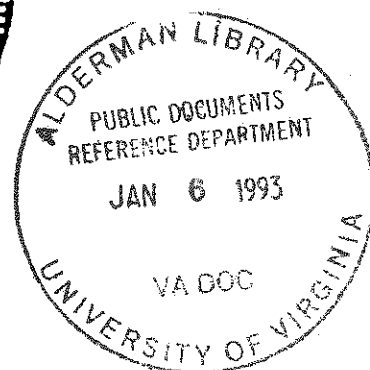
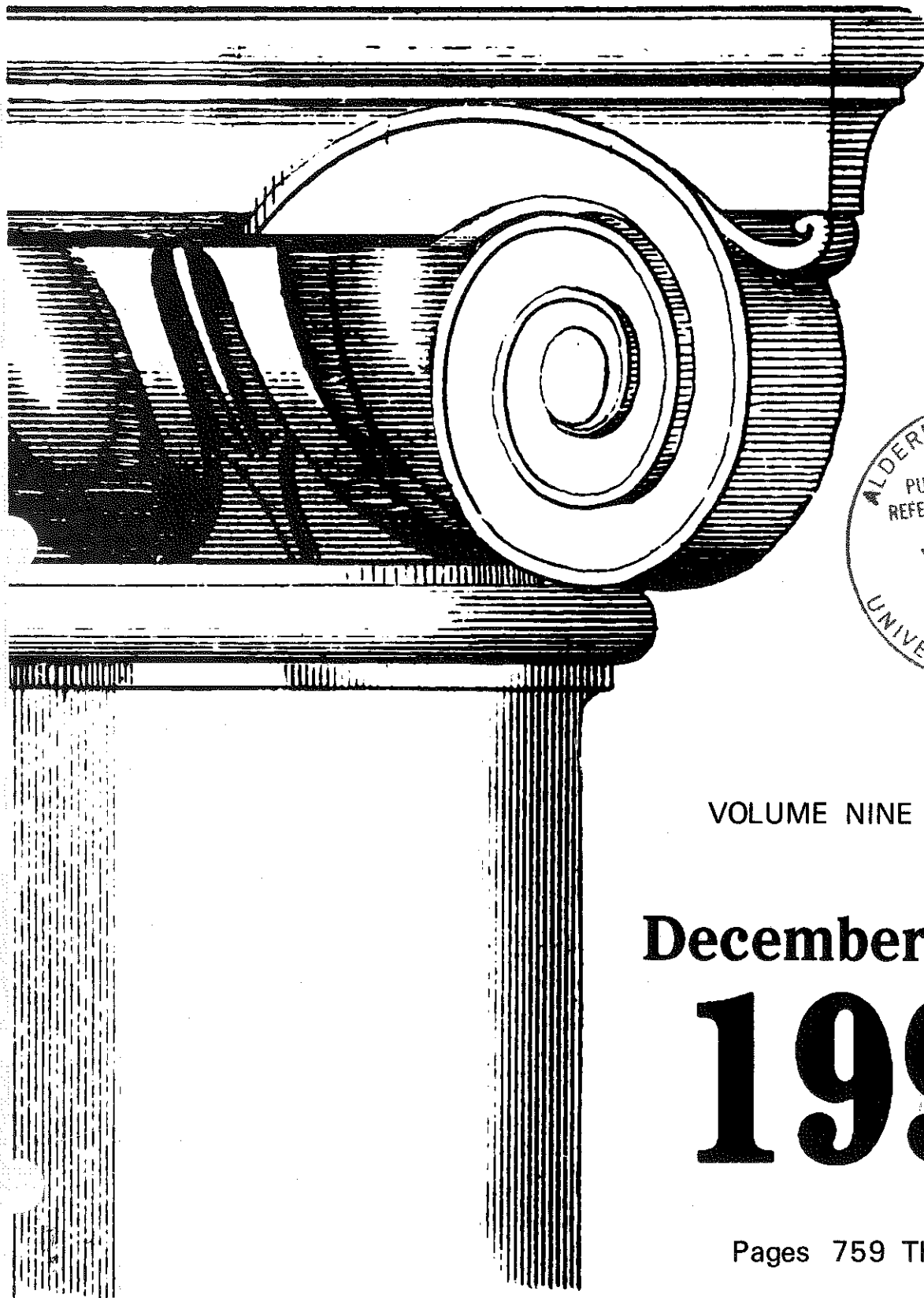


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# THE VIRGINIA REGISTER

OF REGULATIONS

VA  
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VOLUME NINE • ISSUE SIX

December 14, 1992

# 1992

Pages 759 Through 978

## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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

VIRGINIA REGISTER OF REGULATIONS

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July 1992 through September 1993

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Aug. 19	Sept. 7
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Final Index - Volume 8	

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Oct. 14	Nov. 2
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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 AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Audiology and Speech-Language Pathology intend to consider amending regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech Pathology.** The purpose of the proposed action is to (i) delete licensure requirements that become ineffective on December 31, 1992, (ii) add the word "language" to all references of speech pathology, and (iii) incorporate legislative changes which became effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2602 of the Code of Virginia.

Written comments may be submitted until December 31, 1992.

**Contact:** Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7390.

## BOARD OF COMMERCE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Commerce intends to consider repealing regulations entitled: **VR 190-02-1. Agency Rules of Practice for Hearing Officers.** The purpose of the proposed action is to repeal the current rules of practice to eliminate confusion, duplication or inconsistency with the statutes incorporated in the Administrative Process Act (APA.)

Statutory Authority: § 54.1-310 of the Code of Virginia.

Written comments may be submitted until January 13, 1993, to Bonnie S. Salzman, Director, Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

**Contact:** Peggy McCreery, Regulatory Programs Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2194.

## VIRGINIA EMPLOYMENT COMMISSION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-1. Definitions and General Provisions.** The purpose of the proposed action is to clarify definitions, thereby making these regulations more functional for all users.

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

Written comments may be submitted until December 31, 1992.

**Contact:** Michael Maddox, Legislative Analyst, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-3. Benefits.** The purpose of the proposed action is to correct citations to law or other references.

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

Written comments may be submitted until December 31, 1992.

**Contact:** Michael Maddox, Legislative Analyst, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-4. Adjudication.** The purpose of the proposed action is to clarify language relating to the scheduling and conduct of hearings, and conform such language to that used in other VEC regulations.

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

Written comments may be submitted until December 31, 1992.

**Contact:** Michael Maddox, Legislative Analyst, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

# Notices of Intended Regulatory Action

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## 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 repeal regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program**. The purpose of the proposed action is to repeal the Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program. Appropriations for the program ended in FY 88.

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

Written comments may be submitted until January 15, 1993.

**Contact:** Rosanne Kolesar, Health Programs Analyst, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

### † 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 repeal regulations entitled: **VR 355-25-01. Rules and Regulations for the Reporting of Chemical Substances Manufactured or Used in Manufacturing**. The purpose of the proposed action is to repeal the Rules and Regulations for the Reporting of Chemical Substances Manufactured or Used in Manufacturing. These regulations are no longer needed as the 1992 General Assembly passed legislation eliminating the statutory requirements for reporting of toxic substances and the maintenance of the Toxic Substances Chemical Inventory.

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

Written comments may be submitted until January 15, 1993.

**Contact:** Rosanne Kolesar, Health Programs Analyst, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council**. The purpose of the proposed action is to amend the current rules and regulations of the Virginia Health Services Cost Review Council to reflect changes required by the new methodology.

Statutory Authority: §§ 9-161.1 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until December 15, 1992.

**Contact:** John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider promulgating regulations entitled: **VR 370-01-002. The Methodology to Measure the Efficiency and Productivity of Health Care Institutions**. The purpose of the proposed action is to promulgate a new methodology to measure the efficiency and productivity of health care institutions as required by § 9-161.1 of the Code of Virginia.

Statutory Authority: §§ 9-161.1 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until December 15, 1992.

**Contact:** John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## BOARD OF HISTORIC RESOURCES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Historic Resources intends to consider promulgating regulations entitled: **VR 390-01-03.1. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources**. The purpose of the proposed action is to (i) set out those criteria to be used by the board in designating Virginia landmarks, (ii) set out the requirements for public notice and public hearings prior to any designation, and (iii) set out the procedures by which property owners may object to and prevent designation.

Section 10.1-2205 of the Code of Virginia, as amended by the 1992 General Assembly, requires the board to promulgate regulations that set out its evaluation criteria

# Notices of Intended Regulatory Action

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and its procedures for the designation of Virginia landmarks. The same Code section requires that the regulations be consistent with the National Historic Preservation Act and its attendant regulations. Section 10.1-2206.1 of the Code sets out requirements for public notice and public hearings prior to any designation by the board, and it requires that any regulations adopted pursuant to § 10.1-2205 be consistent with those requirements. Finally, § 10.1-2206.2 of the Code makes any designations by the board dependent upon the lack of objection from the owner or majority of owners of the property proposed for designation. The applicable state laws, federal laws, and federal regulations may be reviewed at or obtained (at cost) from the Department of Historic Resources.

In order for the board to carry out its statutory mandate to designate Virginia landmarks, it must adopt regulations setting out criteria and procedures. No alternative to regulations is available. In considering all possible criteria and procedures to be set out in those regulations, the board must remain within the constraints set out in the preceding paragraph. These regulations would affect only those designations made by the board; action by the director of the Department of Historic Resources to nominate property to the National Park Service would be governed by a separate, parallel regulation.

The board requests comments on its intended regulatory action, including any ideas that would assist in the drafting and formation of the proposed regulation. The board also requests comments on the costs and benefits of adopting a regulation setting forth evaluation criteria and procedures; such comments may address the concept generically or they may assess the relative merits of specific alternatives.

The board will hold public meeting on December 16, 1992 at 2 p.m. in Senate Room A, General Assembly Building, Richmond, Virginia, to receive comments and respond to questions on this intended action. It is the board's intent to have a permanent regulation in place by September 1, 1993.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Written comments may be submitted until December 31, 1992, to Margaret T. Peters, Information Officer, 221 Governor Street, Richmond, Virginia.

**Contact:** H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

## DEPARTMENT OF HISTORIC RESOURCES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Historic Resources intends to consider promulgating

regulations entitled: **VR 392-01-02.1. Evaluation Criteria and Procedures for Nomination of Property to the National Register or for Designation as a National Historic Landmark.** The purpose of the proposed action is to set out those criteria to be used by the director in nominating properties to the National Park Service for inclusion in the National Register or for designation as a National Historic Landmark, and to set out the requirements for public notice and public hearings prior to any nomination.

Section 10.1-2202 of the Code of Virginia, as amended by the 1992 General Assembly, authorizes the director of the department to promulgate regulations that set out evaluation criteria and procedures for nominating property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. The same Code section requires that the regulations be consistent with the National Historic Preservation Act and its attendant regulations. Section 10.1-2206.1 of the Code sets out requirements for public notice and public hearings prior to any nomination by the director, and it requires that any regulations adopted pursuant to § 10.1-2205 be consistent with those requirements. The applicable state laws, federal laws, and federal regulations may be reviewed at or obtained (at cost) from the Department of Historic Resources.

While the Code authorizes the director to promulgate regulations but does not explicitly require those regulations, the department finds that the 1992 General Assembly's intent in establishing that authorization was that regulations should be promulgated. The department consequently finds that no alternative to regulations is available. In considering all possible criteria and procedures to be set out in those regulations, the director must remain within the constraints set out in the preceding paragraph. These regulations would affect only those nominations made by the director to the National Park Service; action by the Board of Historic Resources to designate Virginia landmarks would be governed by a separate, parallel regulation.

The department requests comments on its intended regulatory action, including any ideas that would assist in the drafting and formation of the proposed regulation. The department also requests comments on the costs and benefits of adopting a regulation setting forth evaluation criteria and procedures; such comments may address the concept generically or they may assess the relative merits of specific alternatives.

The department will hold a public meeting on December 16, 1992, at 2 p.m. in Senate Room A, General Assembly Building, Richmond, Virginia, to receive comments and respond to questions on this intended action. It is the department's intent to have a permanent regulation in place by September 1, 1993.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

# Notices of Intended Regulatory Action

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Written comments may be submitted until December 31, 1992, to Margaret T. Peters, Information Officer, 221 Governor Street, Richmond, Virginia.

**Contact:** H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

## STATE LOTTERY BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Board intends to consider amending regulations entitled: **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed action is to formally adopt a regulation, currently effective as an emergency, to reduce the potential of the purchase of large blocks of on-line lottery tickets. The regulation will eliminate the requirement that only lottery-issued playslips be used; however, it will stipulate that any playslip used must be manually marked. This action will begin promulgation of an emergency regulation which became effective June 4, 1992.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until December 22, 1992.

**Contact:** Barbara L. Robertson, Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

## BOARD OF MEDICINE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed regulation is to delete the commentary statement following § 2.2 A 3 d (6). The present language is ambiguous and lacks statutory authority.

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

Written comments may be submitted until January 15, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-1. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed regulation is to amend § 9.1 to establish a fee to be retained by the board when an applicant withdraws their application.

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

Written comments may be submitted until January 15, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to conduct a biennial review of existing regulations as to cost of compliance and propose amendments which may result from the review. Included in the review are requests from (i) the Board of Education to reconsider certification and program approval of Nurse Aide Education Programs in the public schools, and (ii) Tidewater Tech for recognition of the Career College Association as an accrediting agency in § 2.2 A 2 of the regulations.

A public hearing to receive oral comments on the existing regulations will be held on January 27, 1993, at 1:30 p.m. at the Department of Health Professions, Conference Room, 6606 W. Broad Street, Richmond, VA.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until January 27, 1993 at 5 p.m.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

## BOARD OF PROFESSIONAL COUNSELORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing**

# Notices of Intended Regulatory Action

the Certification of Substance Abuse Counselors. . The purpose of the proposed action is to adjust renewal and examination fees and to clarify educational and supervision requirements.

Statutory Authority: § 54.1-2400 (6) of the Code of Virginia.

Written comments may be submitted until December 16, 1992.

Contact: Evelyn B. Brown, Executive Director, 6601 W. Broad St., 4th Floor, Richmond, VA 23230-1717, 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 **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** The purpose of the proposed action is to revise certain sections of the standards related to independent living placements, foster and adoptive home studies, and related foster care standards. These are the standards private agencies must meet in order to obtain a license to place children in foster or adoptive homes.

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

Written comments may be submitted until December 16, 1992, to Doris Jenkins, Division of Licensing Programs, 8007 Discovery Drive, Richmond, VA 23229.

Contact: Peggy Friedenber, Policy Analyst, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229, 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 promulgating regulations entitled: **VR 615-43-4.1. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** The purpose of the proposed action is to implement the changes in § 63.1-236 of the Code of Virginia, effective July 1, 1992, which allow adults adopted in Virginia to apply to the Commissioner of Social Services for identifying information on their birth families.

Emergency regulations were published in The Virginia Register on August 24, 1992.

Statutory Authority: §§ 63.1-25, 63.1-223, 63.11-226, 63.1-228, 63.1-229, 63.1-236 and 63.1-236.1.

Written comments may be submitted until January 4, 1992, to Sandra A. Sanroma, Foster Care and Adoption Unit, 8007 Discovery Drive, Richmond, Virginia, 23229-8699.

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

## DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

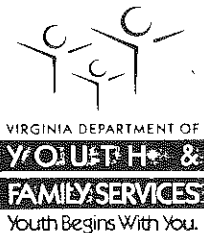
### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-10-1. Hazardous Waste Management Regulations.** The purpose of the proposed action is to incorporate changes to federal rules as related to wood preserving and drip pads to assure consistency and maintain equivalency between the Virginia program and the federal hazardous waste management program.

Statutory Authority: § 10.1-1402 (11) of the Code of Virginia.

Written comments may be submitted until January 14, 1993.

Contact: William F. Gilley, Environmental Regulation Consultant, 101 N. 14th St., 11th Floor, Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2966.



## BOARD OF YOUTH AND FAMILY SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Youth and Family Services intends to consider promulgating regulations entitled: **Design and Construction Standards for Local Residential Care Facilities.** The purpose of the proposed action is to provide direction to localities for the design and construction of residential care facilities for which a locality will seek state reimbursement through the Board of Youth and Family Services and the Department of Youth and Family Services.

Statutory Authority: § 16.1-311 of the Code of Virginia.

Written comments may be submitted until January 8, 1993 to Daniel F. Moon, Capital Outlay Program Manager, P.O.



# Notices of Intended Regulatory Action

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Box 1110, Richmond, Virginia 23208.

**Contact:** Donald R. Carignan, Policy Coordinator, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

# 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.

## BOARD FOR ACCOUNTANCY

### Title of Regulation: VR 105-01-2. Board for Accountancy Regulations.

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

Public Hearing Date: January 19, 1993 - 10 a.m.

Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

### Summary:

The proposed amendments (i) establish professional limited liability companies, (ii) increase the education requirements to 150 semester hours for candidates to sit for the Uniform Certified Public Accountants' examination in the year 2000, (iii) require, effective January 1, 1994, that the education requirements be met prior to applying for the CPA examination, (iv) establish conditioning requirements to accommodate format changes to the Uniform CPA Examination which will become effective with the May 1994 administration, (v) require regulants who fail to renew their license in excess of 12 months to complete prescribed continuing professional education, (vi) establish late fees for regulants who fail to maintain their CPA certificate, renew their license, professional corporation or limited liability company registration for a period of 12 months or longer, (vii) modify the provisions for the use of a sole proprietor name, partnership name and professional corporation, (viii) establish standards of practice for the use of a professional limited liability name, (ix) modify the standards of practice in reference to client records, (x) clarify the CPE reporting period, (xi) clarify services as a lecturer or instructor for CPE credit, and (xii) clarify the acceptable subject areas for CPE.

VR 105-01-2. Board for Accountancy Regulations.

## PART I. GENERAL.

### § 1.1. Definitions.

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

*"Accredited institution"* means any degree-granting college or university accredited at the time of the

applicant's degree or attendance by any of the following: Middle States Association of Colleges and Schools; New England Association of Schools and Colleges; North Central Association of Colleges and Schools; Northwest Association of Schools and Colleges; Southern Association of Colleges and Schools; and Western Association of Schools and Colleges.

*"Anniversary date"* means September 30 of each even-numbered year.

*"Certification"* means the issuance of a certificate to a person who has met all the requirements of Part II of these regulations.

*"Certify," "examine," "review," or "render or disclaim an opinion,"* when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer.

*"Client"* means a person or entity that contracts with or retains a firm for performance of accounting services.

*"Contact hour"* means 50 minutes of participation in a group program or 50 minutes of average completion time in a self-study program.

*"Continuing Professional Education (CPE)"* means an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence.

*"Credit hour"* means successful completion of a course of study measured in a contact hour.

*"Firm"* means a sole proprietorship, partnership, professional corporation, professional limited liability company or any permissible combination practicing public accountancy in Virginia.

*"Group program"* means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

*"Holding out"* means any representation that a regulant is a certified public accountant, made in connection with an offer to practice public accounting. Any such

# Proposed Regulations

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representation is presumed to invite the public to rely upon the professional skills implied by the title "certified public accountant" in connection with the services offered to be performed by the regulant. For the purposes of this definition, a representation shall be deemed to include any oral or written communication conveying that the regulant is a certified public accountant, including without limitation the use of titles on letterheads, professional cards, office doors, advertisements and listings; but, it does not include the display of the original (but not a copy) of a currently valid certificate. A person who holds a valid certificate granted to him by the board may refer to himself as a certified public accountant or CPA but is not empowered to practice public accountancy until he obtains a valid license to do so.

*"Individual firm name"* means a name different from the name in which the individual's license is issued.

*"Interactive self-study program"* means a program designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware, or administrative systems that provide significant ongoing, interactive feedback to the learner regarding his learning process. Evidence of satisfactory completion of each program segment by the learner is often built into such programs. These programs clearly define lesson objectives and manage the student through the learning process by requiring frequent student response to questions that test for understanding of the material presented, providing evaluative feedback to incorrectly answered questions, and providing reinforcement feedback to correctly answered questions. Capabilities are used that, based on student response, provide appropriate ongoing feedback to the student regarding his learning progress through the program.

*"Jurisdiction"* means another state, territory, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam.

*"License"* means a license to practice public accounting issued under the provisions of Chapter 20 (§ 54.1-2000 et seq.) of Title 54.1 of the Code of Virginia.

*"Manager"* means a person who is a licensed certified public accountant designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement.

*"Member"* means a person who is a licensed certified public accountant that owns an interest in a professional limited liability company.

*"Noninteractive self-study program"* means any self-study program that does not meet the criteria for interactive self-study programs.

*"Performance of accounting services"* means the performance of services by a regulant requiring the use of accounting and auditing skills, and includes the issuance of

reports or financial statements, the preparation of tax returns, the furnishing of advice on accounting, auditing or tax matters, or the performance of operational or compliance audits.

*"Principal"* means a certified public accountant who is the sole proprietor of, or a partner or shareholder in, a firm.

*"Professional corporation"* means a firm organized in accordance with Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 of the Code of Virginia.

*"Professional limited liability company"* means a firm organized in accordance with Chapter 13 (§ 13.1-1070 et seq.) of Title 13.1 of the Code of Virginia.

*"Professional services and engagements"* means the association between a client and a firm wherein the firm performs, or offers to perform, accounting services for the client.

*"Professional staff"* means employees of a firm who make decisions and exercise judgment in their performance of accounting services, but excludes employees performing routine bookkeeping or clerical functions.

*"Regulant"* means any Virginia certificate holder, licensee, professional corporation, or professional limited liability company or firm.

*"Reporting cycle"* means the current and two preceding reporting calendar years when meeting the requirements of § 5.1 of these regulations.

*"Reporting year"* means for the purposes of these regulations a calendar year.

*"Self-study program"* means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs do not include informal learning.

*"Virginia approved sponsor"* means an individual or business approved by the board to offer continuing professional education in accordance with these regulations.

## PART II. ENTRY.

### § 2.1. Qualifications for certification.

Any person applying for certification as a certified public accountant shall meet the requirements of good character and education and shall have passed both a basic and an ethics examination, as approved by the board.

#### A. Character.

# Proposed Regulations

The board may deny application to sit for the basic examination or deny certification upon a finding supported by clear and convincing evidence of a lack of good character. An applicant's history of dishonest or felonious acts, lack of fiscal integrity or acts which would constitute violations of these regulations will be considered by the board in determining character. Evidence of the commission of a single act may be sufficient to show a lack of good character.

## B. Education.

1. Each applicant shall have earned one of the following:

a. A baccalaureate or higher degree from a four-year accredited institution. The applicant shall have completed the following courses or their equivalent at an accredited institution:

Courses .....	Semester Hours
Principles of Accounting (or introductory level Financial Accounting and Managerial Accounting) .....	6
Financial Accounting/Accounting Theory (above the introductory level) .....	9
Cost/Managerial Accounting (above the introductory level) .....	3
Auditing .....	3
Taxation .....	3
Business (Commercial) Law (exclusive of Legal Environment of Business) .....	3
Computer Information Systems .....	3
Principles of Economics .....	3
Principles of Management .....	3
Principles of Marketing .....	3
Business Finance .....	3
<b>Total .....</b>	<b>42</b>

b. Provided the applicant initially applies and sits for the examination by November 30, 1992, the education requirement will be satisfied if by July 31, 1988, the applicant had completed a baccalaureate or higher degree and had completed 27 semester hours in accounting subjects from an accredited institution. These courses must have included courses in accounting, auditing, cost accounting, and commercial law (but not more than six semester hours of commercial law); or

e. b. Provided the applicant initially applies and sits for the examination by November 30, 1993, the education requirement will be satisfied if the applicant has completed a baccalaureate or higher degree with either a major in accounting or a concentration in accounting from an accredited institution as defined in § 1.1; or

d. c. Provided the applicant initially applies and sits for the examination by November 30, 1993, the education requirement will be satisfied if the applicant has completed 120 semester hours of earned credit from an accredited institution of which at least 60 semester hours must be at the junior and senior level and must include the following business related courses, or their equivalent:

Courses .....	Semester Hours
Principles of Accounting .....	6
Principles of Economics .....	3
Principles of Marketing .....	3
Principles of Management .....	3
Finance .....	3
Information Systems .....	3
Statistics .....	3
Business Policy .....	3
Financial Accounting and Accounting Theory .....	6
Cost/Managerial Accounting .....	3
Auditing .....	3
Taxation .....	3
Commercial Law (not to exceed six semester hours) ....	3
Business Electives .....	15
<b>Total .....</b>	<b>60</b>

d. By the year 2000, each applicant shall have earned one of the following:

(1) A masters or higher degree with a major in accounting from an American Assembly of Collegiate Schools of Business accredited institution; or

(2) One hundred fifty semester hours of earned credit and a baccalaureate degree with either a major in accounting or a concentration in accounting from an accredited institution as defined in § 1.1

# Proposed Regulations

which must include the following accounting related courses or their equivalent:

Courses	Semester Hours
Principles of Accounting (or introductory level Financial and Managerial Accounting)	6
Financial and Cost/Managerial Accounting (above the introductory level)	15*
Taxation	6*
Auditing (to include Professional Ethics and Responsibilities)	6*
Management or Accounting Computer Based Information Systems	3*
<b>Total Accounting Hours</b>	<b>36</b>
Business Law	3*
Electives	111
<b>Total Required Hours</b>	<b>150</b>

\* Upper division courses that must be taken at a four year accredited institution as defined in § 1.1.

(3) One hundred fifty semester hours of earned credit and a baccalaureate degree from an accredited institution as defined in § 1.1 which must include the following business and accounting related courses or their equivalent:

Courses	Semester Hours
Principles of Economics	6
Principles of Finance	3
Principles of Management	3
Principles of Marketing	3
Statistics, Quantitative Applications in Business or Operations Management	6
Business (Commercial) Law	3*
Policy, Strategy, or an Integrative Business or Accounting Course	3
<b>Total General Business</b>	<b>27</b>
Principles of Accounting (or introductory level Financial and Managerial Accounting)	6
Financial and Cost/Managerial Accounting (above the introductory level)	15*

Taxation	6*
Auditing (to include Professional Ethics and Responsibilities)	6*
Management or Accounting Computer Based Information Systems	3*
<b>Total Accounting Hours</b>	<b>36</b>
Electives	87
<b>Total Required Hours</b>	<b>150</b>

\* Upper division courses that must be taken at a four year accredited institution as defined in § 1.1.

e. Applicants whose degrees or diplomas were earned at colleges or universities outside the United States shall have their educational credentials evaluated by a foreign academic credentials service approved by the board to determine the extent to which such credentials are equivalent to the education requirements set forth above.

Such credentials may be accepted by the board as meeting its educational requirements fully, partially, or not at all.

2. Evidence of education. Each applicant shall submit evidence of having obtained the required education in the form of official transcripts transmitted directly from the accredited institution. In unusual circumstances other evidence of education may be accepted when deemed equivalent and conclusive.

3. Education prerequisite to examination. The education requirements shall be met prior to examination. An applicant may, however, be admitted to the May examination if he will have completed the education requirements by the succeeding June 30, and to the November examination if he will have completed the education requirements by the succeeding December 31, and has filed evidence of enrollment in the required courses as specified by the board. *Effective January 1, 1994, the education requirements shall be met prior to applying for the examination.*

## C. Examination.

1. Each applicant for an original CPA certificate in Virginia must pass a basic ~~four-part~~, written national uniform examination in auditing, business law, theory of accounting, and accounting practice *and other such related subject areas as deemed appropriate by the board from time to time*. Applicants who have no unexpired examination credits must sit for all parts of the basic examination. Each part of the basic examination must be passed with a grade of 75. The board may use all or any part of the Uniform

Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants to assist it in performing its duties.

The fee for examination shall be \$117. The fee for reexamination shall be \$117. The fee for proctoring out-of-state candidates shall be \$75. Fees shall not be prorated and are nonrefundable except in accordance with § 2.1 C 7 8 .

2. Examination credits. Credits will be given for basic examination ~~parts~~ sections passed through five successive offerings subsequent to the first occasion when credit is earned, provided that:

a. No credit will be allowed until either *the section principally testing* accounting practice or two other ~~parts~~ sections are passed at a single sitting; and

b. The candidate sits for all ~~parts~~ sections for which credit has not previously been granted; and

c. ~~The candidate receives a minimum grade of 50 in each part not passed, except if three parts are passed at a single examination no minimum grade shall be required on the fourth part.~~

c. *The candidate receives a minimum grade of 50 in each section not passed, except if all sections but one are passed at a single examination, no minimum grade shall be required on the remaining section.*

3. *Effective with the May 1994 examination, credits will be awarded if, at a given sitting of the examination, a candidate passes two or more, but not all, sections. The candidate shall be given credit for those sections passed, and need not sit for reexamination in those sections, provided:*

a. *The candidate wrote all sections of the examination at that sitting;*

b. *The candidate attained a minimum grade of 50 on each section not passed at each sitting;*

c. *The candidate passes the remaining sections of the examination within five consecutive examinations given after the one at which the first sections were passed;*

d. *At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections not yet passed;*

e. *In order to receive credit for passing additional sections in any such subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed on such sitting; and*

f. *Any candidate who has been awarded conditional*

*credit for a section passed prior to May 1994 shall be awarded conditional credit as specified below:*

(1) *A candidate who has been awarded conditional credit for the accounting practice section shall be awarded conditional credit for the accounting and reporting section, and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.*

(2) *A candidate who has been awarded conditional credit for either the auditing or the business law (renamed business law and professional responsibilities) section, or both, shall retain such credit until he passes the remaining sections, or until the conditional status of such credit expires, whichever occurs first.*

(3) *A candidate who has been awarded conditional credit for the accounting theory section shall be awarded conditional credit for the financial accounting and reporting section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.*

3. 4. Examination credits, exceptions. The board may, at its discretion, waive any of the above requirements for carryover examination credits for candidates who suffer documented serious personal illness or injury, or death in their immediate family, or who are prevented from meeting these requirements due to the obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the examination missed or within 6 months of the completion of military or Peace Corps service whichever is later.

4. 5. Conduct in basic examination. Each applicant shall follow all rules and regulations established by the board with regard to conduct at the basic examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the examination site on the date of the examination.

5. 6. Loss of credit or eligibility. Any applicant found to be in violation of the rules and regulations governing conduct in the basic examination may lose established eligibility to sit for the examination or credit for examination parts passed.

6. 7. Application deadline. Application to sit for the basic examination shall be made on a form provided by the board and shall be filed in accordance with the instructions on the application along with all required documents by the first Friday in March for the May examination and by the first Friday in

# Proposed Regulations

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September for the November examination.

7- 8. Failure to appear; excused examination. An applicant who fails to appear for the basic examination or reexamination shall forfeit the fees charged for that examination or reexamination unless excused.

The board may, at its discretion, excuse an applicant for an examination until the next examination for military service when documented by orders or a letter from the commanding officer; or for serious injury, illness or physical impairment, any of which must be documented by a statement from the treating physician; or death in their immediate family, or for other good cause of similar magnitude approved by the board. The fee for the excused examination will be refunded.

## § 2.2. Original CPA certificate.

A. A CPA certificate will be granted to an applicant who has met all of the qualifications for certification outlined in § 2.1.

B. The fee for an original CPA certificate shall be \$25. All fees are nonrefundable and shall not be prorated.

## § 2.3. Certificate by endorsement.

A CPA certificate will be granted to an applicant who holds a like valid and unrevoked certificate issued under the law of any jurisdiction showing that applicant is in good standing in the jurisdiction; provided:

1. The applicant meets all current requirements in Virginia at the time application is made; or

2. At the time the applicant's certificate was issued in the other jurisdiction the applicant met all requirements then applicable in Virginia; or

3. The applicant has met all requirements applicable in Virginia except the education requirement, or has passed the examination under different credit or grade provisions, and either:

a. The applicant has five years of experience in the performance of accounting services within the 10 years prior to application, or

b. The applicant has five years of experience in the performance of accounting services, one year of which was immediately prior to application and, within the 10 years prior to application, had completed 15 semester hours of accounting, auditing and related subjects at an accredited institution.

4. The fee for a certificate by endorsement shall be \$90. All fees are nonrefundable and shall not be prorated.

## § 2.4. License/certificate maintenance.

Any person holding a Virginia CPA certificate shall either maintain a Virginia license to practice public accounting or file annually as a certificate holder not engaged in the practice of public accounting in Virginia and pay the required maintenance fee.

## § 2.5. Licensure.

Each certified public accountant who is engaged in or holding himself out to be engaged in the practice of public accountancy in Virginia must hold a valid license. This provision applies to professional staff who are eligible for licensure as set forth in § 2.7 as well as to sole proprietors, partners and shareholders. Professional staff required to, but who do not, hold a license on the effective date of these regulations shall be deemed to be in compliance hereunder if an application for license is made no later than March 1, 1991, and is subsequently approved by the board.

1. To be eligible for licensure an individual shall meet the qualifications for certification outlined in § 2.1 and one of the experience requirements set forth in § 2.7.

2. The fee for an initial CPA license shall be \$75. All fees are nonrefundable and shall not be prorated.

## § 2.6. Requirement for licensure; exception.

Only a certified public accountant, holding a valid Virginia license, may engage in the practice of public accounting in Virginia. However, this does not prohibit any person from affixing his signature to any statement or report for his employer's internal or management use designating the position, title, or office of the person.

## § 2.7. Experience and continuing professional education requirements for original license.

### A. Experience.

Each applicant for an original license shall have met the following experience requirements:

1. Two years of experience in public accounting with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services, or

2. Two years of experience under the supervision of a certified public accountant in the performance of accounting services with at least 800 hours of that experience including the following:

a. Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in the accounting records; and

b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records; and

c. Experience in the planning of the program of audit work including the selection of the procedures to be followed; and

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the accounting records; and

e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon; or

3. Three years of experience in the performing of accounting services which demonstrates intensive, diversified application of accounting principles, auditing standards or other technical standards pertaining to accounting and review services, tax services or management advisory services; or

4. Three years of teaching experience in upper level courses in accounting, auditing, and taxation at an accredited institution in conjunction with no less than five months experience with a public accounting firm with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services.

#### B. Education substituted for experience.

An applicant having a baccalaureate degree and courses as defined in § 2.1 B 1 and a master's degree from an accredited institution with 15 semester hours in graduate level accounting courses exclusive of those courses defined in § 2.1 B 1 will be credited with one year of required experience under this section.

#### C. Continuing professional education.

Individuals applying for original licensure after January 1, 1992, shall have completed in addition to one of the experience requirements, a minimum of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to application for licensure. For purposes of license renewal, the calendar year following the year in which the initial license is issued shall be considered the first reporting year for CPE as outlined in § 5.1 of these regulations.

#### § 2.8. Registration of professional corporations and professional limited liability companies .

A. All professional corporations and professional limited liability companies practicing public accountancy in Virginia shall be registered by the board.

A. B. The fee for registration shall be \$50. All fees are

nonrefundable and shall not be prorated.

B. C. All registered professional corporations and professional limited liability companies shall meet the standards set forth in § 54.1-2005 of the Code of Virginia and Part IV of these regulations.

#### PART III. RENEWAL/REINSTATEMENT.

#### § 3.1. Requirement for renewal.

Effective September 30, 1992, each license to practice public accounting ; or CPA certificate maintenance or registration certificate of a professional corporation shall be renewed annually. A registration certificate of a professional corporation or professional limited liability company shall be renewed biennially.

A. Effective September 30, 1992, each license to practice public accounting or registration certificate of a professional corporation shall expire annually on September 30. Maintenance fees for CPA certificates shall also be due on September 30. A registration certificate of a professional corporation or professional limited liability company shall be renewed September 30 of each even-numbered year. The board will mail a renewal notice to the regulant at the last known address of record. Failure of the regulant to receive written notice of the expiration does not relieve him of the requirement to renew or pay the required fee.

#### B. Renewal fees are as follows:

1. The fee for renewal of a CPA license to practice public accounting shall be \$55.

2. The fee for renewal of the registration certificate of a professional corporation shall be \$50.

3. The fee for renewal of the registration certificate of a professional limited liability company shall be \$50.

3. 4. The CPA certificate maintenance fee shall be \$20.

4. 5. All fees are nonrefundable and shall not be prorated.

C. If the required fee is not received by October 30 an additional fee of \$20 for certificate maintenance, \$55 for license renewal and , \$50 for professional corporation , and \$50 for professional limited liability company registration shall be required.

D. Applicants for renewal of the CPA certificate maintenance or license to practice public accounting shall certify on a form provided by the board that they continue to meet the standards for entry as set forth in § 2.1 A.



# Proposed Regulations

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Applicants for renewal of the license to practice public accounting shall meet the requirements of Part V. Failure to comply with Part V will result in the denial of the license renewal.

E. The board, in its discretion, and for just cause, may deny renewal of a license to practice public accounting, registration or certificate maintenance. Upon such denial, the applicant for renewal may request that a hearing be held in accordance with the provisions of the Administrative Process Act.

## § 3.2. Requirement for reinstatement.

A. If the regulant fails to renew his license to practice public accounting or registration or pay his certificate maintenance fee within six months following the expiration, he will be required to present reasons for reinstatement and the board may, in its discretion, grant reinstatement or require a requalification or reexamination or both.

B. The fee for reinstatement of the license to practice public accounting shall be \$150, the fee for reinstatement of the professional corporation registration shall be \$100, *the fee for reinstatement of a professional limited liability company registration shall be \$100*, and the fee for reinstatement of the certificate maintenance shall be \$50. All fees are nonrefundable and shall not be prorated.

C. Applicants for reinstatement of the CPA certificate or license to practice public accounting shall certify on a form provided by the board that they continue to meet the standards for entry as set forth in § 2.1 A.

D. If the regulant has failed to renew his license to practice public accounting for a period of *up to 12 months or longer*, he shall be required in accordance with Part V of these regulations to complete *a minimum of 40* credit hours of Continuing Professional Education (CPE) with a minimum of eight CPE credit hours in accounting and auditing and eight CPE credit hours in taxation within the preceding 12 months prior to application. *If the regulant has failed to renew his license in excess of 12 months, he shall be required to complete a continuing education program specified by the board which shall require him to complete 40 hours of CPE if he failed to renew the license for one year, 80 hours of CPE if he failed to renew the license for two years and 120 hours of CPE if he failed to renew the license for three years, minus the hours which he had taken during this time period.*

E. If the regulant has failed to maintain his CPA certificate, renew his license, professional corporation or limited liability company registration for a period of 12 months or longer, a late fee, in addition to the reinstatement fees outlined in § 3.2 B, will be required.

The late fee shall be \$75 for each renewal period in which the regulant failed to maintain his CPA certificate, or failed to renew his license, professional corporation or

*limited liability company registration.*

E. F. The board, in its discretion, and for just cause, may deny reinstatement of a license to practice public accounting, registration or certificate maintenance. Upon such denial, the applicant for reinstatement may request that a hearing be held in accordance with the provisions of the Administrative Process Act.

## PART IV. STANDARDS OF PRACTICE.

### § 4.1. Regulant accountable for service rendered.

Whenever a regulant offers or performs any services in Virginia related to the performance of accounting services regardless of the necessity to hold a license to perform that service, he shall be subject to the provisions of these regulations. A regulant shall be responsible for the acts or omissions of his staff in the performance of accounting services.

### § 4.2. Use of terms.

No firm with an office in Virginia shall use or assume the title or designation "certified public accountant," "public accountant," "CPA," or any other title, designation, phrase, acronym, abbreviation, sign, card, or device tending to indicate that it is engaged in or holding itself out to be engaged in Virginia in the practice of public accountancy unless all principals and professional staff of that firm who work in Virginia or who have substantial contact with work in Virginia and who meet the qualifications for licensure, currently hold a valid Virginia license.

### § 4.3. Notification of change of address or name.

Every regulant shall notify the board in writing within 30 days of any change of address or name.

### § 4.4. Sole proprietor name.

A sole proprietor shall use his own name as the firm name except that a proprietor surviving the death or withdrawal of all other partners may continue using the name of those partners for not more than two years after becoming a sole proprietor.

A sole proprietor shall use his own name as the firm name. However, a sole proprietor surviving the death or withdrawal of all other partners in a partnership may continue using the names of those partners for not more than two years after becoming a sole proprietor. A sole proprietor surviving the death or withdrawal of all other members in a professional limited liability company may continue using the names of those members for not more than two years after becoming a sole proprietor.

### § 4.5. Partnership name.

A licensee Licensees shall not practice in a partnership that includes a fictitious name, a name that indicates fields of specialization, or a name that includes the terms "company," "associates" or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed partner. The name of one or more past partners or in a predecessor partnership, shareholders or licensed officers of a predecessor professional corporation, or members or managers of a predecessor professional limited liability company may be included in the partnership firm name of a successor partnership.

#### § 4.6. Corporate name Professional corporation name .

A licensee shall not practice in a corporate name professional corporation that includes a fictitious name, which a name that indicates fields of specialization, or a name that includes the terms "company," "associates," or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed shareholder or licensed officer . The names of one or more past shareholders or licensed officers in a predecessor professional corporation, partners in a predecessor partnership, or members or managers in a predecessor professional limited liability company may be included in the corporate firm name of a successor corporation. A shareholder surviving the death or retirement of all other shareholders may continue using the names of those shareholders, or partners in a predecessor partnership, or those members in a predecessor professional limited liability company for not more than two years after becoming a sole shareholder.

#### § 4.7. Professional limited liability company name.

Licensees shall not practice in a professional limited liability company that includes a fictitious name, a name that indicates fields of specialization, or a name that includes the terms "company," "associates," or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed member or licensed manager. The names of one or more past shareholders or licensed officers in a predecessor professional corporation, partners in a predecessor partnership, or members or managers in a predecessor limited liability company may be included in the firm name of a successor professional limited liability company.

#### § 4.7. § 4.8. Notification of changes in firm.

A licensee shall notify the board in writing within 30 days after occurrence of any of the following:

1. The formation of a firm and its name, location and names of partners or , shareholders , members or managers ;
2. The admission of any new partner, shareholder or partner , or member ;
3. The change in the name of any partnership or ,

professional corporation or professional limited liability company ;

4. The change in the supervisor of any branch office;
5. The change in the number or location of Virginia offices;
6. The opening of a new office in Virginia and the name of the supervisor; and
7. Any event which would cause the firm not to be in conformity with the provisions of these regulations.

#### § 4.8. § 4.9. Sharing an office.

When sharing office facilities with any person who is not in the same firm, the licensee shall use practices and procedures which enable a reasonable person clearly to distinguish between the practice of the licensee and the operation of the other occupation or business.

#### § 4.9. § 4.10. Resident manager in Virginia in charge of office.

Each branch office of a firm shall be managed by a certified public accountant licensed in Virginia. No licensed certified public accountant shall manage more than one office until such time as the licensee can provide, and the board approves, a management plan to provide supervision and quality control over the work product of all offices under the supervision of the licensee.

#### § 4.10. § 4.11. Misleading name, letterhead, publication, etc.

Nothing shall be contained in a firm's name or in any firm letterhead, publication, form, card, etc., which states or implies an ability, relationship, or condition that does not exist.

#### § 4.11. § 4.12. Independence.

A regulant individual or a firm of which he is a partner or shareholder shall not express an opinion or conclusion on financial statements of an entity in such a manner as to imply that he or his firm are acting in an independent capacity when either the regulant or his firm during the period of a professional engagement or at time of expressing an opinion have any of the following interests in that entity:

1. Had or was committed to acquire any direct or material indirect financial interest in the entity; or
2. Held the position of trustee, executor, or administrator of any trust or estate, if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the entity; or
3. Held ownership of any joint closely-held business

# Proposed Regulations

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investment with the entity or any officer, director, or principal stockholder thereof which was material in relation to the net worth of the licensee; or

4. Had a relationship with the entity as a promoter, underwriter, or voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee; or

5. Had any loan to or from the entity, or from any officer, director, or principal stockholder thereof except loans made by a financial institution under normal lending procedures, terms and requirements such as: loans obtained by the licensee or firm which are not material in relation to the net worth of the borrower; or home mortgages; or other secured loans, except those secured solely by a guarantee of the firm or its licensees.

## ~~§ 4.12.~~ § 4.13. Integrity and objectivity.

A regulant shall not knowingly misrepresent facts or subordinate his judgement to others. In tax practice, a regulant may resolve doubt in favor of his client as long as there is reasonable support for his position.

## ~~§ 4.13.~~ § 4.14. Commissions.

A regulant shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client of products or services of others. Payments for the purchase of all, or part, of an accounting practice, retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons are permitted.

## ~~§ 4.14.~~ § 4.15. Contingent fees.

A regulant shall not engage or offer to engage in the performance of accounting services for a fee which is contingent upon his findings or results of his services. This regulation does not apply either to services involving taxes in which the sole findings are those of the tax authorities or to the performance of accounting services for which the fees are to be fixed by courts or other public authorities.

## ~~§ 4.15.~~ § 4.16. Incompatible occupations.

A regulant shall not concurrently engage in any other business or occupation which impairs his independence or objectivity in the performance of accounting services.

## ~~§ 4.16.~~ § 4.17. Competence.

A regulant shall not undertake performance of accounting services which he cannot reasonably expect to complete with due professional competence, including compliance, when applicable, with these regulations.

## ~~§ 4.17.~~ § 4.18. Auditing standards.

A regulant shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent certified public accountant unless he has complied with applicable generally accepted auditing standards in current use at the time his services were provided. Departures from compliance with generally accepted auditing standards must be justified.

## ~~§ 4.18.~~ § 4.19. Accounting principles.

A regulant shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from generally accepted accounting principles in current use at the time the services were provided, which departure has a material effect on the statements taken as a whole. Any such departure is permissible only if the regulant can demonstrate that, due to unusual circumstances, the financial statements would otherwise be misleading. In such cases, his report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principles would result in a misleading statement.

## ~~§ 4.19.~~ § 4.20. Other technical standards.

A regulant shall comply with other technical standards pertaining to accounting and review services, tax services and management advisory services in current use at the time services were provided. Departure from compliance with other technical standards must be justified.

## ~~§ 4.20.~~ § 4.21. Forecasts or projections.

No regulant shall vouch for the achievability of any forecast or projection.

## ~~§ 4.21.~~ § 4.22. Confidential client information.

A regulant shall not, without the consent of his client, disclose any confidential information pertaining to his client obtained in the course of the performance of accounting services, except in response to a subpoena or summons enforceable by order of a court, in response to any inquiry made by the board or its agents, by a government agency, or by a recognized organization of certified public accountants, or by the client himself or his heirs, successors or authorized representative, or in connection with a quality control review of the regulant's practice.

## ~~§ 4.22.~~ § 4.23. Client's records.

A regulant shall furnish to his firm's client or former client, regardless of any payment due the firm, within a reasonable time upon request:

1. A copy of the client's tax return or a copy thereof ;  
or

2. A copy of any report, or other document, issued by the regulant or his firm to or for the client and not formally withdrawn by the regulant or his firm prior to the request; or

3. Any accounting or other record belonging to the client, or obtained from or on behalf of the client, which the regulant or another member of his firm removed from the client's premises or had received for the client's account; or

4. A copy of the regulant's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records not otherwise available to the client. Examples would include worksheets in lieu of books of original entry or general or subsidiary ledgers such as a list of accounts receivable or depreciation schedule. All journal entries and supporting details would also be considered client's records ; or

*5. With respect to subdivisions 1, 2 and 4 of this section, a regulant shall not be required to deliver to a client any of the foregoing until the client has paid any amounts owed for those services to which subdivisions relate.*

~~§ 4.23.~~ § 4.24. Acting through others.

A regulant shall not permit others to carry out on his behalf, acts which, if carried out by the regulant would place him in violation of these regulations. A regulant shall not perform services for a client who is performing the same or similar services for another, if the regulant could not perform those services under these rules.

~~§ 4.24.~~ § 4.25. Advertising.

A regulant shall not make any false, fraudulent, misleading, deceptive, or unfair statement or claim, including but not limited to:

1. A misrepresentation of fact; or
2. Failure to make full disclosure of any relevant fact; or
3. Representation of services of exceptional quality not supported by verifiable facts; or
4. A representation that might lead to unjustified expectation of higher level of performance or of favorable results.

~~§ 4.25.~~ § 4.26. Solicitation.

A regulant shall not by any direct personal communication solicit an engagement for the performance of accounting services if the communication is overreaching or contains use of coercion, duress, compulsion, intimidation, threats, or harassment.

~~§ 4.26.~~ § 4.27. Response to board communication.

A regulant shall respond by registered or certified mail within 30 days of the mailing of any communication from the board when requested.

~~§ 4.27.~~ § 4.28. Revocation, suspension, and fines.

The board may suspend, deny renewal, or revoke any certificate, license, or registration, or may fine the holder thereof, upon a finding of any conduct reflecting adversely upon the regulant's fitness to engage in the performance of accounting services or for violation of any of the board's rules and regulations.

~~§ 4.28.~~ § 4.29. Practice inspection and continuing professional education.

In lieu of or in addition to any remedy provided in ~~§ 4.27~~ 4.28 the board may require an inspection of a regulant's practice, require completion of specified continuing education, restrict regulant's area of practice, or impose such other sanctions as it deems appropriate.

~~§ 4.29.~~ § 4.30. Petition for reinstatement or modification of a penalty.

No petition shall be considered while the petitioner is under sentence for a criminal offense related to the practice of accountancy, including any period during which the petitioner is on court imposed probation or parole for such offense. Otherwise, a person whose certificate or license has been revoked or suspended, or who has been subjected to any penalty may petition the board for reinstatement or modification of any penalty, no sooner than one year from the effective date of that decision. The petition shall be accompanied by at least two verified recommendations from licensees who have had personal knowledge of the activities of the petitioner since the time the disciplinary penalty was imposed. The board may consider all activities of the petitioner dating from the time the disciplinary action was taken; the offense for which the petitioner was disciplined; the petitioner's rehabilitative efforts and restitution to damaged parties; and the petitioner's general reputation for truth and professional ability.

~~§ 4.30.~~ § 4.31. Ownership of records.

All statements, records, schedules, working papers, and memoranda made by a regulant incident to rendering services to a client in the performance of accounting services other than records specified in ~~§ 4.22~~ § 4.23 , shall become the property of the regulant's firm absent an express agreement between the firm and the client to the contrary. No such statement, record, schedule, working paper or memorandum covered by this section or in ~~§ 4.22~~ § 4.23 shall be sold, transferred, or bequeathed, to anyone other than a regulant without the consent of the client.

# Proposed Regulations

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## ~~§ 4.31.~~ § 4.32. Acts discreditable.

A regulant shall not commit an act discreditable to the profession of accountancy.

## ~~§ 4.32.~~ § 4.33. Single act.

Evidence of the commission of a single act prohibited by these regulations shall be sufficient to justify a finding of violation, without evidence of a general course of conduct.

## PART V. CONTINUING PROFESSIONAL EDUCATION.

### § 5.1. CPE requirements for license renewal.

Effective January 1, 1992, all licensees shall be required to complete and maintain 120 credit hours of continuing professional education (CPE) during each reporting cycle. At a minimum, a licensee shall complete ~~and report to the board~~ 20 CPE credit hours of CPE by January 31 of the year following the year in which credit was earned during each calendar year. Credits shall be reported to the board by January 31 of the year following the year in which credits were earned.

For each three-year reporting cycle, the licensee shall have completed a minimum of 16 credit hours in accounting and auditing and a minimum of 16 credit hours in taxation as defined by § 5.5. The licensee shall not ~~report~~ receive credit for more than 24 credit hours of personal development as defined by § 5.5 during each reporting cycle.

In order to receive CPE credit for a license renewal, all credit hours shall be from an approved sponsor as set forth in § 5.4.

The board shall approve sponsors of CPE courses and not individual courses. A CPE course provided by an approved sponsor shall meet the CPE requirements set forth in the Rules and Regulations for Continuing Professional Education Sponsors and will be so designated. An investigation of an approved sponsor may be initiated based on a complaint or other information.

### § 5.2. Requirements for retaining records.

It is the responsibility of the licensee to retain evidence of satisfactory completion of CPE credit hours for a period of five years. Such documentation shall be in the form of the certificate of completion provided by the approved sponsor or verification from the accredited institution offering the course. If upon request, the licensee cannot provide such documentation, the licensee shall be subject to a fine which shall not exceed \$1,000 in accordance with § 54.1-202 of the Code of Virginia.

### § 5.3. Requirements for reporting credit hours.

All CPE credit hours shall be reported to the board on a form provided by the board and subject to a possible audit. The date forms are received, not postmarked, by the board shall be the date used to determine compliance with the CPE reporting requirements.

Failure to complete or report CPE credit hours by January 31 of each succeeding year will result in the following late filing fees:

1. A \$100 late filing fee shall be required for all reporting forms received after January 31 but before June 1.
2. A \$250 late filing fee shall be required for all reporting forms received after May 31 but before August 1.
3. A \$500 late filing fee shall be required for all reporting forms when received after July 31. A license renewal shall be issued to the regulant upon receipt by the board of the late filing fee and evidence of compliance with § 5.1.
4. CPE credit hours taken during the late filing period to meet the requirement of the previous year shall not be reported for any succeeding year.
5. Individuals failing to meet the CPE requirements may be subject to requalification including possible reexamination and submission of experience qualifications.
6. The board may, at its discretion, waive or defer CPE requirements and late fees for licensees who suffer documented serious illness or injury, or who are prevented from meeting those requirements due to the obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board.

### § 5.4. Acceptable continuing professional education credit.

The board shall recognize the following as acceptable CPE credit:

1. Courses from sponsors approved by the board in accordance with the board's Rules and Regulations for Continuing Professional Education Sponsors; or
2. Courses from sponsors of continuing professional education programs listed in good standing with the National Registry of CPE Sponsors maintained by the National Association of State Boards of Accountancy (NASBA); or
3. Courses from accredited institutions as defined by § 1.1 of these regulations when offering college courses in the regular course curriculum. CPE credit for completing a college course in the college curriculum will be granted based on the number of credit hours

the college grants for successful completion of the course. One semester hour of college credit is 15 CPE credit hours; on quarter hour of college credit is 10 CPE credit hours; or

4. Auditing of college courses from accredited institutions as defined by § 1.1 of these regulations. Licensees auditing a college course shall be granted one CPE credit hour for each contact hour of courses within the fields of study outlined in § 5.5 of these regulations. Attendance at two-thirds of scheduled sessions of audited courses shall be documented by the course instructor to receive CPE credit for the hours attended; or

5. Service as a lecturer or instructor in a continuing professional education program provided the discussion meets subject matter requirements as defined in § 5.5 and is performed for an approved sponsor in courses which increase the licensee's professional competence and qualifies for CPE credit for participants as defined in §§ 5.4 and 5.5. One credit hour shall be given for each 50-minute period of service instruction. For the instructor's preparation time, there will be awarded two additional hours of CPE for each credit hour of instruction. The instructor shall retain evidence to support the request for credit. The instructor shall be given no credit for subsequent sessions involving substantially identical subject matter. The maximum credit given for preparation as an instructor may not exceed 50% of the CPE credit hours reported each year with a maximum of 20 credit hours in any one reporting year; or

6. Successful completion of a self-study course offered by an approved sponsor. CPE credit hours will be established by the sponsor according to the type of CPE self-study program and pre-tests to determine average completion time. Interactive self-study programs shall receive CPE credit equal to the average completion time. Noninteractive self-study programs shall receive CPE credit equal to one-half of the average completion time. An interactive self-study program that takes an average of two contact hours to complete shall be recommended for two CPE credit hours. A noninteractive self-study program that takes an average of two contact hours to complete shall be recommended for one CPE credit hour.

## § 5.5. Acceptable CPE subject areas.

A. All CPE credit hours shall be in the fields of study within the following CPE subject areas. All acceptable CPE shall be in subject areas within the following six fields of study:

1. Accounting and auditing which includes accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative accounting principles issued by the standard-setting bodies, and any other related subject

generally classified within the accounting discipline. It also includes auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and on the reporting on the results of audit findings, compilations, and review.

A minimum of 16 credit hours in accounting and auditing shall be completed in each three-year reporting cycle.

2. Advisory services which includes all advisory services provided by professional accountants - management, business, personal, and other. It includes Management Advisory Services and Personal Financial Planning Services. This section also covers an organization's various systems, the services provided by consultant practitioners, and the engagement management techniques that are typically used. The systems include those dealing with planning, organizing, and controlling any phase of individual financial activity and business activity. Services provided encompass those for management, such as designing, implementing, and evaluating operating systems for organization, as well as business advisory services and personal financial planning.

3. Management which includes the management needs of individuals in public practice, industry, and government. Some subjects concentrate on the practice management area of the public practitioner such as organizational structures, marketing services, human resource management, and administrative practices. For individuals in industry, there are subjects dealing with the financial management of the organization, including information systems, budgeting, and asset management, as well as items covering management planning, buying and selling businesses, contracting for goods and services, and foreign operations. For licensees in government, this curriculum embraces budgeting, cost analysis, human resource management, and financial management in federal, state and local governmental entities. In general, the emphasis in this field is on the specific management needs of licensees and not on general management skills.

4. Personal development which includes such skills as communications, managing the group process, and dealing effectively with others in interviewing, counseling, and career planning. Public relations and professional ethics are also included.

A maximum of 24 credit hours may be reported awarded in personal development in each reporting cycle.

5. Specialized knowledge and application which includes subjects related to specialized industries, such as not-for-profit organizations, health care, oil and gas. An industry is defined as specialized if it is unusual in its form of organization, economic structure, source(s)

# Proposed Regulations

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of financing, legislation or regulatory requirements, marketing or distribution, terminology, technology; and either employs unique accounting principles and practices, encounters unique tax problems, requires unique advisory services, or faces unique audit issues.

6. Taxation which includes subjects dealing with tax compliance and tax planning. Compliance covers tax return preparation and review and IRS examinations, ruling requests, and protests. Tax planning focuses on applying tax rules to prospective transactions and understanding the tax implications of unusual or complex transactions. Recognizing alternative tax treatments and advising the client on tax saving opportunities are also part of tax planning.

A minimum of 16 *credit* hours in taxation shall be completed in each three-year reporting cycle.

## § 5.6. NASBA approved sponsors.

A. The board shall annually review the NASBA Registry's Standards for Approval.

B. A NASBA approved sponsor removed from the Registry for failure to comply with NASBA standards will no longer qualify as a Virginia approved sponsor. In such cases, the sponsor may apply to the board for approval as a Virginia approved sponsor.

FOR OFFICE USE ONLY	
CODE AND	
NUMBER	
DATE	

FEE: \$50.00  
 (Make Check payable to the  
 Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF COMMERCE  
 Board for Accountancy  
 Post Office Box 11066  
 Richmond, Virginia 23230-1066  
 (804) 367-8505

ALL FEES ARE  
 NONREFUNDABLE

=====

APPLICATION FOR REGISTRATION AS A PROFESSIONAL LIMITED LIABILITY COMPANY  
 PRACTICING PUBLIC ACCOUNTANCY

=====

PLEASE PRINT OR TYPE

Company Name \_\_\_\_\_  
 (The name must be followed by the description "Professional Limited  
 Company," or "Professional Limited Liability Company" or  
 "P.L.C." or P.L.L.C.")

Address of Company \_\_\_\_\_  
 Number and Street

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Mailing Address \_\_\_\_\_  
 (if different than above)

Business Telephone Number: ( ) \_\_\_\_\_

=====

MANAGERS OF COMPANY

<u>NAME</u>	<u>VA CPA LICENSE NUMBER</u>
_____	_____
_____	_____

=====

MEMBERS OF COMPANY

<u>NAME</u>	<u>VA CPA LICENSE NUMBER</u>
_____	_____
_____	_____
_____	_____

Please attach evidence of your articles of organization with the State Corporation  
 Commission to practice as a professional limited liability company in Virginia.

VSPA 10 (7-1-92)

Refer to Chapter 20 of Title 54.1 (§ 54.1-2005) and Chapter 13 of Title 13.1 (§  
 13.1-556) of the Code of Virginia, as amended and to the Board's Rules and Regulations  
 dealing with individual and Limited Liability Company professional practice.

CERTIFICATION

I, \_\_\_\_\_, Manager of the aforementioned Professional  
 Limited Liability Company, do solemnly swear and affirm that the answers herein are  
 true to the best of my knowledge and belief, that Chapter 20 of Title 54.1 and Chapter  
 13 of Title 13.1, of the Code of Virginia, as amended, and all applicable rules and  
 regulations have been adhered to, and that this application is made for the purpose of  
 securing the authority to practice public accountancy as a professional limited  
 liability company under the designation "Certified Public Accountant(s)" or Public  
 Accountant(s)."

\_\_\_\_\_  
 Manager

=====

AFFIDAVIT

State of \_\_\_\_\_

City/County of \_\_\_\_\_

Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day  
 of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

My Commission expires \_\_\_\_\_



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR REGISTRATION AS A PROFESSIONAL CORPORATION
PRACTICING PUBLIC ACCOUNTANCY

PLEASE PRINT OR TYPE

CORPORATE NAME

ADDRESS OF MAIN OFFICE
Number and Street City/Town State Zip Code

MAILING ADDRESS
(If different than above)

OFFICERS OF CORPORATION

Name Title Legal Residence Address in Full

BOARD OF DIRECTORS

Name of Each Director Legal Residence Address in Full

THE FOLLOWING QUESTIONS MUST BE ANSWERED IN DETAIL:

- 1. Number of Shares of Stock Authorized to be Issued
2. Number of Shares of Stock Issued and Outstanding

LIST BELOW THE NAMES OF EACH OWNER OF CAPITAL STOCK IN CORPORATION:

Name of Each Owner Legal Residence Address in Full No. Shares Stock Owned VA license No.

ALL FEES ARE NONREFUNDABLE

Revised 8/6/90

Refer to Chapter 20 of Title 54.1 (Section 54.1-2005) and Chapter 7 of Title 13.1 (Section 13.1-556) of the Code of Virginia, as amended and to the Board's Rules and Regulations dealing with individual and corporate professional practice.

CERTIFICATION

Does each shareholder practicing public accounting in Virginia hold a Virginia license? Yes \_\_\_ No \_\_\_ (If answer is no, attach explanation)

I, \_\_\_\_\_, President of the aforementioned corporation, do solemnly swear and affirm that the answers herein are true to the best of my knowledge and belief, that Chapter 20 of Title 54.1 and Chapter 7 of Title 13.1, of the Code of Virginia, as amended, and all applicable rules and regulations have been adhered to, and that this application is made for the purpose of securing the authority to practice public accountancy as a corporation under the designation "Certified Public Accountant(s)" or Public Accountant(s)."

President

Attested to before me, the secretary of the corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Secretary

AFFIDAVIT

State of \_\_\_\_\_

City/County \_\_\_\_\_

Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Notary Public

My Commission expires \_\_\_\_\_

FOR BOARD FOR ACCOUNTANCY USE ONLY

Corporation organized under Virginia Law? \_\_\_\_\_

Do all shareholders who will practice in Virginia hold a valid Virginia license? \_\_\_\_\_

FOR OFFICE USE ONLY  
CODE A06 \_\_\_\_\_  
NUMBER \_\_\_\_\_  
DATE \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMERCE  
Board for Accountancy  
Post Office Box 11066  
Richmond, Virginia 23230-1066  
(804) 367-8505

APPLICATION FOR REINSTATEMENT OF LICENSE TO PRACTICE PUBLIC ACCOUNTANCY, MAINTENANCE OF CPA CERTIFICATE OR REGISTRATION OF PROFESSIONAL CORPORATION

Section 3.2 of the Board's Rules and Regulations state that if you fail to renew your license, maintain your certificate or renew your professional corporation registration, you are required to apply for reinstatement and remit the appropriate fee.

CPA CERTIFICATE = \$50.00  
CPA CERTIFICATE AND LICENSE = \$150.00  
PROFESSIONAL CORPORATION REGISTRATION = \$100.00  
Make check payable to the Treasurer of VIRGINIA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD  
ALL FEES ARE NONREFUNDABLE

PLEASE ANSWER THE FOLLOWING QUESTIONS:

- (1) Name: \_\_\_\_\_
- (2) Address: \_\_\_\_\_  
\_\_\_\_\_
- (3) I hold license/certificate/registration numbered \_\_\_\_\_ which expired \_\_\_\_\_  
(please Circle one)
- (4) Please provide explanation for failure to renew: \_\_\_\_\_  
\_\_\_\_\_

- (5) Have you accepted a fee for a professional service in Virginia since the license/certificate/registration expired? Yes \_\_\_ No \_\_\_ (If Yes, provide details)
- (6) Have you ever been convicted of a felony? Yes \_\_\_ No \_\_\_  
Have you ever been convicted of a misdemeanor? Yes \_\_\_ No \_\_\_  
If answer to either question is yes, provide details.
- (7) If you are applying for reinstatement and your license has expired 12 months or more, please provide the Board with documentation of 40 hours of CPE with a minimum of eight CPE credit hours in accounting and auditing and eight hours in taxation within the preceding 12 months prior to application.

FOR OFFICE USE ONLY

Staff Approval \_\_\_\_\_ Board Approval \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

VSBA-2 (10/23/91)

longer, please provide the Board with documentation of 40 hours of CPE with a minimum of eight CPE credit hours in accounting and auditing and eight hours in taxation within the preceding 12 months prior to application.

Accounting and auditing  
Subject Area \_\_\_\_\_ CPE Credit \_\_\_\_\_  
Course Title \_\_\_\_\_

Tax  
Subject Area \_\_\_\_\_ CPE Credit \_\_\_\_\_  
Course Title \_\_\_\_\_

Subject Area \_\_\_\_\_ CPE Credit \_\_\_\_\_  
Course Title \_\_\_\_\_

(Please attach supporting documentation of completion of CPE)

I hereby apply to the Board for Accountancy for reinstatement and certify under oath that I have read, and agree to abide by, the Virginia CPA law and rules and regulations of the Board, that all statements contained in this application and the statement(s) attached thereto are correct, to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

Date \_\_\_\_\_ Signature \_\_\_\_\_

AFFIDAVIT

State of \_\_\_\_\_  
City/County of \_\_\_\_\_

This statement was signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Notary Public \_\_\_\_\_

My Commission expires \_\_\_\_\_

FEE: \$25.00  
(Make check payable to the  
Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMERCE  
Board for Accountancy  
Post Office Box 11066  
Richmond, Virginia 23230-1066  
(804) 367-8505

APPLICATION FOR ORIGINAL CPA CERTIFICATE

PLEASE TYPE OR PRINT

NAME \_\_\_\_\_  
(Use name as you wish it to appear on certificate)  
Social Security Number \_\_\_\_\_

Home Address \_\_\_\_\_  
Street Number and Name Telephone Number  
City State Zip Code

Employer's Name \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Business Address \_\_\_\_\_  
Street Number and Name City State Zip Code

Date of completion of Uniform CPA Examination \_\_\_\_\_  
Give Month/Year

Date of completion of AICPA Ethics Examination \_\_\_\_\_  
(Attach copy of grade sheet or certificate) Month/Year

Have you ever been convicted of a felony? Yes \_\_\_ No \_\_\_  
Have you ever been convicted of a misdemeanor? Yes \_\_\_ No \_\_\_  
(If answer to either question is yes, attach full details)

I hereby declare that I am not now in the practice of public accountancy in Virginia  
and that I will not practice in Virginia without first securing a license.

Date \_\_\_\_\_ Signature \_\_\_\_\_  
AFFIDAVIT

State of \_\_\_\_\_  
City/County of \_\_\_\_\_  
This statement was signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

My Commission Expires: \_\_\_\_\_  
Notary Public

FOR BOARD USE ONLY

Certificate Number \_\_\_\_\_ Staff approval \_\_\_\_\_ Board approval \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_ Date \_\_\_\_\_

ALL FEES ARE NONREFUNDABLE

10/23/91

FEE: \$90.00  
(Make check payable to the  
Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMERCE  
Board for Accountancy  
Post Office Box 11066  
Richmond, Virginia 23230-1066  
(804) 367-8505

APPLICATION FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

MUST BE TYPED OR PRINTED

NAME \_\_\_\_\_  
(Use name as you wish it to appear on certificate) Social Security Number \_\_\_\_\_

Home Address \_\_\_\_\_  
Street Number and Name Telephone Number  
City State Zip Code

Employer \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Business Address \_\_\_\_\_  
Street Number and Name City State Zip Code

Length of residence or employment in Virginia \_\_\_\_\_  
Place of Birth \_\_\_\_\_

Have you ever been convicted of a felony? Yes \_\_\_ No \_\_\_  
Have you ever been convicted of a misdemeanor? Yes \_\_\_ No \_\_\_  
If your answer is "Yes," attach a statement providing all relevant details.

Original Certificate Number \_\_\_\_\_ Issued by \_\_\_\_\_ on \_\_\_\_\_  
(Attach Completed Form R-2) Jurisdiction Date

Date of Completion of CPA Examination \_\_\_\_\_  
(Attach completed VSBA-7 Form) Month/Year

Have you completed an AICPA Ethics Examination? Yes \_\_\_ No \_\_\_ if "yes" provide  
answer sheet or certificate; if "no" see order form.

your right to practice public accountancy in  
any jurisdiction ever been suspended or revoked? Yes \_\_\_ No \_\_\_  
(If answer is "yes," attach full details)

Please submit three (3) character references by completing form VSBA R-3

Please provide official transcripts to be submitted directly from the institution to  
the Board showing evidence of completion of the education requirement.

FOR BOARD USE ONLY

Certificate Number \_\_\_\_\_ Staff Approval \_\_\_\_\_ Board Approval \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_ Date \_\_\_\_\_

ALL FEES ARE NONREFUNDABLE

VSBA R-1  
10/23/91

If you are applying for certification by endorsement under Section 2.3(3), please complete the attached VSBA-6 form documenting your experience. All experience, including current experience must be documented by your employer(s) using form VSBA-6. If necessary, the information given on the form may be amplified by an accompanying letter on letterhead, signed by the employer, and notarized.

Employer \_\_\_\_\_  
Address \_\_\_\_\_  
( )  
Telephone No. \_\_\_\_\_  
Exact Dates of Employment: From \_\_\_\_\_ To \_\_\_\_\_  
Employer \_\_\_\_\_  
Address \_\_\_\_\_  
( )  
Telephone No. \_\_\_\_\_  
Exact Dates of Employment: From \_\_\_\_\_ To \_\_\_\_\_

If you wish also to obtain a Virginia CPA license please complete form VSBA-5.

I hereby declare that I am not now in the practice of public accountancy in Virginia and that I will not practice in Virginia without first securing a license.

Date \_\_\_\_\_ Signature \_\_\_\_\_

I hereby apply to the Board for Accountancy for a Virginia certificate by endorsement and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

AFFIDAVIT

State of \_\_\_\_\_  
City/County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_



COMMONWEALTH of VIRGINIA

MILTON K. BROWN, JR.  
Director

Department of Commerce  
2600 WEST BROOK STREET, RICHMOND, VIRGINIA 23230-4917

RONALD K. LAYNE  
Director of Administration and Finance  
PEGGY S. McCREERY  
Director of Regulatory Programs  
BONNIE S. SALZMAN  
Director of Investigation and Adjudication

TO: Roberta L. Banning, Assistant Director  
Virginia Board for Accountancy

FROM: \_\_\_\_\_  
Name of Board transferring grades

I certify that \_\_\_\_\_ sat for the  
Uniform CPA Examination under our jurisdiction on the dates listed below, with the  
results noted:

DATE I.O.NO. AUDITING LAW THEORY PRACTICE

These grades were furnished by the Advisory Grading Service of the AICPA and we recommend that they be accepted.

CERTIFICATION

I certify that the foregoing statements are correct to the best of my knowledge and belief.

Signature of Authorized Person \_\_\_\_\_

S E A L

O F

B O A R D

Date \_\_\_\_\_

VSBA-7

TELEPHONE (804) 367-8500  
TDD (804) 367-7253



COMMONWEALTH of VIRGINIA

MILTON K. BROWN, JR.  
Director

Department of Commerce  
3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23220-4917

RONALD K. LAYNE  
Director of Administration and Finance  
REGGY S. McPHERY  
Director of Regulatory Programs  
BONNIE S. SALZMAN  
Director of Investigation and Assurance

VIRGINIA BOARD FOR ACCOUNTANCY

Department of Commerce  
3600 West Broad Street  
Richmond, Virginia 23230  
(804) 367-8505  
Toll Free 1-800-552-3016

TO THE ENDORSER OF AN APPLICANT FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

The applicant named below has applied for a Virginia CPA Certificate by Endorsement. You have been named as one of the applicant's endorsers, and the Virginia Board for Accountancy would very much appreciate your frank answers to the following questions. Any other comments you care to make regarding this applicant would also be of value.

ENDORSEMENT

1. Applicant's name \_\_\_\_\_
2. What type of relationship have you had with applicant? (Business, professional or social?) \_\_\_\_\_
3. Number of years you have known applicant: \_\_\_\_\_
4. Is he/she of good moral character? \_\_\_\_\_
5. To the best of your knowledge, has he or she been employed as an accountant and, if so, for how long? \_\_\_\_\_
6. If the answer to Number 5 is in the affirmative, what is his or her professional reputation? \_\_\_\_\_
7. Are you aware of any facts which might negatively affect the Board's consideration of this application? If so, please specify. \_\_\_\_\_
8. Your comments or recommendations: \_\_\_\_\_

Continue on reverse side if necessary

Signature \_\_\_\_\_  
 Name (PRINTED) \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Occupation: \_\_\_\_\_  
 Date \_\_\_\_\_

VSBA R-3

TO: \_\_\_\_\_  
Name of Board which issued applicant's original certificate

FROM: Roberta L. Banning, Assistant Director  
Virginia Board for Accountancy

The application for a Virginia CPA certificate submitted by \_\_\_\_\_ states that his or her original certificate was issued by your Board.

We would very much appreciate if you would provide us with the following information:

1. Certification Number \_\_\_\_\_ was issued on \_\_\_\_\_
2. The basis for certification were those checked below:  
 a written examination prepared by this Board  
 grades reported by the Advisory Grading Service for the Uniform CPA Examination.  
 Other \_\_\_\_\_
3. This certification is \_\_\_\_\_, or is not \_\_\_\_\_ in good standing. If not, please provide details.
4. This applicant completed the AICPA ethics examination on \_\_\_\_\_.

I certify that the foregoing statements are correct to the best of my knowledge and belief.

S E A L \_\_\_\_\_  
 O F \_\_\_\_\_  
 B O A R D \_\_\_\_\_  
 \_\_\_\_\_  
 Date \_\_\_\_\_

VSBA R-2

TELEPHONE: (804) 367-8500  
TDD: (804) 367-9753

FEE: \$75.00  
(Make check payable to the  
Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMERCE  
Board for Accountancy  
Post Office Box 11066  
Richmond, Virginia 23230-4917  
(804) 367-3505

APPLICATION FOR LICENSING OF A VIRGINIA CPA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD  
ALL FEES ARE NONREFUNDABLE

NAME Last First Middle Social Security No.  
Home Address Street number and name City State Zip Code Telephone No.  
Name of Employer or Firm Business Address Street number and name City State Zip Code Telephone No.

Do you presently hold a valid CPA Certificate? Yes No Cert. No.  
Have you ever been convicted of a felony? Yes No  
Have you ever been convicted of a misdemeanor? Yes No  
If answer to either question is yes, provide details.

Please check the experience requirement which you meet:  
§ 2.7. Experience.

- A. Each applicant for licensure shall have met one of the following:  
1. Two years of experience in public accounting with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services, or  
2. Two years of experience under the supervision of a certified public accountant in the performance of accounting services with at least 800 hours of that experience including the following:  
a. Experience in applying for a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in the accounting records; and  
b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records; and  
c. Experience in the planning of the program of audit work including selection of the procedures to be followed; and

FOR OFFICE USE ONLY  
Staff Approval Board Approval  
Date Date

VSOA-9 (10/23/91)

FOR OFFICE USE ONLY  
CODE AND NUMBER  
DATE

- d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the accounting records; and  
e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon; or  
3. Three years of experience in the performing of accounting services which demonstrates intensive, diversified application of accounting principles, auditing standards or other technical standards pertaining to accounting and review services, tax services or management advisory services; or  
4. Three years of teaching experience in upper level courses in accounting, auditing, and taxation at an accredited institution in conjunction with no less than five months experience with a public accounting firm with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services.

Individuals applying after January 1, 1992, shall provide documentation of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to submission of this application.

Course Title	Subject area	CPE credit

Please attach supporting documentation of completion of CPE

I hereby apply to the Board for Accountancy for a Virginia CPA license and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

Signature of Applicant

AFFIDAVIT

State of \_\_\_\_\_  
City/County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_  
Notary Public

My Commission expires \_\_\_\_\_

FOR OFFICE USE ONLY  
 CCCEADA \_\_\_\_\_  
 NUMBER \_\_\_\_\_  
 DATE \_\_\_\_\_

FEE: \$75.00  
 (Make check payable to the  
 Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF COMMERCE  
 Board for Accountancy  
 Post Office Box 11066  
 Richmond, Virginia 23230-1066  
 (804) 367-8505

APPLICATION FOR ORIGINAL LICENSE TO PRACTICE PUBLIC ACCOUNTANCY IN VIRGINIA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD  
 ALL FEES ARE NONREFUNDABLE

MUST BE TYPED OR PRINTED

NAME Last First Middle Social Security Number \_\_\_\_\_

Home Address Street number and name Telephone Number \_\_\_\_\_

City State Zip Code \_\_\_\_\_

Employer \_\_\_\_\_

Business Address Street number and name Telephone Number \_\_\_\_\_

City State Zip Code \_\_\_\_\_

CPA Certificate Number Date of Issuance \_\_\_\_\_

(Name on certificate if different from above \_\_\_\_\_)

Date of Completion of CPA Examination Month/year \_\_\_\_\_

Date of Completion of the AICPA Ethics Examination Month/year \_\_\_\_\_

Have you ever been convicted of a felony? Yes \_\_\_ No \_\_\_

Have you ever been convicted of a misdemeanor? Yes \_\_\_ No \_\_\_

If answer to either question is yes, provide details.

FOR OFFICE USE ONLY

Staff Approval \_\_\_\_\_ Board Approval \_\_\_\_\_ Contact Conditions \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

Member \_\_\_\_\_

Member \_\_\_\_\_

RECORD OF EXPERIENCE

(Refer to § 2.7 of the Rules and Regulations on Experience and CPE Requirements)

1. ATTEST AND REVIEW EXPERIENCE

FIRM NAME \_\_\_\_\_ LOCATION \_\_\_\_\_ to \_\_\_\_\_  
 EXACT DATES \_\_\_\_\_  
 \_\_\_\_\_ to \_\_\_\_\_

2. GENERAL ACCOUNTING EXPERIENCE

FIRM NAME \_\_\_\_\_ LOCATION \_\_\_\_\_ to \_\_\_\_\_  
 EXACT DATES \_\_\_\_\_  
 \_\_\_\_\_ to \_\_\_\_\_

3. TEACHING EXPERIENCE

INSTITUTION \_\_\_\_\_ LOCATION \_\_\_\_\_ to \_\_\_\_\_  
 EXACT DATES \_\_\_\_\_

4. DIVERSIFIED ACCOUNTING EXPERIENCE:

EMPLOYER \_\_\_\_\_ LOCATION \_\_\_\_\_ to \_\_\_\_\_  
 EXACT DATES \_\_\_\_\_

Credit under § 2.7(B) requested? Yes \_\_\_ No \_\_\_  
 Document with official transcripts submitted directly from the institution to the Board. Undergraduate and graduate transcripts are required.

All experience, including current experience, must be documented by your employer(s) using Form VSBA-6. If necessary, the information given on the form may be amplified by an accompanying letter on letterhead signed by the employer and notarized.

Individuals applying after January 1, 1992, shall provide documentation of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to submission of this application.

Course Title	Subject Area	CPE Credits
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Please attach supporting documentation of completion of CPE.

I hereby apply to the Virginia Board for Accountancy for a license as a Virginia certified public accountant and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct, to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

Date \_\_\_\_\_ SIGNATURE OF APPLICANT \_\_\_\_\_

AFFIDAVIT

State of \_\_\_\_\_

City/County \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

TO: Department of Commerce  
Board for Accountancy  
3600 West Broad Street  
Richmond, VA 23230-4917

FROM: \_\_\_\_\_  
NAME OF FIRM OR EMPLOYER

RE: \_\_\_\_\_  
APPLICANT FOR LICENSURE

1. Exact dates of employment: From \_\_\_\_\_ To \_\_\_\_\_

2. Reason for leaving, if applicable: \_\_\_\_\_

3. Was employment full-time? Yes \_\_\_\_\_ No \_\_\_\_\_

If part-time, please indicate total number of hours worked: \_\_\_\_\_  
(2000 hours is considered one year experience)

4. Please describe the supervision provided the applicant. (Was the supervisor a CPA?) Yes \_\_\_\_\_ No \_\_\_\_\_

5. Please evaluate the quality of the applicant's performance: \_\_\_\_\_

6. Do you consider the applicant qualified by experience and demonstrated competence to become a CPA and to independently exercise the attest function? Yes \_\_\_\_\_ No \_\_\_\_\_

7. What were the applicant's job titles while with your organization?

Title	Firm Period
_____	_____
_____	_____
_____	_____

(over)



# Proposed Regulations

10. continued-

3. If applicant is no longer with your organization, is there any reason you would be unwilling to rehire him/her should a suitable opening become available?

Please refer to § 2.7 of the Rules and Regulations on experience requirements. If the experience of the applicant with you is:

- 2 years with attest and review experience with license CPA \_\_\_\_\_ complete Question #9
- 2 years general auditing experience \_\_\_\_\_ complete Question #10
- 3 years teaching experience \_\_\_\_\_ complete Question #11
- 3 years Diversified Accounting Experience \_\_\_\_\_ complete Question #12

9. Did the applicant's experience include emphasis on the independent examination and/or review of financial statements involving the applicable performance of either the audit or review functions? Yes \_\_\_ No \_\_\_  
 How many hours of the applicant's time was so engaged? \_\_\_\_\_

Here generally accepted auditing standards or, were applicable, standards for accounting and review services applied? Yes \_\_\_ No \_\_\_

Has third party reliance on the financial statements involved? Yes \_\_\_ No \_\_\_

List the types of organizations audited: \_\_\_\_\_

Describe the types of work assigned to the applicant: \_\_\_\_\_

10. Did the applicant's experience in (a) applying a variety of auditing procedures and techniques to usual and customary financial transactions, (b) preparation of auditing working papers (c) planning the program of audit work including the selection of the procedures to be followed, (d) preparation of written explanations and comments on the findings of the examination and in the accounting records, or (e) preparation and analysis of financial statements together with explanations and notes thereon? Yes \_\_\_ No \_\_\_

How many hours of the applicant's time was so engaged? \_\_\_\_\_

Describe the type of work assigned to the applicant: \_\_\_\_\_

11. Teaching Experience

Name of Institution

Classes Taught (with dates taught)

12. DIVERSIFIED ACCOUNTING EXPERIENCE

Check each of the following items in the appropriate box, also set forth the approximate percentage of time the applicant spent in each category (i.e. Auditing & Accounting, etc.). Experience obtained by the applicant must demonstrate intensive, diversified application of accounting and auditing principles and procedures.

Do Not Write  
% of Time in This Column

A. Auditing & Accounting

- ( ) Review and testing of internal accounting controls.
- ( ) Verification of accounts receivable.
- ( ) Review of inventory procedures & verification of physical inventory.
- ( ) Testing inventory valuation and pricing.
- ( ) Review of client bank reconciliations.
- ( ) Testing fixed asset cost and depreciation.
- ( ) Testing prepaid, intangible & deferred charges.
- ( ) Review and verification of accounts payable and accruals.
- ( ) Search for unrecorded liabilities.
- ( ) Analysis and verification of changes in equity accounts or fund balances.

A. continued-

- ( ) Application of analytical review procedures.
- ( ) Testing of revenue and purchase cut-off.
- ( ) Review of significant subsequent events.
- ( ) Review of pertinent legal documents.
- ( ) Design and use of computer audit tools.
- ( ) Compilation of financial statements.
- ( ) Review of financial statements.
- ( ) Drafting of financial statements.
- ( ) Preparation of financial statements in accordance with GAAP.
- ( ) Preparation of financial plans, budgets or projections in accordance with GAAP.
- ( ) Taking and evaluating physical inventories.
- ( ) Preparation of trial balances, adjusting journal entries and analysis of accounts.
- ( ) Maintaining books of original entry, including general ledger and subsidiary ledgers.

B. Tax Services

- ( ) Preparation of income tax returns.
- ( ) Preparation of payroll tax returns.
- ( ) Review of financial statement tax provisions and tax accruals.
- ( ) Research in tax law, tax planning for clients.

C. Management services

- ( ) Design and installation of accounting, cost and other computer systems.
- ( ) Other management advisory services.

Do Not Write  
in This Column

% of Time      %

---

D. Bookkeeping Services

- ( ) Maintaining books of original entry.
- ( ) Preparation of payroll tax returns.
- ( ) Posting of general and subsidiary ledgers.

E. Other Services

Attach detailed description of work performed.

Total 100%

F. Government

- ( ) General accounting, including preparation of trial balances, analysis of accounts and preparation of financial statements.
- ( ) Employment with a Government Auditor's office or internal auditing unit which includes:
- ( ) Application of auditing procedures and techniques in accordance with general accepted auditing standards.
- ( ) Experience in preparation of audit work papers.
- ( ) Experience in developing audit programs and procedures.
- ( ) Field auditor for state tax returns.
- ( ) other-Attach detailed explanation of work performed.

Total 100%

G. Internal Revenue Service

- ( ) Employment as field agent
- ( ) Other-Attach detailed explanation of work performed

Please indicate the following information:

Grade Level	Months employed at this level
_____	_____
_____	_____

Do Not Write  
in This Column

% of Time      %

---

G. continued-

Grade Level	Months employed at this level
_____	_____
_____	_____

Signature of Employer \_\_\_\_\_

Title \_\_\_\_\_

Firm or Agency Name \_\_\_\_\_

Address \_\_\_\_\_

Zip \_\_\_\_\_

( ) Telephone Number \_\_\_\_\_

Affidavit:

State of \_\_\_\_\_

City/County of \_\_\_\_\_

This statement was signed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

Notary Public \_\_\_\_\_

My Commission expires \_\_\_\_\_

**Instructions For Completing Continuing Education Reporting Form**

**CPE Requirement**

Virginia licensed CPAs must complete and maintain 120 CPE credit hours over a three year reporting cycle. A minimum of 20 CPE credit hours must be taken in each calendar year (Reg. Sec. 5.1). All CPE credits for the 1992 calendar year are to be reported on this form. All reported credits must be acceptable CPE (Reg. Sec. 5.4) and must be in one of the six fields of study (Reg. Sec. 5.5).

**Instructions - PLEASE READ CAREFULLY**

1. SECTION I is designed to be computer read. Please use a #2 pencil. Print information on the top column of boxes. For each letter, fill in the oval containing the appropriate letter—only one oval per column.

2. Information for each course completed in calendar year 1992 should be contained in one of the ten numbered blocks provided. One course per block. At the right is a completed example:

1	DATE COMPLETED		CPE CREDIT	SPONSOR IDENTIFICATION					
	01	02		03	04	05	06	07	08
01	01	01	01	01	01	01	01	01	01
02	02	02	02	02	02	02	02	02	02
03	03	03	03	03	03	03	03	03	03
04	04	04	04	04	04	04	04	04	04
05	05	05	05	05	05	05	05	05	05
06	06	06	06	06	06	06	06	06	06
07	07	07	07	07	07	07	07	07	07
08	08	08	08	08	08	08	08	08	08
09	09	09	09	09	09	09	09	09	09
10	10	10	10	10	10	10	10	10	10

Enter the date course was completed, the field of study, the total CPE credit hours awarded and the sponsor identification number. - Virginia approved sponsors' 6 digit identification number should be found on the certificate of completion;

- Enter 888888 for sponsors which are accredited institutions (colleges/universities) as defined in Reg. Sec. 1.1;
- Enter 999999 for sponsors approved by the National Association of State Boards of Accountancy as defined in Reg. Sec. 5.4.

3. Sponsors are to provide credit hours based on a measurement of 50 minutes equal one credit hour.

4. INSTRUCTORS - One block must be completed for credits earned in Instruction. A separate block must be completed for credits claimed in preparation and the "preparation time" oval must be darkened. See Reg. Sec. 5.4.5 regarding service as an instructor.

5. DO NOT ATTACH SUPPORTING DOCUMENTS OR CERTIFICATES OF COMPLETION.

6. If additional blocks are required for reporting CPE credits in Section I, prepare a written addendum with the required information.

**Instructions for Section II**

1. Complete Section II by listing each CPE course completed in calendar year 1992. Refer to the codes on the bottom of the form for Fields of Study and Sponsor Identification number. Enter month, day and year course was completed.

2. Carefully read and sign page 3 making sure name and license number are legible.

3. Do not bend or fold this form.

4. Retain photo copy for your records; return the original in the enclosed envelope so that it will be received by January 31, 1993.

5. Forms received after January 31 will be subject to late filing fees provided by Reg. Sec. 5.3 and outlined below:

- \$100 late filing fee after January 31 but before June 1;
- \$250 late filing fee after May 31 but before August 1;
- \$500 late filing fee after July 31.

You will be billed for any late fees.

These forms will be subject to audit. The licensee is responsible for maintaining records substantiating CPE credits claimed. If upon request, the licensee cannot provide such documentation, the licensee shall be subject to a fine which shall not exceed \$1,000 (Reg. Sec. 5.3).

SECTION I (continued)

3 4 5 6 7 8 9 10

DATE COURSES: 0 1 2 3 4 5 6 7 8 9

FIELD OF STUDY: Accounting and Auditing, Advisory Services, Management, Personal Development, Specialized Knowledge & Application, Taxation

INSTRUCTOR:  Instructor  Preparation Time

PERSONAL DEVELOPMENT:  Personal Development  Application  Taxation

SPECIALIZED KNOWLEDGE & APPLICATION:  Specialized Knowledge & Application  Taxation

ACCOUNTING AND AUDITING:  Accounting and Auditing  Application  Taxation

ADVISORY SERVICES:  Advisory Services  Application  Taxation

MANAGEMENT:  Management  Application  Taxation

SECTION I

VIRGINIA BOARD FOR ACCOUNTANCY  
Continuing Professional Education Reporting Form  
3600 WEST BROAD STREET • RICHMOND, VA • 23230 - 4917  
(804) 367-8505

INSTRUCTIONS: PRINT YOUR LAST NAME ON THE TOP COLUMN OF BOXES. FOR EACH LETTER, FILL IN THE CIRCLE CONTAINING THE APPROPRIATE LETTER.

DATE OF RECEIPT: 1 2 3 4 5 6 7 8 9 10 11 12

CPE REPORTING YEAR: 1 9 9 2

FOR BOARD USE ONLY

1 2

DATE COURSES: 0 1 2 3 4 5 6 7 8 9

FIELD OF STUDY: Accounting and Auditing, Advisory Services, Management, Personal Development, Specialized Knowledge & Application, Taxation

INSTRUCTOR:  Instructor  Preparation Time

PERSONAL DEVELOPMENT:  Personal Development  Application  Taxation

SPECIALIZED KNOWLEDGE & APPLICATION:  Specialized Knowledge & Application  Taxation

ACCOUNTING AND AUDITING:  Accounting and Auditing  Application  Taxation

ADVISORY SERVICES:  Advisory Services  Application  Taxation

MANAGEMENT:  Management  Application  Taxation



# Proposed Regulations

## DEPARTMENT OF GENERAL SERVICES

**Title of Regulation:** VR 330-03-02. Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies and Public Colleges and Universities in the Commonwealth of Virginia.

**Statutory Authority:** § 2.1-526.14:1 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

### Summary:

The proposed aggressive air sampling standards are applicable to final clearance inspection procedures for asbestos abatement projects in local education agencies (LEAs) and public colleges and universities in the Commonwealth of Virginia, and are promulgated pursuant to § 2.1-526.14:1 of the Code of Virginia enacted by the 1990 Virginia General Assembly.

The application of these standards is not mandatory for small scale, short duration activities involving asbestos-containing materials as defined in 29 CFR 1926.58, the federal Occupational Safety and Health Administration's (OSHA) asbestos construction standard.

The Asbestos Hazard Emergency Response Act (AHERA, 40 CFR Part 763, Subpart E) addresses, at a federal level, procedures for aggressive air sampling in LEAs. These standards are not intended to replace AHERA guidelines for aggressive air sampling in LEAs, but are designed to supplement standards for LEAs in the Commonwealth of Virginia.

VR 330-03-02. Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies and Public Colleges and Universities in the Commonwealth of Virginia.

### § 1. Definitions.

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

**"Abatement contractor"** means the company or individual properly licensed in the Commonwealth of Virginia by the Virginia Department of Commerce who conducts asbestos abatement activities such as, but not limited to, removal, encapsulation or enclosure of asbestos-containing materials.

**"Accredited"** means a person or laboratory holding the credentials in accordance with Section 206 of Title II of AHERA.

**"Airborne asbestos fibers"** means suspended, settling or moving asbestos fibers or fiber bundles in air.

**"Ambient air"** means air in an area outside of the asbestos containment area. Areas chosen for air sampling should not be located near access/egress routes for the project, nor should they be located in areas known to contain friable asbestos-containing materials.

**"Asbestos"** means the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite.

**"Asbestos analytical laboratory"** means a laboratory accredited by the National Institute of Standards and Technology (NIST) for transmission electron microscopy (TEM) analysis, and licensed by the Virginia Department of Commerce to perform phase contrast microscopy (PCM) or TEM on material known or suspected to contain asbestos.

**"Asbestos-containing material (ACM)"** means the material or product containing more than 1.0% asbestos by weight.

**"Asbestos containment area"** means an area where an asbestos response action takes place.

**"Asbestos debris"** means pieces of ACM that can be identified by color, texture, or composition, or particulate matter (i.e., dust) if determined by an accredited inspector to contain more than 1.0% asbestos by volume.

**"Asbestos Hazard Emergency Response Act (AHERA)"** means 40 CFR Part 763, Subpart E, and subsequent amendments thereto.

**"Encapsulation"** means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

**"Enclosure"** means an airtight, impermeable, permanent barrier around ACM to prevent the release of asbestos fibers into the air.

**"Local education agency (LEA)"** means (i) the local education agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381); (ii) the owner of any nonpublic, nonprofit elementary or secondary school building; or (iii) the governing authority of a school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

**"OSHA"** means the federal Occupation Safety and Health Administration.

**"Phase Contrast Microscopy (PCM)"** means a laboratory

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analysis method for measuring airborne asbestos fibers (NIOSH Method 7400).

"Project monitor" means a person who is licensed by the Virginia Department of Commerce to observe and monitor the activities of asbestos abatement contractors and roofing, flooring, siding (RFS) contractors on asbestos projects to determine that proper work practices are used and compliance with all federal, state and local laws and regulations is maintained.

"Public colleges and universities" means all state supported institutions of higher education as defined in § 23-9.5 of the Code of Virginia.

"Removal" means the physical removal and disposal of asbestos-containing material.

"Reoccupancy (clearance) level" means .01 or fewer asbestos fibers per cubic centimeter (.01 f/cc) if determined by PCM, or 70 or fewer structures per square millimeter (70 S/mm<sup>2</sup>) if determined by TEM analysis.

"Response action" means a method, including removal, encapsulation, enclosure, repair, operations and maintenance, to abate asbestos hazards to human health and the environment.

"Roofing, flooring, siding (RFS) contractor's license" means an authorization issued by the Virginia Department of Commerce permitting a person to enter into contracts to install, remove or encapsulate asbestos-containing roofing, flooring or siding materials.

"School" means any elementary or secondary school as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854).

"School building" means (i) any structure suitable for use as a classroom, including a school facility such as a laboratory, library or school eating facility used for the preparation of food; (ii) a gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education; (iii) other facilities used for the instruction or housing of students or for the administration of educational or research programs; (iv) a maintenance, storage, or utility facility, including a hallway essential to the operation of any facility described in this definition of "school building"; (v) a portico or covered exterior hallway or walkway; or (vi) an exterior portion of a mechanical system used to condition interior space.

"Small-scale, short duration projects" means renovation and maintenance activities such as, but not limited to:

1. Removal of asbestos-containing insulation on pipes;
2. Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

3. Replacement of an asbestos-containing gasket on a valve;

4. Installation or removal of a small section of drywall; and

5. Installation of electrical conduits through or proximate to asbestos-containing materials.

"Transmission Electron Microscopy (TEM)" means a laboratory analysis method for measuring airborne asbestos fibers using a transmission electron microscope (40 CFR Part 763, Appendix A to Subpart E).

## § 2. Purpose.

The purpose of these standards is to establish a safe, effective, and standard methodology for obtaining aggressive air samples to monitor air for clearance and area reoccupancy after a removal, encapsulation or enclosure project involving asbestos-containing material.

## § 3. Limitations.

A. The aggressive air sampling techniques mandated in this regulation shall be used only in an asbestos containment area with effective negative air filtration, shall be performed only by individuals meeting the licensing requirements described in § 4, and shall not be initiated until a visual inspection is conducted and visible ACM and asbestos debris have been removed.

B. For LEAs, the number of samples collected and method of analysis shall comply with 40 CFR Part 763, Subpart E, and subsequent amendments thereto.

C. For all other buildings, the number of samples collected shall be as specified for PCM in § 6 B. The acceptable method of analysis for the samples is by PCM. At the owner's discretion, TEM analyses may be substituted for or used as a supplement to PCM analyses for final clearance in non-LEA buildings. However, the required minimum number of samples will be as specified for PCM.

D. These standards are mandatory and applicable only for LEAs and public colleges and universities in Virginia.

## § 4. Personnel and laboratory requirements.

A. Individuals performing aggressive air sampling techniques must have a valid asbestos project monitor's license issued by the Department of Commerce.

B. The following conflict of interest provisions shall be applicable to individuals performing aggressive air sampling techniques and asbestos analytical laboratories:

1. Individuals performing aggressive air sampling techniques shall not be employed by or have a financial affiliation with the asbestos abatement or

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RFS contractor conducting the asbestos abatement project. For asbestos projects in public colleges and universities, the college or university will contract directly for asbestos sampling and asbestos testing services.

2. Laboratories utilized for aggressive air sampling analyses on projects shall not have a business relationship concerning the projects with the contractors conducting the asbestos abatement activities on the projects, nor have financial affiliation with the contractors.

## § 5. Equipment requirements.

A. High volume air pumps with necessary peripheral equipment (hoses, connectors, etc.) calibrated to draw from four to 10 liters of air per minute (lpm) through the filter must be used for air sampling.

B. Filters must be 25 millimeter mixed cellulose ester (MCE) filters with a 0.8-1.2 micrometer pore size if the filter is to be analyzed by PCM, or a 0.45 micrometer pore size if analyzed by TEM. Sampling cassettes must have 50 millimeter extension cowls and must not have been previously used.

C. Electric leaf blowers with a rating of at least one horsepower must be used to initially agitate the air, along with 20 inches x 20 inches stationary box fans for the duration of the aggressive air sampling.

## § 6. Sampling procedures.

### A. Set up.

1. Ensure that the area inside the enclosure is visibly clean of all ACM, dust and debris, that spray encapsulant utilized for lockdown purposes has dried, and that the negative air system is and remains fully operational at a rate of one air change per hour.

2. For each 1,000 square feet of negative air enclosure space, initially agitate the air with an electric leaf blower for at least five minutes, agitating the air on all horizontal and vertical surfaces. Activate at least one stationary fan for each 10,000 cubic feet angled toward the ceiling and keep operational for the duration of the sampling.

3. Place the air pumps and sampling cassettes such that each covers approximately the same square footage of floor area, and the exposed filter faces are oriented approximately 45 degrees from the horizontal, using tape and clips as necessary to position cassettes.

4. Start the sampling pumps and sample for the required time, turning off the pumps and then the fans when finished.

### B. Number of samples.

The minimum required number of samples for each enclosure site is listed in the tables below (each set of samples consists of inside samples, ambient air samples, field blanks, and a sealed blank):

#### Inside Samples

SF of Enclosure	PCM Analysis	TEM Analysis
less than 100	2	5
100 - 500	3	5
500 - 1000	4	5
1000 - 10,000 *	5	5

#### Ambient Samples

SF of Enclosure	PCM Analysis	TEM Analysis
less than 100	2	5
100 - 500	3	5
500 - 1000	4	5
greater than 1000	5	5

\* For areas greater than 10,000 square feet, the number of inside air samples to be obtained will increase by one sample for each 2,000 square feet over 10,000 square feet. For example, an enclosure of 30,000 square feet would require 15 inside samples, five ambient air samples, two field blanks, and one sealed blank, for a total of 23 samples in the set (TEM or PCM analysis).

1. Field blanks required. Not less than 10% of the total inside air samples, or a minimum of two per set. The cap of each cassette is to be removed for not more than 30 seconds and replaced (before inside and ambient air sampling is initiated) at the following places:

- Near the entrance to each abatement area, and
- At one of the ambient sites.

2. Sealed blanks required. One sealed cassette blank shall be included with each sample set submitted for analysis.

### C. Sampling times.

Each pump is calculated by dividing the flow rate (lpm) into the number of liters required (1,000 liters minimum for PCM analysis, 1,199 liters minimum for TEM analysis) to obtain the required number of minutes.

### D. Recording.

A floor plan indicating the locations of the collected samples, along with a data sheet indicating the project name, project monitor, location of project, date samples were collected, calibrated flows for each pump, start and stop times for each pump, the preferred method of analyses specified, and the calculated number of liters drawn for each sample, shall be transmitted to the laboratory with the samples to be analyzed. The inclusion of these documents is necessary when generating reports



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on final clearance air sampling for the project.

## E. Shipping.

Air samples shall be shipped in separate containers from bulk samples. To prevent sample contamination, avoid using expanded polystyrene because of its static charge and particle-based packaging materials.

## § 7. Laboratory analysis.

A. TEM analysis sequence of the samples for LEAs shall be as follows:

1. Analyze the inside samples first.
2. If at least 1,199 liters of air for a 25 millimeter filter is collected for each inside sample and the concentration of structures per square millimeter of filter for one sample is greater than 70 structures per square millimeter, terminate the analysis of existing samples, reclean the abatement site, and collect a new set of samples.
3. If less than 1,199 liters of air for a 25 millimeter filter is collected for the inside samples, or the arithmetic means concentration of structures per square millimeter of filter for one sample is greater than 70 structures per square millimeter, analyze the field blanks and the sealed blank.
4. If the concentration of structures per square millimeter on the blank filters is greater than 70 structures per square millimeter, identify and correct the source of blank contamination, and collect a new set of samples.
5. If utilizing TEM analysis and the concentration of structures per square millimeter on the blank filters is less than or equal to 70 structures per square millimeter, analyze the outside samples and perform the Z-test as described in 40 CFR, Part 763. The response action is considered complete if the value of Z is found to be less than or equal to 1.65.

B. If the sample analyzed by TEM for facilities other than LEAs exceeds a standard of 70 structures per square millimeter, reclean the enclosure site and collect a new set of samples.

C. If the sample analyzed by PCM exceeds the reoccupancy (clearance) level of .01 fibers/cubic centimeter, the area within the enclosure must be recleaned and new air samples obtained for analysis.

D. The following minimum information shall be reported by the analytical laboratory to the client:

1. Concentration in structures per square millimeter (TEM) and structures per cubic centimeter (PCM).

2. Analytical sensitivity used for the analysis.

3. Number of asbestos structures.

4. Area analyzed.

5. Volume of air samples (which was initially provided by client).

6. Average grid size opening.

7. Number of grids analyzed.

8. Copy of the count sheet.

9. Signature of laboratory analyst.

10. Official laboratory identification.

11. Floor plan indicating location where samples were obtained (provided initially by client).

12. Copies of asbestos analytical laboratory and project monitor licenses.

## § 8. Final clearance.

Final clearance is achieved when .01 or fewer asbestos fibers per cubic centimeter (.01 f/cc) using PCM analysis or 70 or fewer structures per square millimeter (70 S/mm<sup>2</sup>) using TEM analysis are detected through aggressive air sampling collection techniques. If this level of cleanliness cannot be achieved, the abatement site must be recleaned, and new sets of samples collected and analyzed until the area passes. This process shall continue until the project site is in compliance with these standards.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**REGISTRAR'S NOTICE:** The following regulation is exempted from the Administrative Process Act under the provisions of § 9-6.14:4.1 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property. The regulation is being published for informational purposes only.

**Title of Regulation:** VR 380-03-04. Tuition Assistance Grant Program Regulations (REPEALED).

**Title of Regulation:** VR 380-03-04:1. Tuition Assistance Grant Program Regulations.

**Statutory Authority:** §§ 23-38.11 through 23-38.18 of the Code of Virginia.

## § 1. Definitions.

The following words and terms, when used in these regulations, will have the following meanings, unless the

context clearly indicates otherwise:

*"Academic year"* means the enrollment period which normally extends from late August to May or June.

*"Accredited"* means an institution approved to confer degrees pursuant to the provisions of §§ 23-265 through 23-276 of the Code of Virginia.

*"Bona-fide domiciliary resident of Virginia"* means a student who is determined by the council to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.

*"Census date"* means the time during an academic year when a count of enrolled students is made for reporting purposes. For semester terms, the census date shall be no sooner than the end of the fourteenth calendar day from the beginning of the term and no later than the established reporting date. For quarter terms, the census date shall be no sooner than the end of the tenth calendar day from the beginning of the term and no later than the established reporting date. For nonstandard terms, the census date shall be no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the reporting date.

*"Cost of attendance"* means the sum of tuition, fees, room, board, books, supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

*"Council"* means the State Council of Higher Education for Virginia.

*"Eligible program"* means a curriculum of courses at the undergraduate, graduate, or first professional level. Undergraduate programs are those programs that lead to an associate's or bachelor's degree and which require at least two academic years (60 semester hours or its equivalent) to complete. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and which require at least one academic year (30 semester hours or its equivalent) to complete. Programs that provide religious training or theological education are not eligible courses of study under the Tuition Assistance Grant Program. Normally, programs in the 3900 series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

*"Eligible institution"* means a private, accredited, nonprofit, degree-granting institution of higher education in Virginia whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.

*"Fiscal year"* means the period extending from July 1 to June 30.

*"Full-time student"* means a student who is enrolled for at least 12 credit hours per semester or its equivalent at the undergraduate level or nine credit hours per semester or its equivalent at the graduate or first professional level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a degree at the institution. A student who is enrolled less than full-time in the term immediately preceding graduation may be certified full-time and eligible to receive an award if: (i) the student was enrolled full-time in the preceding term, (ii) the course credits needed to complete degree requirements total less than a full-time course load, and (iii) the maximum number of years of eligibility has not been exceeded.

*"Nonprofit institution"* means an institution operated by one or more nonprofit corporations or associations no part of the net earnings of which may inure to the benefit of any individual.

*"Post-baccalaureate student"* means a matriculated student who is in a program leading to a degree higher in level than the baccalaureate degree and is classified by the institution as a "professional" or "graduate" student.

*"Program"* means the Tuition Assistance Grant Program (TAGP).

*"Undergraduate student"* means a student in a program leading to an associate's or bachelor's degree who has not earned a bachelor's or higher degree, and who is not classified by the institution as a "professional" or "graduate" student.

§ 2. Institutional participation in the program: application procedures.

In order to participate in the Program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term grants would first be available to students.

Applications shall be addressed to the council's Financial Aid Coordinator and shall include:

1. Estimates of the number of students who would be eligible to receive grants under the Program in the first and second years of participation;
2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP); and
3. Certifications from the institution's chief executive officer that the institution:
  - a. Meets eligibility requirements for participation, namely, that it is an accredited, nonprofit, Virginia

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degree-granting institution of higher education whose primary purpose is not to provide religious training or theological education;

b. Will furnish whatever data the council may request in order to verify its institutional eligibility claims to the satisfaction of the council; and

c. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution.

d. By its governing body has authorized its adherence to the requirements of these regulations, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the Program.

All documents must be on file before any funds are disbursed.

## § 3. Disbursement of funds.

### A. Advancement of funds.

No more than 90% of an institution's estimated allocation of funds for a term will be forwarded to the institution at the beginning of the term. After the census date for each term, the institution will certify that recipients are enrolled as full-time students and are meeting other eligibility requirements established for the Program. After enrollment is verified, remaining funds, if any, will be disbursed to the institution. Funds for recipients reported not enrolled full-time or not meeting other eligibility requirements shall not be disbursed to students, and funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be reported to the council as unutilized funds.

### B. Utilization of funds.

Awards may be used only for payment of tuition at the institution in the academic year for which the award has been made.

The institution shall complete and return to the council, as requested, a report of funds not utilized. An institution shall not declare as unutilized funds the funds it has received for any student whom it has previously certified as an eligible recipient without first notifying the student of its intention to do so, in writing, at least 20 working days prior to taking such action.

For a student who receives an award and withdraws from an institution during a term and is entitled to a refund from that institution, the institution shall report to the council as unutilized funds a prorated portion of the student's award on the basis of the tuition refund policy in effect at the institution.

All unutilized funds shall be returned to the council within 20 working days after receiving written request from the council.

### C. Notification to students.

Institutions shall, in all written communications to students that make reference to awards or award estimates under the Program, notify the student that the award is state-funded. The institution shall also direct specific attention to the status of the award, particularly in those cases where estimates of awards (or awards, the funds for which have not yet been received by the institution) appear as credits on statements of student tuition charges. Institutions, in addition, shall ensure that each award recipient is notified of the disposition of award funds subsequent to the date that such funds are received by the institution. Evidence of such notification may include but shall not be limited to (i) the dates on receipts signed by award recipients, (ii) formal procedures for providing to recipients written notification of the crediting of student accounts or the availability of checks after such funds are received by the institution, or (iii) institutional records which verify the dates that checks were disbursed to students.

### D. Restriction on use of funds.

An institution shall establish and maintain financial records that accurately reflect all Program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each Program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest bearing account established and maintained exclusively for that purpose. Funds may only be disbursed to student accounts receivable or to the council. The institution shall hold Program funds in the account for a maximum of 20 working days before transferring funds to student accounts. All unused funds must be returned to the council no later than the end of the fiscal year.

Funds received by the institution under the Program may be used only to pay awards to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used for any other purpose.

Any income realized, or to be realized, on Program investment income will revert to the Commonwealth of Virginia. Funds, the foregoing notwithstanding, are the property of the Commonwealth of Virginia.

## § 4. Student eligibility.

### A. Eligibility criteria.

In order to be eligible to receive an award, the student must:

1. Be a bona-fide domiciliary resident of Virginia;
2. Enroll in the academic year for which the award is to be received as a full-time student in eligible program at an eligible institution;
3. Not have been convicted for failure to comply with federal selective service registration requirements; and
4. Complete and submit by the published deadline an application for an award.

#### B. Limitations on awards.

1. If a student receives a partial payment for a semester or quarter, the student's total term of eligibility is reduced by one semester or quarter.
2. Preference for awards will be given to eligible students who will enroll for the fall semester or quarter of any given academic year. Awards to students enrolling subsequent to the fall or semester quarter will be limited to funds available through attrition and other nonuse of authorized funds.
3. Awards for undergraduate students shall initially be made for one academic year, but may be renewed for no more than three additional academic years of undergraduate study, subject always to the availability of funds.
4. Students pursuing degrees beyond the baccalaureate level shall be limited to a cumulative total of four academic years of eligibility for tuition assistance. Students enrolled in master's programs may receive assistance for two academic years; doctoral programs, two academic years; law programs, three academic years; and medical programs, four academic years.
5. Degree-holders enrolled in teacher certification programs may receive awards if the student has not exceeded undergraduate eligibility.
6. Students receiving awards must maintain eligibility throughout the period for which the award is made.
7. Students enrolled in a program leading to a second associate's, bachelor's, master's, or professional degree are not eligible to receive an award.

#### § 5. Award amount.

No award shall exceed the annual average appropriation per full-time equivalent student for the previous year from the general fund for operating costs at two- and four-year public institutions of collegiate education in Virginia. The amount of the award will be determined by the number of eligible applicants and funds available. In no event shall any award exceed any award limit set forth in the Appropriations Act.

An award received by a student under the Program shall not be reduced by the student's receipt of other financial aid from any source unless the award, when added to other financial aid, would enable the student to receive total assistance in excess of the estimated cost of attendance at the institution the student attends.

#### § 6. Administration.

##### A. The council.

The council will periodically review institutional administrative practices to determine compliance with these regulations. If a review determines that an institution has failed to comply, the council may suspend or terminate its future participation in the Program. In all instances, the council will require the institution to recover and refund to the council any state funds that were expended improperly.

The council will periodically send confirmation letters to award recipients. The letters shall include but not be limited to requests for information about status, permanent address, domicile, and funds received to date.

##### B. Participating institutions.

##### Institutions shall:

1. Certify student eligibility in all respects except domicile for the purpose of § 23-7.4 of the Code of Virginia;
2. Provide the council with information pertinent to determining domicile and key application data onto a domiciliary diskette provided by the council;
3. Secure and provide to the council forms such information regarding student applicants and award recipients as the council deems necessary for the proper administration of the Program;
4. Act, with the student's authorization, as the student's agent to receive and hold Program funds for the student's use as tuition assistance;
5. Furnish periodic reports and other pertinent information as may be required by the council. The reports shall include but not be limited to copies of institutional financial aid audit reports and audited financial statements;
6. Ensure that each application bears a stamp indicating the date the application was received by the institution. Applications received in the mail after the annually established closing dates for regular or late applications may be treated as regular or late applications, respectively, if proof of mailing on or before the closing date accompanies the application. The only proof of mailing accepted shall be either a completed Certificate of Mailing obtained from the

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U.S. Post Office by the applicant or the postmarked envelope showing that the application was mailed on or before the closing date at the institution. An application bearing a stamped date of receipt later than the closing date for late applications shall normally not be considered; and

7. Withdraw from the Program only upon a 60-day written notice to both its student body and the council. Withdrawal shall be effective at the conclusion of the academic year designated by the withdrawing participant.

The institution's Chief Executive Officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the Program. The Chief Executive Officer shall, in addition, indicate whether the primary institutional representative may designate a single subordinate who may act as an alternate representative for routine administrative operational matters at the campus. At multi-campus institutions, an alternate representative may be designated for each branch campus if the Chief Executive Officer authorizes the appointment of alternate representatives. If there is a change in the primary representative, the Chief Executive Officer shall designate another individual and notify the council within thirty days, in writing, of the change. It is the responsibility of the primary representative to advise the council in a similar fashion of changes in alternate representative(s), if any.

### C. Responsibility of recipients.

A recipient of an award under the Program shall notify, the institution, in writing, of any name or permanent address changes.

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

**Title of Regulation:** VR 394-01-4. Virginia Amusement Device Regulations/1990.

**Statutory Authority:** § 36-98.3 of the Code of Virginia.

**Public Hearing Date:** January 18, 1993 - 10 a.m.

Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

### Summary:

The 1990 edition of the Virginia Amusement Device Regulations (VADR) provides for the administration and enforcement of uniform, statewide standards for the construction, maintenance, operation and inspection of amusement devices, whether mobile or fixed to a site. These regulations supplement the

provisions of the Uniform Statewide Building Code for the purpose of protecting the health, safety and welfare of amusement device users. The technical requirements of the regulations are based primarily on standards developed by the American Society for Testing and Materials (ASTM). Provisions are included in the regulations for the inspection of amusement devices, reports and investigation of accidents, certification and conduct of operators and an administrative appeals system for the resolution of disagreements between the building officials and amusement device owners and operators.

The proposed amendments to these regulations include specific provisions for bungee jumping activities. The regulation has been divided into two articles with the first article setting general requirements and the new Article 2 for specific requirements for bungee jumping. A new definition for bungee jumping has been added in Section 200.1 in Article 1. Section 400.0 has been amended to include the referenced standard and to reference Article 2 for technical requirements for bungee jumping. These amendments are proposed as a result of public comment received relative to this issue and the recommendations of the Virginia Amusement Device Technical Advisory Committee.

VR 394-01-4. Virginia Amusement Device Regulations/1990.

### ARTICLE I. GENERAL PROVISIONS.

#### SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as the Virginia Amusement Device Regulations ("VADR"). Except as otherwise indicated, VADR and regulations, as used herein, shall mean the Virginia Amusement Device Regulations.

100.2. Authority: The VADR is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia. The VADR is intended to supplement the provisions of the Virginia Uniform Statewide Building Code (USBC).

100.3. Adoption: The 1990 edition of the VADR 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.

100.4. Effective date: The 1990 edition of the VADR shall become effective on March 1, 1991. The construction of any amusement device that was subject to a previous edition of the USBC when constructed, shall remain subject to the edition of the USBC in effect at the time of

construction. Subsequent reconstruction, reassembly, maintenance, operation and inspection of such devices shall be subject to the pertinent provisions of the VADR in effect at the time of such action.

100.5. Application: The VADR shall govern the construction, maintenance, operation and inspection of amusement devices, whether mobile or permanently fixed to a site including kiddie rides defined by § 200.0 of these regulations. These regulations do not apply to any single passenger coin-operated ride, manually, mechanically, or electrically operated, which customarily is placed, singularly or in groups, in a public location and which does not normally require the supervision or service of an amusement ride operator and is not considered a kiddie ride for the purpose of these regulations, or to nonmechanized playground equipment, including swings, stationary spring-mounted animal features, rider propelled merry-go-rounds, climbers, slides, trampolines, swinging gates, and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located. To the extent they are not superseded by the provisions of these regulations, all other state and local laws and regulations shall apply to amusement devices. The VADR does not supersede zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the construction, maintenance, operation and inspection of amusement devices.

## SECTION 200.0. DEFINITIONS.

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

*"Amusement attraction"* means any building or structure around, over or through which people may move or walk, without the aid of any moving device integral to the building structure, that provides amusement, pleasure, thrills, or excitement.

*"Amusement device"* means a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion.

*"Amusement park"* means a tract or area used principally as a location for amusement devices permanently fixed to the site.

*"ASTM"* means American Society for Testing and Materials.

*"Board"* means the Board of Housing and Community Development.

*"Bungee jumping"* means that activity where a person free falls from a height and the person's descent is limited by attachment to an elastic rope known as a bungee cord.

*"Carnival"* means an itinerant enterprise consisting principally of portable amusement devices temporarily situated at a site.

*"Certificate of inspection"* means a certificate issued by the building official, pursuant to § 1500.0 of these regulations.

*"Committee"* means the Amusement Device Technical Advisory Committee.

*"Construction"* means the initial construction or manufacture of amusement devices. "Construction" does not include reassembly of existing devices.

*"Director"* means the Director of the Department of Housing and Community Development or his designee.

*"Fair"* means an enterprise principally devoted to the periodic and recurring exhibition of products of agriculture, industry, education, science, religion, or the arts that has one or more amusement devices, either portable or permanently fixed to the site, operated in conjunction with the exhibition.

*"First aid"* means the one time treatment or subsequent observation of scratches, cuts not requiring stitches, burns, splinters, or a diagnostic procedure, including examination and X-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed professional personnel.

*"Inspector"* means a person authorized by the building official to perform the inspections required herein.

*"Kiddie ride"* means an amusement ride designed primarily for use by children up to 12 years of age, that requires simple reassembly procedures prior to operation, and that does not require complex inspections prior to operation.

*"Major modification"* means any change in either the structural or operational characteristics of the ride or device which will alter its performance or structural integrity from that specified in the manufacturer's design criteria.

*"Minor injury"* means sprains, abrasions, bruises, and lacerations less than three inches.

*"Operator"* means any person or persons actually engaged in or directly controlling the operation of an amusement device.

*"Owner"* means a person who owns an amusement device, including the state or its political subdivision, or in the event the amusement device is leased, the lessee, or the agent of either.

*"Permit"* means written authorization given by the local building official to construct, reassemble or locate an

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amusement device so as to make ready for operation. Issuance of a permit does not give authority to operate without a certificate of inspection.

“*Reassembly*” means the act of placing the component parts of an existing device into a configuration which allows its use and operation.

“*Review board*” means the State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.

“*Serious injury*” means an injury that requires medical treatment by a physician other than minor injuries or first aid.

## SECTION 300.0. TECHNICAL ADVISORY COMMITTEE.

300.1. Membership: In appointing an Amusement Device Technical Advisory Committee, the board shall include representatives from the following groups:

1. Ride manufacturers,
2. Owners or operators of carnivals, amusement parks and fairs,
3. Mechanical or structural engineers,
4. Insurance underwriters, and
5. Members of the general public.

300.2. Term of membership: The members of the Technical Advisory Committee established by § 36-98.3(C) of the Code of Virginia, shall each serve for initial staggered terms of two and three years. Thereafter, appointments shall be for three years, with a provision for reappointment at the pleasure of the board.

## SECTION 400.0. REFERENCE STANDARDS.

400.1. Adoption of standards: The construction, maintenance, operation and inspection of amusement devices shall be done in accordance with the *following standards adopted by ASTM and which are set forth in Appendix A:*

*ASTM (American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103) F 698-88, Specification for Physical Information to be Provided for Amusement Rides and Devices*

*ASTM F 747-86, Definitions of Terms Relating to Amusement Rides and Devices:*

*ASTM F 770-88, Practice for Operation Procedures for Amusement Rides and Devices*

*ASTM F 846-86, Guide for Testing Performance of Amusement Rides and Devices*

*ASTM F 853-86, Practice for Maintenance Procedures for Amusement Rides and Devices*

*ASTM F 893-87, Guide for Inspection of Amusement Rides and Devices*

*ASTM F 1159-88, Practice for the Design and Manufacture of Amusement Rides and Devices*

*ASTM F 1193-88, Practice for an Amusement Ride and Device Manufacturer Quality Assurance Program*

If a ride was manufactured prior to the development of the ASTM standards (1978), the information listed in the referenced edition of ASTM 698, §§ 3.1 through 3.6, shall be available at the time of inspection.

Where differences occur between provisions of the VADR and the referenced standards, the provisions of the VADR shall apply.

*400.1.1. Bungee jumping activities: In addition to complying with applicable requirements of Article 1, bungee jumping activities shall meet the requirements established in Article 2 of these regulations.*

## SECTION 500.0. ENFORCEMENT.

500.1. Responsibility of local governments: Enforcement of these regulations shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Inspections under these regulations shall be performed by:

1. The local building official or his representative when such official or representative has been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or, at the option of the owner or lessee or agent of either.

2. Persons from other departments of state government, local government, or private industry, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or

3. Employees of insurance companies providing coverage for claims arising out of the use of the amusement device being inspected, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia.

500.2. Qualifications of inspectors:

1. Any person seeking to become qualified to perform amusement device inspections pursuant to § 500.1 of these regulations shall successfully complete certification requirements in accordance with Part V of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen

(VR 394-01-02).

2. Notwithstanding any regulation to the contrary, no exemption shall be permitted from the requirements for certification for any person including local building officials and their representatives to inspect amusement devices.

500.3. Credentials: The building official, state personnel, or any certified inspector shall carry proper credentials of authorization provided by the Department of Housing and Community Development when enforcing any provision of these regulations.

## SECTION 600.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

600.1. General: The building official shall enforce the provisions of the VADR as provided herein, and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

600.2. Applications and permits: The building official shall receive applications and issue permits for the construction, reassembly, operation and inspection of amusement devices.

600.3. Notices and orders: The building official shall issue necessary notices or orders to remove unsafe conditions, to require the necessary safeguards during construction or reassembly and to ensure compliance with all the VADR requirements for the health, safety and general welfare of the public.

600.4. Inspections: The building official shall make or cause the required inspections to be conducted in accordance with § 1000.0 of these regulations, or shall accept reports of inspection by individuals certified to perform amusement device inspections when the owner or lessee of the amusement device has exercised the option of using private inspectors. Reports of such inspections shall be in writing and signed by the certified individual.

600.5. 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 VADR.

600.6. 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.

600.6.1. Fee schedule: A schedule of fees shall be established by the local government and shall be made available to the public upon request. The fee schedule adopted by the local government shall not exceed the fee schedule set by the Board of Housing and Community Development. The board shall review the fee schedule at least tri-annually and shall adjust the fee schedule as

proven necessary. The fees shall be based on the actual cost of administrative activities and inspections performed by local government personnel. The local government shall not establish a fee schedule resulting in fees that exceed the actual costs of the activities performed by local government personnel. The fee schedule shall have provisions for fee reduction if private inspectors are utilized by the owner or lessee. When an inspector not an employee of the local governing body is retained by an owner, the owner shall pay the inspector's fees directly. When an inspector not an employee of the local governing body is retained by the local building department, that department shall pay the inspector's fees.

## SECTION 700.0. APPLICATION FOR PERMIT.

700.1. When permit is required: Written application shall be made to the building official when a permit is required. A permit shall be issued by the building official before any of the following actions subject to the VADR may be commenced:

1. Constructing and operating an amusement device permanently fixed to a site.
2. Reassembling and operating any portable amusement device.

700.2. Who may apply for a permit: Application for a permit shall be made by the owner or lessee of the amusement device or agent of either.

700.3. Information for application: The application for a permit shall be submitted on forms supplied by the building official. The forms shall require the following information:

1. Name of the owner, lessee, or agent of either.
2. Identification of the person(s) authorized to accept service of process on behalf of the owner or lessee.
3. A general description of the amusement devices, their location, and the work or operation proposed.
4. Proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof may be demonstrated by a bond or cash reserve, or certificate or policy of insurance providing coverage for liability arising out of the use or operation of the amusement device.

## SECTION 800.0. MODIFICATION.

800.1. Modifications: If an owner or operator finds that compliance with the amusement device regulations or decision of the local building official presents a practical difficulty or undue hardship, the owner or operator may apply to the local building official for a modification of the regulation or decision. Such modification may be granted provided the spirit and intent of these regulations



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are observed, and public health, welfare and safety are assured.

800.2. Alternative design, materials, and equipment: Where there is an alternative design, material or equipment, the owner may apply to the local building official for a modification of the VADR relating to such design, material or equipment. Upon application of the owner, the building official may modify the provisions of the VADR relating to amusement device design or building materials, equipment, devices or assemblies provided the proposed alternatives are satisfactory and comply with the intent of the VADR and the standards incorporated therein, and are, for the purposes intended, at least the equivalent of that prescribed in the VADR for quality, strength, effectiveness, durability and safety.

800.3. 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 inspection in the permanent records of the local building department.

## SECTION 900.0. AMUSEMENT DEVICE PERMITS.

900.1. Action on application: The building official shall examine all applications for permits within five days after filing. If the application does not conform to the requirements of the VADR, the building official shall reject such application in writing, stating the reasons for rejection. If the building official is satisfied that the proposed work or operation conforms to the requirements of the VADR and all applicable laws and ordinances, a permit shall be issued as soon as practicable. 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 permit and certificate of inspection. Such reports shall be based upon review of the application or inspection of the project as determined by the local governing body.

Note: Before issuing a permit, the building official should consider the effects of any applicable regulations of other governmental agencies so that proper coordination may be achieved before the work is commenced.

900.2. Signature on permit: The signature of the building official or his authorized representative shall be attached to every permit.

900.3. Annual permit: Instead of an individual permit for each reassembly of an already approved amusement device, the building official may issue an annual permit.

900.4. Revocation of permits: The building official may revoke a permit or approval issued under the provisions of the VADR in case of any false statement or misrepresentation of fact in the application on which the permit or approval was based.

## SECTION 1000.0. INSPECTIONS.

1000.1. Preliminary inspection: Before issuing a permit, the building official may examine all sites for which an application has been filed for a permit to construct, reassemble or operate an amusement device.

1000.2. Required inspections: After issuing a permit, the building official shall conduct inspections from time to time during construction or reassembly or shall accept inspection reports from independent private inspectors employed by the owner or lessee, and may conduct inspections of the operation of amusement devices or may require the owner or lessee to provide reports from private inspectors for inspections conducted during operation of the amusement device(s). A record of such inspections shall be maintained by the building official.

1000.2.1. Right of entry: The building official may inspect amusement devices for the purpose of enforcing the VADR in accordance with the authority granted by §§ 36-105 and 36-98.3(D) of the Code of Virginia.

1000.3. Minimum inspections: As part of their inspections, inspectors shall perform, but are not limited to the following actions:

1. Inspect all amusement devices permanently fixed to a site,
  - a. Prior to each seasonal operation; and
  - b. Prior to operation following any major modification; and
  - c. At least once during the operating season.
2. Inspect all portable amusement devices after each reassembly and prior to operation except that the inspector may accept a valid certificate of inspection which was issued with respect to a "kiddie ride" by another inspector certified in Virginia. If an inspector chooses to inspect a kiddie ride which has a valid certificate of inspection, no fee shall be charged. If upon inspection, the inspector finds that a device is not in compliance with applicable standards, the certificate of inspection may be declared invalid.
3. Verify that nondestructive testing has been conducted by a recognized testing agency as prescribed by the device manufacturer and in accordance with ASTM.
4. At the discretion of the inspector, verify that the operation and maintenance of amusement devices is in accordance with the requirements of these regulations and the standards referenced therein.
5. Inspect any amusement device upon the request of the director or local building official following a report or other notification that the device or one of

substantially similar design and construction has been involved in an accident resulting in a fatality or serious injury.

6. Investigate any report or other notification of a problem or a defect with respect to an amusement device and inspect the device at the request of the director or the building official to determine whether it poses a hazard or threat of injury to the public.

7. Upon completion of the amusement device, and before issuance of the certificate of inspection, a final inspection shall be made to ensure that the device conforms with the VADR.

1000.4. Notice of readiness for inspection: Every owner or operator of an amusement device shall notify the local building official when an amusement device or one that has undergone major modifications is scheduled to be ready and available for inspection.

In addition, every owner or operator of an amusement park shall notify the local building official when each amusement device located within the park is scheduled to be ready for inspection prior to its seasonal operation.

Every owner or operator of a carnival or fair shall notify the local building official of the date each amusement device is scheduled to be reassembled and ready for inspection on a site.

Note: Although no requirements are imposed on owners or operators with respect to time for giving notice of readiness for inspection, owners and operators are cautioned to refer to §§ 900.1 and 1000.5 of these regulations which require the building official to perform certain duties within five days of application or notice. Owners or operators failing to give at least five days notice of readiness for inspection will only be inspected by the building official or his authorized representative at their pleasure or convenience.

1000.5. Inspections to be prompt: The inspector shall respond to inspection requests without unreasonable delay. When given at least five days notice of readiness for inspection, the inspector shall inspect on the date designated by the owner or operator. The inspector shall approve the device or give written notice of defects to the owner or operator. Such defects shall be corrected and the amusement device reinspected before operation or proceeding with any work that would conceal the defects.

## SECTION 1100.0. ACCIDENTS.

1100.1. Owner/operator to suspend operation: An owner or operator shall immediately suspend operation of any amusement device which is involved in an accident resulting in fatality or serious injury.

1100.2. Reports: Every owner or operator of an amusement

device shall report to the director and the local building official the details of any accident involving an amusement device which results in a fatality or serious injury. The report shall be submitted in writing to the local building official within 24 hours, and to the director the next working day. Such report shall include but is not limited to the following information:

1. A description of the amusement device including the name of the manufacturer, the serial number and the date the device was originally constructed, if available.
2. A description of the accident including the number of people involved, number and type of injuries, number of fatalities.
3. Cause of accident if determined.

1100.3. Owner's authority to resume operation: The owner, lessee or agent of either may resume operation of an amusement device following suspension of operation under this section if, after conducting an investigation, the owner, lessee, or agent determines that the incident was in no way the result of a failure or malfunction of the device or any of its operating or safety equipment. Any investigation conducted under this section shall include (i) examination of the accident scene, (ii) interviews with witnesses, if any, (iii) review of statements made by the injured person, if any, and (iv) trial operation and inspection of the amusement device. A written record of such investigation shall be made and submitted to the local building official or his designee.

The decision of the owner or operator not to resume operation of the amusement device shall not be construed as an admission that the incident was caused by the failure or malfunction of the device. Nothing in this section shall be construed to waive the requirements of notification of the occurrence set forth in § 1100.2.

## SECTION 1200.0. QUALIFICATION OF OPERATORS.

1200.1. Minimum age: No amusement device shall be operated by a person under 16 years of age, except that this provision shall not apply to a child under 16 years of age employed by his parents in an occupation not declared hazardous by the Commissioner of Labor and Industry.

1200.2. Requirements:

1. An operator may not operate more than one amusement device at a time unless the devices are within the sight of the operator and are operated by a common control panel or station, except that in the case of kiddie rides, two rides may be operated in unison under the continuous and common control of one operator provided that the farthest point of operation of either device is no more than 35 feet and the control is equipped with a positive pressure switch.

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2. An amusement device shall be attended by an operator at all times during operation.

## 1200.3. Conduct; authority:

1. No amusement device shall be operated by an operator while under the influence of alcohol.

2. No amusement device shall be operated by an operator while under the influence of drugs which may affect the operator's judgment or ability to assure patrons' safety.

3. The operator has the authority to prohibit use of amusement devices by individuals who may present a safety threat to others or to themselves.

1200.4. Training: The ride operator shall be trained in the proper use and operation of the ride as required by ASTM F770 and ASTM F853 listed in Appendix A .

## SECTION 1300.0. SUSPENSION OF OPERATION.

1300.1. When director or local building official may order: The director or local building official shall order, in writing, a temporary suspension of operation of an amusement device if the director or local building official has reason to believe that the device is hazardous or unsafe, or if the director or local building official receives a report or is otherwise notified that the amusement device has been involved in an accident resulting in fatality or serious injury.

The director or local building official may order, in writing, a temporary suspension of operation of an amusement device if (i) the director or local building official receives a report or is otherwise notified that an amusement device or one of substantially similar design has been involved in an accident resulting in a fatality or serious injury; and (ii) an inspection conducted in accordance with § 1000.0 of these regulations reveals that the ride is hazardous or poses a threat to the safety of the public.

1300.2. When operation to resume: When the operation of an amusement device has been suspended under this section, such operation shall not resume until any hazardous or unsafe condition has been corrected and a certificate of inspection has been issued with respect to such device.

## SECTION 1400.0. VIOLATIONS.

1400.1. Code violations prohibited: No person, firm or corporation shall construct, reassemble, maintain, operate or inspect any amusement device regulated by the VADR, or cause same to be done in conflict with or in violation of any of the provisions of the VADR.

1400.2. Notice of violation: The building official shall serve a notice of violation on the person responsible for the

construction, reassembly, maintenance, operation or inspection of any amusement device in violation of the provisions of the VADR, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the VADR. Such order shall direct the discontinuance and abatement of the violation.

1400.3. Prosecution of violation: If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of any amusement device in violation of the provisions of the VADR.

1400.4. 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.

1400.5. Abatement of violation: Conviction of a violation of the VADR shall not preclude the institution of appropriate legal action to prevent other violations or recurring violations of the VADR relating to construction, reassembly, maintenance, operation or inspection of any amusement device.

## SECTION 1500.0. CERTIFICATES OF INSPECTION.

1500.1. When certificate required: No amusement device shall be operated unless a certificate of inspection has been issued with respect to that device. A copy of the certificate shall be affixed to the entrance of the device in plain view of riders or patrons.

1500.2. Requirements: A certificate of inspection shall be issued to an owner or operator after an inspection conducted pursuant to § 1000.0 of these regulations indicates that the device is in satisfactory working order and poses no hazard or threat to the safety of the public.

1500.3. Term: A certificate of inspection will be valid:

1. Until the device is disassembled except that a certificate of inspection issued with respect to a portable kiddie ride shall be valid for one year after the issue date, regardless of whether the device is disassembled; or

2. Until any major modification or alteration is made to the device; or

3. Until the inspection required by § 1000.0 is conducted on fixed site devices; or

4. Until termination of the proof of financial responsibility required by § 1600.0.

1500.4. Contents of the certificate of inspection: When an amusement device is entitled thereto, the building official

shall issue a certificate of inspection. When the certificate is issued, the device shall be deemed in compliance with the VADR. The certificate shall specify the use of the amusement device, the type of construction, the occupancy load of the device, the date on which the certificate was issued, the term of the certificate, and any special stipulations and conditions. The certificate shall also include the name of the building official or his representative and a telephone number where they may be reached in case of an emergency or accident.

## SECTION 1600.0. FINANCIAL RESPONSIBILITY.

1600.1. Proof of financial responsibility: The owner shall provide proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof shall be demonstrated by a bond or cash reserve, or certificate of insurance providing coverage for liability arising out of the use or operation of the amusement device.

1600.2. Termination of financial responsibility: Each owner or operator of an amusement device shall report immediately to the director and to the local building official that the proof of financial responsibility required by this section will be terminated and shall include in the report the date of such termination.

## SECTION 1700.0. APPEALS.

1700.1. Assistance from director: An owner of an amusement device aggrieved by a decision of the building official may request the director to assist the building official and the owner in resolving any questions arising from the interpretation and application of these regulations. The director may request advice or assistance from members of the Technical Advisory Committee in resolving any questions.

1700.2. Appeal to review board: When the questions cannot be resolved with the assistance of the director, the owner may appeal to the State Building Code Technical Review Board. Application for review shall be made to the review board within 15 days of the decision of the building official. The review board may request advice or assistance from members of the Technical Advisory Committee when rendering a decision.

1700.3. 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.

1700.4. 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.

## SECTION 1800.0. CONTINUATION OF COMPLIANCE.

1800.1. Continued compliance required: Amusement devices constructed or manufactured before the effective date of the VADR shall be maintained, reassembled, operated and inspected in accordance with the provisions of the VADR. The construction and manufacture of such devices shall remain subject to the previous edition of the USBC in effect at the time the device was constructed or manufactured.

## APPENDIX A Referenced Standards

The following is a listing of the standards referenced in this code, the date of the applicable edition of the standard, and the promulgating agency of the standard.

ASTM - American Society of Testing and Materials  
1916 Race Street  
Philadelphia, Pennsylvania 19103

F 698-88 Specification for Physical Information to be Provided for Amusement Rides and Devices

F 747-86 Definitions of Terms Relating to Amusement Rides and Devices

F 770-88 Practice for Operation Procedures for Amusement Rides and Devices

F 846-86 Guide for Testing Performance of Amusement Rides and Devices

F 853-86 Practice for Maintenance Procedures for Amusement Rides and Devices

F 893-87 Guide for Inspection of Amusement Rides and Devices

F 1159-88 Practice for the Design and Manufacture of Amusement Rides and Devices

F 1193-88 Practice for an Amusement Ride and Device Manufacturer Quality Assurance Program

## ARTICLE 2. BUNGEE JUMPING.

### SECTION 1900.0. GENERAL.

1900.1. Definitions: The following words and terms, when used in this article, shall have the following meaning, unless the context clearly indicates otherwise.

"Bungee cord" means the elastic rope to which the jumper is attached which lengthens and shortens to produce a bouncing action.

"Bungee cord end connections" means a static line runner commonly made from tubular nylon webbing.

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*“Bungee cord loop end connections” means the loop of cord generally provided by the manufacturer to which an end connection is attached prior to use.*

*“Carabineer” means a shaped metal device with a gate used to connect sections of the bungee cord, jump rigging, equipment or safety gear.*

*“Dynamic loading” means the load placed on the rigging and attachments by the initial free fall of the jumper and the bouncing movements of the jumper, expressed as pounds force.*

*“Harness” means an assembly to be worn by a jumper to be attached to a bungee cord. It is designed to prevent the wearer from becoming detached from the bungee system.*

*“Jump height” means the distance from where the jumper begins his leap to the bottom of the jump space.*

*“Jump master” means a person who has responsibility for the bungee jumper and who takes the jumper through the final stages to the actual jump.*

*“Jump operator” means a person who assists the jump master to prepare a jumper for jumping.*

*“Jump point” means the position from which the jumper departs from the platform.*

*“Jump zone” means the space bounded by the maximum designed movements of the jumper or any part of the jumper.*

*“Jumper” means the person who departs from a height attached to a bungee system.*

*“Landing area” means the surface area of ground or water directly under the jump space, the area where the lifting device moves the jumper to be landed away from the jump space and the area covered by the movement of the lifting device.*

*“Operating manual” means the document that contains the procedures and forms for the operation of bungee jumping activity at a site.*

*“Platform” means the equipment attached to the structure or crane from which the jumper departs.*

*“Preparation area” means the area where the jumper is prepared for jumping which is either a separate area on the ground, on the support structure or part of the platform.*

*“Safety factor” means the ratio obtained by dividing the breaking load of any piece of equipment by its working load.*

*“Ultimate tensile strength” means the greatest amount*

*of load applied to a bungee cord prior to failure.*

*1900.2. Purpose: The purpose of this article is to set minimum technical requirements to assure safety for bungee jumpers, spectators and employees in bungee jumping activities governed by these regulations.*

*1900.3. Application: This article sets standards for bungee jumping operations which are open to the public and which are conducted from structures designed for use as part of the bungee jumping operation, including cranes.*

*1900.4. Prohibited activities: Bungee jumping operations which involve double jumping, sandbagging, catapulting or stunt jumping shall not be permitted to be open for public participation.*

## SECTION 2000.0. BUNGEE CORDS.

*2000.1. Testing requirements: Bungee cords shall be tested by an approved testing agency or by an engineer licensed in Virginia. The following criteria shall be met:*

*1. Each lot of bungee cords shall have a representative number of cords tested to determine the lowest ultimate tensile strength of the cords tested. A load versus elongation curve based on the test result shall be provided with each lot of bungee cords.*

*2. The manufacturer shall specify the maximum number of jumps for which each cord or cord type is designed.*

*3. In a single cord system, the binding shall hold the cord threads in the designed positions and shall have the same characteristics as the cord itself. In a multiple cord system, the cord shall be bound together in a manner to prevent potential jumper entanglement. The bindings shall not damage or effect the performance of the cords.*

*2000.2. Cord retirement and destruction: Bungee cords shall be retired when (i) the cords exhibit deterioration or damage, (ii) they do not react according to specifications, or (iii) they have reached the maximum usage expressed in number of jumps as specified by the manufacturer. Bungee cords retired from use shall be destroyed by cutting the cord into five foot lengths.*

## SECTION 2100.0. JUMP HARDWARE.

*2100.1. Jump harnesses: Jump harnesses shall be either full body-designed, which includes a waist harness worn in conjunction with a chest harness, or ankle-designed with a link to a waist harness and shall meet the following requirements:*

*1. The harness shall be designed so as not to cause bruising.*

2. The ankle-designed harness shall be either as an ankle harness or as ankle strapping which is tied off in such a manner as to secure the jumper to the cord end connection.

3. The harness shall be available to fit the range of jumper sizes accepted for jumping.

4. The harness shall have a minimum breaking strength of 4,000 pounds, and be suitable for the type of jumping conducted.

2100.2. Carabineers: Carabineers shall be of the screw type lock with a minimum main axis breaking load of 6,000 pounds. Alloy carabineers shall not be used. A minimum of two carabineers shall be used at each bungee end connection point.

2100.3. Anchors: One of two anchors shall attach the bungee cord to the structure or crane. If two anchors are used, each shall have a minimum strength of 8,000 pounds or shall be designed with a factor of safety of five, whichever is greater. If a single anchor is used, it shall have a minimum strength of 32,000 pounds or shall be designed with a factor of safety of 20, whichever is more. There shall be a carabineer that connects each anchor to the bungee cord end or in the case of single anchor attachment to the structure or crane, two carabineers shall be used. The carabineers shall have a minimum strength of 8,000 pounds and shall be of locking variety with a screw-type lock.

2100.4. Other connection systems: Other connection systems may be used if meeting the connection requirements for carabineers and anchors. Where wire rope is used, it shall have swaged ends with a thimble eye or be continuous. Wire clips are not permitted.

2100.5. Other hardware: Other hardware shall be of a size, strength, design and construction suitable for its intended use. The minimum diameter of rope is 11 millimeters with a minimum breaking load of 5,000 pounds. The minimum breaking load of tubular webbing or equivalent hardware is 4,000 pounds.

## SECTION 2200.0. CRANE AND STRUCTURE REQUIREMENTS.

2200.1. Cranes: Cranes shall have a minimum lifting capacity of 20 tons. The maximum load while hoisting persons shall not exceed 50% of the rated capacity of the crane given any boom angle used. The load on the crane shall be established by combining the weight of the man basket, headache ball, maximum dynamic load of the jumper and all other equipment and passengers.

2200.2. Structures: Structures used for bungee jumping activities shall be analyzed by an engineer licensed in Virginia to determine loading and the proper placement of anchors and other rigging.

## SECTION 2300.0. OPERATIONAL AND SITE REQUIREMENTS.

2300.1. Bungee cord use: Operators shall follow the criteria provided by the manufacturer for the use of bungee cords. A documented record of the number of jumps with each cord shall be maintained. All cord ends shall be inspected daily for wear, slippage or other abnormalities, unless the manufacturer specifies more frequent inspections.

2300.1.1. Determining loading of bungee cord: The jump master or site controller or manager shall be responsible for determining the appropriate use of all bungee cords in relation to the weight of the jumper and height of the platform. The maximum G-force allowable on a jumper using a waist and chest harness is 4.5 G's. The maximum G-force allowable on a jumper using an ankle harness is 3.5 G's. The minimum factor of safety for any cord configuration attached to a jumper shall be no less than five. The maximum dynamic load which is possible for a jumper to exert on a bungee cord configuration shall be no greater than 20% of that cord configuration's minimum breaking strength.

2300.2. Hardware requirements: All harnesses shall be inspected prior to harnessing a jumper and shall be removed from service when they exhibit signs of excessive wear or have been damaged. All carabineers shall be inspected daily and shall be removed from service when (i) the locking mechanisms fail to lock properly, (ii) the springs are worn, or (iii) the locking gates become deformed. The anchors shall be inspected daily and shall be replaced if showing signs of excessive wear. A locking mechanism on the rope shall be used to stop and hold the jumper in one place after being pulled back to the jump platform in a human-powered retrieval system. A dead man's switch or locking mechanism that will stop the lowering action, if necessary, shall be used in a friction lowering system. Bungee cords shall be attached to the structure or crane at all times when in the connection area.

2300.3. Jump-related operational requirements: A secondary retrieval system must be provided in all operations with personnel trained in performing a rescue. The crane operator shall have a durable load chart visible at all times during operation and shall be responsible for not exceeding the permissible load requirements. The jumper shall be instructed to jump as perpendicular to the boom of a crane as possible. If the man basket is lowered onto the bungee cord, the cord shall be inspected before jumping is continued. Communication shall be maintained between all personnel involved with the jump.

2300.4. Site requirements: The jump zone, preparation area, jump space and landing/recovery area shall be identified and maintained during bungee jumping activities. The landing/recovery area shall be accessible to emergency vehicles.

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2300.4.1. *Over land site requirements: An air bag or landing pad shall be used. The air bag or landing pad shall be a minimum of 10 feet by 10 feet. The air bag shall be rated for the maximum free fall height possible from the platform during operation. The landing area shall be located immediately below jump space. The landing area shall be free of spectators and debris at all times and shall be free of any equipment or personnel when a jumper is being prepared on the jump platform and until the bungee cord is at its static extended state. A place to sit and recover shall be provided close to, but outside, the landing area where the jumper shall be allowed to recover before moving off the landing spot.*

2300.4.2. *Over water site requirements: Where the jump space or landing area, or both, is over sea, lake, river or harbor waters, the following shall apply:*

1. *The landing water area shall be at least nine feet deep and a minimum of 10 feet by 10 feet in area if square or have a minimum of 15 feet in diameter if circular.*
2. *The jump space or landing area, or both, shall be free of other vessels, floating and submerged objects and the placement of buoys. A sign of appropriate size which reads "Bungee Jumping! Keep Clear" shall be fixed to the buoy lines on four sides.*
3. *The landing and recovery vessel shall be positioned accurately and remain in a constant position for the duration of the landing procedures.*
4. *The landing vessel shall have a landing pad size of at least five feet by five feet within and lower than the sides of the vessel.*
5. *A vessel shall be present that is able to be maneuvered in the range of water conditions expected and will enable staff to pick up a jumper or other persons who have fallen into the water.*
6. *One person may operate the landing vessel where the vessel is positioned without the use of power. A separate person shall pilot the vessel where power is required to maneuver into or hold, or both, the landing position.*
7. *The vessel shall be equipped as required by the U.S. Coast Guard with approved life jackets for all personnel and other rescue equipment.*

*Where the landing area is part of a constructed swimming pool complex or is specifically constructed for bungee jumping, the following shall apply:*

1. *Rescue equipment shall be available.*
2. *The jump space and landing area shall be fenced to exclude the public.*

3. *Only the operators of the bungee jump shall be within the jump space and landing areas.*

2300.5. *Storage: Adequate storage shall be provided both on site and off site to protect equipment from physical, chemical and ultra-violet radiation damage. The storage shall be provided for current, replacement and emergency equipment and organized for easy and orderly access and shall be secure against unauthorized entry.*

## SECTION 2400.0. MANAGEMENT AND PERSONNEL REQUIREMENTS.

2400.1. *General: All bungee jumping activities shall have a minimum of one site controller or manager, two jump masters and two ground operators, all over the age of 18, to be present at all times during operation of the bungee jump.*

2400.2. *Site controller or manager: The site controller or manager shall be qualified as a jump master and have first aid and CPR training. The site controller or manager is responsible for the following:*

1. *Controlling the entire operation.*
2. *Site equipment and procedures for replacement.*
3. *Determining whether it is safe to jump.*
4. *Selection of, and training of personnel.*
5. *Emergency action and procedures.*
6. *Maintaining records.*

2400.3. *Jump master: The jump master shall have completed a minimum of 25 jumps and completed 30 hours of training with 10 hours reviewing the operation manual, 10 hours of on the job experience and four hours of procedural review and additional information or education. A jump master shall be located at each jump platform and shall have thorough knowledge of, and is responsible for, the following:*

1. *Rescue procedures for, briefing and psychological preparation of the jumper.*
2. *Overseeing the processing of jumpers; final check of jumper's preparation, countdown for and observation of the jump, selection of the bungee cord and adjustment of the rigging.*
3. *The site, equipment, procedures and personnel.*
4. *Emergency procedures for accidents, illness, unruly or hysterical jumpers, failure of equipment before or after the jump.*
5. *Ensuring that the number of jumps undertaken in a given period of time will allow all personnel to*

safely carry out their responsibilities.

**2400.4. Ground operator:** The ground operator shall have completed at least one bungee jump and have 10 hours training with four hours reviewing the operation manual and six hours training on site. The ground operator shall have knowledge of all equipment used and of jump procedures and shall have the following responsibilities:

1. Ensuring that the participant is qualified to jump.
2. Assisting the jump master to prepare the jumper and attaching the jumper to the harnesses.
3. Attaching the jumper to the rigging, under the supervision of the jump master, assisting the jumper to the recovery area and ensuring that the jumper leaves the operation area.
4. Maintaining a clear view of the landing zone.
5. Assisting in crowd control when warranted.

**2400.5. Operating manual:** Each site shall have an operating manual which shall include the following:

1. Site plan, job descriptions (including procedures), maintenance requirements of equipment including rigging, hardware, bungee cords harnesses and lifelines.
2. An emergency plan (including procedures), bungee cord logs and inspection procedures, standards and follow-up actions.

**2400.6. Daily operating procedures:** The daily operating procedures include the following:

1. Setting up the site and associated equipment.
2. Completing a written check list for personal protective equipment such as gloves, life jackets, buoyancy aids, harnesses and life lines and the communication system.
3. Examination of the jump equipment and rigging.
4. Perform test jumps and check the bungee cord operation.
5. Brief personnel for the day's operation.

**2400.7. Registration and preparation of jumpers:** The registration of jumpers shall include their name, any pertinent medical information, age, weight, briefing of procedures and safety instructions.

**2400.8. Jump procedures:** The following procedure shall be used to execute a jump:

1. Personnel shall check the jumper for loose objects.

2. The harness shall be attached.

3. The bungee cord shall be connected and adjusted if necessary.

4. The jumper shall be connected to the cord and the connections to the rigging shall be checked prior to being raised to elevation.

5. The jump master shall perform a final inspection.

6. The ground crew countdowns jumper.

7. Retrieval process shall not be initiated until rebounds have ceased.

8. The jumper shall be returned to the public area.

9. The bungee cord is retrieved to the platform.

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

**Title of Regulation:** VR 470-06-01. Rules and Regulations to Assure the Protection of the Subjects of Human Research (REPEALED).

**Title of Regulation:** VR 470-06-01:1. Regulations to Assure the Protection of Participants in Human Research.

**Statutory Authority:** §§ 37.1-10 and 37.1-24.01 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through February 15, 1993.

(See Calendar of Events section for additional information)

### Summary:

The proposed regulations:

1. Limit applicability of regulations to the DMHMRSAS community services boards and to any facility operated, funded or licensed by the department as required by the Code of Virginia.

2. Extend the requirement that participants in biomedical research be informed of risks discovered after the research has been conducted by participants in all types of human research.

3. Revise the definitions of:

- a. "Human research" to be consistent with the Code of Virginia. More specifically defined exemptions are described in a separate section.

- b. "Legally authorized representative" to clarify that



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*an official or employee of the institution conducting the research cannot act as the authorized representative and to authorize the use of an attorney-in-fact.*

*c. "Informed consent" to clarify the basic elements of informed consent. Requirements have been added that informed consent must include a description of the expected duration of participation and the extent to which confidentiality will be maintained. The participants rights regarding refusal to participate and withdrawal from the study are clarified.*

*4. Replace the definition "present a hazardous risk" with a definition of "minimal risk" as it is defined in federal regulations.*

*5. Clarify that the summary of the proposed human research must be submitted prior to the initiation of the research project.*

*6. Add the requirements that consideration be given to race, gender and cultural background in assuring diversity in the membership of the review committee.*

*7. Change the requirement that each committee must include "several members" who are not affiliated with the institution sponsoring the research to "at least one member," and add the requirement that this member must not be part of the immediate family of a person who is affiliated with the institution.*

*8. Add the requirement that a quorum must include at least one member whose primary concerns are in nonscientific areas.*

*9. Add a provision allowing an institution or agency to expedite the review of a human research project if the project has been reviewed and approved by the human research review committee of another institution. Committees are required to review human research proposals within 45 days rather than 60 days.*

*10. Reflect that, in reviewing human research, the review committee must consider whether or not the selection of subjects is "equitable" rather than "valid" as previously indicated.*

*11. Define specific types of research that present no risk to participants and are, therefore, exempt from these regulations. This would increase the consistency with the federal regulations.*

*12. Define the conditions under which the procedures for conducting an "expedited" review for particular types of research as provided for in federal regulations. An expedited review may be used for minor changes in previously approved research and specific types of research as identified in federal*

*regulations.*

*13. Clarify conditions required to assure voluntary and informed consent.*

*14. Define conditions under which the research review committee may allow some elements of informed consent to be omitted or altered and for the requirement of written informed consent to be waived. These may be allowed when the research involves no more than minimal risk, the waiver or alteration will not adversely affect the participants, the research could not otherwise be conducted, and additional pertinent information is provided to the participant after participation.*

*15. Outline new requirements for the preparation and maintenance of committee records. Committees must prepare and retain copies of all research proposals, progress reports, reports of injuries to participants, minutes of committee meetings, etc., for three years.*

VR 470-06-01:1. Regulations to Assure the Protection of Participants in Human Research.

## § 1. Definitions.

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

*"Affiliated with the institution" means employed by the institution or a member of a household containing an employee of the institution.*

*"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board.*

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

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

*"Human participant" means a living individual about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. "Intervention" includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the participant or participant's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and participant. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public*

(for example, a medical record). Private information must be individually identifiable (i.e., the identity of the participant is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Human research" means any systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs.

"Institution" means any community services board or any facility or program operated, funded, or licensed by the department.

"Legally authorized representative" means the parent or parents having custody of a prospective participant, the legal guardian of a prospective participant or any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective participant to such person's participation in the particular human research. For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the participant.

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to general knowledge. Activities which meet this definition constitute research for purposes of these regulations, whether or not they are supported or funded under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Voluntary informed consent" means the knowing consent of an individual so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other

form of constraint or coercion. With regard to the conduct of human research, the basic elements of information necessary to such consent shall include:

1. A statement that the study involves research, and a reasonable and comprehensible explanation to the individual of the procedures to be followed and their purposes, including identification of any procedures which are experimental; the expected duration of the individual's participation; a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the individual will not be identified without his written permission;
2. A description of any attendant discomforts and risks reasonably to be expected and a statement that there may be other risks not yet identified;
3. A description of any benefits to the individual or to others reasonably to be expected;
4. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the individual;
5. An offer to answer and answers to any inquiries by any individual concerning the procedure;
6. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the individual is otherwise entitled, and the individual may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;
7. An explanation of whom to contact for answers to pertinent questions about the research and research participants' rights, and whom to contact in the event of a research-related injury;
8. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what they consist of or where further information may be obtained; and
9. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols.

## § 2. Authority.

These regulations are promulgated under the authority of §§ 37.1-24.01 and 37.1-10 6 of the Code of Virginia, to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

## § 3. Applicability.

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*These regulations shall apply to the Department of Mental Health, Mental Retardation and Substance Abuse Services and to any community services board and to any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants.*

## § 4. Policy.

*A. No human research may be conducted without informing the participant or his legally authorized representative in writing of the risks, procedures, and discomforts of the research. The consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in § 10 F of these regulations. Arrangements shall be made for those who need special assistance in understanding the consequences of participating in the research.*

*B. Each human research activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities.*

*C. Nontherapeutic research using institutionalized participants is prohibited unless it is determined by the research review committee that such nontherapeutic research will not present greater than minimal risk.*

*D. The individual conducting the research shall be required to notify all participants of research of the risks caused by the research which are discovered after the research has concluded.*

## § 5. Certification process.

*A. Institutions seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a research review committee. Institutions shall report annually to the commissioner giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their institutional affiliation and a copy of the minutes of committee meetings.*

*B. Prior to the initiation of a human research project, institutions shall also send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a participant in the research project, a description of what will be done to the participants, and a copy of the informed consent statement.*

*C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with any institution having a committee, and such human research as he conducts or proposes to*

*conduct shall be subject to review and approval by the committee in the manner set forth in this section.*

*D. The commissioner may inspect the records of the committee.*

*E. The chairman of the committee shall report as soon as possible to the head of the institution and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.*

## § 6. Composition of research review committees.

*A. Each committee shall have at least five members, appointed by the head of the institution, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the institution. The committee shall be sufficiently qualified through the maturity, experience, and diversity of its members, including consideration of race, gender and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, including residents of mental health or mental retardation facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.*

*B. No committee shall consist entirely of men or entirely of women, or entirely of members of one profession, and at least one member must be an individual whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy).*

*C. Each committee shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.*

*D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member is directly involved or for which he has administrative approval authority, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflicting interest. The committee member shall be replaced in the case of conflicting interests resulting in a decrease of the committee below five persons.*

*E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review*

of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas.

G. The committee and the institution shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

## § 7. Elements of each committee's review process.

A. No human research shall be conducted or authorized by such institution or agency unless such committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
2. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;
3. Whether the rights and welfare of the participants are adequately protected;
4. Whether the risks to the participants are outweighed by the potential benefits to them;
5. Whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular participants of the research;
6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;
7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;
8. Whether the research conforms with such other requirements as the board may establish; and
9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants.

B. Each committee shall review approved projects to ensure conformity with the approved proposal at least annually.

C. Research must be approved by the committee which has jurisdiction over the participant. When cooperating

institutions conduct some or all of the research involving some or all of the participants, each cooperating institution is responsible for safeguarding the rights and welfare of human participants and for complying with these regulations, except that in complying with these regulations institutions may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 45 days after submission to the committee's chairman. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written description of the procedure to be followed by a participant who has a complaint about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

## § 8. Kinds of research exempt from committee review.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of these regulations:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:
  - a. Research on regular and special education instructional strategies; or
  - b. Research on the effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods.
2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably

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identified, directly or through identifiers linked to the participants.

3. Research involving survey or interview procedures, unless:

a. Responses are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants; and

(1) The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or

(2) The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct or family planning.

4. Research involving solely the observation (including observation by participants) of public behavior, unless:

a. Observations are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants, and either:

(1) The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or

(2) The research deals with sensitive aspects of the participant's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

5. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available or if the information taken from these sources is recorded in such a manner that participants cannot be identified, directly or through identifiers linked to the participants.

6. Research involving solely a combination of any of the activities described in this section.

§ 9. Expedited review procedures for certain kinds of research involving no more than minimal risk.

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the review may be carried out by the committee chairperson

and one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 7 of these regulations.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the only involvement of human participants will be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

1. Collection of hair and nail clippings, in a nondisfiguring manner; nonpermanent teeth; and permanent teeth if patient care indicates a need for extraction.

2. Collection of excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.

3. Recording of data from participants 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the participant or an invasion of the participant's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

4. Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from participants 18 years of age or older and who are in good health and not pregnant.

5. Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

6. Voice recordings made for research purposes such as investigations of speech defects.

7. Moderate exercise by healthy volunteers.

8. The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

9. Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate participants' behavior and the research will not involve stress to participants.

10. Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

## § 10. Informed consent.

A. No human research may be conducted in this Commonwealth in the absence of voluntary informed consent subscribed to in writing by the participant or by the participant's legally authorized representative except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent shall be subscribed to by both the minor and his legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the participant or the representative shall be in language understandable to the participant or the representative.

B. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human research. Each participant shall be given a copy of the signed consent form required by § 4 A of these regulations, except as provided for in § 10 F.

C. No legally authorized representative may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the participant.

D. The committee may approve a consent procedure which does not include, or which alters some or all of the elements of informed consent set forth in § 1 of these regulations, or waive the requirements to obtain informed

consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;

2. The waiver or alteration will not adversely affect the rights and welfare of the participants;

3. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 1 of these regulations. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by § 1 of these regulations have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the participant or the representative, in addition to a copy of the short form.

F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each participant will be asked whether the participant wants documentation linking the participant with the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement regarding the research.

## § 11. Committee records.

A. An institution, or when appropriate a committee, shall prepare and maintain adequate documentation of committee activities, including the following:

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1. Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to participants.

2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

3. Records of continuing review activities.

4. Copies of all correspondence between the committee and the investigators.

5. A list of committee members.

6. Written procedures for the committee.

7. Statements of significant new findings provided to participants.

B. The records required by this regulation shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

## § 12. Mandatory reporting.

Each research review committee shall submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee, including any significant deviations from the proposals as approved.

## § 13. Role of the department, commissioner, and the board.

A. The commissioner shall establish and maintain records of institutional assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The commissioner shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of human research participants. The board shall be kept informed.

C. The commissioner shall arrange for the printing and dissemination of copies of these regulations.

## § 14. Applicability of state policies.

Nothing in these regulations shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board pursuant to § 37.1-84.1 of the Code of Virginia.

## § 15. Applicability of federal policies.

Human research at institutions which are subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempt from these regulations. Such institutions shall notify the commissioner and the board annually of their compliance with the policies and regulations of federal agencies.

## DEPARTMENT OF MOTOR VEHICLES

**Title of Regulation:** VR 485-60-9292. Salvage Act Regulation.

**Statutory Authority:** § 46.2-203 of the Code of Virginia.

The Department of Motor Vehicles is **WITHDRAWING** its proposed regulation entitled "VR 485-60-9292. Salvage Act Regulation" based on recommendations made by the Office of the Attorney General. This regulation was published in 8:26 VA.R. 4668-4669 September 21, 1992.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**Title of Regulation:** VR 615-01-50. Food Stamp Program – Income Conversion Method.

**Statutory Authority:** §§ 63.1-25 and 63.1-110 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

### Summary:

One factor of eligibility for the Food Stamp Program is determined by the calculation of household income. This regulation will require that a full month's income be calculated by multiplying by 4.3 for weekly income amounts and by 2.15 for bi-weekly amounts.

VR 615-01-50. Food Stamp Program – Income Conversion Method.

§ 1. Whenever income is anticipated for every pay period in a month and it is received on a weekly or bi-weekly basis, the eligibility worker must convert the income to a monthly amount by multiplying weekly

amounts by 4.3 and bi-weekly amounts by 2.15.

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**Title of Regulation:** VR 615-34-01. Voluntary Registration of Small Family Day Care Homes--Requirements for Contracting Organizations.

**Statutory Authority:** §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

**Public Hearing Dates:**

- January 19, 1993 - 5:30 p.m.
  - January 20, 1993 - 5:30 p.m.
  - January 21, 1993 - 5:30 p.m.
- Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

**Summary:**

The 1991 General Assembly added a section to the Code of Virginia through HB 1862 which sets forth broad parameters for the creation of a voluntary registration program for unlicensed providers. The proposed regulation establishes administration, staff and service requirements for contracting organizations which will administer the voluntary registration program.

**VR 615-34-01. Voluntary Registration of Small Family Day Care Homes--Requirements for Contracting Organizations.**

**PART I.  
INTRODUCTION.**

**§ 1.1. Definitions.**

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

"Certificate of registration" means a document issued by the commissioner to a family day care provider, acknowledging that the provider has been certified by the contracting organization and has met the Requirements for Voluntary Registration of Small Family Day Care Homes (VR 615-35-01).

"Child" means any individual under 18 years of age.

"Commissioner" means the Commissioner of Social Services.

"Commissioner's designee" means a designated individual or division within the Department of Social Services who is delegated to act on the commissioner's behalf in one or more specific responsibilities.

"Contract" means the document signed by the

Department of Social Services and the contracting agency.

"Contracting organization" means the agency which has been selected by the Department of Social Services to administer the voluntary registration program for small family day care providers.

"Cooperative agreement" means an agreement between contractors administering the Voluntary Registration Program.

"Denial of certificate of registration" means a refusal by the commissioner to issue a certificate of registration.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

"Division" means Division of Licensing Programs.

"Evaluate" or "evaluation" means the review of a family day care provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the requirements for providers.

"Family day care provider applicant" or "provider applicant" means a person at least 18 years of age who has applied for a certificate of registration.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business/professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to administer a program for the care, guidance and protection of children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Monitor" or "monitoring visit" means to visit a registered family day care provider to review the provider's compliance with applicable requirements.

"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of, a child enrolled or in the process of being enrolled in a family day care home.

"Provider" or "registered family day care provider" means a person who has received an initial or renewed certificate of registration issued by the commissioner. This



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provider has primary responsibility in providing care, protection, supervision, and guidance for children in his private home.

*“Provider assistant” means a person at least 14 years of age who has been designated by the provider to assist the provider in caring for children in the home. The assistant helps the family day care provider in the care, protection, supervision, and guidance of children in a private home.*

*“Refusal to renew a certificate of registration” means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.*

*“Registered small family day care home” means any small family day care home which has met the standards for voluntary registration for such homes pursuant to regulations prescribed by the Board of Social Services and which has obtained a certificate of registration from the Commissioner of Social Services.*

*“Registration fee” means the payment to a contracting organization by a provider or applicant upon filing application for a certificate of registration.*

*“Renewal of a certificate of registration” means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.*

*“Requirements for Contracting Organizations” means Parts II through IV of these regulations. This section sets forth definitions for key terms and the staff and service requirements for contracting organizations.*

*“Requirements for Providers” means procedures and general information for providers operating small family day care homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.*

*“Revocation of a certificate of registration” means the removal of a provider’s current certificate of registration for failure to comply with the applicable requirements for providers.*

*“Small family day care home” means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day. Further, a family day care home which accepts no more than 10 children, at least five of whom are of school age and are not in the home for longer than three hours immediately before and three hours immediately after school hours each day, may also voluntarily register as a small family day care home.*

*“Sponsoring organization” refers to an agency*

*administering the USDA’s adult and child food nutrition program.*

*“Staff member” means a person employed by or working for a contracting organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.*

*“Substitute provider” means a regulated provider who meets the requirements for voluntary registration and who is readily available to provide child care for a registered provider.*

*“USDA” means the United States Department of Agriculture.*

## § 1.2. Legal authority.

*The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to include provisions for the voluntary registration of small family day care homes.*

## PART II. ADMINISTRATION OF CONTRACTING ORGANIZATIONS.

### § 2.1. Eligibility and qualifications.

*A. Any public or private for-profit or nonprofit organization may apply to become a family day care contracting organization, provided the organization meets the eligibility requirements.*

*B. In order to secure, maintain or renew a contract to provide registration services for small family day care homes, a contracting organization shall demonstrate its ability to provide for sound facility and finances, permanent records, the collection of fees, the maintenance and provision of reports, officers and agents who have good character and reputation, and as set forth below:*

*1. The contractor shall maintain adequate facilities as verified by an on-site visit prior to approval of the contract and subsequent inspection(s) and monitoring visits;*

*2. The contractor shall demonstrate its ability to provide for sound financial management through submission of:*

*a. Financial statements of the organization for which an independent auditor has rendered an opinion for the most recent fiscal year;*

*b. A report on the internal control structure of the organization prepared by an independent auditor for the most recent fiscal year, which is free of material weaknesses that affect the fiscal management capabilities of the organization; and*

- c. Any program audit or review performed by state and federal agencies prepared within the last two years which is free of material weaknesses that affect the fiscal management capabilities of the organization.*
3. *The contractor shall provide for workers' compensation insurance required by Virginia law and a minimum of \$500,000 liability insurance.*
4. *Contracting requirements.*
- a. The contracting organization must meet the applicable contracting requirements of the commissioner and the State Board of Social Services and the Requirements for Contracting Organizations.*
- b. The commissioner may give preference to contracting organizations which serve large geographic areas and to limit the number of contractors based on available resources.*
- c. The commissioner may modify the territories assigned to contractors to better facilitate the administration of the registration program at any time.*
5. *Training, technical assistance, and information. The organization shall provide training or educational information, technical assistance and consultation to providers (See §§ 4.2 and 4.7).*
6. *Program Administration.*
- a. Process applications for voluntary registration;*
- b. Certify family day care homes as eligible for registration (as noted in § 4.3);*
- c. Provide educational information to parents;*
- d. Maintain a list of substitute providers who are voluntary registrants which shall be given to providers upon request; and*
- e. Provide information as required under the Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and Privacy Protection Act (§ 2.1-377 et seq.).*
7. *Monitoring and complaints.*
- a. Monitor small family day care providers for compliance with health and safety checklist (as described in § 4.6);*
- b. Respond to routine complaints under the directions of the department (as noted in § 4.5);*
- c. Make appropriate referrals to state and local agencies; and*
- d. Encourage provider participation in the USDA food program and refer interested persons to sponsoring organizations.*
8. *Comply with all performance provisions and level of service provisions as specified in the executed contract.*
- C. The contracting organization may elect to provide training and may subcontract for the provision of this training to providers. The contracting organization shall ensure that:*
- 1. An agency under subcontract complies with all applicable Requirements for Contracting Organizations in the delivery of training to the providers;*
  - 2. Trainers meet the criteria set forth in § 4.2; and*
  - 3. A copy of the subcontract between the contracting organization and the agency subcontracted to perform training shall be maintained on file with the contracting organization.*
- § 2.2. *Administrative responsibility.*
- A. A privately operated contracting organization shall have a governing board of at least five members that has the authority to:*
- 1. Set overall administrative and operational policies for the contracting organization.*
  - 2. Ensure the financial viability of the contracting organization.*
  - 3. Ensure policies pertaining to, but not limited to:*
    - a. Program services;*
    - b. Personnel recruitment, selection, training and performance evaluation; and*
    - c. Data collection and reporting.*
  - 4. Oversee fiscal operations, including budget and resource development.*
- B. The governing board shall delegate responsibility for day-to-day operations to an executive director or administrator. The director shall maintain minutes and attendance records of board meetings for review by the division.*
- C. A publicly operated contracting organization shall have an advisory committee of at least five people that offers advice and counsel to the contracting organization on the fiscal and administrative operations of the family day care registration program. The director shall maintain*

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minutes and attendance records of advisory committee meetings and attendance for review by the division.

D. The governing board of a private contracting organization or the director of a public contracting organization shall appoint an appeals committee of at least three people which shall:

1. Review recommendations to the commissioner to deny, revoke or refuse to renew a certificate of registration if requested by the provider;
2. Exclude from its membership staff members responsible for recommending decisions regarding the denial, revocation or refusal to renew a certificate of registration; and
3. Maintain on file documentation of its findings.

E. The contracting organization shall make available family day care registration services to those who request it.

## § 2.3. Inspection and monitoring of contractors.

A. The department will conduct a comprehensive programmatic inspection of the contracting organization to determine compliance at least once during the contract period.

B. Each contract period shall be two years or as established by the department.

C. An authorized representative of the department may make an announced or unannounced visit at any time during the contracting organization's normal operating hours to monitor the contracting organization and review files, reports or records to determine its compliance with the requirements, and to investigate a complaint.

D. The department shall notify the contracting organization in writing whenever the department determines that the contracting organization is operating in violation of any of the Requirements for Contracting Organizations. Notifications will specify the plan of corrective action, including completion date, that must be taken by the contracting organization in order to abate the violation(s).

E. If the contracting organization fails to abate the violation(s) or commits subsequent violations, the contract may be revoked or refused renewal. A contract may also be revoked or refused renewal for:

1. Any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child;
2. Demonstrating of unfitness or inability to operate or to administer the voluntary family day care registration program in accordance with the contract;

3. Using fraud in obtaining or maintaining a contract;

4. Any fiscal policies, procedures, or conduct which demonstrate inadequate fiscal management of program funds; or

5. Failing to comply with the cooperative agreement between contractors.

F. If a contracting organization's approval is revoked or refused renewal or if the contract is terminated for any reason, all records related to voluntary registration shall be brought up to date, put in good order, and given to the department within five working days.

## § 2.4. Reporting requirements.

A. The contracting organizations or any staff member shall notify the local department of social services or the state department's Child Protective Services office as specified in Chapter 12 (§ 63.1-248.3 et seq.) of Title 63.1 of the Code of Virginia, whenever there is a reason to suspect that a child has been subjected to abuse or neglect by a provider or any other person.

B. The contracting organization or any staff member shall notify the department immediately of any imminent danger(s) or hazard(s) that threaten the health and safety of children in the provider's home.

C. The contracting organization shall notify the division and the local health department in the provider's municipality of the occurrence of a communicable disease. Such notification shall be made by the next working day after the contracting organization learns of the occurrence.

D. The contracting organization shall notify the central office of the division, orally, of any of the following changes or events by the next working day after the contracting organization learns of their occurrence:

1. Injury that results in the admission of a child to a hospital while in the care of a provider;
2. Lost or missing child when it was necessary to seek assistance of local emergency or police personnel.
3. The death of a child while in the care of a provider;
4. Damage to the contracting organization's offices that affects the operation of family day care registration;
5. Any criminal charge(s) and their disposition(s), as specified in § 63.1-198.1 of the Code of Virginia, of the staff of the contracting organization or of a provider, substitute provider, provider assistant, or member of a provider's household;

6. Cancellation of the contracting organization's general/comprehensive liability insurance coverage;
7. Unanticipated permanent or temporary closing of the contracting organization or the registration program; and
8. The provider is exceeding the number of children allowed under registration and is required by law to be licensed.

E. The contracting organization shall notify the division orally within three working days, of any change in office location or the director of the contracting organization or the registration program.

F. The contracting organization shall report statistical data as noted in § 2.5 and specified by the contract.

## § 2.5. Contracting organization records.

A. The contracting organization shall maintain the following records:

1. Administrative records.
  - a. The Requirements for Voluntary Registration of Small Family Day Care Homes;
  - b. The document providing information to parents as specified in § 4.8;
  - c. Staff records, as specified in § 3.1;
  - d. A copy of the contracting organization's insurance policies as specified herein and by the contract;
  - e. Documentation of all funds collected and expended related to the administration of the program, including registration fees;
  - f. A copy of the contracting organization's financial records and audits;
  - g. Documentation of training sessions conducted by the contracting organization or subcontractors and the qualifications of trainers;
  - h. Files documenting recommended denials, and nonrenewals of certificates of registration and appeals as specified in § 4.10;
  - i. A copy of corrective action plans to abate violations of the Requirements for Contracting Organizations;
  - j. A copy of the inspection and monitoring visit reports completed by the department; and
  - k. A copy of the cooperative agreements with other

contractors.

2. A copy of contracts between the contracting organization and any subcontracted agency to perform training related to family day care registration.

3. Records on providers as specified in Part IV and all documents related to the registration application. Records shall also be kept on providers who have discontinued family day care services, and additional information as may be received regarding the provider's compliance with the Requirements for Providers.

B. The contracting organization shall submit quarterly narrative and statistical reports including, but not limited to:

1. The number of applications pending and withdrawn;
2. The training information listed in § 4.2 G;
3. Program income and expenditures as noted in § 4.4;
4. Number of monitoring visits, the areas of noncompliance and the results of any complaint investigations; and
5. Narrative reports on progress or impediments related to the attainment of goals and objectives set forth in the contract.

C. The administrative records specified in this section shall be maintained by the contracting organization for three calendar years.

## § 2.6. Complaints against a contracting organization.

A. Complaints against a contracting organization shall be investigated by the department. An investigation shall be conducted to determine compliance with the contract and the Requirements for Contracting Organizations. The contracting organization shall be notified of the findings by the department.

B. If the contracting organization wishes to appeal an administrative decision that does not result in revocation of the contract by the department, the contractor may follow an informal appeal process as outlined in the Department of Social Services, Division of Licensing Programs, General Procedures and Information for Licensure.

C. The contracting organization may appeal a decision by the department resulting in a revocation decision in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

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## § 2.7. Public Access to Records.

A. The contracting organization shall make the following files available for public review:

1. Active applications for a certificate of registration and related materials or documentation;
2. List of registered providers updated quarterly;
3. Correspondence between the contracting organization and the provider or other parties in matters pertaining to the contracting organization's monitoring or registration of the provider;
4. Evaluation and monitoring reports, where applicable, reflecting the results of the contracting organization's evaluation and monitoring of the provider;
5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Requirements for Providers;
6. Enforcement letters from the contracting organization requiring abatement of violations of the Requirements for Providers;
7. Correspondence to the contracting organization from the department regarding enforcement actions against the provider;
8. Chronological lists of events about the provider on compliance and enforcement matters;
9. Completed complaint investigations reports, except child abuse or neglect investigations or other information restricted by the requirements of Chapter 12 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia or other state law; and
10. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

B. The contracting organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse or neglect investigations involving enrolled children and any other information pertaining to children, parents or providers that are restricted from public access under Chapter 12 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia or other state law;
2. Records, reports, correspondence or forms containing names of enrolled children and their parents;

3. Confidential information with regard to specific contracting organization personnel;

4. Any items that deal with reports of inspection or complaint investigations that are still in progress; and

5. Other material required by state law to be maintained as confidential.

C. If a contracting organization has a question about whether information may be released to the public, the executive director should consult the organization's attorney and a representative of the department.

D. Contractors may not charge the public more than provided under the Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia).

## PART III. STAFF REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.

### § 3.1. General staff requirements.

A. The executive director or administrator, board members, corporate officers, or partners and every staff member of a contracting organization shall be of good character and reputation. Staff shall possess ability to provide services to parents and providers, as specified in these requirements. The director, board members, and corporate officers shall possess ability to direct the organization.

B. Prior to the employment or utilization of the executive director or administrator or a staff member directly involved with administering the registration program, the contracting organization shall require the applicant for executive director or administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:

1. Name, address and telephone number;
2. Education and work experience; and
3. Criminal records check and Child Protective Services Central Registry clearance.

C. Prior to the executive director's or administrator's or any staff member's employment, the contracting organization shall obtain two references, either in writing or orally, from former employers or other persons who have knowledge of the applicant's work experience, education and character. If the reference is given orally, documentation shall be on file with comments. If staff is already employed, references shall be provided within 20 days of signing the contract with the department.

D. The executive director or administrator and every staff member shall notify the contracting organization by the end of the contracting organization's next working

day of any criminal convictions or charges filed during their employment or utilization by the contracting organization.

E. Evidence of conviction for crimes of violence, child abuse or neglect or other crimes which may relate adversely to the operation of the contracting organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director or administrator or as a staff member.

F. Except for crimes specified in § 63.1-198.1 of the Code of Virginia, evidence of conviction of a crime by an individual serving as executive director or administrator, corporate officer, or partner or as a staff member shall not automatically result in the cancellation of the contract. Such determination shall be made on a case-by-case basis by the commissioner or the commissioner's designee.

G. The contracting organization shall maintain on file for the executive director or administrator and for each staff member the information described in this section.

### § 3.2. Types and responsibilities of staff.

A. Each contracting organization shall have an executive director or administrator who is responsible for the overall management and administration of the contracting organization's family day care registration program.

B. The contracting organization shall have sufficient staff to carry out the family day care registration program.

C. The executive director or administrator may also serve as a staff member if he has no role in approving providers for the USDA food program. Likewise, staff involved in approving homes for USDA shall not approved homes for registration.

D. The executive director or administrator shall ensure:

1. That the contracting organization operates in compliance with all applicable Requirements for Contracting Organizations;
2. That each provider operates in compliance with all applicable Requirements for Providers;
3. The supervision of all staff members assigned to the contracting organization's family day care registration program;
4. The development and implementation of policies and procedures for the day-to-day operation of the contracting organization's family day care registration program;

5. The orientation of staff members to the policies and procedures of the contracting organizations;

6. The development and maintenance of administrative, fiscal and program records; and

7. The development and implementation of a program of outreach, public relations, and technical assistance as directed by the division.

### § 3.3. Staff qualifications.

A. The executive director or administrator shall possess a bachelor's degree and a minimum of two years of managerial or supervisory experience. The degree and experience shall be in the field of human services, child care services, child development, education, psychology, nursing, social work, or business.

B. Staff members responsible for provider evaluation, monitoring, support, technical assistance and training shall possess the following:

1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year experience working with children; or
2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, psychology, or social work and at least one year of which must be experience working directly with children.

### § 3.4. Staff training.

The executive director or administrator shall:

1. Provide staff members with access to a copy of the Requirements for Contracting Organizations and the Requirements for Providers.
2. Ensure that staff, as appropriate, are trained in:
  - a. Recognizing and reporting child abuse or neglect;
  - b. Evaluating provider applicants as specified in § 4.1;
  - c. Conducting or securing training sessions for providers when requested;
  - d. Monitoring providers as specified in § 4.6;
  - e. Providing technical assistance to providers as specified in § 4.7;
  - f. Procedures for identification and referral of special needs children; and

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*g. Recruiting providers for registration and promoting the program through public relations as directed or approved by the division.*

*3. Ensure staff designated to conduct training meet the qualifications set forth for trainers in § 4.2.*

## **PART IV. SERVICE REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.**

### **§ 4.1. Evaluation of family day care provider applicants.**

*A. The contracting organization shall provide to each applicant for a certificate of registration the following information:*

- 1. A voluntary registration provider application, including the health and safety checklist;*
- 2. A request form for a criminal records check and a Child Protective Services (CPS) Central Registry clearance;*
- 3. A sworn disclosure statement;*
- 4. A copy of the Requirements for Providers;*
- 5. A list of sponsoring organizations for the USDA food program if the registrant is not a participant and expresses interest in the program;*
- 6. A list of all contracting organizations; and*
- 7. Other forms and information as required by the division.*

*B. The contracting organization's evaluation of each applicant shall include a review of the information required on the application for registration and other program requirements.*

*C. The contracting organization shall evaluate each provider prior to recommending certification, denial or refusal to renew the provider's certificate of registration.*

*D. The contracting organization shall visit each applicant's home as described in § 4.6 prior to recommending the issuance of the certificate of registration and at renewal to evaluate the applicant's compliance with the Requirements for Providers.*

*E. A renewal application packet will be sent to the provider no later than 90 days prior to the expiration of the current certificate of registration.*

*F. If needed, the provider and contracting organization shall complete a corrective action plan during the initial home visit. This will briefly describe any standard not met, the action to be taken to meet it, the date by which it will be completed, and the signature of the provider.*

### **§ 4.2. Training of family day care providers.**

*A. The contracting organization shall supply to each provider:*

- 1. Prior to recommending the issuance of a certificate of registration, a copy of appropriate informational materials supplied by the department; and*
- 2. From time to time, any other available materials that may assist the provider in operating a small family day care home.*

*B. The contracting organization shall ensure training or educational materials are available and easily accessible to providers prior to recommending the issuance of a certificate of registration and after being awarded the certificate by the commissioner.*

*C. Training or educational materials shall include information regarding, but not limited to, the following subjects:*

- 1. Child development;*
- 2. Discipline;*
- 3. Safety, first aid and emergency evacuation procedures;*
- 4. Health and sanitation;*
- 5. Nutrition;*
- 6. Program activities;*
- 7. Child abuse detection and prevention;*
- 8. Parent-provider communication;*
- 9. Injury prevention; and*
- 10. Special needs training.*

*D. Where training is provided, sessions for provider applicants shall include group or individual instruction by persons with expertise in the areas of instruction. All trainers used, including those under subcontract, shall have the following education and experience.*

- 1. A.A., B.A., B.S., or advanced degree in early childhood education (ECE), child development, home economics, psychology, nursing, social work, special education or related field from an accredited college or university (the degree must directly relate to the area of training); or*
- 2. A valid professional credential (or certification) from an early childhood education or child development related organization (such as Child Development Associate Credential or National*

Association for Family Day Care Accreditation); or

3. Have at least four years of substantial compliance with applicable regulations, in a child care setting working directly with children as a caregiver, teacher, child life worker, social worker, or in a similar role in a program serving children of the age represented in the course, seminar or workshop; and

4. At least 12 college level credits in courses directly related to child growth and development and three professional references. A professional reference may not be from a relative, and must directly relate to the training topics for which the applicant is applying.

E. Alternatives to the education or experience requirements in § 4.2 D will be considered on an individual basis for specialized subject matter that is relevant for child care providers but which does not require academic preparation in early childhood education. The applicant must provide the following documentation for consideration:

1. A written description of education or experience related to the field of expertise under consideration; and

2. A brief explanation of how the area of expertise relates to early childhood care.

F. Training may be supplemented by:

1. Printed materials;

2. Television broadcasts; or

3. Audio-visual materials.

G. Training provided by organizations other than the contractor and publicized by the contractor through the mediums described in subsection F of this section shall meet the criteria for quality training set forth in subsection D.

H. The contracting organization shall maintain on file documentation of training it provides, including for each training session the names of the participants, the goals, a description of the information presented, the date the training occurred and an evaluation.

#### § 4.3. Issuance of the certificate of registration.

A. If the contracting organization determines that the provider applicant is in compliance with all applicable requirements for providers, the contracting organization shall certify the home as eligible for registration and submit a recommendation on forms prescribed by the commissioner. Upon receipt, the commissioner shall evaluate the recommendation for certification and may register the small family day care home.

B. The certificate of registration shall be issued by the commissioner to a specific provider at a specific location and shall not be transferable.

C. A provider who has been denied a certificate of registration or has had a certificate revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action unless the waiting period is waived by the commissioner as noted in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

#### § 4.4. Collection of registration fees.

A. The contracting organization shall process all applications for a certificate of registration without regard to the applicant's race, national origin, religion, sex, or age (provider must be at least 18 to register).

B. The contracting organization shall collect a nonrefundable biennial registration fee not to exceed \$50 from the provider applicant and with each application for renewal of the certificate of registration. The fee shall be paid in the form of check or money order made payable to the contracting organization. This does not include the fee for the criminal records check, CPS Central Registry clearance, or the tuberculosis test.

C. The contracting organization may assess a fee not to exceed \$10 for an additional home visit if corrective action is needed after the initial home visit and as specified in the Requirements for Providers.

D. An additional fee shall not be required if a minor change in the information collected occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

E. The contracting organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with department's contract requirements.

F. The contracting organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the contracting organization's voluntary registration program.

#### § 4.5. Complaints and violations.

A. Complaints against a provider and alleged violations by a provider which are directed to the contracting organization shall be referred to the appropriate agency within a timeframe specified by the division. This may include referrals to Child Protective Services, health and safety officials, the appropriate sponsoring organization or USDA office, or the department's regional licensing office if the complaint alleges that the home is subject to licensure.



# Proposed Regulations

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B. Complaints shall also be received by or referred to the contracting organization with procedures developed under the direction of the department.

C. If, during the course of investigating a complaint, the commissioner determines that it is necessary to revoke a certificate of registration, the contracting organization and the commissioner shall take action in accordance with § 4.10.

## § 4.6. Monitoring of family day care providers.

A. The contracting organization shall monitor, unannounced, at least 10% of the providers registered who are not participating in the food program every two years to evaluate compliance with the Requirements for Providers. The USDA requires that providers participating in the food program be monitored three times a year and recommends one of these visits be unannounced.

B. The contractor shall visit the home during the hours in which care is being provided to children by the provider.

C. The contracting organization shall maintain on file a written report of each monitoring visit to the provider's home.

## § 4.7. Technical assistance.

A. The contracting organization shall provide technical assistance to registered providers and parents of enrolled children upon request. This assistance shall include responding to providers' and parents' questions and concerns regarding family day care and referrals to appropriate agencies.

B. The contracting organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

C. The contracting organization shall make the following information available to providers:

1. A list of reportable communicable diseases;
2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;
3. Guidelines for administration of medication;
4. Guidelines for the care of sick children;
5. Guidelines for positive discipline;
6. A list of services to which a provider is entitled, including:

a. Participating in training sessions offered by or through the contracting organization; and

b. Receiving technical assistance from the contracting organization;

7. Resources for children with a potential or actual handicapping condition. This may include a toll free number for early intervention (1-800-234-1448) or:

a. Informing the parent of the child's rights to a special education program and related services;

b. Referring the parent to the Virginia Department of Education for a possible comprehensive evaluation and individual service plan development for the child; and

c. Referring the parent to the health clinic in the local health department for a possible comprehensive medical evaluation for the child;

8. Information on how to identify children who are victims of abuse and neglect and who to contact if it is suspected.

## § 4.8. Information to parents.

A. The contracting organization shall supply to providers sufficient copies of a written information to parents statement for the parents of all enrolled children which indicates:

1. The provider has received a certificate of registration;

2. The provider is required to comply with the Requirements of Providers;

3. The scope and limitations of voluntary registration;

4. The name, address and phone number of the contractor so that parents may receive a copy of the Requirements for Providers by contacting the contracting organizations;

5. Parents may report alleged violations of the Requirements for Providers to the local contracting organizations and complaints about the contractor to the division;

6. Any person providing full-time or part-time child care for pay on a regular basis who has reason to suspect that a child is an abused or neglected child is required by state law to report the matter immediately to the local social services department (except as prescribed in § 63.1-248.3 of the Code of Virginia) or to call the statewide toll free hotline (1-800-552-7096/TDD). Further, any person may report suspected abuse and neglect as set forth in § 63.1-248.4 of the Code of Virginia;

7. Parents of enrolled children shall be permitted to visit the family day care home at any time their

child(ren) is present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day care;

8. The operation of the family day care home is subject to unannounced monitoring visits by the contracting organization and monitoring of a sample of registered family day homes by the department; and

9. Parents may request that the contracting organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources.

#### § 4.9. Outreach and public relations.

The contracting organization will, in partnership with the department, disseminate registration information provided by the state to agencies, organizations and the general public.

#### § 4.10. Denials, revocations, refusals to renew, provider appeals procedures.

A. The contracting organization may recommend to the commissioner that a provider's certificate of registration be denied, revoked, or refused renewal for cause, including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;

2. Use of fraud or misrepresentation in obtaining a certificate of registration or in the subsequent operation of the family day care home;

3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day care home;

4. Refusal to furnish the contracting organization with records;

5. Refusal to permit immediate admission to the family day care home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department during normal hours of operation or when any enrolled child is present; or

6. Documentation maintained by a contracting organization or the department that a provider's certificate of registration has been denied, revoked, or refused renewal by the commissioner during the six months prior to the date the application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation(s) first orally and then in writing, and shall afford the provider an opportunity to abate the violation(s) within a timeframe agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation situations where children are at risk of abuse, neglect or serious harm or injury.

C. The contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal if the provider fails to abate the violation(s) within the agreed upon timeframe or commits a subsequent violation. A statement referencing the standard violated shall be included with the recommendation.

D. Upon notification of the contracting organization's intent to recommend to the commissioner that a certificate of registration be denied, revoked or refused renewal, the contracting organization shall give written notice to the provider within five calendar days, specifying the reason for such action, either by hand delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity to request a review in writing within 15 calendar days after receipt of notification before the contracting organization's review committee.

E. If the provider requests a review, the contracting organization's review committee shall consider each recommendation to deny, revoke, or refuse renewal within 15 calendar days of receiving the provider's request and shall afford the provider an opportunity to be heard. The review committee shall issue a written report of its findings to the provider and the commissioner's designee within five working days after completing its review.

F. The contracting organization shall submit its recommendation to the commissioner's designee who shall make a decision to accept or refuse the recommendation.

G. If the commissioner's designee upholds the recommendation to deny, revoke, or refuse renewal, the commissioner's designee shall inform the provider that the decision may be appealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and a hearing may be requested in writing within 15 calendar days after receipt of the notification of the decision.

H. After a hearing, the commissioner shall issue the final order and shall notify the provider that this order may be appealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

I. If the provider's certificate of registration is revoked or refused renewal by the commissioner or the commissioner's designee, the contracting organization shall

## Proposed Regulations

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*request that the provider notify the parent of each child enrolled in the family day care home within 10 calendar days of such action.*

MODEL

REGISTRAR OF REGULATIONS

92 NOV 24 PM 3:20

SMALL FAMILY DAY CARE HOME

RECOMMENDATION FOR CERTIFICATE OF REGISTRATION

Provider Name: \_\_\_\_\_

Provider Address: \_\_\_\_\_

Effective Dates: \_\_\_\_/\_\_\_\_/\_\_\_\_ through \_\_\_\_/\_\_\_\_/\_\_\_\_

Stipulations:

I certify that the Standards for Voluntary Registration of Small Family Day Care Homes have been reviewed at the home named above and that these requirements have been met by the provider. I recommend a Certificate of Registration be issued.

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Contracting Organization

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

Mail to:

Voluntary Registration Technician  
Division of Licensing Programs  
Virginia Department of Social Services  
8007 Discovery Drive  
Richmond, VA 23229-8699

032-05-209  
9/92

Appendix A

MODEL

REGISTRAR OF REGULATIONS

SMALL FAMILY DAY CARE HOME  
RECOMMENDATION TO DENY,  
REVOKE, OR REFUSE TO RENEW  
CERTIFICATE OF REGISTRATION

Provider Name: \_\_\_\_\_

Provider Address: \_\_\_\_\_

CHECK ONE OF THE FOLLOWING:

- Deny
- Revoke
- Refuse To Renew

REASON (specifically state the standard(s) not met):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorized Agency Representative

\_\_\_\_\_  
Contracting Organization

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date

Mail to:

Voluntary Registration Technician  
Division of Licensing Programs  
Virginia Department of Social Services  
8007 Discovery Drive  
Richmond, VA 23229-8699

032-05-209  
9/92

\*\*\* ATTACH PART I AND II OF THE COMPLETED APPLICATION FORM \*\*\*

Appendix B

# Proposed Regulations

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\* \* \* \* \*

**Title of Regulation:** VR 615-35-01. Voluntary Registration of Small Family Day Care Homes—Requirements for Providers.

**Statutory Authority:** §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

**Public Hearing Dates:**

January 19, 1993 - 5:30 p.m.

January 20, 1993 - 5:30 p.m.

January 21, 1993 - 5:30 p.m.

Written comments may be submitted through February 12, 1993.

(See Calendar of Events section for additional information)

**Summary:**

*The 1991 General Assembly added § 63.1-196.04 of the Code of Virginia which sets forth broad parameters for the development of a voluntary registration program for unlicensed family day care homes. An emergency regulation was promulgated to implement the program July 1, 1992. The proposed regulation establishes registration procedures and general information for providers of small family day care homes who voluntarily register. Information on staffing requirements, adult-child ratios and a self-administered health and safety checklist is included in the regulation. This regulation will replace the emergency regulation and the estimated effective date is July 1, 1993.*

VR 615-35-01. Voluntary Registration of Small Family Day Care Homes—Requirements for Providers.

PART I.  
INTRODUCTION.

§ 1.1. Definitions.

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

*“Adult” means any individual 18 years of age or older.*

*“Age groups”*

*“Infant” means children from birth to 16 months.*

*“Toddler” means children from 16 months to 31 months.*

*“Preschooler” means children from 31 months up to the age of eligibility to be enrolled in kindergarten or an equivalent program.*

*“School age” means children who are eligible to be*

*enrolled in kindergarten or attend public school.*

*“Age appropriate” means suitable to the chronological age range and developmental characteristics of a specific group of children.*

*“Age of eligibility to attend public school” means five years of age or older by September 30.*

*“Care, protection and guidance” means responsibility assumed by a small family day care home provider for children receiving care in the home, whether they are related or unrelated to the provider.*

*“Certificate of registration” means a document issued by the commissioner to a family day care provider, acknowledging that the provider has been certified by the contracting organization or the department and has met the Requirements for Voluntary Registration of Small Family Day Care Homes.*

*“Child” means any individual under 18 years of age.*

*“Commissioner” means the Commissioner of Social Services.*

*“Commissioner’s designee” means a designated individual or division within the Department of Social Services that is delegated to act on the commissioner’s behalf in one or more specific responsibilities.*

*“Contracting organization” means the agency which has contracted with the Department of Social Services to administer the voluntary registration program for small family day care providers.*

*“Denial of a certificate of registration” means a refusal by the commissioner to issue an initial certificate of registration.*

*“Department” means the Virginia Department of Social Services.*

*“Department’s representative” means an employee or designee of the Virginia Department of Social Services acting as the authorized agent of the commissioner in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195 et seq.) of the Code of Virginia.*

*“Evaluate” or “evaluation” means the review of a family day care provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the Requirements for Providers.*

*“Family day care provider applicant” or “provider applicant” means a person 18 years of age or older who has applied for a certificate of registration.*

*“Monitor” or “monitoring visit” means to visit a registered family day care provider and to review the*

provider's compliance with the applicable requirements described in the Requirements for Providers.

"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of, a child enrolled or in the process of being enrolled in a family day care home.

"Physician" means a person licensed to practice medicine.

"Provider" or "registered family day care provider" means a person who has received an initial or renewed certificate of registration issued by the commissioner. This provider has primary responsibility in providing care, protection, supervision, and guidance for the children in his registered home.

"Provider assistant" means a person 14 years of age or older who has been designated by the provider and approved by the contracting organization to assist the provider in caring for children in the home. The assistant helps the family day care provider in the care, protection, supervision, and guidance of children in a private home.

"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing an application for a certificate of registration.

"Registered small family day care home" means any small family day care home which has met the standards for voluntary registration for such homes pursuant to regulations prescribed by the Board of Social Services and which has obtained a certificate of registration from the Commissioner of Social Services through a contracting organization.

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Requirements for Providers" sets forth procedures and general information for providers operating small family day care homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration by the commissioner for failure to comply with the applicable Requirements for Providers.

"Small family day care home" means any private family home in which no more than five children, except children related by blood or marriage to the person who

maintains the home, are received for care, protection, and guidance during only part of the day. Further, a family day care home which accepts no more than 10 children, at least five of whom are of school age and are not in the home for longer than three hours immediately before and three hours immediately after school hours each day, may also voluntarily register as a small family day care home.

"Substitute provider" means a regulated provider who meets the Requirements for Providers and is readily available to provide child care for a registered provider.

"USDA" means United States Department of Agriculture.

## § 1.2. Legal authority.

The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to include provisions for the voluntary registration of small family day care homes.

## PART II. PROVIDER REGISTRATION AND GENERAL PROCEDURES.

### § 2.1. Provider eligibility.

A. A family day care provider and substitute provider shall be 18 years of age or older.

B. A family day care assistant shall be 14 years of age or older.

C. A family day care provider, assistant(s) and substitute provider shall be able to read, write, understand and carry out the responsibilities in the Requirements for Providers.

D. A family day care provider and substitute provider shall live in a county, city, or town that does not have a local ordinance for the regulation or licensure of family day care homes.

E. A family day care provider shall not be required by law to be licensed.

### § 2.2. Application for registration.

A. A family day care provider applicant for a certificate of registration shall submit to the contracting organization a completed application form, which shall include, but not be limited to:

1. The health and safety checklist and statements of assurance as noted in Part III.

2. A tuberculosis test report as noted in subsection C of this section.

# Proposed Regulations

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3. A criminal records check(s) and child protective services central registry clearance(s) as indicated in subsection D of this section.

4. A sworn disclosure statement as noted in subsection D of this section.

5. General information as noted in subsection B of this section.

B. The provider shall also indicate his preferences as to whether:

1. The provider applicant is interested in participating in the USDA food program (if the registrant is not currently participating);

2. The provider applicant is willing and able to serve as a substitute provider (after the primary provider obtains consent from parents of enrolled children) and is interested in being included on the substitute provider list maintained by the contracting organization.

C. Health information shall be submitted on the small family day care provider applicant, assistant(s) and substitute providers, if any, and any other adult household member who comes in contact with children or handles food served to children. The applicant shall return the completed application form along with a tuberculosis (TB) form which provides written proof of the results of a tuberculosis examination for the applicant, the provider assistant, if any, and all other persons who care for children in the family day care home as follows:

1. Initial tuberculosis examination and report.

a. Within 90 days before the date of initial application for registration or within 30 days before employment or having contact with children in a registered home, each individual shall obtain a tuberculin skin test indicating the absence of tuberculosis in a communicable form.

b. Each individual shall submit a statement that he is free of tuberculosis in a communicable form, including the result(s) of the test.

c. The statement shall be signed by a physician, the physician's designee, or an official of a local health department.

d. The statement shall be filed in the individual's record maintained at the family day care home.

**EXCEPTION:** An individual may delay obtaining the tuberculosis test if a statement from a physician is provided that indicates the test is not advisable for specific health reasons. This statement shall include an estimated date for when the test can be safely administered. The individual shall obtain the test no

later than 30 days after this date.

2. Subsequent evaluations.

a. An individual who had a significant (positive) reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis shall obtain chest x-rays on an annual basis for the following two years.

(1) The individual shall submit statements documenting the chest x-rays and certifying freedom from tuberculosis in a communicable form.

(2) The statements shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

(3) The statements shall be filed in the individual's record maintained at the family day care home.

(4) Following the two-year period during which chest x-rays are required annually, additional screening shall be obtained every two years.

b. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.

c. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an evaluation in accordance with subdivision C 1 of this section.

3. At the request of the contracting organization or the Department of Social Services, a report of examination by a physician shall be obtained when there is an indication that the safety of children in care may be jeopardized by the physical or mental health of a specific individual.

D. Information certifying that those in contact with children do not have a criminal background shall be submitted. Attachments will include:

1. A criminal records check, as specified in § 63.1-198.1 of the Code of Virginia, conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

2. A Child Protective Services (CPS) Central Registry Clearance conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in

the home.

3. A sworn disclosure statement for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

## § 2.3. Registration fees.

A. At the time an application for a certificate of registration is submitted to the contracting organization, the provider applicant shall pay a nonrefundable registration fee not to exceed \$50 for a two-year period. The fee shall be paid in the form of a check or money order made payable to the contracting organization. (This does not include the fee for the criminal records check, CPS Central Registry clearance or the tuberculosis test.)

B. An additional fee shall not be required if a minor change in the information collected, e.g., change in name, occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

C. An additional fee shall only be charged if a second home visit is required because:

1. The provider changes location (not to exceed \$50);
2. The original certificate of registration was revoked (not to exceed \$50);
3. The provider's completion of a corrective action plan needs to be verified (not to exceed \$10).

## § 2.4. Issuance of a certificate of registration.

A. After the provider applicant has satisfactorily met the requirements for voluntary registration, the contracting organization shall certify the provider applicant as eligible for registration to the commissioner and recommend the issuance of a certificate of registration.

B. The commissioner shall issue the certificate of registration, which shall not be transferable, to a specific provider at a specific location.

C. If it is necessary to change any identifying information (name and phone) noted on the certificate of registration prior to the end of the two-year registration period, the provider shall advise the contracting organization no later than 14 calendar days after the change.

D. If the provider changes location prior to the end of the two-year registration period, he shall permit and participate in a second home visit and an evaluation of the new residence within 30 days of occupying the residence.

E. The provider shall not claim in advertising or in any written or verbal announcement to be registered with the Commonwealth of Virginia unless a certificate of registration is currently in effect.

F. A provider who has been denied a certificate of registration or who has had a certificate of registration revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action, unless the waiting period is waived by the commissioner as noted in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

## § 2.5. Renewal of a certificate of registration.

A. The certificate of registration shall be subject to renewal upon expiration.

B. No later than 45 days before the expiration of the current certificate of registration, the provider shall submit to the contracting organization a completed renewal application form which shall include, but not limited to, the required information specified in § 2.2 A.

## § 2.6. Denials, revocations, refusals to renew and provider appeals procedures.

A. A provider's certificate of registration may be denied, revoked, or refused renewal by the commissioner for cause including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;
2. Use of fraud in obtaining a certificate of registration or in the subsequent operations of the family day care home;
3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day care home;
4. Refusal to furnish the contracting organization with records;
5. Refusal to permit immediate admission to the family day care home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department during normal hours of operation or when any enrolled child is present; or
6. Documentation maintained by a contracting organization or the department that a certificate of registration has been denied, revoked, or refused renewal by the commissioner to the provider during the six months prior to the date an application is



# Proposed Regulations

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resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation(s) first orally and then in writing, and shall afford the provider an opportunity to abate the violation(s) within a time frame agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation(s) in situations where children are at risk of abuse or neglect or serious harm or injury.

C. If the provider fails to abate the violation(s) within the agreed upon timeframe or commits a subsequent violation, the contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal. A statement referencing the standard(s) violated shall be included with the recommendation.

D. Upon notification of the contracting organization's intent to recommend that a certificate of registration be denied, revoked, or refused renewal, a provider may request a review in writing by the contracting organization's review committee within 15 calendar days after receipt of notification.

E. The contracting organization shall submit its recommendation of the provider's eligibility for issuance of a certificate of registration to the commissioner's designee. If a certificate of registration is denied, revoked or refused renewal by the commissioner's designee, the provider may appeal the decision in accordance with the Administrative Process Act (§ 9-6.14.1 et seq. of the Code of Virginia), and may request a hearing in writing within 15 calendar days after receipt of notification of the decision.

F. After the hearing, the commissioner shall issue the final order which may be appealed in accordance with the Administrative Process Act.

G. A provider whose certificate of registration is revoked or refused renewal shall notify the parent(s) of each child enrolled within 10 calendar days after receipt of notification of such action.

## § 2.7. Provider reporting requirements.

A. The provider shall verbally notify the local department of social services or call the toll free number for the Bureau of Child Protective Services (1-800-552-7096/TDD) immediately whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall report the following incidents to the contracting organization as soon as possible but no later than the beginning of the contracting organization's next working day:

1. A lost or missing child when it was necessary to seek assistance from local emergency or police personnel;

2. Any injury that occurs while in the provider's care that results in the admission of a child to a hospital;

3. The death of a child while in the provider's care;

4. Any damage to the provider's home that affects the provider's compliance with the Requirements for Providers;

5. Any occurrence of a reportable disease, as specified in the list of reportable diseases provided by the contracting organization;

6. The termination of all family day care services by the provider; or

7. The provider's decision to surrender the certificate of registration in accordance with the Requirements of the Voluntary Registration Program.

## § 2.8. Provider record requirements.

A. The provider's records shall be open for inspection by authorized representatives of the contracting organizations and the department.

B. The provider shall maintain on file a signed statement from each parent, affirming receipt of the Information to Parents Statement.

C. The provider shall assume responsibility for submitting information on any training completed to the contracting organization.

D. The provider shall maintain an individual record for each child enrolled in care. This record shall include:

1. The child's full name (including nicknames, if any), address and birth date;

2. Name, address and telephone number of each parent or other responsible person(s);

3. Name, address and telephone number of each parent's place of employment and his or her work hours;

4. Name, address and telephone number of one or more persons designated by the parent(s) to be called in case of emergency when a parent cannot be reached during the hours the child is in care;

5. Name, address and telephone number of the child's physician;

6. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;

7. The child's allergies to medication or drugs, if applicable, and directions for providing medicines to the child;

8. The name of the parent's hospitalization plan and number or medical assistance plan, if applicable;

9. The parent's signed authorization for the child's emergency medical treatment and written consent for giving of medications to the child;

10. The child's date of enrollment in and date of withdrawal from, the family day care home, when applicable;

11. Results of the health examination and up-to-date immunization records of each child unless there is record of a medical or religious exemption;

12. Names of persons authorized to visit or call for the child, as well as those who are not to visit or call for the child;

13. A record of any accidents and injuries sustained by a child;

14. The parent's signed authorization to use a substitute provider and his or her name, address, and phone number;

15. The parent's signed authorization to transport children and to take trips out of the immediate community;

16. Any written agreement made between the day care provider and the natural parent, guardian, or other responsible person for each child in care. The agreement may cover hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; and any special services to be provided by either party to the agreement.

E. The emergency contact information listed in subdivisions D 2 through D 5 of this section shall be made available to a physician, hospital or emergency care unit in the event of a child's illness or injury.

F. Whenever the provider leaves the home with the child(ren), the provider shall have the emergency contact information and medical information required by subdivisions D 1 through D 9 of this section in his possession.

G. The day care home provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent(s) or guardian(s) of the child has granted written permission to do so, except in the course of performance of official duties and to employees or representatives of the contracting organization or the department.

## § 2.9. Staffing.

A. There shall never be more than five unrelated children in care in a registered small family day care home except that 10 unrelated children may be accepted each day when school is in operation when at least five of the children are of school age and in the home no more than three hours immediately before and three hours immediately after school hours.

B. One adult may care for up to nine children at any one time, within the limitations that follow. This includes children related to the provider by blood or marriage.

1. Of the nine children, no more than six shall be under school age without an assistant;

2. Of the children under school age, no more than five shall be under 31 months (2 1/2 years of age or younger) even when an assistant is present;

3. Of the children under 31 months, no more than three shall be under 16 months without an assistant.

4. School age children (related and unrelated) who are 10 years of age and older shall not count in determining the ratio of children to adults for staffing purposes.

C. Providers shall sign and submit a notarized statement to the contracting organization attesting to the names, birth dates, and relationships of related children receiving care. This statement includes the signature of the parent(s) or legal guardian(s) of the related children.

## PART III. HEALTH AND SAFETY CHECKLIST.

### § 3.1. Health and safety checklist.

A. A health and safety checklist shall be completed by providers who apply for voluntary registration. The checklist serves as both a self-review tool for providers and an initial and renewal evaluation method for the contracting organization. Items included on the checklist are those which address the basic health and safety needs of children in care in small family day care homes.

B. The provider shall review and complete the checklist before being certified as eligible for issuance of a certificate of registration.

C. If the provider does not meet the criteria on the health and safety checklist at the time of the initial evaluation or monitoring visit, a corrective action plan shall be completed. This will briefly describe the standard not met, the action to be taken to meet it, the date by which it shall be completed and the signature of the provider.

D. The home shall have indoor running water and an

## Proposed Regulations

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*indoor bathroom equipped with a flush toilet and a sink with running water.*

*E. If the provider does not have a working telephone, he shall demonstrate that one is quickly and easily accessible in case of an emergency.*

## VOLUNTARY REGISTRATION OF SMALL FAMILY DAY CARE HOMES REQUIREMENTS FOR PROVIDERS

## VOLUNTARY REGISTRATION HEALTH and SAFETY CHECKLIST

Verify each item that is currently true for your home by inserting a P (Provider) in the first slot provided before the item. The Screener will place an S (Screener) in the second slot when this information is verified during his/her visit to your home. Mark the item N/A if the item is not applicable to your home.

Section 1. I AM PREPARED TO DEAL WITH EMERGENCIES:

\_\_\_ I have a medical release form from each family to permit emergency care; I also have the names and phone numbers of one or more persons besides the family who may be contacted in case of emergency.

\_\_\_ I have an operable telephone, or have easy access to one, with a 911 sticker or emergency telephone numbers posted in clear view.

\_\_\_ My address or equivalent identifying information is easily seen from the street or parking lot.

\_\_\_ Exit ways, hallways and stairways are always well lighted and free of obstructions.

\_\_\_ I have a first aid kit and an operable flashlight available at all times.

\_\_\_ I practice fire drills monthly to the point of exit from the home and have a posted evacuation plan.

\_\_\_ I have working smoke detectors on floors where children are in care.

Section 2. I TAKE PRECAUTIONS TO PREVENT ACCIDENTS AND INJURIES:

\_\_\_ I have taken steps to safeguard the outdoor play area used by children in my home from open and obvious hazards, such as: standing water, animal fecal material, construction materials, poison ivy, dangerous lawn and garden tools, tools, and traffic. (Fencing or other barriers might be needed when play area is next to a body of water or busy street.)

\_\_\_ My home is in good repair, with no peeling lead paint.

\_\_\_ Steps and stairs accessible to children are in good repair with hand or guard rails.

\_\_\_ I have taken steps to safeguard my home from open and obvious household hazards, such as loose carpeting, unmarked glass doors, and small items that could be swallowed.

\_\_\_ The service side of an occupied crib is accessible. Crib slats are less than 2 3/8 inches apart.

\_\_\_ I use screened doors and windows for ventilation.

## VOLUNTARY REGISTRATION OF SMALL FAMILY DAY CARE HOMES REQUIREMENTS FOR PROVIDERS

\_\_\_ Protective barriers, including but not limited to safety gates, are placed on stairways that are accessible to children. Safety gates that are used will meet the Consumer Product Safety Commission (CPSC) federal standards for juvenile products.

\_\_\_ Electrical outlets are child-proof in all areas accessible to children. Multi-plug adapters that are used will have fuse safety features.

\_\_\_ I place barriers around space heaters, fireplaces, wood stoves, and fans when in use.

\_\_\_ I keep flammable or combustible liquids away from heat sources and out of the reach of children.

\_\_\_ I keep materials that burn easily (such as newspaper, wood, cloth) at least three feet away from appliances and other heat sources.

\_\_\_ All portable heating appliances are UL or FM approved.

\_\_\_ My fireplaces, heating system, and duct work are in good repair.

\_\_\_ My washer, dryer and dryer vent are kept free of lint.

\_\_\_ My electrical panel is easily accessible to adults, free of loose connections and frayed wiring, and has no missing fuses. There is no frayed or uninsulated wiring anywhere in the house.

\_\_\_ I keep medications and toxic household products in areas inaccessible to children and away from food products.

\_\_\_ I keep dangerous objects, such as knives, out of the reach of children, unless under supervision, e.g., when children are using these objects in planned activities.

\_\_\_ I ensure that small appliances are not accessible to children, unless under supervision, e.g., when children are using these appliances in planned activities.

\_\_\_ I keep firearms unloaded, apart from ammunition, and in a locked place.

\_\_\_ My kitchen appliances are in good working order, with range, oven and hood clean and free of grease.

Section 3. I TAKE PRECAUTIONS TO PROTECT THE HEALTH OF THE CHILDREN ENTRUSTED TO ME:

\_\_\_ I keep up-to-date immunization records on each child in care, unless I have a statement of medical or religious exemption.

\_\_\_ My hands and children's hands are washed with soap before meals and after toileting and diapering.

\_\_\_ I serve nutritious meals and snacks to children.

\_\_\_ Rooms used by children are dry, well lighted, and kept at least 68 degrees during heating season.

VOLUNTARY REGISTRATION OF SMALL FAMILY DAY CARE HOMES REQUIREMENTS FOR PROVIDERS

\_\_\_ I have indoor running water and bathrooms.

\_\_\_ My bathrooms are kept clean and have working toilets and sinks, tissue, soap, and disposable or individually assigned towels.

\_\_\_ Drinking water is available to children at all times.

\_\_\_ I allow only one child to occupy a crib or playpen at a time.

\_\_\_ My refrigerator is kept at no more than 45 degrees (F), food is kept from spoilage, and children's food brought from home and infant formula is clearly labeled with their name.

\_\_\_ My home is free of insect and rodent infestation.

\_\_\_ I agree to provide a smoke-free environment in rooms accessible to children while children are in care.

\_\_\_ My dogs and cats have up-to-date rabies shots and are kept from food preparation surfaces.

Section 4. I ENCOURAGE CHILDREN TO DEVELOP THEIR OWN SKILLS AND PERSONALITIES:

\_\_\_ I plan for adequate rest and play for children in care.

\_\_\_ I encourage children to participate in activities appropriate to their ages and levels of development.

\_\_\_ I never use discipline which would demean or belittle a child and never use physical (corporal) punishment.

Section 5. I AM MINDFUL OF MY RESPONSIBILITIES TO UPHOLD LAWS AND REGULATIONS IMPORTANT TO THE PROTECTION OF CHILDREN:

\_\_\_ I am at least 18 years of age and have not been convicted of any offenses specified in §63.1-198.1 of the Code of Virginia.

\_\_\_ My physical and mental condition are such that I am able to care for children.

\_\_\_ My family day care home is not required to be licensed under state law. I never have more than five unrelated children in care unless I accept up to ten unrelated children each day when school is in operation and at least five of these children are of school age and in my home no more than three hours before and three hours after school. I never have more than nine children who receive care, protection and guidance in my home at the same time without an assistant; this includes my own or related children. No more than six of these nine children will be under school age unless I have an assistant; no more than five of the children under school age will be under 31 months even when I have an assistant; no more than three of the children under 31 months will be under 16 months unless I have an assistant. The Uniform Statewide Building Code permits no more than 5 children below the age of 31 months in a small family day care home.

\_\_\_ I never leave children alone with an assistant younger than 18 years of age. I make sure children are properly supervised at all times.

VOLUNTARY REGISTRATION OF SMALL FAMILY DAY CARE HOMES REQUIREMENTS FOR PROVIDERS

\_\_\_ I make sure that any assistant or substitute provider is familiar with the Requirements for Providers.

\_\_\_ I report cases of suspected child abuse and neglect and other hazardous situations as described in the Requirements for Providers.

\_\_\_ I make sure that any adult (18 years of age or older), including any adult household member, who comes in contact with children or will provide ongoing care to children has a tuberculosis (TB) test, criminal records check and Child Protective Services Central Registry clearance; and I will not allow them to use alcohol or illegal drugs while children are in care.

\_\_\_ If I transport children, I have a valid driver's license (shown to screener) and make sure any vehicle used to transport children meets the standards set by the Division of Motor Vehicles and is equipped with the proper restraining devices required by law.

\_\_\_ I will comply with the Requirements for Providers and permit and participate in an evaluation of my home by the department or contracting organization; and, I will maintain the records listed in the Requirements for Providers and make them available for review by an authorized screener.

\_\_\_ I understand that the contracting organization and the Virginia Department of Social Services stand ready to help me provide good care to children and that I may ask for help or advice as needed.

*Larry D. Jackson*  
 \_\_\_\_\_  
 Larry D. Jackson

I, the undersigned, agree to comply with these requirements.

Signature: \_\_\_\_\_

Name: (print) \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

Days/Hours of Operation: \_\_\_\_\_

I, \_\_\_\_\_ (screener), verify that the provider meets the health and safety standards and has agreed to comply with the above requirements.

Agency conducting evaluation: \_\_\_\_\_

Check One: \_\_\_\_\_

Initial Verification: \_\_\_\_\_

Interim Visit: \_\_\_\_\_

Renewal Visit: \_\_\_\_\_

Other (Specify): \_\_\_\_\_

Time of Visit: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 Date



VOLUNTARY REGISTRATION PROVIDER APPLICATION FORM

Page 2 of 2

Signature(s) of parent(s) or legal guardian(s) of related children receiving care, if other than provider's own:

\_\_\_\_ Date \_\_\_\_\_
\_\_\_\_ Date \_\_\_\_\_
\_\_\_\_ Date \_\_\_\_\_
\_\_\_\_ Date \_\_\_\_\_

List the names of all persons over 18 years of age in the home (excluding the provider and assistants listed above)

\_\_\_\_
\_\_\_\_
\_\_\_\_

SWORN DISCLOSURE STATEMENT: (This statement must be signed in the presence of a notary).

I certify that the information submitted on this application is true to the best of my knowledge and belief.

Provider's Signature \_\_\_\_\_ Date \_\_\_\_\_

City/County of \_\_\_\_\_; State of \_\_\_\_\_

subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

My commission expires \_\_\_\_\_, 19\_\_ (Notary Public)

\* Date Received By Contracting Agency - \_\_\_/\_\_\_/\_\_\_ (For Agency Use Only)

Locality FIPS CODE - \_\_\_\_\_ (For Agency Use Only)

Licensing FIPS CODE - \_\_\_\_\_ (For Agency Use Only)

CHILD WELFARE AGENCIES

DEPARTMENT OF SOCIAL SERVICES REGULAR OF REGULATIONS
DIVISION OF LICENSING PROGRAMS 92NOV21 PM 3:19

SWORN DISCLOSURE STATEMENT

INSTRUCTIONS:

Effective July 1, 1992 Sections 63.1-198 and 63.1-198.1, Code of Virginia, require that a sworn disclosure statement or affirmation be completed by each applicant for licensure or registration as a child welfare agency prior to licensure or registration, each applicant for employment or volunteer service prior to licensure or registration, each applicant home or adoptive home applicant prior to approval, and each caretaker, and other adults living in the home of a family day care home prior to approval, licensure, or registration.

Please print the information required in section one.

Convictions of the felony offenses specified in section two prohibit licensure, registration, employment or approval.

Please read carefully and sign where indicated in the presence of a notary.

Applicants for licensure or registration must provide this statement to the Department of Social Services' licensing representative.

This statement must be provided to and maintained at the child welfare agency for all applicants for employment or volunteer service and applicants for approval as a foster home, adoptive home, and family day care home through a family day care system.

PLEASE PRINT:

1. LAST NAME FIRST MIDDLE Social Security Number
Current Mailing Address Street or P.O. Box No., Apt. No. City State Zip
Name of licensed facility/provider Street City State Zip

2. SWORN DISCLOSURE STATEMENT

The disclosure statement must be signed in the presence of a notary by the individual requesting clearance.

I HAVE NOT been convicted of and I AM NOT the subject of pending charges for the following offenses: murder; abduction of children for immoral purposes; sexual assault; pandering; crimes against nature involving children; taking indecent liberties with children; abuse and neglect of children including failure to secure medical attention for an injured child; obscenity offenses, within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 Misdemeanor.

County/City of \_\_\_\_\_; State of \_\_\_\_\_
Signature of person named above \_\_\_\_\_

subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

My commission expires \_\_\_\_\_, 19\_\_ Notary Public

032-05-160

Appendix B

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**Title of Regulation:** VR 615-37-01. Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers.

**Statutory Authority:** § 63.1-174 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through February 14, 1993.

**Summary:**

*This regulation establishes the criminal record check procedures to be followed by home for adults and adult day care center applicants for employment. This regulation supersedes emergency criminal record check requirements that were implemented July 1, 1992.*

*The regulation includes the following topics: (i) Legal Base and Subjectivity; (ii) Sworn Disclosure Statements; (iii) Validity of Criminal Record Reports; and (iv) Maintenance of Criminal Record Reports.*

*This regulation ensures additional protection for residents of homes for adults and adult day care centers.*

VR 615-37-01. Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers.

**PART I.  
INTRODUCTION.**

**§ 1.1. Definitions.**

*The following words and terms when used in conjunction with this regulation shall have the following meaning:*

*“Barrier crimes” means certain crimes which automatically bar individuals convicted of same from employment at a licensed home for adults or adult day care center. These crimes, as specified by §§ 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia, are murder, abduction for immoral purposes, sexual assault, pandering, obscenity offenses, crimes against the person, crimes against property, crimes involving fraud, crimes involving health and safety, crimes involving morals and decency, and abuse of aged and incapacitated adults.*

*“Central criminal records exchange” means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.*

*“Criminal history record request” means the Department of State Police form used to authorize the State Police to generate a criminal record report on an individual.*

*“Criminal record report” means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.*

*“Employee” means compensated personnel working at a facility regardless of role, service, age, function or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.*

*“Facility” means a home for adults, district home for adults or adult day care center subject to licensure by the Department of Social Services.*

*“Sworn disclosure statement” means a document to be completed, signed, and submitted for employment. The document indicates that the individual has neither a conviction nor pending charges in, or outside, the Commonwealth of Virginia of those crimes which act as barriers to employment at the indicated facilities. This is required as specified in §§ 63.1-173.2, 63.1-189.1 and 63.1-194.13 of the Code of Virginia.*

**§ 1.2. Legal base and applicability.**

*A. Sections 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia require all employees of homes for adults, district homes for adults, and adult day care centers, as defined by §§ 63.1-172 and 63.1-194.1 of the Code of Virginia, to obtain a criminal record report from the Department of State Police.*

*Exception: (As set forth in §§ 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia) The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a criminal record report.*

*B. Sections 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia require all employees of homes for adults, district homes, and adult day care centers to provide the hiring facility with a sworn disclosure statement.*

**PART II.  
THE SWORN DISCLOSURE STATEMENT.**

**§ 2.1. Sworn disclosure statement.**

*A. The sworn disclosure statement shall be completed prior to employment. (NOTE: A model form is available from the department upon request.)*

*B. Any person making a false statement on the sworn disclosure statement shall be guilty of a Class 1 misdemeanor.*



# Proposed Regulations

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C. The sworn disclosure statement shall be attached and filed with the criminal record report.

## PART III. THE CRIMINAL RECORD REPORT.

### § 3.1. General requirements.

A. The criminal record report shall be obtained on or prior to the 30th day of employment for each employee.

B. Any person required by these standards and regulations to obtain a criminal record report shall be ineligible for employment if the report contains convictions of the barrier crimes.

C. If a criminal history record report is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

D. Criminal record reports shall be kept confidential. Reports on employees shall only be received by the facility administrator, licensee, board president, or their designee.

E. A criminal record report issued by the State Police shall not be accepted by the facility if the report is dated more than 90 days prior to the date of employment.

F. Any applicant denied employment because of convictions appearing on his criminal record report shall be provided a copy of the report by the hiring facility.

### § 3.2. Validity of criminal record reports.

A. Facility staff shall accept only the original criminal record report. Photocopies will not be acceptable.

Exception: Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;
2. The date of employment; and
3. A statement verifying that the criminal record report has been obtained within 30 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal record report.

B. Each criminal record report shall be verified by the operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's

license. If any of the information does not match, a new criminal history request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal record report remains valid as long as the employee remains in continuous service at the same facility.

D. When an individual terminates employment at one facility and begins work at another facility, the criminal record report secured for the prior facility shall not be valid for the new facility. A new criminal record report and sworn disclosure statement shall be required.

#### Exceptions:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal record report has been transferred or forwarded to the new location.

2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal record report and sworn disclosure statement are required.

### § 3.3. Maintenance of criminal record reports.

A. The original report shall be maintained at the facility where the person is employed.

B. Criminal record reports conforming to the requirements for all employed staff shall be maintained in the files of the facility during the time the individual is employed and for one year after termination of work.

Exception: See § 3.2 D 1.

C. Criminal record reports shall be made available by the facility to the licensing representative.

D. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

E. Criminal record reports shall be maintained in locked files accessible only to the licensee, administrator, board president, or their designee.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD)

OF) AND CHILD DAY-CARE COUNCIL

**Title of Regulation:** VR 615-32-02. Regulations for Criminal Record Checks: Licensed Child-Caring Institutions (REPEALED).

**Title of Regulation:** VR 175-04-01. Criminal Record Checks for Licensed Child Care Centers (REPEALED).

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

**Public Hearing Date:** N/A – Written comments may be submitted through February 14, 1993.  
(See Calendar of Events section for additional information)

**Summary:**

*These regulations are being proposed for repeal concurrently with the promulgation of newly proposed Regulation for Criminal Record Checks for Child Welfare Agencies. Amendments to the Code of Virginia made during the 1992 General Assembly session require the promulgation of regulations for criminal checks for licensed or registered child welfare agencies. Maintaining the existing regulation would be in conflict with the 1992 mandate.*

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**Title of Regulation:** VR 615-36-01 and 175-10-01. Regulation for Criminal Record Checks for Child Welfare Agencies.

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

**Effective Dates:** N/A – Written comments may be submitted through February 14, 1993.  
(See Calendar of Events section for additional information)

**Summary:**

*Effective July 1, 1992, child welfare agencies subject to licensure and small family day care homes which are voluntarily registered and administrators or board presidents of child welfare agencies are required to obtain either the original criminal record clearance with respect to specified offenses or the original criminal record history from the Central Criminal Records Exchange.*

*This report must also be secured for all employees, volunteers, foster home applicants, adoptive home applicants, family day care homes providers and all adults living in the home of the family day care home. A sworn disclosure statement must also be obtained.*

*The Division of Licensing Programs, as the agent of the Commissioner of Social Services, will enforce the provisions of §§ 63.1-198 and 63.1-198.1 of the Code of*

*Virginia. The Central Criminal Records Exchange, Department of State Police, will issue criminal record reports as required by law. Any facility's failure to obtain a criminal record report for each designated individual shall be grounds for denial or revocation of the registration or license (§ 63.1-198.1 of the Code of Virginia). A license or registration shall not be granted to any applicant as a child welfare agency who has been convicted of any offense specified in § 63.1-198.1 of the Code of Virginia (§ 63.1-199 of the Code of Virginia).*

*Child welfare agencies are prohibited from hiring or using as volunteers any persons who have been convicted of any offense specified in § 63.1-198.1. Child placing agencies are prohibited from approving foster and adoptive home applicants who have been convicted of a barrier crime. Family day care systems are prohibited from approving a family day care home if the caretaker has been convicted of a barrier crime. Family day care systems are required to obtain a criminal record clearance or a criminal history record from the Central Criminal Records Exchange for all family day care providers and any other adult living in the home of the family day care providers. Contract agencies are prohibited from recommending registration or continued registration for any small family day care home if the caretaker or other adult living in the home has been convicted of a barrier crime.*

*This regulation establishes the criminal record check procedures to be followed by licensed and registered child welfare agencies.*

*The regulation includes the following topics: (i) Legal Base and Subjectivity; (ii) Sworn Disclosure Statements; (iii) Validity of Criminal Record Reports; and (iv) Maintenance of Criminal Record Reports and Requirements for Board Members.*

*This regulation ensures additional protection for children in out-of-home care and streamlines the criminal record check process.*

VR 615-36-01 and 175-10-01. Regulation for Criminal Record Checks for Child Welfare Agencies.

PART I.  
INTRODUCTION.

§ 1.1. Definitions.

*The following words and terms when used in conjunction with this regulation shall have the following meaning:*

*"Applicant for licensure or registration" means all agents of child welfare agencies and small family day care homes, including owners, partners or officers of the governing board of a corporation or association, who*

# Proposed Regulations

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have applied for licensure or registration.

*“Barrier crimes” means certain crimes which automatically bar an individual convicted of same from employment or volunteer services at child welfare agencies. It also prevents persons convicted of same who are screened as adoptive or foster parents by child-placing agencies, and caretakers approved by family day care systems, from assuming such roles. These crimes, as specified by § 63.1-198.1 of the Code of Virginia, are murder; abduction for immoral purposes; sexual assault; pandering; crimes against nature involving children; taking indecent liberties with children; abuse and neglect of children, including failure to secure medical attention for an injured child; and obscenity offenses.*

*“Central Criminal Records Exchange” means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request is processed.*

*“Contracting organization” means the agency which has been designated by the Department of Social Services to administer the voluntary registration program for small family day care home providers.*

*“Criminal history record request” means the Department of State Police form used to authorize the State Police to generate a criminal record report on an individual.*

*“Criminal record report” means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes. The criminal history record discloses all known conviction data.*

*“Employee” means all personnel hired at a facility regardless of role, service, age, function or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility.*

*“Facility” means a child welfare agency as defined in § 63.1-195 of the Code of Virginia and subject to licensure or registration by the Department of Social Services.*

*“Officer of the board” means anyone holding an office on the board of the facility and responsible for its operation in any manner.*

*“Parent-volunteer” means someone supervising, without pay, a group of children which includes the parent-volunteer’s own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.1-198.1 or § 63.1-198.2 of the Code of Virginia.*

*“Small family day care home” means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day. Further, a family day care home which accepts no more than 10 children, at least five of whom are school age and not in the home for longer than three hours immediately before and three hours immediately after school each day, may also voluntarily register as a small family day care home.*

*“Sworn disclosure statement” means a document to be completed, signed, and submitted by the applicant for licensure or registration and applicants for employment or volunteer service, applicants for foster home and adoptive home approval, and adults living in the family day care home. The document indicates that the individual has neither a conviction nor pending charges in, or outside, the Commonwealth of Virginia of those crimes which act as barriers to employment at or approval of the indicated facilities. This is required as specified in §§ 63.1-198 and 63.1-198.1 of the Code of Virginia.*

*“Volunteer” means anyone who, without pay, at any time would be alone with, in control of, or supervising one or more children outside the physical presence of a paid facility staff member. This pertains to all activities occurring at the facility location or sponsored by the licensed facility. This also includes volunteer staff counted for purposes of maintaining required ratios for the program.*

## § 1.2. Legal base and applicability.

A. Sections 63.1-198 and 63.1-198.1 of the Code of Virginia require all employees, volunteers, and applicants for licensure or registration of a child welfare agency, as defined by § 63.1-195 of the Code of Virginia, to obtain a criminal record report from the Department of State Police. This includes caretakers approved by family day care systems, all adults living in the family day care home, and those individuals approved by child-placing agencies as foster or adoptive parents.

Exception: (As set forth in § 63.1-198.1 of the Code of Virginia) “The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties.”

B. Section 63.1-198.1 of the Code of Virginia requires all employees, volunteers, foster or adoptive parents, and applicants for licensure of or registration as a child welfare agency, as defined by law (§ 63.1-195), shall provide the hiring or approving authority, facility or agency with a sworn disclosure statement. This includes caretakers approved by family day care systems and those individuals approved by child-placing agencies as foster or adoptive parents. Pursuant to § 63.1-198 of the Code of Virginia, all adults living in the family day care home must also provide a sworn disclosure statement.

## PART II. THE SWORN DISCLOSURE STATEMENT.

### § 2.1. Sworn disclosure statement.

A. The sworn disclosure statement shall be completed prior to employment or commencement of volunteer service, registration, or approval. (NOTE: A model form is available from the department upon request.)

B. Any person making a false statement on the sworn disclosure statement shall be guilty of a Class 1 misdemeanor.

C. The sworn disclosure statement shall be attached and filed with the criminal record report.

## PART III. THE CRIMINAL RECORD REPORT.

### § 3.1. General requirements.

A. Prior to the issuance of an initial license or registration, the criminal record report for the applicant(s) for licensure or registration shall be made available to the commissioner's representative.

B. The criminal record report shall be obtained on or prior to the 21st day of employment or volunteer service for individuals participating in the operation of a facility.

Exception: The criminal record report shall be obtained prior to approval of foster and adoptive homes by private child-placing agencies and prior to approval of family day care providers by family day care systems.

C. Any person required by these standards and regulations to obtain a criminal record report shall be ineligible for employment, volunteer service or any facility related activity, if the report contains convictions of the barrier crimes.

D. If a criminal history record report is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

E. A criminal record report issued by the State Police shall not be accepted by the facility, registration or contract agency if the report is dated more than 90 days prior to the date of employment or volunteer service at the facility or date of application for approval as a foster home, adoptive home, or family day care home.

### § 3.2. Validity of criminal record reports.

A. Contract agencies or facility staff shall accept only the original criminal record report. Photocopies will not be acceptable.

Exception: Facilities using temporary agencies for the

provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;
2. The date of employment; and
3. A statement verifying that the criminal record report has been obtained within 21 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal record report.

B. Each criminal record report shall be verified by the contract agency or operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, a new criminal history request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal record report remains valid as long as the employee, volunteer, foster parents, or family day care home provider remains in continuous service at the same facility.

Exception: Criminal record reports are required every two years for voluntary registration program participants.

D. When an individual terminates employment or ceases volunteer work at one facility and begins work at another facility, the criminal record report secured for the prior facility shall not be valid for the new facility. A new criminal record report and sworn disclosure statement shall be required.

#### Exceptions:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal record report has been transferred or forwarded to the new location.

2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal record report and sworn disclosure statement are required.

### § 3.3. Maintenance of criminal record reports.

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A. The original report shall be maintained at the facility where the person is employed, volunteers or is approved.

B. Criminal record reports conforming to the requirements for all employed staff or utilized volunteers and approved homes shall be maintained in the files of the facility during the time the individual is employed, volunteering or is approved and for one year after termination.

Criminal record reports shall be made available by the facility to the licensing representative or the representative of the contract agency.

Exception: See § 3.2 D 1.

C. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

D. Criminal record reports shall be maintained in locked files. These files shall be accessible only to the following facility related staff: the licensee, administrator, provider, board president, or their designee.

## § 3.4. Requirements for board members.

A. When an individual becomes an officer of the board which serves as the licensee of a facility, a criminal record report shall be obtained by the facility within 21 days after the board member assumes the position.

B. When a board officer changes position within a board, a new criminal record report is not required.

C. Officers of advisory boards are not required to obtain criminal record reports.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**Title of Regulation:** VR 674-01-02. Waste Management Facility Operators Regulations.

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

### Public Hearing Dates:

January 11, 1993 - 2 p.m.

February 9, 1993 - 2 p.m.

Written comments may be submitted through February 18, 1993.

(See Calendar of Events section for additional information)

### Summary:

The proposed regulations apply to all individuals acting as a waste management facility operator. A waste management facility operator is defined as "any person, including an owner who is in charge of the actual, on-site operation of a waste management facility during any period of operation." A waste management facility is "a site used for the planned treatment, storage, or disposal of nonhazardous solid waste." The regulations establish the standards and qualifications for the training and certification of a waste management facility operator. The standards and qualifications include definitions, requirements for interim and full certification, applications procedures, fees, examination requirements, exemption from training through experience, reciprocity, continuing education, approval of training courses and continuing education sponsors, and standards of conduct and disciplinary action.

All fees proposed are to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia.

The board estimates 500 persons will apply for interim or full certification.

Interim certification established by emergency regulations promulgated by the board in July 1992 was extended to allow the board time to approve training courses and develop an examination. It further allows individuals time to complete required training and successfully pass the examination. Also, the extension will accommodate those facilities closing due to amendments of RCRA, Subtitle D, a federal regulation. Individuals employed by these facilities will not have to meet the more stringent standard of full certification.

VR 674-01-02. Waste Management Facility Operators Regulations.

### PART I. GENERAL.

#### § 1.1. Definitions.

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

\* "Board" means the Board for Waste Management Facility Operators.

"Board approved CPE sponsor" means a person approved by the board to offer continuing education in accordance with these regulations.

"Board approved training course" means a course which has been approved by the board to provide appropriate training to an applicant in accordance with these regulations.

"Class I certification" means the authorization from the board to act as a waste management facility operator of a transfer station, a material recovery facility receiving mixed waste, an experimental facility, or a composting facility receiving yard waste.

"Class II certification" means the authorization from the board to act as a waste management facility operator of a facility which composts municipal solid waste, a sanitary, industrial, construction or debris landfill.

"Class III certification" means the authorization from the board to act as a waste management facility operator of an infectious waste incinerator or autoclave.

"Class IV certification" means the authorization from the board to act as a waste management facility operator of a waste derived fuel incinerator or facility designed or modified for the purpose of noninfectious solid waste combustion.

"Class V certification" means the authorization from the board to act as a waste management facility operator for any of the facilities defined in Class I, II, III or IV certification.

"Closed facility" means a solid waste management facility which has been properly secured in accordance with an approved facility closure plan.

"Closure" means an act of securing a solid waste management facility pursuant to the requirements established by the Virginia Department of Waste Management or appropriate regulatory authority.

"Continuing Professional Education (CPE)" means an integral part of lifelong learning required to provide competent service to the public; the formal set of activities that enables certified solid waste management facility operators to maintain and increase their professional competence.

"CPE credit hour" means 50 minutes of participation as a student or as an instructor in a CPE program.

"Department" means the Department of Commerce.

"Experience for Class I, II, III or IV certification" means, but shall not be limited to, the following activities: supervision, research, construction, project development, site development, compliance and enforcement of a permit or regulations, operation, or regulatory review of permit applications.

"Experience for interim certification" means skill or knowledge obtained by employment which includes responsible, technical, or operational direction of a solid waste management facility or a portion thereof.

"Full certification" means an authorization issued by the board to a waste management facility operator after

the completion of training and examination, through reciprocity or experience.

"In charge" means the designation of any person by the owner to have duty and authority to operate or modify the operation of a waste management facility.

"Interim certification" means the method of regulation for a temporary time period whereby the Commonwealth, through the issuance of interim certification, authorizes a person possessing the minimum skills to engage in the practice of a profession or occupation which is unlawful to practice without certification.

"Level of knowledge" means the nature and depth of knowledge, skill, and ability in a particular subject. The levels shall be described as:

1. Basic which covers fundamental principals and skills. This level is for individuals with limited or no exposure to the subject matter.
2. Intermediate which builds on this level or upon fundamental principals and skills and focuses on their application. This level is for those with more extensive exposure to the subject matter.
3. Advanced which focuses on the development of in-depth knowledge, a variety of skills, and a broader range of applications. This level is for individuals with significant exposure to the subject matter.
4. Update which provides a general overview of new developments. It is for individuals with a background in the subject who wish to be kept up to date.

"Operation" means any waste management facility which is under construction, treating, processing, storing or disposing of solid waste, or in the act of securing a facility for closure.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

\* "Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.

"Site" means within the vicinity of all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any of those materials defined as nonhazardous solid waste in regulations promulgated by the Virginia Department of Waste Management.

# Proposed Regulations

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"Storage" means housing a solid waste for more than 30 calendar days.

\* "Waste management facility" means a site used for planned treatment, storage, or disposal of nonhazardous solid waste.

\* "Waste management facility operator" means any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation.

\* As defined by Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia.

## § 1.2. Certification required.

For the purposes of these regulations, the individual acting as a waste management facility operator is an individual employed by the facility owner whose responsibilities include supervision of on-site activities that normally require an individual to be at the waste management facility on each day of operation. This is not intended to include individuals whose duties do not include the actual operation or direct supervision of a waste management facility.

## § 1.3. Disclosure.

A. Any individual seeking certification shall disclose any other operator or related certification issued by any other state(s) on the provided application.

B. Any individual seeking certification shall disclose on the application any felony convictions or final order actions issued by an administrative body or court regarding environmental violations or crimes resulting in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

C. Any certified operator shall notify the board in writing within 30 days of any felony convictions or final order actions issued by an administrative body or court regarding environmental violations or crimes resulting in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

## § 1.4. Fees.

A. All fees are nonrefundable and shall not be prorated.

B. An application shall not be deemed complete and shall not be processed without the required fee.

1. The application fee for full certification shall be \$100.

2. The fee for renewal of full certification shall be \$100.

3. The fee for late renewal of full certification shall be \$100.

4. The fee for reinstatement of full certification shall be \$100.

5. The fee for taking the examination or reexamination for certification shall be \$65.

6. The application fee for training course approval is \$150.

7. The application fee for CPE sponsor approval is \$150.

8. The fee for interim certification shall be \$85.

9. The fee for renewal of interim certification shall be \$85.

C. All checks shall be made payable to the Treasurer of Virginia.

D. Receipt and deposit of fees submitted with applications do not indicate certification.

## § 1.5. Change of status.

A. The certified individual shall provide written notification of any change of address to the department within 30 days.

B. The certified individual shall provide written notification and proof of any change of name within 30 days.

C. The certification issued by the board shall not be transferred or otherwise reassigned.

## PART II. INTERIM CERTIFICATION.

### § 2.1. Entry.

A. All individuals acting as a waste management facility operator in the Commonwealth after January 1, 1993, shall hold a valid interim certification or full certification specific to the class of their facility.

B. Interim certificates issued under the emergency Waste Management Facility Operator Regulations will remain valid through December 31, 1993. Individuals holding interim certificates may renew the certificate until December 31, 1994, or apply for full certification, meeting the standards established by § 4.1 of these regulations.

C. Operators securing a facility for closure may renew their interim certification until December 31, 1994. Operators securing a facility for closure after December 31, 1994, shall hold full certification in the appropriate classification.

D. Closed facilities are not required to have a certified waste management facility operator.

E. The holder of the certification is not automatically entitled to any subsequent certification upon the expiration of the certificate, but shall meet the standards established by the board to renew the certification.

## § 2.2. Qualifications for interim certification.

The board shall issue interim certification only after an individual has met, through a completed application and addendum, all education and experience requirements set forth in these regulations.

1. All individuals seeking interim certification shall be at least 18 years of age.

2. All individuals seeking interim certification shall meet one of the following requirements:

a. Three years of full-time employment which includes supervisory or operational experience managing a waste management facility since January 1989.

b. Two years of full-time employment which includes supervisory or operational experience managing a waste management facility since January 1989 and a high school diploma or GED.

c. One year of full-time employment which includes supervisory or operational experience managing a waste management facility since January 1989 and an Associate's Degree or at least 60 completed semester hours or equivalent from an accredited institution of higher learning.

d. Six months of full-time employment which includes supervisory or operational experience managing a waste management facility since January 1989 and a Bachelor's Degree.

3. For the purposes of these regulations, a year of full-time employment is defined as 1,760 hours per year or 220 work days per year.

4. For the purposes of these regulations, experience requirements claimed on the application for interim certification shall be verified by the individual's supervisor(s) or personnel officer on the form provided. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.

5. For the purposes of these regulations, education requirements claimed on the application for interim certification shall be verified by the attendee's educational institution or authorizing jurisdiction on the provided form or in the form of an official transcript. Diplomas will not be accepted for

verification of degree or graduation.

## § 2.3. Application procedures for interim certification.

A. Applicants for interim certification shall complete a general application form and all applicable addendum forms. The applications for interim certification are available from the department upon request. Addendum forms shall include but not be limited to:

1. Verification of experience form; and

2. Verification of degree or graduation form.

B. Failure to provide a complete application and all applicable addenda may result in a denial of approval. The failure to provide complete information may be interpreted as misrepresentation and may result in disciplinary action as defined in Part VIII of these regulations.

## PART III. RENEWAL OF INTERIM CERTIFICATION.

### § 3.1. Procedures for renewal.

A. Operators may renew their interim certification until December 31, 1994, or may apply for full certification if all requirements under § 4.1 of these regulations can be met before the interim certificate's expiration.

B. Interim certified operators shall be notified by the department by mail of the renewal fee and procedures for certificate renewal.

C. Each operator desiring to renew his interim certification shall submit the renewal notice and the appropriate fee before the certification expires. A copy of the certificate may be submitted in lieu of the renewal notice.

D. The renewed interim certificate shall expire on December 31, 1994. All operators desiring to act as a waste management facility operator after December 31, 1994, shall apply for full certification in the appropriate classification as defined in § 4.1 of these regulations.

E. Failure to receive written notice from the Department of Commerce does not relieve the regulant from the requirement to renew his certificate or apply for full certification.

## PART IV. FULL CERTIFICATION.

### § 4.1. Full certification required.

Full certification is required for all individuals acting as waste management facility operators after December 31, 1994.



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## § 4.2. Classification for full certification.

A. The applicant shall apply for one classification of certification as outlined below:

1. An individual operating a facility which is defined by the Department of Waste Management as a transfer station, a material recovery facility receiving mixed waste, an experimental facility, or a composting facility receiving yard waste shall hold Class I certification. An individual who has obtained Class II, III or IV certification may also operate a facility listed under Class I, if the individual has completed the board approved basic training course.

2. An individual operating a facility which composts municipal solid waste, or is defined by the Department of Waste Management as a sanitary, industrial, construction or debris landfill shall hold Class II or Class V certification.

3. An individual operating a facility defined by the Department of Waste Management as an infectious waste incinerator or an autoclave shall hold Class III or Class V certification.

4. An individual operating a facility defined by the Department of Waste Management as a refuse derived fuel incinerator or a facility designed or modified for the purpose of noninfectious solid waste combustion shall hold Class IV or Class V certification.

5. An individual operating any of the facilities outlined in this section may hold Class V certification.

B. No certified operator may operate a facility other than that defined by subdivision A 1 of this section outside of his classification.

## § 4.3. Qualifications for certification.

A. The board shall issue certification only after an individual has met, through a completed application and addendum, all training, testing, and experience requirements for a specific class as set forth in these regulations.

B. The operator shall meet the following requirements for certification for all classes of certification:

1. The applicant shall be at least 18 years of age.
2. The applicant shall provide proof of graduation from high school, college or have successfully completed and received a GED.
3. If the applicant cannot fulfill the requirement outlined in subdivision B 2 of this section, the applicant shall provide at least five years of verified experience, with at least three years of experience

since January 1, 1988.

4. All applicants shall successfully complete the basic training course as defined in § 6.1 A 1 of these regulations.

5. The applicant may provide verification of seven years of experience with at least three years of experience since January 1, 1988, in lieu of facility specific training as defined in subsections D through G of this section. This experience shall be specific to the desired classification. Acceptable experience shall include the following activities: supervision, research, construction, project development, site development, compliance and enforcement of a permit or regulations, operation, or review of materials for the permitting purposes.

6. The board will accept facility specific training prior to the approval of a board approved course if the training was successfully completed after January 1, 1989.

7. A year of full-time employment is defined as 1,760 hours per year or 220 work days per year.

8. Experience requirements claimed on the application for certification shall be verified by the individual's supervisor(s) or personnel officer. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.

9. Education requirements claimed on the application for certification shall be verified by the attendee's educational institution or authorizing jurisdiction on the provided form or in the form of an official transcript or letter. Diplomas will not be accepted for verification of degree or graduation.

10. The applicant holding a valid certification from another state or jurisdiction may qualify by reciprocity defined in § 4.6 of these regulations.

C. The specific requirements for Class I certification follow:

1. Complete a board approved basic training course, and
2. Pass Part I of the board approved examination.

D. The specific requirements for Class II certification follow:

1. Complete a board approved basic training course and an approved training course specific to Class II facilities, and
2. Pass Parts I and II of the board approved examination.

E. The specific requirements for Class III certification follow:

1. Complete a board approved basic training course and an approved training course specific to Class III facilities, and
2. Pass Parts I and III of the board approved examination, or
3. Complete a course as required by a federal or state agency under the Clean Air Act amendments of 1990 and complete the board approved basic training course within one year of certification. This requirement will credit the operator with five hours toward their continuing education obligation.

F. The specific requirements for Class IV certification follow:

1. Complete a board approved basic training course and an approved training course specific to Class IV facilities, and
2. Pass Parts I and IV of the board approved examination, or
3. Complete a course as required by a federal or state agency under the Clean Air Act of 1990 and complete the board approved basic training course within one year of certification. This requirement will credit the operator with five hours toward their continuing education obligation.

G. The specific requirements for Class V certification follow:

1. Complete a board approved basic training course and approved training courses specific to all designated classifications of facilities, and
2. Pass Parts I, II, III and IV of the board approved examinations.

## § 4.4. Application procedures.

A. Applicants for certification shall complete a general application form and all applicable addendum forms. The applications are provided by the department upon request. Addendum forms shall include, but not be limited to:

1. Verification of experience form; and
2. Verification of degree or graduation form.

B. Failure to provide a complete application and all applicable addenda may result in a denial of approval. The failure to provide complete information may be interpreted as misrepresentation and may result in disciplinary action as defined in Part VIII of these regulations.

## § 4.5. Examinations.

### A. Initial examination.

1. All applicants shall achieve a passing score of 70% correct on the examination.
2. An individual may not take the board approved examination until all training requirements have been completed and verified to the board unless exempt under § 4.3 B 5 of the regulations.
3. All applicants approved for the examination by the board will be notified in writing with a request for the examination fee defined in § 1.4 B 5 of these regulations. The applicant will be scheduled for the next available examination upon receipt of the examination fee.
4. The examination fee will be required at least 30 days before the scheduled date of the examination.
5. An individual unable to take an examination at the time scheduled shall notify the board prior to the date of the examination; such an individual shall be rescheduled for the next examination. Failure to notify the board may require the submittal of a new examination fee.

### B. Reexamination.

1. An individual may retake the board approved examination as many times as necessary to pass except those who have been waived from training requirements.
2. If the applicant has been waived from training under § 4.3 B 5 of these regulations and fails, the applicant may retake the examination once. After failing twice, the applicant shall complete the required training before retaking the examination.
3. Reexamination shall require the submission of the reexamination fee as defined in § 1.4 B 5 of the regulations.

## § 4.6. Reciprocity.

A. Any individual holding valid certification under another state may apply for certification based on reciprocity.

B. All applicants certified through reciprocity shall complete the basic training course in lieu of five hours of their continuing education requirement within one year of certification.

C. If the certified operator fails to complete the basic course and properly notify the board within one year of certification, the board may begin disciplinary action to suspend or revoke the certification.

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## PART V. RENEWAL OF FULL CERTIFICATION.

### § 5.1. Procedures for renewal.

A. Certificates issued under these regulations shall expire biannually on the last calendar day of the month. Certificate holders shall be notified by mail of the fee and the procedures for certificate renewal. Each certificate holder desiring to renew the certificate shall submit the renewal notice, verification of continuing education on the form provided by the department, and the appropriate fee before the certificate expires.

B. There shall be a penalty for late renewal assessed in addition to the renewal fee for any certificate holder failing to renew the certificate within 30 days following the date of expiration.

C. Failure to receive written notice from the Department of Commerce does not relieve the regulant from the requirement to renew his certificate. If the certificate holder fails to receive the renewal notice, a copy of the certificate may be submitted with verification of continuing education requirements and the appropriate fee.

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

E. Revoked or suspended certificates are not renewable until reinstated by the board.

### § 5.2. Continuing education.

All applicants for certification renewal shall complete at least 10 hours of continuing education in accordance with § 6.3 during the term of certification.

### § 5.3. Late renewal.

If the renewal fee as defined in § 1.4 B 3 of the regulations is not received by the Department of Commerce within 30 days after the expiration date noted on the certification, a late renewal fee shall be required in addition to the renewal fee.

### § 5.4. Reinstatements.

If the certificate holder fails to renew the certificate within six months following the expiration date, the certificate holder will be required to apply for reinstatement of the certificate. The applicant will be required to present reasons that the certificate was allowed to expire, and the board may grant reinstatement of the certificate or require requalification or reexamination or both. The application fee for reinstatement of a certificate shall be an amount equal to twice the renewal fee. An individual who has not

reinstated within two years of expiration of the certification must reapply as a new applicant. The new applicant shall be exempted from the required training but shall pass the appropriate part(s) of the examination.

### § 5.5. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a certificate for the same reasons as it may refuse initial certification or discipline a certificate holder.

## PART VI. TRAINING REQUIREMENTS FOR FULL CERTIFICATION.

### § 6.1. Training requirements.

A. All individuals seeking to become a certified solid waste management facility operator shall complete a Virginia Board for Waste Management Facility Operators approved training course(s). This section may be waived if the individual is applying for certification through reciprocity or under § 4.3 B 5.

B. A board approved basic training course shall at a minimum include the following topics as they relate to nonhazardous solid waste management facilities:

1. Definitions
2. Authority for Regulations
3. Purpose of Regulations
4. Administration of Regulations
5. Applicability of Regulations
6. Prohibitions
7. Open Dumps
8. Unpermitted Facilities
9. Enforcement and Appeal
10. Penalties and Enforcement
11. Public Participation
12. Relationship with other regulations promulgated by the Department of Waste Management
13. Identification of Solid Waste
  - a. Purpose and Scope
  - b. Definitions of Solid Waste
  - c. Special Wastes

*d. Exclusions*

*e. Conditional Exemptions*

*14. Overview of Open Dumps and Unpermitted Facilities*

*15. Permitting of Solid Waste Management Facilities*

*16. Review of Department of Waste Management Inspection Form*

*17. Overview of Permitted Solid Waste Management Facilities*

*a. Transfer Stations*

*b. Material Recover Facilities*

*c. Experimental Facilities*

*d. Sanitary Landfills*

*e. Infectious Waste Incinerators*

*f. Mass Burn Facilities*

*g. Refuse Derived Fuel Facilities*

*h. Autoclaves*

*18. Overview of General OSHA Requirements*

*19. Neighbor Relations*

*20. Recordkeeping and Financial Assurance*

*C. A board approved training course specific to Class II facilities shall include at a minimum the following topics:*

*1. Definitions*

*2. Special Wastes*

*a. General*

*b. Asbestos Wastes*

*c. Wastes Containing Polychlorinated Biphenyls*

*d. Liquids*

*e. Tires*

*f. Drums*

*g. White Goods*

*h. Soil Contaminated with Petroleum Products*

*i. Lead Acid Batteries*

*j. Other Prohibited Wastes*

*k. Hazardous Wastes*

*l. Screening for Prohibited Wastes*

*m. Handling Procedures for Special or Hazardous Wastes*

*n. Recordkeeping and Notification Requirements*

*3. Solid Waste Disposal Standards*

*a. General Standards for Sanitary Landfills*

*b. Design/Construction*

*c. Operation*

*d. Groundwater Monitoring*

*e. Closure*

*f. Post-Closure Care Requirements*

*g. Control of Decomposition Gases*

*h. Leachate Control System and Monitoring*

*i. Leachate Control System Appurtenances*

*j. Corrective Action Program*

*4. Construction/Demolition Debris Standards*

*5. Industrial Waste Disposal Standards*

*6. Other Solid Waste Management Facility Standards*

*a. Compost Facilities*

*b. Surface Impoundments and Lagoons*

*c. Waste Piles*

*d. Miscellaneous Units*

*7. Permitting of Solid Waste Management Facilities*

*8. Financial Assurance Documentation*

*9. Rulemaking Petitions and Procedures*

*D. A board approved training course for Class III specific management facility shall include at a minimum the following topics:*

*1. Identification and Listing of Infectious Waste*

*a. General*

# Proposed Regulations

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- b. Exemption to Regulations*
  - c. Exclusions*
  - d. Characteristics of Infectious Waste*
  - e. Controlled Infectious Waste*
  - 2. General Requirements*
    - a. Permits and Permits by Rule*
    - b. Financial Assurance Requirements*
    - c. Packaging and Labeling Requirements*
    - d. Management of Spills*
    - e. Closure Requirements*
    - f. Methods of Treatment and Disposal*
    - g. Approved Test Method*
    - h. Recordkeeping Requirements*
  - 3. Requirements for Storage Facilities*
    - a. Sanitation*
    - b. Access*
    - c. Temperature Control and Storage Period*
    - d. Drainage and Ventilation*
  - 4. Requirements for Transportation*
    - a. Sanitation*
    - b. Access*
    - c. Temperature and Storage Period*
    - d. Drainage*
    - e. Packaging, Labeling and Placards*
    - f. Management of Spills*
    - g. Loading and Unloading*
    - h. Registration of Transportation*
  - 5. Requirements for Incineration*
    - a. Performance Standards*
    - b. Analysis and Management of Ash Residue*
    - c. Unloading Operation*
    - d. Compliance with Other Regulatory Requirements*
  - 6. Requirements for Steam Sterilization*
    - a. Performance Standards*
    - b. Compliance with Other Regulatory Requirements*
- E. A board approved training course for Class IV specific management facility shall include at a minimum the following topics:*
- 1. Solid Waste Management Regulations*
    - a. Siting*
    - b. Design and Construction*
    - c. Operation*
    - d. Waste Characteristics*
  - 2. Emissions Formation and Control*
    - a. Type of Emissions*
    - b. Environmental Effect*
    - c. Control Techniques*
  - 3. Emissions Monitoring*
    - a. Parameters Monitored*
    - b. Types of Monitors*
    - c. Data Acquisition*
    - d. Monitor Calibration, Certification and Testing*
  - 4. Combustion and Gas Reactions*
    - a. Combustion Components*
    - b. Optimizing Solid Waste Combustion*
    - c. Gas Reactions Related to Combustor Construction Materials*
  - 5. Solid Waste Materials Handling*
    - a. Front End Processing Equipment*
    - b. Combustion Enhancement*
    - c. Back End Processing*
    - d. Recycling Benefits*
  - 6. Waste Combustion Residue Handling and Disposal*

a. *Types of Residue*

b. *Characteristics*

c. *Regulations*

d. *Monitoring*

e. *Handling and Transportation*

f. *Disposal*

g. *Alternative Uses*

## 7. *Safety*

a. *Employer/Employee Obligations*

b. *OSHA*

c. *Hazard Communication*

d. *Equipment Tagout*

e. *Respiratory Protection*

## 8. *Recordkeeping*

a. *Engineering Log Keeping*

b. *Maintenance*

c. *Solid Waste*

### § 6.2. *Approval of training course.*

A. *Persons seeking to have a training course approved by the board shall complete a form provided by the board and submit the appropriate fee as defined in § 1.4 B 6 of these regulations. Receipt and deposit of the required fee do not indicate board approval.*

b. *Training courses shall be approved by the board prior to the training activity in accordance with the following:*

#### 1. *Training providers.*

a. *Organizations. The board may approve training courses offered by a sponsor who is an identifiable organization with an acceptable past performance of teaching environmental or engineering material. The organization shall have a mission statement outlining its functions, structure, process and philosophy, and that a staff of one or more persons has the authority to administer and coordinate the training program.*

b. *Schools. The board may approve training courses offered by an accredited academic institution which has demonstrated an acceptable past performance*

*of teaching environmental or engineering material.*

c. *Businesses. The board may approve training courses offered by a business entity which has demonstrated an acceptable past performance of teaching environmental or engineering material.*

2. *Instructors. The training course provider shall ensure training is only conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the teaching process to be used, and a proven ability to communicate.*

3. *Objectives. The training course provider shall ensure that the course have a series of stated objectives that are consistent with the type of facility, operator job requirements, state and federal regulation. The training course shall be consistent with training criteria outlined in § 6.1 of the regulations.*

4. *The board shall only approve courses which provide the participants a complete tour of a facility appropriate to the course emphasizing operator responsibilities.*

5. *Course completion requirements. For successful completion of a training program, participants must attend 90% or more of the class contact time and the tour of the facility.*

6. *The training provider shall provide an effective means for evaluation of the quality of the course and the instructor(s).*

7. *The training provider shall ensure the number of participants and physical facilities are appropriate for the course content and teaching method specified by the developer.*

8. *The training provider shall ensure all course materials are technically accurate, current and sufficient to meet the program's learning objectives.*

#### C. *Training records.*

1. *An approved training provider shall retain records for all participants for a period of 10 years and shall maintain a written policy on the retention and release of records.*

2. *All records pertaining to the approved training and participants shall be made available to the board immediately upon request.*

C. *The board shall consider the following information, to be submitted to the board at least 45 days prior to the scheduled training activity:*

#### 1. *Course information.*

# Proposed Regulations

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- a. *Course title*
- b. *Planned audience*
- c. *Name of sponsor*
- d. *Name, address and phone number of contact person*
- e. *Scheduled presentation dates*
- f. *Detailed course schedule on an hour by hour basis*
- g. *List of planned breaks*
- h. *Scheduled presentation locations*
- i. *Scheduled tour locations*
- j. *Instructor(s) resume*

## 2. *Training materials.*

a. *Course objectives.* A listing of the course objectives stated in the terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.

b. *Course outline.* A detailed outline showing the planned activities that will occur during the training program, including major topics, planned presentation sequence, tour activities, audio-visual presentations and other major activities.

c. *Course reference materials.* A list of name, publisher, and publication of commercially available publications; for material developed specifically for the course, a copy of the reference material.

d. *Audio-visual support materials.* A list of any commercially available audio-visual support material that will be used in the course; a brief description of any audio-visual material generated by the sponsor or instructor.

e. *Handouts.* Identification of all commercially available handout material including regulations; copies of other handouts generated by the sponsor or instructor.

3. *The board shall approve all substantial changes to the course and all additional course dates and locations prior to the training activity.*

4. *The board reserves the right to withdraw approval if the board determines the course is not adequately teaching participants, or the sponsor or an instructor violates these regulations.*

## § 6.3. *Continuing education requirement.*

A. *All applicants for certification renewal shall complete at least 10 hours of continuing education during the term of certification. All individuals approved through reciprocity shall complete the general course in lieu of five hours of their CPE requirement during the first year of certification.*

B. *In order for the certified operator to receive continuing education credit, all credit hours shall be specific to the management of a solid waste management facility.*

C. *Individuals may seek board approval of a specific course on a case by case basis.*

1. *Certified individuals requesting an individual course be approved shall submit the name, address and telephone number of the sponsor, a copy of the syllabus, all handouts and a copy of the certificate of completion to the board for review.*

2. *If the board approves the course, the applicant will receive a letter from the board stating the approval and the number of credit hours awarded for completing the course.*

D. *The certified operator shall retain evidence of satisfactory completion of CPE credit hours for a period of five years. Such documentation shall be in a form of the certificate of completion from an approved sponsor or verification from the accredited institution offering the course. If, upon request, the certified operator cannot produce such documentation, the certified operator may be subject to disciplinary proceedings.*

e. *All CPE credit hours shall be reported to the board on a form provided by the board and subject to possible audit.*

F. *CPE credit hours, taken after the expiration of the individual's certificate to meet the CPE requirement of the prior certification cycle, shall not be reported for any future renewal.*

G. *Failing to meet the CPE requirement may result in reapplication for certification including possible training and examination requirements.*

## PART VII.

### APPROVAL OF CPE SPONSORS.

#### § 7.1. *General.*

A. *For the purposes of this section all courses, seminars and conference presentations sponsored by sovereign government bodies are approved by the board.*

B. *Persons seeking registration as a board approved sponsor shall apply on an application form provided by the board and submit the application fee defined in § 1.4 B 7 of these regulations. The receipt and deposit of fees*

do not indicate board approval.

C. Each applicant shall agree as a condition of registration to abide by the following provisions:

1. Each applicant shall possess the financial resources, sound administration, competent supervision and an effective and supportive organizational structure.
2. Programs shall contribute to the professional competence of participants in managing and operating a solid waste management facility.
3. CPE credit hours are allowed only for formal programs of learning that maintain or increase the professional competence of the participant.
4. Program sponsor shall select instructors qualified with respect to both program content and required teaching methods.
5. Program sponsors shall ensure the number of participants and the physical facilities are appropriate for the program content and teaching methods used by the instructors.
6. Sponsors shall provide an effective means for evaluating the quality of the program and instructors.

D. Failure of the sponsor to comply with the requirements relating to the responsibilities of program sponsors may result in the termination by the board of approved sponsor designation.

E. The board reserves the right to initiate an investigation of an approved sponsor.

F. Upon finding of any violation of the board's rules and regulations, the board may deny initial registration, renewal, suspend or revoke approval.

§ 7.2. Standards for CPE program development and presentation.

Each sponsor that submits an application to the board shall accept and abide by these provisions:

1. Program developers shall state learning objectives and specify the level of knowledge of the program. Each objective shall be written to be consistent with the program's specified level of knowledge. Levels of knowledge shall be described as basic, intermediate, advanced or updated.
2. Program developers shall state the prerequisites for education, experience, or both for all programs.
3. Program developers shall be qualified in the subject matter and be knowledgeable in instruction design through practical experience, education or both.

4. Program materials shall be technically accurate, current, and sufficient to meet the program's learning objectives.

5. Program sponsors shall inform all participants in advance of learning objectives, prerequisites, level of knowledge of the program, program content, need for any advanced preparation, teaching methods to be used, recommended CPE credit, and relevant administrative policies.

6. Brochures and other announcements shall disclose all policies and procedures concerning registration, payment of fees, refunds, attendance, and certificates of completion.

7. All programs shall be measured in 50-minute contact hours. The shortest program for CPE credit purposes shall consist of one contact hour.

8. Instructors shall be given CPE credit for their preparation and presentation time. Credit for instructors shall be measured in 50-minute contact hours. Preparation credit received shall be no greater than two times the number of presentation hours. An instructor may not receive credit for preparation time for a repeated presentation unless they can demonstrate that the program content involved was substantially changed.

§ 7.3. Certificates of completion and recordkeeping.

A. The sponsor shall provide participants, upon successful completion of each course, a certificate of completion indicating location, date(s), CPE credit hours, sponsor identification, address of sponsor, and title of course.

B. The sponsor shall maintain for a period of five years records of participation, copy of program materials, dates, location, instructor(s), number of CPE contact hours, and evaluations of the course and instructor.

C. All records shall be made available to the board immediately upon request.

## PART VIII. STANDARDS OF CONDUCT AND DISCIPLINARY ACTION.

§ 8.1. Prohibited acts.

A. Part VIII is intended to apply to both interim and full certification.

B. The following are grounds for disciplinary action by the board.

1. The certificate holder violates or induces another person to violate any provisions of Chapters 1, 2, 3 and 22.1 of Title 54.1 of the Code of Virginia, or any



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provisions of these regulations.

2. The certificate issued to a solid waste management facility operator was obtained through fraudulent means or misrepresentation.

3. Having been found guilty by the board, an administrative body or by a court of any material misrepresentation in the course of performing his operating duties.

4. Having been convicted or found guilty, regardless of jurisdiction, of any felony or violation which resulted in the significant harm to human health or the environment, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of *nolo contendere* shall be considered a conviction for the purposes of this regulation. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as *prima facie* evidence of such conviction.

5. Failing to inform the board in writing within 30 days of pleading guilty or *nolo contendere* or being convicted or found guilty of any felony which resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

6. Gross negligence, or a continued pattern of incompetence, in the practice as a waste management facility operator.

7. Violating the permit conditions for the facility, or violating any federal, state or local laws or regulations which results in the significant harm or an imminent and substantial threat of significant harm to human health or the environment.

C. Any individual whose certification is revoked under this section shall not be eligible to apply for certification for a period of one year from the effective date of the final order of revocation. The individual shall meet all education, experience and training requirements, complete the application and submit the required fee for consideration as a new applicant.

§ 8.2. Denial, suspension or revocation of certification or approval.

A. Denial of certification or approval.

1. The board, at its discretion, may deny approval of a training course, CPE sponsor or individual certification for any reason specified in these regulations.

2. The applicant may request the board to reconsider their initial decision in writing within 30 days of

applicant's notification of the denial.

3. If the board's initial decision of denial is reconfirmed, the board will notify the applicant in writing outlining the reasons for denial. The response may also include any necessary steps that can be taken by the applicant to ensure compliance with these regulations.

4. All appeals for denied applicants for certification or approval shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Suspension and revocation of certification.

1. The board, in its discretion, may suspend or revoke the certification of an individual, an approved course or CPE sponsor for any reason specified in these regulations.

2. The board shall conduct disciplinary proceedings in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

3. Any individual certified or training provider approved by the board who violates any statute or provision of these regulations and is not criminally prosecuted, shall be subject to a monetary penalty. The board shall determine the monetary penalty which shall not exceed \$1,000 for each violation.

APPLICATION FOR FULL CERTIFICATION

Virginia Department of Commerce
Board for Waste Management Facility
Operators
3600 West Broad Street
Richmond, Virginia 23230

Page Two

Name
Business Address
Date(s) of Employment
Supervisor
Title

VI. Reciprocity (Please include a copy of the certificate/license).

Are you certified/licensed in any other state or jurisdiction as a solid waste management facility operator? Yes No. If so, where?

State Date of Expiration Certification Number

VII. Training (Please include a copy of all applicable training certificates).

Have you completed the general training course?
Have you completed training specific to your desired classification?

VIII. Enforcement History

Have you ever had a waste management facility operator's certificate/license revoked? If so, please explain.

Have you ever had any final order actions against you issued by an administrative body or court regarding an environmental violation or crime which resulted in significant harm to the environment or human health? If so, please explain.

Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of a felony regarding an environmental violation or crime which resulted in significant harm to the environment or human health? If so, please explain.

I hereby certify by my signature, that the above information is correct and that no information has been suppressed which may affect this application. I understand that Section 54.1-111(6) of the Code of Virginia, deems it unlawful to materially misrepresent facts in an application for a certificate, and that violations of this section could result in criminal prosecution which could result in one year in jail and up to a \$2,500 fine.

Name (Signature of applicant) Date

Form 10-19-92

Name (Last) (First) (M.I.)
Home Address

Home Phone Business Phone
Date of Birth SSN
Did you receive interim certification? Your Number

II. Classification (Please check the appropriate classification)

Class I Class II Class III Class IV Class V

III. Method of Certification (Please check the appropriate method)

Reciprocity Training and Examination

Experience and Examination

IV. Education History

Name and location of High School or College: Diploma? Yes No
GED? Yes No Major?

V. Employment History
Complete this section for all applicable employment and use additional sheets if necessary. Please forward the Verification of Employment Form to each employer listed.

Current Employer:
Name Business Address
Date(s) of Employment Title
Is this facility permitted by the Department of Waste Management?
If so, what is the permit number?

Previous Employer(s):
Name Business Address
Date(s) of Employment Title
Supervisor

Form 10-19-92

Department of Commerce  
 Board for Waste Management Facility Operators  
 3600 West Broad Street  
 Richmond, Virginia 23230

**VERIFICATION OF EMPLOYMENT EXPERIENCE**

**I. To be completed by the applicant**

Complete one verification form for each employer listed on the application. Please submit this entire form to your applicable current and past employers for verification.

Name \_\_\_\_\_  
 (Last) (First) (M.I.)  
 Address \_\_\_\_\_  
 Employer \_\_\_\_\_ Dates of Employment \_\_\_\_\_  
 Address \_\_\_\_\_  
 Job Title \_\_\_\_\_

Please provide a thorough and complete description of your daily job activities. This should include how much time you spend at the site, your duties and how many individuals you may supervise. This must be complete our the application will be returned for additional information.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name of Supervisor \_\_\_\_\_ Title \_\_\_\_\_

**II. To be completed by the supervisor:**

The applicant is/was employed during the time period indicated above? \_\_\_\_\_  
 If not, when? \_\_\_\_\_ The job description is accurate and complete? \_\_\_\_\_ Comments? \_\_\_\_\_

Name of certifying Supervisor? \_\_\_\_\_ Date \_\_\_\_\_  
 Signature \_\_\_\_\_

Please forward the completed form to the Department of Commerce at the address above. Please use additional sheets as necessary.

Form 10-19-92

VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

DEPARTMENT OF COMMERCE  
 3600 WEST BROAD STREET  
 RICHMOND, VIRGINIA 23230

**VERIFICATION OF EDUCATION/DEGREE GRANTED**

**I. TO BE COMPLETED BY APPLICANT**

NAME \_\_\_\_\_  
 HOME ADDRESS \_\_\_\_\_  
 HOME PHONE (\_\_\_\_) \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_ SSN \_\_\_\_\_  
 NAME OF INSTITUTION \_\_\_\_\_  
 DATE(S) ATTENDED \_\_\_\_\_  
 DEGREE \_\_\_\_\_ OR \_\_\_\_\_ SEMESTER \_\_\_\_\_ QUARTER HOURS COMPLETED \_\_\_\_\_  
 SIGNATURE OF APPLICANT \_\_\_\_\_ DATE \_\_\_\_\_

After completion of the above section, send this form to the high school, GED issuing institution, college or university listed above. Please request that the following certification be completed and that this form be returned directly to the Board at the above address. If you have not completed a college degree, request an official transcript to be sent to the above address.

**II. TO BE COMPLETED BY EDUCATIONAL INSTITUTION OR AUTHORIZING JURISDICTION**

**CERTIFICATION**

I hereby certify that the above named applicant has graduated from this school/institution:

DEGREE \_\_\_\_\_ MAJOR \_\_\_\_\_  
 DATE RECEIVED \_\_\_\_\_

OFFICIAL SEAL

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Official Title  
 \_\_\_\_\_  
 Date

VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY  
 DEPARTMENT OF COMMERCE  
 3600 WEST BROAD STREET  
 RICHMOND, VIRGINIA 23230

Application for Virginia Approved Sponsor of Continuing Education

I. Sponsor  
 Name \_\_\_\_\_ Telephone \_\_\_\_\_  
 Address \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Title \_\_\_\_\_  
 Address (if different than above) \_\_\_\_\_ Telephone \_\_\_\_\_

II. Training History  
 How long have you or our organization been offering continuing education courses in waste management issues? \_\_\_\_\_  
 Projected number of courses to be given a year? \_\_\_\_\_  
 Location(s) \_\_\_\_\_  
 Site Visits? \_\_\_\_\_ If yes, where? \_\_\_\_\_  
 Address \_\_\_\_\_

III. Training Materials  
 How will satisfactory completion of this course be measured? (Check the appropriate boxes)  
 examination  attendance  written exercise  
 other \_\_\_\_\_

IV. Instructors  
 Name \_\_\_\_\_ Title \_\_\_\_\_ Telephone \_\_\_\_\_  
 Address \_\_\_\_\_  
 Course Title \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Address \_\_\_\_\_ Telephone \_\_\_\_\_  
 Course Title \_\_\_\_\_

V. Required Attachments  
 Evaluation form(s)  Certificate(s) of Completion  
 Instructor resume(s)  List of course titles to be included under the approval with the designated "level of knowledge" and appropriate number of credit hours.

VI. Optional Attachments  
 course outline(s)  course objective(s)

VII. Signature of Contact Person  
 Name \_\_\_\_\_ Date \_\_\_\_\_

Form 10-19-92

Board for Waste Management Facility Operators  
 Department of Commerce  
 3600 West Broad Street  
 Richmond, Virginia 23230

Application for Approval of Waste Management Facility Operators Training Course

I. Sponsor  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

II. Training Course  
 Title \_\_\_\_\_ Recurring? \_\_\_\_\_  
 Scheduled dates of classes \_\_\_\_\_  
 Location \_\_\_\_\_ Intended Audience \_\_\_\_\_  
 Is the course open to the public? \_\_\_\_\_ Facility being used for the site visit? \_\_\_\_\_ Address \_\_\_\_\_  
 How does this training course relate to the management and operation of a waste management facility? \_\_\_\_\_

Training is appropriate for which classification of certification?  
 Intended hours of instruction? \_\_\_\_\_ Is there an examination? \_\_\_\_\_

Please attach a detailed hour by hour course outline.

III. Training Materials  
 How will satisfactory completion of this course be measured? (Check the appropriate boxes).  
 Skill demonstration  Site visit  Exam  
 Attendance  Other \_\_\_\_\_  
 List reference materials to be used. \_\_\_\_\_  
 List audio-visual materials to be used. \_\_\_\_\_  
 List handouts to be used. \_\_\_\_\_

IV. Instructor(s) Please use additional sheets as necessary.  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Employer \_\_\_\_\_  
 Address \_\_\_\_\_ Phone \_\_\_\_\_

V. Required Attachments  
 Course objectives  Course outline  Handouts  Certificate  
 Reference materials  Instructor(s) resume of Completion

Signature of Contact Person \_\_\_\_\_  
 Date \_\_\_\_\_

Form 10-19-92

VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY  
DEPARTMENT OF COMMERCE  
1600 WEST BROAD STREET  
RICHMOND, VIRGINIA 23230

Form of Reporting Continuing Education Credit Hours for Renewal

I. General

Name \_\_\_\_\_  
(Last) (First) (M.I.)  
Address \_\_\_\_\_ Telephone \_\_\_\_\_  
Certification Number \_\_\_\_\_ Expire \_\_\_\_\_  
Employer \_\_\_\_\_ Title \_\_\_\_\_  
Address \_\_\_\_\_ Telephone \_\_\_\_\_

II. Credit Hours

Name of Course \_\_\_\_\_  
Sponsor \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ Telephone \_\_\_\_\_  
Location of course \_\_\_\_\_ Course dates \_\_\_\_\_  
Level of Knowledge \_\_\_ Basic \_\_\_ Intermediate \_\_\_ Advanced \_\_\_ Update  
Number of credit hours \_\_\_\_\_ Actual hours of instruction \_\_\_\_\_  
Name of Course \_\_\_\_\_  
Sponsor \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ Telephone \_\_\_\_\_  
Location of course \_\_\_\_\_ Course dates \_\_\_\_\_  
Level of Knowledge \_\_\_ Basic \_\_\_ Intermediate \_\_\_ Advanced \_\_\_ Update  
Number of credit hours \_\_\_\_\_ Actual hours of instruction \_\_\_\_\_  
Name of Course \_\_\_\_\_  
Sponsor \_\_\_\_\_ Telephone \_\_\_\_\_  
Address \_\_\_\_\_ Telephone \_\_\_\_\_  
Location of course \_\_\_\_\_ Course dates \_\_\_\_\_  
Level of Knowledge \_\_\_ Basic \_\_\_ Intermediate \_\_\_ Advanced \_\_\_ Update  
Number of credit hours \_\_\_\_\_ Actual hours of instruction \_\_\_\_\_

Please attach a copy of all certificates of completion to the application.

Is the sponsor currently approved by the Board to provide continuing education? \_\_\_\_\_ If not, please provide the following information:

1) Copy of the Syllabus 2) All Handouts 3) Other \_\_\_\_\_

Please attach the additional information to the application.

Where was the instructor of any of the courses above? \_\_\_\_\_ If yes, which courses? \_\_\_\_\_

Failure to meet the CPE requirement outlined in Section 4.3 of the Regulations and may result in reapplication for certification meeting all training and examination requirements.

III. Signature

Name \_\_\_\_\_ Date \_\_\_\_\_  
(Name of applicant)

# FINAL REGULATIONS

For information concerning Final Regulations, see information page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

## STATE AIR POLLUTION CONTROL BOARD

### Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution - Definitions (Part I) and General Provisions (Part II).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: February 1, 1993.

#### Summary:

*The regulation amendments clarify the provisions relating to making case decisions with regard to process, statutory basis and appeals; establish criteria for determining confidential information; and update various provisions to conform to changes in the Code of Virginia.*

VR 120-01. Regulations for the Control and Abatement of Air Pollution - Definitions (Part I) and General Provisions (Part II).

### PART I. GENERAL DEFINITIONS.

#### § 120-01-01. General.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 120-01-02.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in these regulations, terms used shall have the meanings commonly ascribed to them by recognized authorities.

C. In addition to the definitions given in this part, some other major divisions (i.e. parts, rules, etc.) of these regulations have within them definitions for use with that specific major division.

#### § 120-01-02. Terms defined.

*"Actual emissions rate"* means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board

shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

*"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 U.S. Environmental Protection Agency (EPA) or his authorized representative.

*"Affected facility"* means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated.

*"Air pollution"* means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

*"Air quality"* means the specific measurement in the ambient air of a particular air pollutant at any given time.

*"Air quality control region"* means any area designated as such in Appendix B.

*"Air quality maintenance area"* means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in Part III within a subsequent 10-year period and designated as such in Appendix H.

*"Alternative method"* means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

*"Ambient air"* means that portion of the atmosphere, external to buildings, to which the general public has access.

*"Ambient air quality standard"* means any primary or secondary standard designated as such in Part III.

*"Board"* means the State Air Pollution Control Board or its designated representative.

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"Class I area" means any prevention of significant deterioration area designated as such in Appendix L.

"Class II area" means any prevention of significant deterioration area designated as such in Appendix L.

"Class III area" means any prevention of significant deterioration area designated as such in Appendix L.

"Confidential information" means secret formulae, secret processes, secret methods or other trade secrets which are proprietary information certified by the signature of the responsible [ party person ] for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with these regulations, by mutual agreement of the owner or any other person and the board.

"Consent order" means a consent agreement issued as an order. Such orders may be issued without a hearing.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under Part III.

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable State Implementation Plan.

"Department" means any employee or other representative of the Virginia Department of Air Pollution Control, as designated by the executive director.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

- a. Using that portion of a stack which exceeds good engineering practice stack height;

- b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

- c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

- a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

- b. The merging of exhaust gas streams where:

- (1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

- (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the

emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

*"Emergency"* means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

*"Emergency special order"* means any order of the board issued under the provisions of § 10.1-1309 B, after declaring a state of emergency and without a hearing, to owners who are permitting or causing air pollution, to cease such pollution. Such orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.

*"Emission limitation"* means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

*"Emission standard"* means any provision of Parts IV, V or VI which prescribes an emission limitation, or other requirements that control air pollution emissions.

*"Emissions unit"* means any part of a stationary source which emits or would have the potential to emit any air

pollutant.

*"Equivalent method"* means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

*"Excess emissions"* means emissions of air pollutant in excess of an emission standard.

*"Excessive concentration"* is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of § 120-08-02, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of



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the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

*“Executive director”* means the executive director of the Virginia Department of Air Pollution Control or his designated representative.

*“Existing source”* means any stationary source other than a new source or modified source.

*“Facility”* means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

*“Federal Clean Air Act”* means 42 USC 7401 et seq., 91 Stat 685.

*“Formal hearing”* means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

*“Good engineering practice”* (GEP) stack height means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;
2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under Part VIII,

$$H_g = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

- b. For all other stacks,

$$H_g = H + 1.5L,$$

where:

$H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

*“Hazardous air pollutant”* means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

*“Isokinetic sampling”* means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

*“Locality”* means a city, town, county or other public body created by or pursuant to state law.

*“Malfunction”* means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person.

*“Metropolitan statistical area”* means any area designated as such in Appendix G.

*“Monitoring device”* means the total equipment used to measure and record (if applicable) process parameters.

*“Nearby”* as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in Appendix K.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Order" means any decision or directive of the board, including special orders, emergency special orders and orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of these regulations. Unless specified otherwise in these regulations, orders shall only be issued after the appropriate hearing.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Party" means any person named in the record who

actively participates in the administrative proceeding [ and who has an interest that may be directly affected by the case decision resulting from the proceeding or offers comments through the public participation process ]. The term "party" also means the department.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in Appendix K for a particular pollutant and designated as such in Appendix L.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in Part III: the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been ~~cancelled~~ canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in Parts IV and V: Appendix A of 40 CFR Part 60.

3. For emission standards in Part VI: Appendix B of

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40 CFR Part 61.

*"Regional director"* means the regional director of an administrative region of the Department of Air Pollution Control or his designated representative.

*"Reid vapor pressure"* means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Standard D323-82, Test Method for Vapor Pressure of Petroleum Products (Reid Method) (see Appendix M).

*"Run"* means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

*"Shutdown"* means the cessation of operation of an affected facility for any purpose.

*"Source"* means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

*"Special order"* means any order of the board issued:

1. Under the provisions of § 10.1-1309:
  - a. To owners who are permitting or causing air pollution to cease and desist from such pollution;
  - b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct such facilities in accordance with or otherwise comply with such approved plan;
  - c. To owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with such terms and provisions;
  - d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from such contravention and to comply with such air quality standards and policies; and
  - e. To require any owner to comply with the provisions of this chapter and any decision of the board; or

2. Under the provisions of § 10.1-1309.1 requiring that an owner file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations.

*"Stack"* means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

*"Stack in existence"* means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be ~~cancelled~~ canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

*"Standard conditions"* means a temperature of 20° C (68° F) and a pressure of 760 mm of Hg (29.92 in. of Hg).

*"Standard of performance"* means any provision of Part V which prescribes an emission limitation or other requirements that control air pollution emissions.

*"Startup"* means the setting in operation of an affected facility for any purpose.

*"State Implementation Plan"* means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under Section 110 of the federal Clean Air Act, and which implements the requirements of Section 110.

*"Stationary source"* means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see Appendix M).

*"Total suspended particulate (TSP)"* means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

*"True vapor pressure"* means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American

Petroleum Institute (API) Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see Appendix M). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in Appendix C.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in API Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see Appendix M).

"Variance" means the temporary exemption of an owner or other person from these regulations, or a temporary change in these regulations as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Register Act" means Chapter 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

"Volatile organic compound" means any organic compound which participates in atmospheric photochemical reactions and is measured by the applicable reference method. The following compounds are exempted from this definition:

1. Methane
2. Ethane
3. 1,1,1-trichloroethane (methyl chloroform)
4. Methylene chloride
5. Trichlorofluoromethane (CFC-11)
6. Dichlorodifluoromethane (CFC-12)
7. Chlorodifluoromethane (CFC-22)
8. Trifluoromethane (FC-23)
9. 1,1,2-trichlorotrifluoroethane (CFC-113)
10. 1,2-dichlorotetrafluoroethane (CFC-114)
11. Chloropentafluoroethane (CFC-115)
12. Dichlorotrifluoroethane (HCFC-123)
13. Tetrafluoroethane (HFC-134a)

14. Dichlorofluoroethane (HCFC-141b)

15. Chlorodifluoroethane (HCFC-142b)

Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well being.

## PART II. GENERAL PROVISIONS.

### § 120-02-01. Applicability.

A. The provisions of these regulations, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of these regulations, unless specified otherwise, shall apply to only those pollutants for which ambient air quality standards are set forth in Part III or for which emission standards are set forth in Parts IV, V and VI or both.

C. No provision of these regulations shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

D. By the adoption of these regulations, the board confers upon the department the administrative, enforcement and decision making authority enumerated therein.

### § 120-02-02. Establishment of regulations and orders.

A. Regulations for the Control and Abatement of Air Pollution are established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

B. Regulations for the Control and Abatement of Air Pollution shall be adopted, amended or repealed in accordance with the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Guidelines Procedures in Appendix E.

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C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § ~~9-6.14:6~~ 9-6.14:4.1 of the Administrative Process Act, but such ~~rule or~~ regulation shall remain effective no longer than 60 days *one year* unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; such orders are subject to the provisions of subsection F of this section.

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on the specific documents incorporated and their availability may be found in Appendix M.

F. Orders, special orders and emergency special orders may be issued pursuant to § 10.1-1307 D or § 10.1-1309 of the Virginia Air Pollution Control Law.

§ 120-02-03. Enforcement of regulations , *permits* and orders.

A. Whenever the executive director or his designated representative has reason to believe that a violation of any provision of these regulations or any *permit* or order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of these regulations or the *permit* or order or *both* involved and the facts on which the violation is based. The executive director or his designated representative may act as the agent of the board to obtain compliance through either one of the following enforcement proceedings:

1. Administrative proceedings. The executive director or his designated representative may negotiate to obtain compliance through administrative means. Such means may be a variance, control program, consent agreement or any other mechanism that ~~mandates~~ *requires* compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable

delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in these regulations, the administrative means shall be approved by the board.

2. Judicial proceedings. The executive director or his designated representative may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the executive director or his designated representative from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders and emergency special orders are considered administrative means, and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the executive director or his designated representative under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to ~~insure~~ *ensure* that the compliance status of any source is reasonably maintained by the owner.

E. *Case decisions regarding the enforcement of regulations, orders and permits shall be made by the executive director or board. Case decisions of the executive director that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to subsection C of § 120-02-09; or (ii) may be directly considered by the board as provided in Section I B of Appendix F, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the executive director that are made pursuant to an informal proceeding (i) may be appealed to the board pursuant to subsection A of § 120-02-09 or (ii) may be directly considered by the board according to Section I B of Appendix F.*

§ 120-02-04. Hearings and proceedings.

A. ~~Hearings and proceedings by the board may take any of the following forms~~ *The primary hearings and proceedings associated with the promulgation and enforcement of statutory provisions are as follows :*

1. The public hearing and informational proceeding required before considering regulations ~~or variances~~ , in accordance with § ~~§ 10.1-1307 C and 10.1-1308~~ of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § ~~9-6.14:7~~ 9-6.14:7.1 of the Administrative Process Act, except as modified by § §

10.1-1307 C and F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E.

2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of § 120-02-05.

2. 3. The informal fact finding proceeding which, with all parties consenting, may be used to ascertain facts upon which decisions of the board are based, in accordance with § 9-6.14:11 of the Administrative Process Act used to make case decisions. The procedure for an informal fact finding proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

3. 4. The formal hearing for the determination of violations, and for the enforcement or review of its orders and permits and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and F and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

4. 5. The special order hearing or emergency special order hearing for the determination of violations, and for the enforcement or review of its orders and permits and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Air Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

B. The board may adopt policies and procedures to supplement the statutory procedural requirements for the various proceedings cited in subsection A of this section.

B. C. Records of hearings by the board and proceedings may be kept in either one of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at any informal proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. 3. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically

recorded for transcription to written form.

C. D. Availability of record records of hearings by the board and proceedings shall be as follows:

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. 3. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

§ 120-02-05. Variances.

A. General.

1. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the board at may in its discretion may grant local variances to any provision of these regulations after a public hearing in accordance with § 120-02-04 A at an investigation and public hearing. If a local variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time.

2. Notices of public hearings on applications for variances shall be advertised in at least one major newspaper of general circulation in the affected air quality control region at least 30 days prior to the date of the hearing. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected air quality control region of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance [ and the hearing record shall remain open for a minimum of 10 days after the hearing ].

B. Fuel variance.

1. Regardless of any other provision of this section, the executive director may grant issue an order granting a fuel variance for fuel burning equipment

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from applicable provisions of these regulations if, after a thorough investigation and public hearing, he finds that:

- a. The owner, in good faith and prior to the request for the fuel variance, has attempted to comply with applicable provisions of these regulations.
- b. The owner has substantial cause to believe he will be unable to obtain the fuel to operate the equipment in compliance with applicable provisions of these regulations.
- c. The maximum particulate and sulfur dioxide emissions from fuels permitted in the fuel variance would be the lowest that the available fuels will permit.
- d. The need for the requested fuel variance could not have been avoided by the owner.
- e. The period of the fuel variance will not exceed the reasonably predicted shortage of fuel which would allow compliance with these regulations, or [ ~~120~~ 180 ] days, whichever is less.

2. The owner requesting the fuel variance shall submit the following, where appropriate, to the executive director:

- a. The requested commencement and termination dates of the fuel variance.
- b. The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any.
- c. An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to, obtain fuel which would allow compliance with applicable provisions of these regulations.
- d. An estimate of the amount of fuel to be conserved.
- e. An estimate of the increased air pollutants that might cause violations of the ambient air quality standards.
- f. An estimate, with reasons given, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations.
- g. Such other information as the executive director may require to make his findings as provided in subdivision B 1 of this section.

3. Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major

newspaper of general circulation in the air quality control region in which the affected source is located. *The notice shall contain the subject, date, time and place of the public hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance.*

4. Fuel variances may be granted only for individual sources, and not for categories or classes.

5. No fuel variance shall be granted for more than [ ~~120~~ 180 ] days. Any request for a variance for a period beyond [ ~~120~~ 180 ] days shall be governed by the provisions of subsection A of this section, except that the board, where appropriate, may require compliance with any of the conditions and requirements herein.

*6. Fuel variances may be amended or revoked in the manner provided for in § 120-02-05 A except that only a 10-day notice shall be required.*

C. Nothing in this section shall be construed to limit, alter or otherwise affect the obligation of any person to comply with any provision of these regulations not specifically affected by this section.

§ 120-02-06. Local ordinances.

A. Establishment/approval.

1. Any local governing body proposing to adopt or amend an ordinance, relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of any local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months.

B. Reports.

Local ordinances shall provide for reporting such information as may be required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Such reports shall include, but are not limited to: monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings and status of control programs and permits.

### C. Relationship to state regulations.

Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the development of ambient air quality or emission standards, in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

### D. Variances.

A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

1. A public hearing is held prior to granting the variance;
2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
3. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

### § 120-02-07. Circumvention.

A. No owner or other person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants which would otherwise violate these regulations. Such concealment includes, but is not limited to, either of the following:

1. The use of gaseous diluents to achieve compliance with a visible emissions standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

2. The piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

B. This section does not prohibit the construction of a stack.

### § 120-02-08. Relationship of state regulations to federal regulations.

A. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of these regulations are required to be approved by the U.S. Environmental Protection Agency and when approved those provisions become federally enforceable.

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing or specifically provide for decisions to be made by the board or department, it may be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by the U.S. Environmental Protection Agency in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with U.S. Environmental Protection Agency regulations and policy.

### § 120-02-09. Appeals.

A. Any owner or other person aggrieved party significantly affected by any action of the board taken without a formal hearing, or by inaction of the board, may demand request a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or other person [ or party requesting notification of such action ] .

B. Prior to any formal hearing, the board shall, provided all parties consent, ascertain the fact basis for its decision in accordance with § 9-6.14:11 of the Administrative Process Act an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless waived by the board.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. [ Any owner or other person aggrieved by a final decision of the board may appeal such decision Judicial



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*review of a final decision of the board shall be afforded ]* in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act. ~~Any petition for appeal shall be filed within 30 days after the date of such final decision.~~

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or *any notice or petition* for an appeal by itself shall not constitute a stay of decision or action.

## § 120-02-10. Right of entry.

Whenever it is necessary for the purposes of these regulations, the board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 of the Virginia Air Pollution Control Law.

## § 120-02-11. Conditions on approvals.

A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to such conditions, the board may automatically cancel such permit or approvals. Without limiting the generality of this section, this section shall apply to: approval of variances, approval of control programs, granting of new or modified source permits and granting of open burning permits.

B. An owner may consider any condition imposed by the board as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the board pursuant to § 120-02-09.

## § 120-02-12. Policy and procedural information and guidance.

A. The board may adopt detailed *policies and procedures* which:

1. Require data and information in addition to and in amplification of the provisions of these regulations;
2. ~~Are reasonably designed~~ *Specify the methods and means to determine compliance with applicable provisions of these regulations; and*
3. Set forth the format by which all data and information shall be submitted : ; *and*
4. *Set forth how the regulatory programs shall be implemented.*

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the board shall furnish in writing such information on a case-by-case basis.

## § 120-02-13. Delegation of authority.

In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the executive director such administrative, enforcement and decision making powers as are set forth in Appendix F.

## § 120-02-14. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

A. The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;

B. The social and economic value of the activity involved;

C. The suitability of the activity to the area in which it is located; and

D. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

## §§ 120-02-15 through 120-02-29. Reserved.

## § 120-02-30. Availability of information.

~~A. Emission data provided to, or otherwise obtained by, in the possession of the board in accordance with the provisions of these regulations shall be available to the public without exception .~~

B. ~~Except as provided in subsection A of this section, any other records, reports or information provided to, or otherwise obtained by, in the possession of the board in accordance with provisions of these regulations shall be available to the public ; except that: with the following exception.~~

1. Upon a showing satisfactory to the board by any owner that such records or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such owner, the board shall consider such records, reports or information, or particular part thereof, confidential in accordance with the purposes of § 10.1-1314 of the Virginia Air

~~Pollution Control Law except that such~~ The board shall consider such records, reports or information, or particular part thereof, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board by any owner that such records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible party for the owner. Such [ records, ] reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act ; and .

~~2. Information received by the board in accordance with § 120-02-31, § 120-02-32, Part VII and Part VIII of these regulations shall not be disclosed if it is identified by the owner as being a trade secret or commercial or financial information which such owner considers confidential.~~

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;

2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

3. Information which is not publicly available from sources other than the owner; and

4. Information the disclosure of which would cause substantial harm to the owner.

D. The board shall have the right to substitute information [ received from sources ] which [ are is ] not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. [ Upon approval of the board, an owner may substitute information which is not confidential for information claimed as confidential. ] Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board as the information for which the inquiry is made.

E. Any responsible party for an owner who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

§ 120-02-31. Registration.

The owner of any stationary source to which permits are issued under Part VIII or for which emission standards are given in Parts IV, V or VI shall, upon request of the board, register such source operations with the board and update such registration information. The information required for registration shall be determined by the board and shall be provided in the manner specified by the board. Owners should review the emission standard for their respective source type to identify the exemption levels for purposes of this section.

§ 120-02-32. Control programs.

A. Under the provisions of § 120-02-03 A, the board may require an owner of a stationary source to submit a control program, in a form and manner satisfactory to the board, showing how compliance shall be achieved as quickly as possible.

B. The board shall act within 90 days of receiving an acceptable control program. A public hearing will be held within this period. The hearing shall be held only after reasonable notice, at least 30 days prior to the hearing date, which shall include:

1. Notice given to the public by advertisement in at least one major newspaper of general circulation in the affected air quality control region;

2. Availability of the information in the control program (exclusive of confidential information under the provisions of § 120-02-30) for public inspection in at least one location in the affected air quality control region; and

3. Notification to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and the regional administrator of the U.S. Environmental Protection Agency.

C. When acting upon control programs, the board shall be guided by the provisions of the federal Clean Air Act.

D. The board may require owners submitting a control program to submit periodic progress reports in the form and manner acceptable to the board.

E. The board normally will take action on all control programs within 30 days after the date of the public hearing unless more information is required. The board shall notify the applicant in writing of its decision on the control program and shall set forth its reasons therefor.

F. The owner may appeal the decision pursuant to § 120-02-09.

§ 120-02-33. Reserved.

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§ 120-02-34. Facility and control equipment maintenance or malfunction.

A. At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number.
2. The expected length of time that the air pollution control equipment will be out of service.
3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period.
4. Measures that will be taken to minimize the length of the shutdown or to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than four daytime business hours, notify the board by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within two weeks provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of §§ 120-04-05 C and 120-05-05 C are not required to provide the written statement prescribed in this paragraph for facilities subject to the monitoring requirements of §§ 120-04-04 and 120-05-04. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, within 30 days of the failure or malfunction and semi-monthly thereafter until the failure or malfunction is corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number.

2. The expected length of time that the air pollution control equipment will be out of service.

3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period.

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period.

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the provisions of these regulations within 30 days of the malfunction or failure.

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the provisions of these regulations.

7. Any other pertinent information as may be requested by the board.

E. The procedural requirements of subsection D of this section shall not apply beyond three months of the date of the malfunction or failure. Should the breakdown period exist past the three-month period, the owner may apply for a variance in accordance with § 120-02-05 A.

F. The following special provisions govern facilities which are subject to the provisions of Rule 4-3, Rule 5-3 or Rule 6-1:

1. Nothing in this section shall be understood to allow any such facility to operate in violation of applicable emission standards, except that all such facilities shall be subject to the reporting and notification procedures in this section.

2. Any facility which is subject to the provisions of Rule 6-1 shall shut down immediately if it is unable to meet the applicable emission standards, and it shall not return to operation until it is able to operate in compliance with the applicable emission standards.

3. Regardless of any other provision of this section, any facility which is subject to the provisions of Rule 4-3 or 5-3 shall shut down immediately upon request of the board if its emissions increase in any amount because of a bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment; and such facility shall not return to operation until it and the associated air pollution control equipment are able to operate in a proper manner.

G. No violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions, or cessation of monitoring activities is due to a malfunction, provided that:

1. The procedural requirements of this section are met or the owner has submitted an acceptable application for a variance, which is subsequently granted;

2. The owner has taken expedient and reasonable measures to minimize emissions during the breakdown period;

3. The owner has taken expedient and reasonable measures to correct the malfunction and return the facility to a normal operation; and

4. The source is in compliance at least 90% of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in these regulations.

I. Regardless of any other provision of this section, the owner of any facility subject to the provisions of these regulations shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years following the date of the occurrence.

## ALCOHOLIC BEVERAGE CONTROL BOARD

### Title of Regulations:

VR 125-01-2. Advertising.

VR 125-01-3. Tied House.

VR 125-01-4. Requirements for Product Approval.

VR 125-01-5. Retail 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 13, 1993.

### Summary:

*Numerous regulations are being amended, some of which relate to (i) the advertising of nonalcoholic beer and nonalcoholic wine; (ii) combination packaging for wine; (iii) manufacturers, bottlers and wholesalers supplying placemats, coasters, napkins and back-bar pedestals to retailers under limited conditions; (iv) radio advertising of low-proof distilled spirits products; (v) no limitation on the number of distilled spirits brands which may be listed on clip-ons and table tents; (vi) allowing brewpubs to use growlers to sell their beer to consumers for off-premises consumption; (vii) limiting a licensed club from obtaining a banquet special events license or a mixed beverage special events license more than 12 times annually for the unlicensed portion of its premises; (viii) the definition of "gift shop"; (ix) the acceptance of credit or debit cards by A.B.C. stores for the retail purchase of alcoholic beverages; and (x) keg registration.*

### **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 regulation of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical, 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. 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.

#### D. Exceptions.

The board may issue a permit authorizing a variance

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from any of its advertising regulations for good cause shown.

## E. General restrictions.

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

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent 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. Constitutes or contains a contest or 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 refund coupons as provided in § 9 of this regulation and combination packaging [ for wine. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer ].

F. The board shall not regulate advertising of nonalcoholic [ beverages beer ] or [ other ] nonalcoholic [ products wine ] so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages or beverages and (ii) [ the advertising does not contain any statement, symbol, depiction or reference to the name of a brand or the name or logo of a manufacturer of alcoholic beverages.

However, if the nonalcoholic beverage's name makes reference to the name of a brand or manufacturer of alcoholic beverages and [ the advertising prominently states that the product is [ a ] nonalcoholic [ beer or nonalcoholic wine, then such advertising is permitted. ] .

§ 2. Advertising; interior; retail licensees.

## 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[ ; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with the provisions of VR 125-01-2 § 1 F ] .

B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:

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 [ , canvas ] or plastic stock; however, [ canvas advertising materials shall be restricted to fabric banners containing only two-dimensional display surfaces and ] 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. Notwithstanding subdivision B 2 above, retail [ on-premises and on- and off-premises ] licensees may display any permanent point-of-sale advertising pertaining to nonalcoholic beer or nonalcoholic wine [ as long as such advertising complies with VR 125-01-2 § 1 F ] . Any such brand of nonalcoholic beer or nonalcoholic wine may be offered for sale in the retail establishment. Such permanent point-of-sale advertising may [ be obtained by retailers from any

source, including manufacturers, bottlers and wholesalers of alcoholic beverages; provided that the total value of such advertising furnished by industry members may not exceed \$160 per brand in any one calendar year per retail establishment; and not be supplied, installed, maintained or otherwise serviced by any manufacturer, bottler or wholesaler of alcoholic beverages; ]

3. 4. 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 [ , canvas ] 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; however, manufacturers, bottlers or wholesalers may supply to retailers napkins, placemats, coasters and back-bar pedestals which contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine as permitted under VR 125-01-2 § 1 F, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo and address of the sponsoring manufacturer, bottler or wholesaler, provided such recognition is subordinate to the message, occupies no more than 10% of the space, and contains no reference to or

pictures of the sponsor's brand or brands;

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 6 ] 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 of a wine manufacturing area ; which have been shipped in the case ; and ~~the~~ 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.~~ h. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2;

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. 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 mark or affix retail prices on these materials.

E. Every retail [ ~~on-premises and on- and off-premises~~ ] licensee who, pursuant to subdivision subdivisions B 2[ ~~and~~ or B ] 3 above, obtains any mechanical or illuminated advertising devices which 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 person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price

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charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designated 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; 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 tour 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;

Advertising placed by a manufacturer, bottler or wholesaler in trade publications or 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 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 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.

A. Distilled spirits [ *Except as provided in subsection B,* ] alcoholic beverage advertising of products greater than 14% alcohol [ ; *except for alcoholic beverages subject to subsection B;* ] by distillers manufacturers , 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 or wine , such as "whiskey," "whiskey" or "chardonnay" is referred to, statements as to contents may be omitted.

c. Type size. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

2. Prohibited statement. Any reference to a *distilled spirits* 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.

B. [ *Electronic* ] advertising of alcoholic beverages containing more than 14% alcohol but less than 22% alcohol [ *on the radio* ] shall [ *not depict or describe the consumption of alcoholic beverages for the effect their alcohol content may produce or appeal to persons below the legal drinking age. Such advertising shall be permitted as long as it emphasizes* ] that [ *such* ] alcoholic beverages are traditionally served with meals or immediately before or following a meal.

§ 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 \$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 \$5.00 in wholesale value, limited to one item per retailer and [ , and ] one item per employee ; [ *and one item per patron* ] , per visit ; which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers, brokers,



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wholesalers or their representatives may give such items to patrons on the premises of retail licensees; [ *Retailers and employees may not display such items on the licensed premises, 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 \$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 ease to retailers . Wholesalers may not be involved in the redemption process.

§ 7. Advertising; fairs and trade shows; 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 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 alcoholic beverages and beverages; and

3. Distribution of novelty and specialty items bearing alcoholic beverage and beverage advertising not in excess of \$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. *Beer refund* 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 *beer* licensees in Virginia may not put them on the package at the wholesale premises and coupons may not be shipped in the ease to retailers . Wholesale *wine* licensees may attach *refund* coupons to the package and wholesale *wine* licensees 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 for each retailer or his representative.

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 their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

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. 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. Any sponsorship on a college, high school or younger age level 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 & 6 ] F, table tents as defined in VR 125-01-3 § [ 8 & 6 ] G and canisters are permitted;
8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving

the date, time and place of it; and

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.

##### 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 beer products only.

##### 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

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or money refunded;

c. Products that a manufacturer discontinues nationally may be returned and money refunded;

d. Resaleable draft beer or beverages may be returned and money refunded;

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;

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

g. Beer wine may be exchanged on an identical quantity, brand and package basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

## § 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.

## § 3. § 2. 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.

§ 4. § 3. 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, 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 (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, money orders and electronic fund transfers.

If a check, 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 checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages or beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, 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.

**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 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 any invalid checks or incomplete electronic fund transfer reports received in payment of wine, beer or beverages when either (i) any such invalid check or 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.

**F. Payments to the board.**

Payments to the board for the following items shall be

for cash, as 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.

§ 5- § 4. 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

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## 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.

~~§ 6.~~ § 5. 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 § 3 .

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 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.

~~§ 7.~~ § 6. 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);

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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 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 \$5.00. Openers in excess of \$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 [ , canvas ] and plastic advertising [ materials ].

[ Any ] Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide [ alcoholic beverage point-of-sale ] advertising [ for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine ] to retail licensees except in accordance with VR 125-01-2 § 2.

[ G. Permanent point-of-sale advertising for nonalcoholic beer and nonalcoholic wine.

*Manufacturers, bottlers or wholesalers of alcoholic beverages may provide retail licensees with permanent point-of-sale advertising for nonalcoholic beer and nonalcoholic wine only in accordance with VR 125-01-2 § 2. ]*

G. [ H. 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 ; or four beers and four brands of distilled spirits . There is no limitation on the number of distilled spirits brands which may be listed on clip-ons and table tents.

H. [ I. 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. [ J. 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. [ K. 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.

§ 8. § 7. Routine business entertainment; definition; permitted activities; conditions.

A. Generally.

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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 125-01-4. Requirements for Product Approval.

### § 1. Distilled spirits; definitions and standards of identity.

Distilled spirits sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. Applicants shall furnish the board a certified copy of the approval of the label by such federal agency.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.

### § 2. Wines, qualifying procedures; disqualifying factors; samples; exceptions.

#### A. Qualifying procedures.

All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of wine offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through government stores shall be subject only to a registration fee in such amount as may be established by the board.

3. All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.

5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.

## B. Disqualifying factors as to contents.

While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;
2. If the alcoholic content exceeds 21% by volume;
3. Which is a wine cocktail containing any ingredient other than wine.

## C. Disqualifying factors as to labels.

While not limited thereto, the board shall withhold approval of any label:

1. Which contains the name of a cocktail generally understood to contain spirits;
2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;
3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;
4. Which contain the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;
5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;
6. Which contains subject matter designed to induce minors to consume alcoholic beverages, or is suggestive of the intoxicating effect of wine;
7. Which contains any reference to a game of chance;
8. Which contains any design or statement which is likely to mislead the consumer.

## D. Samples.

A person holding a license as a winery, farm winery or a wholesale wine distributor shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the board may require recertification of the

merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

## E. Exceptions.

Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

§ 3. Wine containers; sizes and types; on- and off-premises limitations; cooler dispensers; novel containers; carafes and decanters.

### A. Sizes generally.

Wine may be sold at retail only in or from the original containers of the sizes of 1.7 ounces (50 ml. if in a metric sized package) or above which have been approved by the appropriate federal agency.

### B. On-premises consumption.

Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original package with closure.

### C. Off-premises consumption.

Wine shall not be sold for off-premises consumption in any container upon which the original closure has been broken.

### D. Cooler-dispensers.

The sale of wine from cooler-dispensers is prohibited unless the device is designed so that the original container becomes a part of the equipment, except that frozen drink dispensers or containers used in automatic dispensing may be used if approved by the board.

### E. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the following factors: nature and composition of the container; length of time it has been employed for the purpose; the extent to which it is designed or suitable for those uses; the extent to which the container is a humorous representation; whether the container is dutiable for any other purpose under custom laws and regulations.

### F. Carafes or decanters.

Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity.



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§ 4. Beer and beverage containers; sizes; off- and on-premises limitations; novel containers; opening devices.

A. Generally.

Beer and beverages may be sold at retail only in or from the original containers of the sizes which have been approved by the appropriate federal agency.

B. Off- and on-premises limitations.

No beer or beverages shall be sold by licensees for off-premises consumption in any container upon which the original closure has been broken, *except for a growler or reusable container that is federally approved to hold a malt beverage, has a resealable closure and is properly labeled. Growlers may only be used by brewpubs.* Further, licensees shall not allow beer or beverages dispensed for on-premises consumption to be removed from authorized areas upon the premises.

C. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the factors set forth in § 3 of this regulation.

D. Opening devices.

No retail beer licensee shall sell at retail any beer or beverage packaged in a metal container designed and constructed with an opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container.

§ 5. Beer and beverages; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Qualifying procedures.

Beer and beverages sold in this Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of beer or beverages offered for sale in the state. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that beer and beverages offered for sale in another state with which this Commonwealth has an analysis and certification exchange agreement shall be subject only to a

registration fee in such amounts as may be established by the board.

3. All beer and beverages sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer or beverages originally approved by the board.

B. Samples.

A person holding a license as a brewery or as a wholesale beer distributor shall upon request furnish the board without compensation a reasonable quantity of each brand of beer or beverage sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

C. Exceptions.

Any beer or beverage whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer or beverage was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

D. Disqualifying factors as to labels.

While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;
2. Implies the product contains above average alcohol for beer;
3. Is suggestive of intoxicating effects;
4. Would tend to induce minors to consume;
5. Would tend to induce persons to consume to excess;
6. Is obscene, lewd or indecent;
7. Implies or indicates that the product is government (federal, state or local) endorsed;
8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team;

9. Implies endorsement of the product by any prominent living person;

10. Makes any humorous or frivolous reference to any intoxicating drink.

## 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.

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

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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, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales. 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 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;

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Monthly sales ..... \$2,000

Inventory (cost) ..... \$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 ..... \$1,000

Inventory (cost) ..... \$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 ..... \$1,000

Inventory (cost) ..... \$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 food :

Monthly sales .....\$2,000

2. "Restaurant." A bona fide dining establishment habitually selling meals with entrees and other foods prepared on the premises:

Monthly sales .....\$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 .....\$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 food :

Monthly sales .....\$2,000

2. "Restaurant." An establishment habitually selling food prepared on the premises:

Monthly sales .....\$2,000

3. "Hotel." See subdivision B 3;

Monthly sales .....\$2,000

4. "Tavern." An establishment where food and refreshment, including beer or beverages, are habitually sold for on-premises consumption.

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## 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 \$4,000 of which at least \$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. "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. 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.

## 5. "Tables and counters."

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. 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.

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. Special events licenses.

*A licensed club may not obtain a banquet special events license or a mixed beverage special events license for use on its premises. [ However, a club may obtain a banquet special events license or a mixed beverage special events license not more than 12 times per calendar year upon the unlicensed portion of its premises. ]*

## D. E. 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. F. 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. G. Financial statements.

Each club licensee shall 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:



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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 separated 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 \$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;

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

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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 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 and gift shops ; wine and beer off-premises and wine off-premises licenses; conditions; records; inspections.

### A. Qualifications.

Pursuant to the provisions of §§ 4-25 A 13 and 4-25 A 23 of the Code of Virginia, the board may grant (i) retail wine and beer off-premises licenses to persons operating a registered historical site or museum specialty store or (ii) retail wine off-premises licenses to persons operating gift shops .

### B. Restrictions and conditions.

1. A historical site or museum specialty store shall be defined as (i) any bona fide retail store selling, predominately, gifts, books, souvenirs and specialty items relating to history, in general, or to the site or any exhibits ~~(†)~~ ; (ii) 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 ~~(††)~~ (iii) which is located within the premises of a museum which is open to the public on a regular basis ; and (iv) provided in either case that such store is located within a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

2. A gift shop shall be defined as any bona fide retail

store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine.

3. 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 or gift shop within the meaning of this section.

4. Specialty store and gift shop 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.

5. A Specialty store and gift shop retail license shall authorize the licensee to sell at retail alcoholic beverages in accordance with their license privileges, 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 or gift shop retail license.

6. 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.

7. Every person licensed to sell alcoholic beverages under the provisions of this regulation shall comply with VR 125-01-7 § 9.

§ 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.

§ 22. 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 beverage, or beverages.

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.

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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 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 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.

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.

## D. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose. They shall be stored at the permittee's place of business, separate and apart from all other commodities.

§ 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:

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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.

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 *at the permittee's place of business for a period of two years*; and

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. Permits for persons having alcoholic beverages distilled.

## A. Permits.

Any person who contracts with or engages a licensed distiller or fruit distiller to manufacture distilled spirits from grain fruit, fruit products or other substances grown or lawfully produced by such person shall obtain a board permit 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) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of distilled spirits samples to the person growing or producing the substance distilled. Samples shall be packaged in containers of 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.



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## 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 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 sale of food and nonalcoholic beverages at such establishment shall be not less than 45% of the gross receipts from the sale of mixed beverages and 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.

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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.

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. 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.

§ 17. Credit and debit cards.

*Government stores may accept credit or debit cards from consumers for the retail purchase of alcoholic beverages. The board may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties or service charges where appropriate, establish credit procedures for returned merchandise and make any other decisions to carry out the purpose of this regulation.*

§ 18. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. Generally.

*The following definitions shall apply for purposes of this section:*

1. "Keg." Any container capable of holding four gallons or more of beer, wine or beverages and which is designed to dispense beer, wine or beverages directly from the container for purposes of consumption; and

2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker or device approved by the board which is designed to be affixed to kegs and which displays a registration number and such other information as may be prescribed by the board.

## B. Permits.

The board may grant to any person licensed to sell wine, beer or beverages at retail for off-premises consumption, a permit to sell such alcoholic beverages or beverages in kegs for off-premises consumption. Such permit shall be subject to suspension or revocation, as provided in § 4-37 of the Code of Virginia. No permit shall be required, however, to sell alcoholic beverages or beverages in kegs to banquet licensees or to retail licensees for on-premises consumption. [ Sales of such kegs to banquet licensees shall only be permitted upon presentation of a banquet license by the purchaser to the seller. ]

## C. Restrictions.

1. No person licensed by the board to sell wine, beer or beverages at retail for off-premises consumption, or any officer, agent or employee thereof, shall sell any such alcoholic beverage or beverages in a keg without having (i) obtained a permit pursuant to subsection B of this section authorizing such sales, (ii) registered the sale on a form prescribed by the board, and (iii) affixed a registration seal on the keg at the time of sale; provided, if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G of this section, the wholesale licensee shall affix the registration seal.

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the board shall be properly completed and shall contain:

a. The name and address of the purchaser verified by valid identification as defined in VR 125-01-5 § 2 B.

b. The type and number of the identification presented by the purchaser;

c. A [ ~~sworn~~ ] statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons under 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and

d. The particular address or location where the keg will be consumed, and the date or dates on which it will be consumed.

3. Where the purchaser obtains more than one keg for

consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. Such keg registration declaration and receipt forms which contain the reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove [ and obliterate ] the keg registration seal from the keg and [ ~~attach it to the copy of note such action on~~ ] the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. [ The retail licensee shall issue to the consumer a returned keg receipt containing (i) the reference number of the fully completed keg registration declaration and receipt form; and (ii) the date upon which the retail licensee received the returned kegs. ] Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

D. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

[ E. The retail licensee shall immediately notify the board when the purchaser obtains more than one keg for consumption at the same location and on the same date. ]

[ F. E. ] Except in accordance with these regulations, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this regulation. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee of the board is in possession of a keg containing alcoholic beverages, and which keg does not bear the [ registered registration ] seal, or upon which keg the registration seal has been altered, defaced or obliterated, [ there shall be a presumption that such person unlawfully removed, altered, defaced or obliterated the registration seal the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture ] .

[ G. F. ] Any retail licensee granted a permit by the board pursuant to subsection B of this section shall maintain a complete and accurate record of all registration forms and other documentation of the sale of

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kegs at the place of business designated in his license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall at all reasonable times be open to inspection by the board or its authorized representatives, and other law-enforcement officers. [ ~~If any person returns a keg to the retail licensee which keg does not bear the registration seal, or upon which keg the registration seal has been altered, defaced or obliterated, the retail licensee shall report the same on a form prescribed by the board.~~ ]

[ ~~H. G.~~ ] Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg [ ; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to VR 125-01-3 § 3 ] .

[ ~~F. H.~~ ] Except as authorized by the board, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply, however, to the return of the registered container to the seller.

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

**Title of Regulation:** VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing Impaired .

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

**Effective Date:** January 13, 1993.

### Summary:

These regulations are amended to incorporate a cued speech assessment in the Virginia Quality Assurance Screening (VQAS). Cued speech is a system of hand shapes used in conjunction with speech to assist in lip reading. There are cued speech transliterators in the school systems using this communication method to convey information to and receive information from individuals who are deaf. By including such an assessment, the Virginia Department for the Deaf and Hard of Hearing (VDDHH) demonstrates the desire to meet the needs of all individuals who are deaf and hard of hearing within the Commonwealth by providing standardized assessment of skill level.

VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

“ASL” (American Sign Language) means the [ ~~manual~~ visual-manual ] language predominantly used by members of the deaf community.

“Assessment team” refers to the group of individuals who serve on the panel for Virginia Quality Assurance Screenings.

“Candidate” refers to any person who has applied to take the Virginia Quality Assurance Screening.

“Certified interpreter” refers to an advanced level interpreter who holds valid certification issued by the Registry of Interpreters for the Deaf, Inc., or a cued speech [ ~~interpreter~~ transliterator ] certified by the National Cued Speech Association.

“Closed screening” means a screening which may be offered to a group who has requested a screening for at least eight candidates within that group. Candidates on the waiting list to be screened may not be notified of closed screenings.

“Code of ethics” means the guidelines for interpreters as established by the national Registry of Interpreters for the Deaf, Inc. [ , and the Code of Conduct of the National Cued Speech Association TEC Unit ] .

“Consumer” refers to any individual [ ~~with or without a~~ : deaf, hard of hearing or ] hearing [ ~~impairment~~ ] who is a recipient of interpreter services.

“Coordinator” refers to the Coordinator of Interpreter Programs the Virginia Quality Assurance Screening in the Department for the Deaf and Hard of Hearing.

“Cued speech” means [ ~~the phonetically-based hand supplement to speechreading which is independent to all sign language modalities: a phonemically-based system used in conjunction with speech reading, comprised of handshapes representing consonant sounds and positions about the face representing vowel sounds.~~ ]

“Deaf” refers to any person [ ~~whose hearing is totally impaired or whose hearing, who has a hearing loss such that~~ ] with or without amplification [ ; ] is [ ~~so seriously impaired that the~~ unable to receive information in an auditory fashion and whose ] primary means of receiving [ ~~spoken~~ ] communication is through visual input such as lip reading, sign language, finger spelling, [ cued speech, ] reading or writing.

"Department" means the Virginia Department for the Deaf and Hard of Hearing.

"Director" refers to the Director of the Virginia Department for the Deaf and Hard of Hearing.

"Directory" means the listing of qualified interpreters for the hearing impaired deaf and hard of hearing as compiled by the department.

"Expressive" means to convey a spoken message into a visual equivalent.

"Freelance" means to contract independently without long-term contractual commitments to any one employer.

"Hard of hearing" refers to any person [ whose who has a hearing loss such that ] hearing is [ impaired to an extent that makes hearing ] difficult but [ does not preclude ] the understanding of spoken communication through the ear alone, with or without a hearing aid [ , is not precluded ] .

"Hearing" refers to any person who is able to comprehend conversational speech without an assistive device and who can speak intelligibly .

"Hearing-impaired" refers to any person who is unable to comprehend conversational speech without the aid of an assistive device, such as a hearing aid, audible loop, or interpreter.

"Interpret" means to accurately convey messages without personal interjection between two or more parties using two languages.

"Interpreter" refers to any person who [ intermediates for the purpose of facilitates ] communication between two or more parties using different languages or different forms of the same language and refers to sign language [ ; interpreter/transliterators and ] oral [ ; ] and cued speech [ interpreters and ] transliterators. When the term is used to specifically identify an interpreter who interprets using ASL, this text will so indicate.

"Interpreting (ASL)" means the specific process of interpreting ASL vocabulary, structure, and [ grammatical ] components and does not include oral [ ; or ] cued speech [ ; transliterating ] or [ other ] forms of [ interpreting manual communication ] using an English-based structure. The term is used specifically herein when discussing components of the VQAS assessment process.

"Manually-coded English" means any form of manual communication which utilizes specified handshapes to represent English syntax.

"MLS" (Minimal Language Skills) means a communication model, which may include informal gestures and home signs, characterized by limited, or minimal, expressions based on a recognized language.

[ "National Cued Speech Association" (NCSA) means the national training, evaluation, and certification unit of cued speech transliterators. ]

[ "Oral" means a communication mode which is dependent upon speech reading and spoken communication. ]

"Panel" refers to the people selected to serve on an assessment team of the Virginia Quality Assurance Screening.

"Panelist" refers to any person who has satisfied the requirements for serving as a member of the assessment team for quality assurance screenings during live panel rating sessions .

"QAS" (Quality Assurance Screening) means the process of assessing candidates to determine a level of interpreting competency. Standards established for the QAS are based on those originally set forth by the national Registry of Interpreters for the Deaf, Inc.

"Qualified interpreter" refers to an interpreter who currently holds [ valid national certification or a state screening/evaluation level and is able to understand and be understood by the consumers; at least one of the following credentials:

1. Certification from any national organization whose certification process has been recognized by the Department for the Deaf and Hard of Hearing; or
2. A current screening level awarded by the Virginia Quality Assurance Screening Program of the Department for the Deaf and Hard of Hearing; or
3. A screening level or recognized evaluation from any other state when (i) the credentials meet the minimum requirements of Virginia Quality Assurance Screening and (ii) the credentials are valid and current in the state issued. ]

"Rater" refers to any person who has satisfied the requirements for serving as a member of the assessment team for rating videotapes of candidates who participate in the Virginia Quality Assurance Screening.

"Receptive" means to convey a visual message into a spoken equivalent.

"RID" (Registry of Interpreters for the Deaf, Inc.) means the national governing body membership organization of the interpreting profession.

"Screening" means the Virginia Quality Assurance Screening.

"Screening level" means the level of competency awarded to an interpreter who has successfully satisfied the minimum standards established for VQAS.

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"Service provider" refers to the person requesting interpreter services who may or may not also be the consumer.

"Transliterate" means to accurately convey messages without personal interjection between two or more parties using different forms of the same language, such as written or spoken English and a manually-coded form of English [ or cued speech ].

"VQAS" means Virginia Quality Assurance Screening , which is designed to assess interpreting and transliterating skills of interpreters who facilitate communication between persons who are deaf or hard of hearing and persons who are hearing, and is administered by the Virginia Department for the Deaf and Hard of Hearing .

## PART II. ADMINISTRATION OF INTERPRETER SERVICES.

### § 2.1. Responsibilities of the department.

#### A. The department will:

1. ~~Compile a directory of qualified interpreters; Refer and assign only qualified interpreters to consumers and service providers; and~~

2. ~~Compile a directory of qualified interpreters.~~

#### B. Upon request, the department may:

~~1. Distribute the directory upon request ;~~

~~2. Maintain a list of directory recipients and distribute updates; [ or ]~~

~~3. Refer only qualified interpreters to consumers and service providers; and~~

~~4. Assist consumers and service providers in selecting an appropriate interpreter when requested [ ; or ]~~

~~[ 4. Provide information about the different levels of qualifications and the various modes of communication. ]~~

#### C. The department may:

1. Assign interpreters when requested by a consumer or service provider; and

2. Compensate interpreters from available funds appropriated for that purpose ; ; and

3. Refer qualified interpreters directly to the service provider or consumer.

~~G. [ D. The department will provide, upon request, information about the different levels of qualifications and~~

~~the various modes of communication and will assist consumers in selecting an interpreter with the appropriate skills: ]~~

### § 2.2. Directory of qualified interpreters.

A. A qualified interpreter listed in the directory ~~holds shall hold~~ at least one of the following credentials:

1. [ Valid ] RID certification;

2. Current VQAS screening level;

3. Certification issued by the National Cued Speech Association; or

4. A screening level or recognized evaluation from another state when:

a. The credentials meet the minimum requirements of VQAS; and

b. The credentials are valid and current in the state issued.

NOTE: [ ~~Notwithstanding~~ An interpreter listed in the directory with qualifications in ] subdivision 4 of this subsection, [ the interpreter ] must receive ~~shall~~ [ hold apply for and receive ] a VQAS screening level or national certification [ prior to within ] one year from the date [ originally ] listed in the directory.

B. Before an interpreter will ~~shall~~ be listed in the directory, the department will:

1. Verify the validity of all credentials;

2. Ensure that all credentials are current; and

3. Obtain a written request from the interpreter to be listed in the directory as a qualified interpreter.

### § 2.3. Appeal procedure.

If an interpreter desires to contest the department's decision to exclude that interpreter's request to be listed as a qualified interpreter, that interpreter must file a written appeal with the director within 30 working days of the determination. The director, or designee, shall provide an informal conference with that interpreter within 30 working days from the date received. *The final decision will be determined by the director who will provide written notification of that decision within 30 working days of the conference.*

## PART III. VIRGINIA QUALITY ASSURANCE SCREENINGS (VQAS).

In order to maintain the referenced directory and ensure the maintenance of quality interpreter services, the

department will administer Virginia Quality Assurance Screenings in accordance with the provisions specified in this part.

## § 3.1. Notification of intent to be screened.

Candidates interested in being screened should contact:

[ V ] QAS Coordinator  
Virginia Department for the Deaf and Hard of Hearing  
Washington Building, 12th Floor  
1100 Bank Street  
Richmond, Virginia 23219-3640  
(804) 225-2570 V/[ ~~TDD~~ TTP ] in Richmond  
(800) 552-7917 V/[ ~~TDD~~ TTP ] Toll-free Statewide

## § 3.2. Type of [ V ] QAS screening.

Candidate will notify the administering agency of intent to participate in the [ V ] QAS and which assessment will be taken.

All requests to be screened will be acknowledged by the coordinator, or designee, in writing within 30 working days of receipt of the request.

## § 3.2. § 3.3. Fee for screening.

The department may assess a fee for any each part of the screening. The fee shall not exceed the actual cost of administration. Notification of current fees shall be provided with registration forms ( § 3.4 § 3.5 ). Payment of fees shall be made received prior to administration of the candidate's participation in any portion of the assessment.

## § 3.3. § 3.4. Scheduling of screenings.

The department may offer a screening whenever [ eight or more ] candidates are waiting to be screened but screenings may be cancelled when fewer than six candidates apply to be screened as scheduled. [ A minimum of two screenings per year will be offered in geographical regions most conducive to the accessibility of candidates and ; if applicable, panelists or raters. ]

## § 3.4. § 3.5. Notifying and scheduling of candidates.

Candidates will shall be notified by mail in writing of the next scheduled screening at least 10 days prior to the scheduled date. Closed screenings may be offered upon request to groups [ of eight or more ] who satisfy the requirements established by the department for offering a screening ( § 3.3 § 3.4 ).

Candidates must complete and return the appropriate registration form requesting to be screened. The coordinator will be responsible for scheduling and confirming requests in the order received. Candidates whose requests are received after the screening schedule

has been filled shall be retained as alternates and may be contacted in the event of a cancellation or assigned to another assessment site/date .

## § 3.5. § 3.6. VQAS assessment process.

Each candidate's performance will be assessed either by a screening panel present during the assessment or videotaped and rated by individual raters [ at varying locations around the state ]. Panelists/raters will [ work within their specialty areas; assess only the segments for which they have been specifically trained. ]

### A. Assessment team.

1. A screening panel or individual ratings shall consist of at least [ three but no more than five panelists /raters with at least one panelist/rater who is hearing and one hearing-impaired panelist /rater who is deaf or hard of hearing .

[ 2. ] Hearing [ Panelists /raters who are hearing shall be qualified interpreters who have successfully completed VQAS assessment team training as administered by the department. ]

[ 3. ] Hearing-impaired [ Panelists /raters who are deaf or hard of hearing shall have successfully completed VQAS assessment team training as administered by the department. ]

[ 4. 2. ] All panelists /raters shall be fluent in [ English and the second language modality the language mode ] being assessed [ : and shall have successfully completed rater training as administered by the agency. ]

[ 5. Employees of the department may not serve as panelists /raters. ]

### B. Screening components.

Each screening is comprised of three two major categories:

1. Part I - Code of Ethics: (General knowledge and application). May Shall be administered prior to the other two categories category orally (in front of a live panel, on videotape, or both) or in writing (in the presence of a monitor).

[ NOTE: A candidate may not participate in a performance assessment until 90% competency has been demonstrated on Part I, the Code of Ethics assessment. ]

2. Part II - Skills Assessment [ (shall be administered to a candidate only after he has demonstrated the required competency criteria on Part I). ]

a. Sign Language Assessment. Interpreting (ASL )



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Performance } : (Expressive and receptive abilities using ASL vocabulary, structure, and components) and Transliterating (English) Performance (Expressive and receptive abilities using a form of manually-coded English). The assessment may be administered in front of a live panel, on videotape, or both.

b. Cued Speech. Transliterating Performance: Expressive and receptive abilities using cued speech hand shapes [ ; a form of manually-coded English and mouth movements ] . The assessment

3. Part III - Transliterating (Performance): (Expressive and receptive abilities using a form of manually-coded English)- may be administered in front of a live panel, on videotape, or both.

## C. Awarding of screening levels.

Each panelist /rater will independently assess a candidate's performance and assign a raw score for the required competencies within each category (Parts I ; and II ; and III ). Raw scores will be totaled for each part, converted to percentages, and averaged with the other panelists' /raters' scores. Part Parts I may and II will be scored independently of each other by the department when administered in writing . Depending on the results, a candidate may:

1. Not receive any level at this that time;
2. Receive a level for Interpreting (ASL) only;
3. Receive a level for Transliterating Sign Language only; or
4. Receive a level for both Interpreting (ASL) and Transliterating Sign Language; or
5. Receive a level for Transliterating Cued Speech only .

## D. Criteria for screening levels.

A screening level of I, II, III, or IV will be awarded to candidates who satisfy the minimum competency requirements. (Refer to § 3-5 § 3.6 B Screening Components.) These minimum requirements are:

1. 90% Code of Ethics (Part I) and
2. Performance Scores Parts (Part II and III ( Interpreting or Transliterating):
  - a. 95% - Level IV
  - b. 80% - Level III
  - c. 65% - Level II

d. 50% - Level I

[ NOTE: A ] Level will not be awarded [ Candidate may not participate in a Performance Assessment until ] the candidate has achieved [ 90% competency has been demonstrated on Part I, the Code of Ethics assessment. ]

E. The department will notify candidates in writing of the status of their screening results within 90 working days of the screening date.

§ 3-6. § 3.7. Validity period.

A screening level, or the results of any part as described in § 3-5 § 3.6 B, shall remain valid for three years from the date of the letter of notification .

§ 3-7. § 3.8. Appeal procedure.

If a candidate desires to contest the results of any part of a screening, the candidate must file an appeal with the director within 30 calendar days of the date of the adverse decision. The director, or designee, shall provide for an informal conference with the candidate within 30 working days. The only remedy which the director may award for the Code of Ethics (Part I) is the opportunity to retake the screening at the next scheduled date. The only remedy which the director may award for the performance component ( Parts Part II and III ) is the opportunity to be reassessed by additional panelists /raters within 90 working days.

§ 3-8. § 3.9. Confidentiality.

All [ V ] QAS materials shall be kept confidential by department personnel and other persons authorized by the department to view such materials. Candidate's scores shall also be confidential and shall not be released to persons other than the candidate without the candidate's written permission.

## MILK COMMISSION

NOTICE: The Milk Commission is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish its regulations.

Due to its length, the following regulation filed by the Milk Commission is not being published; however, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. Also, the amended text is set out below. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Milk Commission.

Title of Regulation: VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia (Regulation No. 10).

Statutory Authority: § 3.1-430 of the Code of Virginia.

Effective Date: January 1, 1993.

Summary:

*The amendment adjusts the index to delivered wholesale accounts and a component in the computation of the presumptive cost schedule. The changes in the index were driven by the fact that the index in Regulation No. 10, 7(G)2 had not been adjusted since 1980. The costs associated with delivery of milk to wholesale accounts have increased due to increase in wages, fuel, equipment, etc., associated with the delivery of milk to wholesale accounts.*

**REGULATION NO. 10.  
RULES OF PRACTICE.**

The following Rules of Practice shall be observed.

1. The sale of milk products shall be in containers of the size and butterfat content as specified by the regulations of the Virginia Department of Agriculture and Consumer Services.

2. Except as provided in paragraph 4 below, retail prices, when established by the commission, shall apply to all sales other than wholesale or where milk is sold and consumed on the premises.

3. Except as provided in paragraph 4 below, wholesale prices, when established by the commission, shall apply to sales of milk products by general distributors or subdistributors where such milk products are resold for consumption, whether on or off the premises, and shall apply to sales made by general distributors or subdistributors to hotels, restaurants, stores, licensed boarding houses, vending machine operators and other operations which have a sales tax exemption certificate as set forth in § 58.1-623 of the Code of Virginia.

4. General distributor or subdistributors may submit bids requested by any governing body of any municipality, county or state, or by the federal government, or by any agency operated by the above, or by colleges, universities and schools, either elementary or secondary whether or not they be public or private, provided:

A. That such sales are classified as Class I for the purpose of producer payments, except those sales that are made on federal reservations over which the state government has ceded jurisdiction, and

B. The general distributor or subdistributor must have been licensed by the commission to distribute milk products in the market concerned.

5. No general distributor, subdistributor or retail distributor, his officers, agents or employees, shall engage in, permit or encourage any method or device in

connection with the sale of milk the result of which method or device will be to increase, or reduce the net price to purchases above the maximum price or below the minimum price, when established by the commission.

6. General distributors or subdistributors may use a milk container's side panels and labels for paid advertisements, provided:

(1) The advertisement does not promote or refer to an existing or prospective retail or wholesale customer of Class I milk products, and

(2) The advertisement, the container, or any part thereof, is without value, and

(3) The container, or proof of purchase thereof, is not referred to in the advertisement, and

(4) Any advertisement or label, other than the distributor's dairy label, does not advertise or promote any Class I milk product distributed by the distributor, and

(5) The distributor and subdistributor certifies in writing that the advertisement has been made available to all licensed distributors within the market under equal terms and conditions and lists in the certificate all of such licensed distributors, and

(6) Written approval is obtained from the office of the commission before an advertisement or an advertising program begins. Any denials must be based on subdivisions (1) through (5) above.

7. General distributors or subdistributors shall not directly or indirectly:

A. Pay for advertising of milk in any place of business of a milk customer or prospective milk customer without first having obtained the written approval of the State Milk Commission or its authorized representative.

B. Pay for advertising by a milk customer or prospective milk customer. However, a distributor may pay at the published or prorated rate, whichever is less, for the actual space of service used for the advertising of his milk.

C. Provide a milk customer or prospective milk customer with any article for handling or serving milk except on a bona fide sale. In order to be considered bona fide such sale must meet the following minimum requirements:

(1) The sale price shall be not less than the cost (including freight and installation costs) or not less than the book value based in 10% per year depreciation of the cost to the distributor (plus installation costs).

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(2) In the event that the article has been fully depreciated on a 10-year basis the price to the milk customer or prospective milk customer or prospective milk customer shall be not less than 10% of its current replacement value whichever is the greater.

(3) In order to be considered as a cash sale, payment in full must be made by the milk customer or prospective milk customer within 31 days after installation of the article.

(4) If sale is made on other than a cash basis, as defined in subdivision (3) above, the following requirements shall apply:

(a) A down payment of not less than 10% of the total cost of the article must be made within 31 days after installation.

(b) Interest of not less than 8.0% per year must be charged on the unpaid balance due the distributor for all sales made after July 1, 1974. Interest of not less than 7.0% per year must be charged on the unpaid balance due the distributor for all sales made prior to July 1, 1974.

(c) The unpaid balance must be paid in full within a period not to exceed three years, by monthly payments at least equal to 1/36 of the initial unpaid balance. Said payments may be anticipated in part or in whole.

(d) Payment of the balance due must be secured in such a manner that the article may be repossessed for nonpayment.

(e) In the event any payment becomes overdue by 60 days the article must be repossessed immediately.

D. Combine the pricing or sale of milk with any other commodity, product, or service regardless of the cost, if any, to the distributor of such commodity, product, or service.

E. Engage in any practice or practices which may tend substantially to lessen competition in, or substantially to increase the cost of, distribution of milk.

F. Advertise, transfer, sell or offer to sell at wholesale or retail any packaged Class I product purchased for resale at less than cost. Cost shall be presumed to be the net invoice or transfer price, including all applicable discounts and/or rebates, plus 6.0%, unless a lower amount can be justified to the commission's satisfaction by the licensee. When seeking to make such a justification, the licensee shall have the burden of proof on all issues, and shall employ the accounting procedures set forth in the Fluid Milk Products Cost

Manual prepared by Case and Company, Inc., for the Virginia State Milk Commission.

G. Advertise, transfer, sell or offer to sell at wholesale any packaged Class I product processed and packaged by their own facilities, leased, or subsidiary facilities or by contractual agreement at less than cost.

(1) Cost for Class I items sold at plant dock shall be presumed to be the total of the following cost factors:

(a) The net cost of the fluid milk computed at the established Class I rate (adjusted for butterfat content).

(b) A shrinkage factor of 2.0% of the volume of each container computed at the established Class II rate for the plant average butterfat test.

(c) The net cost of any fortification and/or added ingredients.

(d) The net container cost.

(e) The net State Milk Commission assessment cost to the licensee.

(f) The weighted average of all other platform costs as determined by the current Milk Commission cost study of "Cost Created in Processing and Distributing Milk by Processing General Distributors in Virginia."

(2) The presumptive cost for Class I items delivered to wholesale accounts shall be the product of the total platform cost as set forth in subdivision G (1) above, multiplied by the following percentages:

More than 99 cases per delivery - Platform Cost x 1.05 1.0675

From 14 to 99 cases per delivery - Platform Cost x 1.10 1.125

Less than 14 cases per delivery - Platform Cost x 1.20 1.250

However, when two or more wholesale accounts purchase Class I items from a distributor under a contractual agreement that provides for consolidated billing and payment, the average case delivery for the entire group of accounts shown on the consolidated billing shall be used in lieu of delivery volume to each individual account. For the purpose of this subdivision a case shall consist of the following terms:

Container	Units
Case of Multiquart	1

Greater than Gallon)	
Case of Gallon	4
Case of Three-Quart	6
Case of Half-Gallon	9
Case of Quart	16
Case of Pint	28
Case of Half-Pint	44
Case of Ten-Ounce	32

(3) In lieu of the cost determination as set forth in subdivisions (1) and (2) of this subdivision, a licensee may substitute his costs provided they can be justified to the commission's satisfaction. When seeking to make such a justification, the licensee shall have the burden of proof on all issues, and shall employ the accounting procedures set forth in the Fluid Milk Products Cost Manual prepared by Case and Company, Inc., for the Virginia State Milk Commission.

**8. Retail distributors.**

A. Shall not purchase milk except from general distributors or subdistributors licensed in the market.

B. Shall sell in a market only that milk purchased from a general distributor or subdistributor licensed in that market.

C. Shall not combine the pricing or sale of milk with any other commodity, product, or service regardless of the cost, if any, to the distributor of such commodity, product, or service for the purpose of circumventing the below cost provisions of this regulation.

D. Shall not advertise, sell or offer to sell, at retail, any packaged Class I product at less than cost. Cost shall be presumed to be the net invoice or transfer price including all applicable discounts and/or rebates, plus 6.0%, unless a lower amount can be justified to the commission's satisfaction by the licensee. When seeking to make such a justification, the licensee shall have the burden of proof on all issues and shall employ the accounting procedures set forth in the Fluid Milk Products Cost Manual prepared by Case and Company, Inc., for the Virginia State Milk Commission.

E. Other provisions of this regulation notwithstanding, no distributor shall be prohibited from meeting a lawful competitive price below his cost as determined by the provisions of this regulation provided:

(1) A written statement is filed with the commission giving the following information prior to meeting that price:

(a) The name and address of the distributor licensee offering the competitive price he anticipates meeting, and

(b) The exact price necessary to meet competition, and

(c) The effective date of the competitive price he anticipates meeting, and

(d) The effective date of his price necessary to meet the competitor's price, and

(e) Does not at anytime sell or offer to sell at a price that is less than the competitor's price.

**DEPARTMENT OF STATE POLICE**

**Title of Regulation:** VR 545-01-07. Virginia Official Inspection Manual.

**REGISTRAR'S NOTICE:** The Department of State Police has filed a Governor's Proclamation dated July 1, 1992, which replaces pages 2 through 4 in the Official Inspection Manual. The Governor's Proclamation is being published in the Governor Section of this issue of The Virginia Register.

**DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)**

**REGISTRAR'S NOTICE:** Due to the length, the Virginia Hazardous Waste Management Regulations filed by the Department of Waste Management are not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulations is available for public inspection at the office of the Registrar of Regulations and at the Department of Waste Management.

**Title of Regulation:** VR 672-10-1. Virginia Hazardous Waste Management Regulations.

**Statutory Authority:** § 10.1-1402 of the Code of Virginia.

**Effective Date:** January 13, 1993.

**Summary:**

*The adoption of Amendment 12 to the Virginia Hazardous Waste Management Regulation on November 18, 1992, includes a number of significant changes the United States Environmental Protection Agency made to its regulations. During the period from July 1, 1990, to June 30, 1991, EPA promulgated regulations dealing with wood preserving operations, industrial boilers and furnaces, and added a number of new listings. EPA also made a number of corrections to the toxicity characteristic rule and continued with its promulgation of land disposal requirements. These and other less far-reaching changes require prompt regulatory action by the Commonwealth. At the same time, the Commonwealth*

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also incorporated a portion of the mining waste changes which were made by EPA in January, 1990. Because of a recent court decision, only a portion of these changes are included in Amendment 12. Several of the changes included in Amendment 12 make certain that provisions are no more stringent than their federal counterparts; these include changes regarding delistings, changes impacting upon "clean closures," the closed-loop recycling exclusion, transporter requirements, and notification requirements for minor permit modifications. Other minor changes were made to make the Virginia regulation consistent with those of EPA.

## VIRGINIA WORKERS' COMPENSATION COMMISSION

**REGISTRAR'S NOTICE:** These regulations are exempt from the Administrative Process Act as specified in § 9-6.14:4.1 A 2 of the Code of Virginia.

**Title of Regulation:** VR 405-20-01. Regulations Governing Individual Self-Insurance Under the Virginia Workers' Compensation Act.

**Statutory Authority:** §§ 65.2-201 and 65.2-801 of the Code of Virginia.

**Effective Date:** January 13, 1993.

### Summary:

These regulations specify the procedures and standards used by the Virginia Workers' Compensation Commission to review, certify, and monitor employers who wish to be individual self-insurers for workers' compensation in Virginia. The regulations address the minimum criteria for individual self-insurance in Virginia, the procedures used by the commission to review applications for self-insurance, the security requirements for individual self-insurers, and the basic reporting required by the commission. The regulations were developed in response to § 65.2-801 B of the Workers' Compensation Act as amended in 1991, and were modified as a result of written comments and a public hearing held in August 1992.

VR 405-20-01. Regulations Governing Individual Self-Insurance Under the Virginia Workers' Compensation Act.

### § 1. Definitions.

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

"Act" means the Virginia Workers' Compensation Act.

"Bond" means a corporate surety bond issued by a

company currently licensed by the State Corporation Commission to write bonds in Virginia.

"Commission" means the Virginia Workers' Compensation Commission.

"Current" or "currently" means in effect at the time the action is taken.

"Excess coverage" means a policy providing coverage for claims costs in excess of a specified retention level, issued by a company currently approved by the State Corporation Commission to write such coverage in Virginia.

"Group self-insurer" means an employer belonging to a group self-insurance association that has been certified by the State Corporation Commission.

"Individual self-insurer" means a public or private employer certified by the Virginia Workers' Compensation Commission as an individual self-insurer for workers' compensation.

"Private self-insurer" means a self-insured individual employer that is not a governmental entity.

"Public self-insurer" means a self-insured individual employer that is a branch of state, county, or municipal government.

### § 2. Requirements for individual self-insurance.

A. Individual self-insurance for workers' compensation in Virginia is governed by Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia. Section 65.2-801 of the Code of Virginia specifies that the Virginia Workers' Compensation Commission shall establish requirements and standards for assessing and certifying that a self-insurer is solvent, capable of meeting its existing financial obligations, and able to pay all compensation that is due to its employees. Section 65.2-808 specifies that the commission shall issue a certificate of self-insurance to those employers it approves for self-insurance, and has the right to revoke that certificate upon 30 days' notice and hearing.

Currently approved individual self-insurers in Virginia shall not be subject to §§ 3, 4, and 5 of this regulation, which apply to the initial submission and review of applications.

B. Currently approved self-insurers shall, however, be subject to all aspects of the regulations that apply after initial application and review. This shall include all requirements regarding bonds (including increases in bonds) contained in § 6, all reporting requirements in § 7, termination and withdrawal procedures in § 8, and assessment requirements in § 10. However, currently approved self-insurers shall have until January 1, 1994, to comply with the advance notification requirements

regarding excess coverage that are contained in § 7 D.

C. Applicants that are governmental entities must apply and be certified as individual self-insurers. However, under Rule 7 of the commission such public entities are required to provide neither proof of financial solvency nor any bond or security to guarantee payment of claims. The application and reporting requirements are therefore different, and more limited, for public self-insurers than they are for private self-insurers. Requirements for public employers are provided in § 9 of this regulation. Public self-insurers are also subject to § 10 (Assessments).

D. These regulations do not govern any aspect of the application, approval, or regulation of group self-insurance under § 65.2-802 of the Code of Virginia. Group self-insurance is regulated by Insurance Regulation No. 16, adopted by order of the State Corporation Commission on January 17, 1985. Group self-insurers are, however, subject to the assessment provisions of § 10 of this regulation.

E. These regulations may be amended by the commission subject to a 30-day period for public comment, and a separate 60-day period from notification until implementation.

### § 3. Applications for self-insurance.

A. Applicants for individual self-insurance shall meet the following minimum requirements:

1. At least three years of operation under the current corporate identity.
2. Positive tangible net worth.
3. No fewer than 50 full-time employees within Virginia, except that for applicants with more than 250 employees in all U.S. jurisdictions this requirement will be waived.
4. No more than one net loss within the last three years.
5. A current ratio, based on audited figures, of at least 1.00, except that upon satisfactory and acceptable proof from the applicant that the median current ratio for the applicant's industry is less than 1.0, that median ratio shall be used as the minimum standard.
6. A debt/equity ratio (total liabilities to net worth), based on audited figures, of less than 2.0, except that upon satisfactory and acceptable proof from the applicant that the debt/equity ratio for the applicant's industry is greater than 2.0, that median figure shall be used as the minimum standard.

B. All applications for self-insurance must be submitted on the current version of the Employer's Application for Individual Self-Insurance (VWC Form No. 20).

C. All applications must be filled out completely and signed by an officer of the applying corporation, or by an agent authorized by the board of directors or trustees.

D. All applications must be accompanied by:

1. The latest three years of audited financial statements.
2. The latest three years of detailed claims information.
3. An overview of program operations (if this is not included with the financial figures as part of an annual report).
4. A nonrefundable application fee in the amount currently set by the commission.

### § 4. Review of applications.

A. Completed applications will be reviewed and a decision made within 90 days.

B. Applicants will be notified that their application has been received, whether it is complete, what materials will be needed, and when a decision can be expected.

C. Applicants may be required to provide additional information in support of their applications. Such additional information may include, but is not limited to, the following:

1. Updated information on financial operations, including review of the applicant's financial records by commission staff or their agents.
2. Additional information on Virginia operations (precise manufacturing procedures, exposure to industrial chemicals, potential occupational disease exposures, loss control efforts).
3. Detailed information on accidents or diseases, including review of the applicant's accident and safety records by commission staff or their agents.

D. Applicants will be reviewed for their financial solvency, efficiency, profitability, stability, and future prospects. The review will be based on the materials submitted by the applicant and on third-party analyses and ratings of the applicant's financial operations (including ratings of its credit). Critical financial issues, indicators, and ratios include, but are not limited to, those listed below. Analysis will be in terms of the applicant's current situation, any trends over the past three years, and comparison with other employers in the same or similar industries.

1. Net worth (tangible and intangible).
2. Operating results and working capital.

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3. *Nature and proportion of assets and liabilities.*

4. *Level and nature of debt, and overall relation of debt to equity.*

5. *Independent credit ratings.*

6. *Profitability in relation to sales, assets, and net worth.*

*E. Applicants will also be reviewed in terms of their existing claims experience and their possible future exposure. To the extent possible, the analysis will be based on comparisons with other employers in the same or similar industries. Issues for review include, but are not limited to, the following:*

1. *Total number of accidents over the past three years compared to national and state rates.*

2. *Number of lost-time accidents over the past three years compared to national and state rates.*

3. *Distribution of accidents by type and severity, including amputations, fatalities, and total incapacity.*

4. *Claims costs over the past three years compared to national and state rates.*

5. *Particular hazards to the employee in terms of both continuous and catastrophic exposures.*

6. *Any other indications of increase or unpredictability in accidents, lost-time accidents, and aggregate or per-capita claims costs.*

*F. Applicants will also be reviewed in terms of their proposed management of workers' compensation claims. Elements that will be considered include, but are not limited to, the following:*

1. *Demonstration of clear corporate responsibility for managing workers' compensation claims, procedures, policies, and reserves.*

2. *Reasonableness of proposals for maintaining excess coverage (proposed carrier, retention and limits for specific coverage, retention and limits for aggregate coverage).*

3. *Feasibility of proposed plan for managing claims (including specification of a third-party administrator or description of in-house claims management operations).*

4. *Existence of loss control programs, demonstrable effectiveness of such programs, and feasibility of any proposed improvements to such programs.*

§ 5. *Notice of approval or denial.*

*A. After reviewing the application, the commission will approve it (with or without conditions), deny it, or request additional information.*

*B. If the commission approves the application, the applicant will be informed of the decision, and requested to provide the following:*

1. *A surety bond written by a company licensed by the State Corporation Commission to write such bonds in Virginia. The bond must be in the amount specified by the commission, and provided on the currently approved version of the commission bond form (VWC Form No. 21A).*

2. *Proof of excess coverage provided by a company approved by the State Corporation Commission to write such coverage in Virginia. The coverage must be in the amount stipulated in the application, subject to any modifications in limits or retention level that may have been specified as a condition of the commission's approval of the application. The coverage may not be provided by any captive or subsidiary of the self-insurer, or by any captive or subsidiary of the self-insurer's parent company.*

3. *A copy of the agreement between the applicant and the proposed third party administrator (if not already provided as part of the application).*

4. *A copy of a parental guarantee if required by the commission. The guarantee must be provided on the currently approved version of the commission's parental guarantee form (VWC Form No. 22).*

5. *Documentation that any additional conditions of the commission's approval have been met.*

*C. Once all required materials have been provided by an approved applicant, the commission will provide a Certificate of Self-Insurance (VWC Form No. 22A). This certificate continues in force so long as the applicant meets all its requirements as a self-insurer under this regulation, under other commission rules and regulations, and under the provisions of the Virginia Workers' Compensation Act.*

*D. If the approved applicant fails to provide the required information within 60 days of the notification of approval, the application shall be considered withdrawn, but may be reactivated under the provisions of § 5 E 5.*

*E. If the commission disapproves the application, the applicant will be informed of the action.*

1. *If the applicant wishes to discuss the reasons for denial in detail, a specific request may be provided either in writing or verbally.*

2. *If, on the basis of the discussion, the applicant wishes the commission to reconsider the application,*

a written request for such reconsideration must be made within 30 days from the date on which the applicant was notified of disapproval. The request must indicate the grounds for the reconsideration, and must provide evidence that any reasons for disapproval have been corrected or that the information previously provided to the commission was incomplete or incorrect.

3. The commission will reconsider the application within 60 days, and provide a written response to the applicant.

4. If the commission requires additional information, either for an initial review, or for a subsequent request for reconsideration of a disapproval, the applicant will have 30 days in which to provide the required information. If the information is not provided within that time period, the application will be considered withdrawn.

5. An application that has been withdrawn, either during review or after initial approval, may be reactivated so long as it has been no more than 180 days since the original application was submitted.

6. Applicants who have withdrawn their applications or have had their applications rejected may reapply at any time, but must meet all of the application requirements.

## § 6. Surety bonds.

A. All approved self-insurers, except those employers who already have securities on deposit, shall submit to the commission a corporate surety bond, issued by a licensed Virginia bond writer.

B. The bond may not be written by any captive or subsidiary of the self-insurer, or by any captive or subsidiary of the self-insurer's parent company.

C. The bond shall be issued on the currently approved version of the commission's bond form (VWC Form No. 21A).

D. The bond must include the phrase "and its subsidiaries" immediately after the corporate name under which self-insurance was approved.

E. If the applicant has any subsidiaries that are not to be included under the bond, a specific rider to that effect must be submitted.

F. The minimum amount of the bond shall be the larger of the following:

1. \$750,000, or
2. 2.0 times the annual incurred costs (including all reserves) for workers' compensation claims, based on

the average of costs incurred over the past three years.

G. The commission shall increase the bond to reflect:

1. Questionable incurred cost figures or unusual reserving practices by the applicant,

2. Any change in the size or nature of operations that may affect the validity of existing claims statistics, or

3. Any aspect of the employment which suggests increased, unpredictable, incalculable, or catastrophic workers' compensation exposure in the future.

## § 7. Reporting requirements.

A. The following regular reports must be submitted annually to the commission.

1. Within 60 days after the request, the self-insurer must provide a report of payroll to the commission, broken down by NCCI payroll classifications.

2. Within 60 days after the request, the self-insurer must provide a completed annual questionnaire on operations and claims experience.

3. Private self-insurers, but not public self-insurers, must also provide with the annual questionnaire:

a. Audited financial figures for the latest year of operations, and

b. A list of subcontractors who are, or may be, covered by the certificate of self-insurance.

B. The following information must be reported to the commission 30 days before the change occurs:

1. Any substantial change in corporate structure and status that affects overall management, financial soundness, or corporate names and designations.

2. Any substantial change in Virginia operations to include:

a. The addition of any subsidiary,

b. The addition of, or change to, any different kind of operation, or

c. An increase in the number of employees of more than 20% from the figure provided in the most recent annual questionnaire (or from the information in the self-insurer's original application if no annual questionnaire has yet been submitted).

3. Any decision to cease operating as a self-insurer.



# Final Regulations

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C. Any proposed change in claims management or third party administration must be sent to the commission at least 60 days prior to the proposed change.

D. The requirements listed below apply to excess coverage. All reports, notices, and requests for approval of changes in, or notices of cancellation of, excess coverage shall be provided by certified mail, addressed to "Self-Insurance Program," Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond VA 23220.

1. All excess coverage policies must contain a clause requiring 60 days advance notice of cancellation.
2. All excess coverage policies must contain a clause to the effect that the policy is automatically renewable except upon 60 days advance notice of nonrenewal.
3. Prompt notification is required for any change in carrier, any decrease or moderate increase in retention level, or any increase or moderate decrease in indemnity limits.
4. Thirty days prior notice, subject to commission approval, is required for any change in excess coverage that involves more than a 25% decrease in indemnity limits or more than a 25% increase in retention levels.

E. Self-insurers must also respond to individual requests for information from the commission. Such requests may include, but are not limited to, the following:

1. Quarterly financial reports.
2. Clarification of information provided in regular reports.
3. Information on particular accidents and claims.
4. Copies of insurance policies and endorsements.
5. Copies of claims management and loss control reports and statistics.

F. The commission reserves the right to conduct independent audits of a self-insurer's financial records, claims management practices, and safety and loss control programs. Such audits may be conducted by commission staff or by their authorized agents.

## § 8. Termination and withdrawal.

A. The commission may revoke the privilege of self-insurance. Reasons for revocation include, but are not limited to, the following:

1. Deteriorating financial condition.
  - a. Seriously deteriorating financial condition, as

evidenced by poor financial indicators, negative net worth, or sequential net losses, may result either in termination of the Certificate of Self-Insurance under § 8 B or a requirement to increase the bond and/or excess coverage amounts.

b. Moderately deteriorating financial condition, as evidenced by poor financial indicators, low net worth, or a net loss, may result in a requirement to increase bond and/or excess coverage amounts.

## 2. Deteriorating accident and claims situation.

a. Substantial increase in number or cost of claims may result in termination of the Certificate of Self-Insurance or a requirement to increase the bond and/or excess coverage amounts.

b. Moderate increase in number or cost of claims may result in a requirement to increase bond and/or excess coverage amounts.

## 3. Failure to provide required reports.

4. Failure to respond to commission requests for information within 30 days.

5. Provision of inaccurate or misleading information to the commission regarding financial condition, claims experience, or claims management.

6. Failure to manage claims according to Virginia requirements.

7. Failure to maintain bond and excess coverage at the levels required or approved by the commission, subject to the reporting requirements in § 7 D.

B. In the case of termination, the commission will provide at least 30 days advance notice of the termination, as required by § 65.2-801 of the Act. The commission will also specify the reason for the termination.

C. The commission will schedule a hearing at which the self-insurer may present evidence as to why the privilege of self-insurance should not be revoked.

D. Self-insurers may surrender their Certificate of Self-Insurance by sending a notice of intent to withdraw by certified mail to "Self-Insurance Program," Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond VA 23220. Withdrawal shall not be effective until approved by the commission on the basis of proof of alternate commercial coverage, or cessation of all Virginia operations for which workers' compensation coverage is required.

## § 9. Public self-insurers.

A. Rule 7 of the commission stipulates that the state,

*its municipalities, and its divisions, may apply for and be granted the privilege of self-insurance without providing the proof of solvency required by § 65.2-801 of the Code of Virginia.*

*B. Public entities that wish to become self-insured for workers' compensation must apply using the currently approved version of the commission's application form (VWC Form No. 20).*

*C. The attachments to the application that are required of private sector applicants (financial reports, claims runs, application fee) are not required of public sector applicants.*

*D. No surety bond or excess insurance coverage will be required of public sector applicants.*

*E. Public sector applicants will be provided with a Certificate of Self-Insurance that is continuous in nature.*

*F. Approved public self-insurers are required to:*

- 1. Meet their responsibilities under the Virginia Workers' Compensation Act.*
- 2. Follow all other commission rules and regulations.*
- 3. Provide annual payroll and operational reports as specified in § 7 A of this regulation.*
- 4. Respond to specific commission requests for information as specified in § 7 E of this regulation.*
- 5. Provide the assessments that are required under Chapters 10 (§ 65.2-1000 et seq.), 11 (§ 65.2-1100 et seq.), and 12 (§ 65.2-1200 et seq.) of Title 65.2 of the Code of Virginia and § 10 of this regulation.*

## *§ 10. Assessments.*

*A. All self-insurers, public and private, shall be subject to assessments for the commission's Administrative Fund (Chapter 10 of Title 65.2 of the Code of Virginia), the Second Injury Fund (Chapter 11 of Title 65.2), the Uninsured Employer's Fund (Chapter 12 of Title 65.2), and such other funds or expenses as may be required by future legislation or commission regulation.*

*B. Self-insurers' assessments shall be calculated by the commission each year based on manual insurance rates for the same or similar work.*

*C. Failure to provide the amounts assessed within 60 days of notice of the amount of the assessment shall be grounds for termination of the privilege of self-insurance.*

# STATE CORPORATION COMMISSION

## STATE CORPORATION COMMISSION

### BUREAU OF INSURANCE

November 10, 1992

Administrative Letter 1992-19

TO: All Organizations Licensed under Chapters 11, 12, 25, 26, 42, 43, 44 or 45 of Title 38.2 or Licensed as a Property or Casualty Insurer under Chapter 10 of Title 38.2 of the Code of Virginia

RE: Actuarial Opinion Submissions in Company Annual Statements

The purpose of this letter is to withdraw Administrative Letter 1990-16 and to replace its requirements as to those identified above with modified provisions which shall be effective for Annual Statement filings for all years ended December 31, 1992 or thereafter.

Subject to the provisions of this letter, the Annual Statement submissions of all those licensees identified above must contain the opinion of a qualified actuary regarding the adequacy of policy and claim reserves, including any loss adjustment expense reserves, and any other actuarial items established for all lines of business written or reinsured by the company. This actuarial opinion filing is being required pursuant to Sections 38.2-1109, 38.2-1203, 38.2-1300, 38.2-1301, 38.2-2506, 38.2-2613, 38.2-4214, 38.2-4307, 38.2-4408, 38.2-4509, and 38.2-4602 of Title 38.2 of the Virginia Code.

#### Who Must Comply

All property and casualty companies licensed to do business in Virginia under Chapter 10 of Title 38.2 of the Virginia Code and all other organizations licensed to do business under the following chapters of Title 38.2 must file an opinion by a qualified actuary in their Annual Statement submissions to the Commission, subject to the limitations and/or exemptions stated in this letter:

Effective immediately, the qualified actuary shall be appointed by the Board of Directors, or its equivalent, or by a committee of the Board, by December 31 of the calendar year for which the opinion is rendered. Whenever the appointed actuary is replaced by the Board of Directors, the company shall promptly notify the Commission and give reasons for the replacement. The appointed actuary must present a report to the Board of Directors each year on the items within the scope of the opinion.

#### Opinion Form and Content

The actuarial opinion is to consist of, though not necessarily be limited to, the following:

a) an identification paragraph,

b) a scope paragraph,

c) a reliance paragraph (if necessary),

d) an opinion paragraph,

e) any additional paragraphs deemed necessary to further explain or to qualify the opinion, and

f) date of the opinion's issuance and actuary's signature.

If the qualified actuary relied on another individual's(s) opinion(s) for determining the accuracy of the underlying records, the qualified actuary should state such in the reliance paragraph of his opinion. Additionally, the individual(s) upon whom the qualified actuary relied, should submit a signed and dated statement certifying the accuracy and inclusion of the underlying records. This statement should be attached to the qualified actuary's opinion.

If there has been any material change in the actuarial assumptions and/or methods from those previously employed, that change should be described in the opinion.

#### Due Date

The actuarial opinion or certified copy of the Commission's written exemption: (i) is to be included on or attached to Page 1 of the company's Annual Statement that is to be filed with the Commission, and (ii) is due when the Annual Statement is due. An Annual Statement submitted without the qualified actuary's opinion or Commission's written exemption may subject the company to applicable penalties and/or fines as well as suspension or revocation of its Virginia license as provided for in Title 38.2 of the Virginia Code. For good cause shown, the Commission may extend a company's deadline for submitting the qualified actuary's opinion or the Commission's written exemption for a limited and specified period of time, but not beyond 60 days after its Annual Statement filing deadline.

Any questions regarding the implementation of the contents of this letter should be directed to:

Edward J. Buyalos, Jr., CFE, CPA, FLMI  
Supervisor, Financial Analysis Section  
Bureau of Insurance  
P. O. Box 1157  
Richmond, Virginia 23209  
(804) 786-3637

/s/ Steven T. Foster  
Commissioner of Insurance

\* \* \* \* \*

**EDITOR'S NOTE:** The full text of the Rules Governing Actuarial Opinions and Memoranda (Insurance Regulation

# State Corporation Commission

No. 45) referenced in Administrative Letter 1992-24 and the "Order Adopting Regulation" dated November 5, 1992, is being published following Administrative Letter 1992-24.

November 10, 1992

Administrative Letter 1992-24

TO: All Life and Accident and Health Insurance Companies licensed under Chapter 10, Life Benefit Companies licensed under Chapter 38, Mutual Assessments Life, Accident and Sickness insurers licensed under Chapter 39, Burial Societies licensed under Chapter 40 and Fraternal Benefit Societies licensed under Chapter 41 of Title 38.2 of the Code of Virginia.

RE: Actuarial Opinion Submissions in Company Annual Statements

The purpose of this letter is to inform all licensees described above that Administrative Letter 1990-16 is being withdrawn. The Commission has adopted a new regulation pertaining to actuarial opinions filed by any company licensed to write policies or agreements providing any form of life insurance benefits or annuity benefits, or reinsurance thereof.

The regulation is entitled "Rules Governing Actuarial Opinions and Memoranda." It is sometimes referred to as Insurance Regulation No. 45 and becomes effective December 15, 1992. A copy is enclosed. All licensees addressed by this letter must file actuarial opinions for the year ended December 31, 1992, and all subsequent years, which comply with the new regulation.

If you have questions concerning this letter or the enclosed regulation, please contact:

Edward J. Buyalos, Jr., CFE, CPA, FLMI  
Supervisor, Financial Analysis Section  
Bureau of Insurance  
P. O. Box 1157  
Richmond, Virginia 23209  
(804) 786-3637

/s/ Steven T. Foster  
Commissioner of Insurance

## FINAL REGULATIONS

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 5, 1992

COMMONWEALTH OF VIRGINIA

At the relation of the  
STATE CORPORATION COMMISSION

CASE NO. INS920377

Ex Parte: In the matter of

adopting Rules Governing Actuarial  
Opinions and Memoranda

## ORDER ADOPTING REGULATION

WHEREAS, by order entered herein September 16, 1992, the Commission ordered that a hearing be held in the Commission's Courtroom on November 3, 1992, for the purpose of considering the adoption of a regulation proposed by the Bureau of Insurance ("Bureau") entitled "Rules Governing Actuarial Opinions and Memoranda";

WHEREAS, the Commission conducted the aforesaid hearing where the Bureau appeared, by counsel, and recommended several technical corrections to the regulation and no interested party appeared to comment on the proposed regulation;

THE COMMISSION, having considered the record herein, the one comment filed by an interested party and the recommendation of the Bureau, is of the opinion that the regulation should be adopted, as amended;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing Actuarial Opinions and Memoranda" which is attached hereto and made a part hereof should be, and it is hereby, ADOPTED to be effective December 15, 1992.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Alfred W. Gross, who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order together with a copy of the regulation to all fraternal benefit societies licensed pursuant to Chapter 41 of Title 38.2 and all other companies licensed pursuant to Title 38.2 of the Code of Virginia to write and reinsure policies providing for any form of life insurance or annuity benefits.

Rules Governing Actuarial Opinions and Memoranda  
(Insurance Regulation No. 45).

### § 1. Purpose

*The purpose of this regulation is to prescribe:*

*A. Guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection B.1 of § 38.2-3127.1 of the Code of Virginia, and for memoranda in support thereof;*

*B. Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from filing the actuarial opinion prescribed by subsection B.1 of § 38.2-3127.1 of the Code of Virginia; and*

*C. Rules applicable to the appointment of an appointed actuary.*

### § 2. Authority

# State Corporation Commission

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This regulation is adopted and promulgated by the Commission pursuant to Virginia Code §§ 12.1-13, 38.2-223, and 38.2-3127.1. This regulation will take effect for annual statements for the year-ending December 31, 1992.

If a foreign or alien company's state of domicile makes provision in its Insurance Code or regulations for a later effective date, this later effective date will apply to the company, but under no circumstance will the effective date apply beyond December 31, 1993.

## § 3. Scope

A. This regulation shall apply to all companies subject to the provisions of Virginia Code § 38.2-3127.1, including fraternal benefit societies licensed under Chapter 41 of Title 38.2 and all other companies licensed under Title 38.2 of the Code of Virginia to write and reinsure policies or agreements providing any form of life, life insurance, or annuity benefits as those terms are defined in Virginia Code §§ 38.2-102 through 38.2-107.1. This regulation shall be applicable to all annual statements filed with the Commission after the effective date of this regulation. Except with respect to companies which are exempted pursuant to Section 6 of this regulation, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 8 of this regulation, and a memorandum in support thereof in accordance with Section 9 of this regulation, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to Section 7 of this regulation.

B. Notwithstanding the foregoing, the Commission may require any company otherwise exempt pursuant to this regulation to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 8 and 9 of this regulation if, in the opinion of the Commission, an asset adequacy analysis is necessary with respect to the company.

## § 4. Definitions

### A. Actuarial Standards Board

"Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

### B. Annual Statement

"Annual Statement" means that statement required by § 38.2-1300 of the Code of Virginia to be filed by the company with the Commission annually.

### C. Appointed Actuary

"Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Section 5C of this regulation to provide the actuarial opinion and supporting memorandum as required

by § 38.2-3127.1 of the Code of Virginia.

### D. Asset Adequacy Analysis

"Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Section 5D of this regulation. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

### E. Commission

"Commission" means the Virginia State Corporation Commission.

### F. Commissioner

"Commissioner" means the Insurance Commissioner, Director, Superintendent or other supervising regulatory official of a given state who is responsible for administering the insurance laws of said state.

### G. Company

"Company" means a life insurer, company or fraternal benefit society subject to the provisions of this regulation.

### H. Non-Investment Grade Bonds

"Non-Investment Grade Bonds" are those which are (i) rated 3, 4, 5 or 6 by the NAIC Securities Valuation Office, or (ii) if not rated by the Securities Valuation Office, are rated in an equivalent grade by a national rating agency recognized by the Commission.

### I. Qualified Actuary

"Qualified Actuary" means any individual who meets the requirements set forth in Section 5B of this regulation.

## § 5. General Requirements

### A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 8 of this regulation; provided, however, that any company exempted pursuant to Section 6 of this regulation from submitting a statement of actuarial opinion in accordance with Section 8 of this regulation shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Section 7 of this regulation.

(2) If in the previous year a company provided a

statement of actuarial opinion in accordance with Section 7 of this regulation, and in the current year fails the exemption criteria of Sections 6C(1), 6C(2) or 6C(5) to again provide an actuarial opinion in accordance with Section 7, the statement of actuarial opinion in accordance with Section 8 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 7 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 8.

(3) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by such company with the commissioner of another state if the Commission determines that the opinion reasonably meets the requirements applicable to a company domiciled in Virginia.

(4) Upon written request by the company, the Commission may grant an extension of the date for submission of the statement of actuarial opinion.

## B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries; and

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and

(3) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(4) Has not been found by the Commission (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

(a) Violated any provision of, or any obligation imposed by Title 38.2 of the Code of Virginia or other law in the course of his or her dealings as a qualified actuary; or

(b) Been found guilty of fraudulent or dishonest practices; or

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(d) Submitted to the Commission during the past five (5) years, pursuant to this regulation, an

actuarial opinion or memorandum that the Commission rejected because it did not meet the provisions of this regulation, including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the Commission of any action taken by the commissioner of any other state similar to that under Paragraph (4) above.

## C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation, either directly by or by the authority of the board of directors through an executive officer of the company. The company shall give the Commission timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Section 5B. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commission timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Section 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

## D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this regulation:

(1) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with Section 8 of this regulation; and

(2) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

## E. Liabilities to be Covered

(1) Under authority of Virginia Code § 38.2-3127.1, the statement of actuarial opinion shall apply to all in-force business on the statement date regardless of when or where issued, e.g., reserves reported in Exhibits 8, 9 and 10 of the NAIC annual statement for life insurers, and claim liabilities reported in Exhibit

# State Corporation Commission

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11, Part I of such statement, and equivalent items in the separate account statement(s) or other annual financial statements filed pursuant to Virginia Code §§ 38.2-1300, 38.2-1301 or 38.2-4126.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth for policies providing life insurance, annuity or endowment benefits in Virginia Code §§ 38.2-3137, 38.2-3138, 38.2-3141, and 38.2-3142; for policies providing disability, accident and sickness benefits in the Commission's Rules Governing Reserve Standards for Accident and Sickness Insurance Policies (Insurance Regulation 15) and any supplemental and related rules and regulations; and, for certain other companies affected by this regulation, in Virginia Code §§ 38.2-1311, 38.2-3816, 38.2-3923, 38.2-4010, 38.2-4011 and 38.2-4125; the company shall establish such additional reserve.

(3) For years ending prior to December 31, 1994, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

December 31, 1992: The additional reserve divided by three.

December 31, 1993: Two times the additional reserve divided by three.

(4) Additional reserves established under Paragraphs (2) or (3) above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

## § 6. Required Opinions

### A. General

In accordance with § 38.2-3127.1 of the Code of Virginia, every company doing business in Virginia shall annually submit the opinion of an appointed actuary as provided for by this regulation. The type of opinion submitted shall be determined by the provisions set forth in this Section 6 and shall be in accordance with the applicable provisions in this regulation.

### B. Company Categories

For purposes of this regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

(1) Category A shall consist of those companies whose admitted assets do not exceed \$20 million;

(2) Category B shall consist of those companies whose admitted assets exceed \$20 million but do not exceed \$100 million;

(3) Category C shall consist of those companies whose admitted assets exceed \$100 million but do not exceed \$500 million; and

(4) Category D shall consist of those companies whose admitted assets exceed \$500 million.

### C. Exemption Eligibility Tests

(1) Any Category A company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this regulation for the year in which these criteria are met. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.10.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.30.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(2) Any Category B company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this regulation for the year in which the criteria are met. The ratios in (a), (b) and (c) below

shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.07.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.40.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(3) Any Category A or Category B company that meets all of the criteria set forth in Paragraph (1) or (2) of this subsection, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with Section 8 of this regulation unless the Commission specifically indicates to the company that the exemption is not to be taken.

(4) Any Category A or Category B company that, for any year beginning with the year in which this regulation becomes effective, is not exempted under Paragraph (3) of this subsection shall be required to submit a statement of actuarial opinion in accordance with Section 8 of this regulation for the year for which it is not exempt.

(5) Any Category C company that, after submitting an opinion in accordance with Section 8 of this regulation, meets all of the following criteria shall not be required, unless required in accordance with Paragraph (6) below, to submit a statement of actuarial opinion in accordance with Section 8 of this regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 8 of this regulation for that year. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to 0.05.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than 0.50.

(c) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than 0.50.

(d) The company has not been designated by the National Association of Insurance Commissioners (NAIC) as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(6) Any company which is not required by this Section 6 to submit a statement of actuarial opinion in accordance with Section 8 of this regulation for any year shall submit a statement of actuarial opinion in accordance with Section 7 of this regulation for that year unless as provided for by the second paragraph of Section 3 of this regulation the Commission requires a statement of actuarial opinion in accordance with Section 8 of this regulation.

#### D. Large Companies

Every Category D company shall submit a statement of actuarial opinion in accordance with Section 8 of this regulation for each year beginning with the year in which this regulation becomes effective.

#### § 7. Statement of Actuarial Opinion That Does Not Include an Asset Adequacy Analysis

##### A. General Description

The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of this regulation; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's



# State Corporation Commission

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opinion as required by § 38.2-3127.1 of the Code of Virginia.

## B. Recommended Language

The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in Section 7.

- (1) The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

- (2) The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of the regulation."

- (3) The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [ ]."

The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:

(a) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 of the NAIC annual statement for life insurers,

(b) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 of the NAIC annual statement for life insurers,;

(c) Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10 of the NAIC annual statement for life insurers; and

(d) Policy and contract claims—liability end of current year included in Exhibit 11, Part I of the NAIC annual statement for life insurers.

- (4) If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

- (5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in-force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in-force prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

OR

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying should follow the form indicated by Section 7B(10).

- (6) The opinion paragraph should include the

following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of Title 38.2 of the Code of Virginia, and related rules, regulations and administrative promulgations [OR: of the Insurance Law and regulations of the company's state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion."

(7) The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this Section 7. It shall include the following:

"This opinion is provided in accordance with Section 7 of the NAIC Actuarial Opinion and Memorandum Regulation. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for Section 7 is confirmed as follows:

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company (Section 6C).

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the excess of the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (Section 6C).

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of 0.50.

(d) To my knowledge, the company has not been designated by the NAIC as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and said commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(e) To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.

.....  
Signature of Appointed Actuary

.....  
Address of Appointed Actuary

.....  
Telephone Number of Appointed Actuary"

(8) If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in Section 7B(6)(d) above to consistency should read as follows:

"... with the exception of the change described on Page [ ] of the annual statement (or in the preceding paragraph)."

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.

(9) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the

# State Corporation Commission

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reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(10) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in-force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

"I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in-force as of December 31, [ ], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

.....  
Signature of the Officer of the Company or Accounting Firm

.....  
Address of the Officer of the Company or Accounting Firm

.....  
Telephone Number of the Officer of the Company or Accounting Firm"

## § 8. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis

### A. General Description

The statement of actuarial opinion submitted in accordance with this section shall consist of:

(1) A paragraph identifying the appointed actuary and his or her qualifications (see Section 8B(1));

(2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see Section 8B(2)) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see Section 8B(3)), supported by a statement of each such expert in the form prescribed by Section 8E; and

(4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities (see Section 8B(6)).

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(a) If the appointed actuary considers it necessary to state a qualification of his or her opinion;

(b) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement reserves for asset adequacy analysis.

(d) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.

(e) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.

(f) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

### B. Recommended Language

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for

*rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."*

*For a consulting actuary, the opening paragraph should contain a sentence such as:*

*"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commission dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."*

*(2) The scope paragraph should include a statement such as the following:*

*"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."*

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Statement Item	Table of Reserves and Liabilities				Total Amount (1)+(2)+(3) (4)
	Asset Adequacy Tested Amounts Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b) (3)	Other Amount (4)	
<b>Exhibit 8</b>					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
TOTAL (Exhibit 8 Item 1, page 3)	_____	_____		_____	_____
<b>Exhibit 9</b>					
A Active Life Reserve					
B Claim Reserve					
TOTAL (Exhibit 9 Item 2, Page 3)	_____	_____		_____	_____
<b>Exhibit 10</b>					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2. Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3. Dividend and Coupon Accumulations (Page 3, Line 5)					
TOTAL (Exhibit 10)	_____	_____		_____	_____
<b>Exhibit 11 Part 1</b>					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
TOTAL (Exhibit 11, Part 1)	_____	_____		_____	_____
<b>Separate Accounts (Page 3, Line 27)</b>					
TOTAL (Sep Acct)	_____	_____		_____	_____
<b>TOTAL RESERVES</b>	_____	_____		_____	_____
IMR (Page __, Line __) _____(c)	=====	=====		=====	=====
AVR (Page __, Line __) _____(c)					

Notes: (a) the additional actuarial reserves are the reserves established under Paragraphs (2) or (3) of Section 5E of this regulation; (b) the appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Section 5D of this regulation, by means of symbols which should be defined in footnotes to the table; (c) allocated amounts.

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement, ..."

OR

"I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Section 8E.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in-force and/or asset records prepared by the company or a third party, the reliance paragraph should include a sentence such as:

"I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

OR

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

Such a section must be accompanied by a statement by each person relied upon of a form substantially similar to that prescribed by Section 8E.

(6) The opinion paragraph should include the

following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of Title 38.2 of the Code of Virginia and related rules, regulations and administrative promulgations [OR: the Insurance Law and regulation of the state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion."

AND ONE OF THE FOLLOWING TWO PARAGRAPHS, WHICHEVER IS APPLICABLE:

"This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion."

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OR:

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion." [Describe the change or changes.]

AND:

"The impact of unanticipated events subsequent to the date of This opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

.....  
Signature of Appointed Actuary

.....  
Address of Appointed Actuary

.....  
Telephone Number of Appointed Actuary"

## C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 8.

## D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

## E. Reliance on Data Furnished by Other Persons

If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in-force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

.....  
Signature of the Officer of the Company or Accounting Firm

.....  
Address of the Officer of the Company or Accounting Firm

.....  
Telephone Number of the Officer of the Company or Accounting Firm"

AND/OR

"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

.....  
Signature of the Officer of the Company, Accounting Firm or the Security Analyst

.....  
Address of the Officer of the Company, Accounting Firm or the Security Analyst

.....  
Telephone Number of the Officer of the Company, Accounting Firm or the Security Analyst"

## § 9. Description of Actuarial Memorandum Issued for an Asset Adequacy Analysis

### A. General

(1) In accordance with Virginia Code § 38.2-3127.1, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under a Section 8 opinion. The memorandum shall be made available for examination by the Commission upon its request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Commission.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Commission requests a memorandum and no such memorandum exists or if the Commission finds

that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commission may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commission.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commission; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commission and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commission pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

#### B. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 8)

When an actuarial opinion under Section 8 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Section 5D of this regulation and any additional standards under this regulation. It shall specify:

##### (1) For reserves:

- (a) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
- (b) Source of liability in force;
- (c) Reserve method and basis;
- (d) Investment reserves;
- (e) Reinsurance arrangements.

##### (2) For assets:

- (a) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
- (b) Investment and disinvestment assumptions;

(c) Source of asset data;

(d) Asset valuation bases.

##### (3) For the analysis basis:

(a) Methodology;

(b) Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) Rationale for degree of rigor in analyzing different blocks of business;

(d) Criteria for determining asset adequacy;

(e) Effect of federal income taxes, reinsurance and other relevant factors.

##### (4) A Summary of Results

##### (5) Conclusion(s)

#### C. Conformity to Standards of Practice

The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

#### § 10. Additional Considerations for Analysis

##### A. Aggregation

For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 8 of this regulation, reserves and assets may be aggregated by either of the following methods:

(1) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.

(2) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for



# State Corporation Commission

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the various products or lines of business for which the results are so aggregated:

(a) Are developed using consistent economic scenarios, or

(b) Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of method (1), (2)(a) or (2)(b) above, whichever is applicable, and describe the aggregation in the supporting memorandum.

## B. Selection of Assets for Analysis

The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Subsection C below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

## C. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve

An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

## D. Required Interest Scenarios

For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial

Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

(1) Level with no deviation;

(2) Uniformly increasing over ten (10) years at a half percent per year and then level;

(3) Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;

(4) An immediate increase of three percent (3%) and then level;

(5) Uniformly decreasing over ten (10) years at a half percent per year and then level;

(6) Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and

(7) An immediate decrease of three percent (3%) and then level.

For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where such five (5) year Treasury Note yield would be at fifty percent (50%) of its initial level.

The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.

## E. Documentation

The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

## § 11. Opinion and Memorandum Submission Dates

The opinions and memoranda filed with the Commission pursuant to this regulation and Virginia Code § 38.2-3127.1 shall be subject to submission and due dates as given in this regulation and summarized in Exhibit A attached to these rules and regulation.

**§ 12. Severability**

*A. If any provision of this rule and regulation, or its application to any person, company or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this rule and regulation are severable.*

**INSURANCE REGULATION NO. 45 – EXHIBIT A**

Rules Governing Actuarial Opinions and Memoranda  
Section 11. Opinion and Memorandum Submission Dates

Previous Year's (N-1) Required Opinion	Current Year (N) Required Opinion	Deadline to Submit Asset Adequacy Opinion	Deadline to Submit Supporting Memorandum
Issued Asset Adequacy Opinion	Asset Adequacy Opinion Due – Already Filed	_____	10 Days Following the Commission's Request
Issued Asset Adequacy Opinion	Asset Adequacy Opinion Due – Not Filed Yet	Annual Statement Due Date	Later of: Annual Statement Due Date or 10 Days Following the Commission's Request
Issued Traditional Opinion	Asset Adequacy Opinion Due – Already Filed	_____	10 Days Following the Commission's Request
Issued Traditional Opinion	Asset Adequacy Opinion Due – Interim Traditional Opinion Due on Annual Statement Due Date	August 1, N	Later of: August 1, N or 10 Days Following the Commission's Request
Issued Asset Adequacy Opinion	Traditional Opinion Due – Already Filed	90 Days Following the Commission's Request	90 Days Following the Commission's Request
Issued Asset Adequacy Opinion	Traditional Opinion Due – Not Filed Yet	Later of: June 1, N or 90 Days Following the Commission's Request	Later of: June 1, N or 90 Days Following the Commission's Request
Issued Traditional Opinion	Traditional Opinion Due – Already Filed	Later of: August 1, N or 1st Day Following the Completion of the 5th Month Following the Commission's Request	Later of: August 1, N or 1st Day Following the Completion of the 5th Month Following the Commission's Request
Issued Traditional Opinion	Traditional Opinion Due – Not Filed Yet	Later of: August 1, N or 1st Day Following the Completion of the 5th Month Following the Commission's Request	Later of: August 1, N or 1st Day Following the Completion of the 5th Month Following the Commission's Request

*To determine the filing requirements for the current year(\*), the issuer must identify both the previous year's required opinion(\*\*) and the current year's required opinion.*

*Unless Extended by Section 5 A (4) of the Regulation.*

*Unless Extended by the Commission.*

(\*) – "Current Year" is the year in which the submission is to be made.  
(\*\*) – "Previous Year's Required Opinion" means the type of opinion which would have been required if the regulation had been in effect in the previous year; otherwise, the type of opinion which was actually required and submitted to the Commission during the previous year.

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AT RICHMOND, NOVEMBER 23, 1992

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI920268

Ex Parte, in re: Maximum rates of interest and loan ceiling permitted on loans made under the Virginia Consumer Finance Act

ORDER ESTABLISHING INTEREST RATES AND LOAN CEILING

By order herein dated June 17, 1992, the Commission directed, pursuant to Virginia Code § 6.1-271, that notice be given of its intention to consider redetermining small loan maximum interest rates and ceiling, and that a public hearing would be held in order to afford all interested parties an opportunity to present evidence and be heard. Notice was duly published as required by said statute, and a public hearing was held on September 23, 1992, at which Chairman Preston C. Shannon presided and Commissioners Theodore V. Morrison, Jr. and Hullahen Williams Moore were present. Appearances at the hearing were made by Joseph E. Blackburn, counsel for the Virginia Financial Services Association; David B. Irvin, Assistant Attorney General, Antitrust and Consumer Litigation Section; Miriam Amy Bender, counsel for Virginia Citizens Consumer Council; David Rubinstein, Margot Saunders and John Gifford, counsel for Virginia Poverty Law Center; and William F. Schutt, Senior Counsel, and Jonathan B. Orne, Assistant General Counsel, for the Bureau of Financial Institutions. Statements were made by members of the public, and expert testimony was given.

Now having heard and considered the testimony and other evidence and documents presented, the statements of counsel, and the criteria and factors enumerated in Virginia Code §§ 6.1-271 and 6.1-271.1, the Commission is of the opinion and finds that the structure of maximum interest rates and loan ceilings contained in the attached regulation should be adopted in order to effectuate the goals set forth in the aforesaid statutes. Accordingly,

IT IS ORDERED that the attached Virginia Regulation 225-01-0601, as amended, is hereby adopted for use in Virginia on and after January 1, 1993, until modified or revoked by order of the Commission.

The Bureau of Financial Institutions shall send a copy of the regulation to every licensee under the Virginia Consumer Finance Act, and it shall monitor and report the results of operations of licensees under the regulation. And, it appearing that nothing further remains to be done in this proceeding, it is ordered that this case be dismissed from the docket and placed among the ended causes.

ATTESTED COPIES of this Order, with copies of Virginia Regulation 225-01-0601 attached, shall be sent by the Clerk of the Commission to Joseph E. Blackburn, White, Blackburn & Conte, P.C., 300 West Main Street, Richmond, Virginia 23220; David B. Irvin, Assistant Attorney General, Office of the Attorney General, 101 North 8th Street, Richmond, Virginia 23219; Miriam Amy Bender, 2050 Fray Road, Ruckersville, Virginia 22968; David Rubinstein, Virginia Poverty Law Center, 9 West Main Street, Richmond, Virginia 23220; and to the Commissioner of Financial Institutions.

VR 225-01-0601. Establishing Maximum Rates of Charge and Loan Ceilings.

Section 1. LOAN CEILINGS AND RATES OF CHARGE

(a) The loan ceiling for small loans shall be three thousand five hundred dollars (\$3,500) in principal amount.

(b) Every licensee may contract for and receive on any such loan interest at rates not exceeding 2.56 percent per month on that part of the unpaid principal balance of any loan not in excess of eight hundred dollars (\$800), 1.9 percent per month on that part of the unpaid principal balance in excess of \$800 but not in excess of two thousand dollars (\$2,000), and 1.4 percent per month on that part of the unpaid principal balance in excess of \$2,000 to the loan ceiling.

(c) When the loan contract is repayable in substantially equal installments of principal and interest combined, a licensee - in lieu of the rates provided in paragraph 1(b) above - may contract for and receive interest at rates not exceeding \$17 per one hundred dollars per year on that part of the original principal not exceeding \$800, \$15 per one hundred dollars per year on that part of the original principal exceeding \$800 but not exceeding \$2,000, and \$11 per one hundred dollars per year on that part of the original principal exceeding \$2,000 up to the loan ceiling.

(d) Where the interest is computed using the rates set forth in paragraph 1(b) hereof, such computation shall be made in accordance with the provisions of § 6.1-277(a) of the Code of Virginia, as amended. Where the interest is precomputed using the rates set forth in paragraph 1(c) hereof, such computation shall be made in accordance with the provisions of § 6.1-277(b) of the Code of Virginia, as amended.

Section 2. INSTALLMENT PAYMENTS

No licensee shall enter into any contract of loan under Chapter 6 of Title 6.1 of the Code of Virginia providing for installment payments extending more than: 21 calendar months from the date of making the contract for any loan of \$500 or less in principal amount, 31 calendar months for any loan exceeding \$500 but not exceeding \$1,000 in principal amount, 43 calendar months for any loan exceeding \$1,000 but no exceeding \$1,500 in principal amount, and 49 calendar months from the date of making

# State Corporation Commission

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the contract for any loan in excess of \$1,500 in principal amount.

By order of the State Corporation Commission dated November 23, 1992, effective January 1, 1993.

Reference: § 6.1-271 of the Code of Virginia

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# STATE LOTTERY DEPARTMENT

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## DIRECTOR'S ORDER NUMBER TWENTY-SIX (92)

### “INSTANT LUCK”; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the “Instant Luck” promotional game and drawing rules for the kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, November 19, 1992. 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 until November 30, 1992, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson  
Date: November 4, 1992

## DIRECTOR'S ORDER NUMBER TWENTY-SEVEN (92)

### VIRGINIA'S THIRTIETH INSTANT GAME LOTTERY; “INSTANT LUCK,” 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 final rules for game operation in Virginia's thirtieth instant game lottery, “Instant Luck.” These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game 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  
Date: November 16, 1992

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# GOVERNOR

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## PROCLAMATION

The successful carrying out of the Virginia traffic safety program is dependent to a large extent upon the proper mechanical maintenance of motor vehicles, trailers or semi-trailers which operate over the streets and highways of Virginia.

Motor vehicles, trailers or semi-trailers inspected under this Proclamation which continue to be registered in and operated upon the highways of this Commonwealth shall be reinspected within twelve months from the month of inspection and within twelve months from each month of inspection thereafter. Any motor vehicle, trailer or semi-trailer presently being operated in Virginia which bears a current inspection sticker as of the date of this Proclamation shall not be required to be reinspected pursuant to this Proclamation until the current twelve-month period has expired.

The owner or operator of a motor vehicle, trailer or semi-trailer subject to this Proclamation shall submit the same to an official inspection station for inspection before operating such motor vehicle, trailer or semi-trailer upon the highways of Virginia, except as follows:

1. Four-wheel vehicles weighing less than 500 pounds and having less than 6 horsepower;
2. Trailers not equipped with brakes;
3. Motor vehicles defined under Section 46.2-100 of the Code of Virginia as an antique motor vehicle and licensed as an antique motor vehicle pursuant to the provisions of Section 46.2-730 of the Code;
4. Any motor vehicle, bus, trailer or semi-trailer which is outside of the Commonwealth of Virginia at the time its inspection expires may be returned to the owner's or operator's place of residence or the owner's legal place of business in the State before it will be required to be submitted for a reinspection;
5. Motor vehicles owned and operated by persons on active duty with the United States Armed Forces, who are Virginia residents stationed outside of Virginia at the time its inspection expires, may operate such vehicle on the highways of the Commonwealth while on leave, provided such vehicle displays a valid inspection sticker issued by another state and not be in violation of Section 46.2-1157 of the Code of Virginia;
6. New motor vehicles, new trailers or new semi-trailers may be operated upon the highways of Virginia for the purpose of delivery from the place of manufacture to the dealer's or distributor's designed place of business, or between places of business if such manufacturer, dealer or distributor has more than one place of business, without being inspected; dealers or distributors may take delivery and operate

upon the highways of Virginia new motor vehicles, new trailers or new semi-trailers from another dealer or distributor provided a motor vehicle, trailer or semi-trailer shall not be considered new if driven upon the highways for any purpose other than the delivery of the vehicle;

7. New motor vehicles, new trailers or new semi-trailers bearing a manufacturer's license may be operated for test purposes by the manufacturer without an inspection;

8. Motor vehicles, trailers or semi-trailers may be operated for test purposes by a certified inspector without an inspection during the performance of an official inspection;

9. New motor vehicles, new trailers or new semi-trailers may be operated upon the highways of Virginia over the most direct route to a location for installation of permanent body without being inspected;

10. Motor vehicles, trailers or semi-trailers purchased outside the Commonwealth of Virginia may be driven to the purchaser's place of residence or the dealer's or distributor's designated place of business without being inspected;

11. Prior to purchase from auto auctions within the Commonwealth, motor vehicles, trailers or semi-trailers may be operated upon the highways not be exceed a five-mile radius of such auction by prospective purchasers for the purpose of road testing only without being inspected;

Motor vehicles, trailers or semi-trailers purchased from auto auctions within the Commonwealth also may be operated upon the highways from such auction to the purchaser's place of residence or business without being inspected;

12. Motor vehicles, trailers or semi-trailers, after the expiration of a period fixed for the inspection thereof, may be operated over the most direct route between the place where such vehicle is kept or garaged and an official inspection station for the purpose of having the same inspected pursuant to a prior appointment with such station for such inspection as provided in Section 46.2-1157 of the Code of Virginia;

13. Vehicles transporting well drilling machinery and mobile equipment as defined in Section 46.2-700 of the Code of Virginia;

14. Motor vehicles being towed in a legal manner as exempted by Section 46.2-1150 of the Code of Virginia;

15. Log trailers as exempted by Section 46.2-1159 of the Code of Virginia;

16. Motor vehicles designed or altered and used

exclusively for racing or other exhibition purposes, as exempted by Section 46.2-1160 of the Code of Virginia.

Motor vehicles, trailers or semi-trailers not registered in Virginia are not subject to this Proclamation. Accordingly, mopeds as defined in Section 46.2-100, and vehicles exempted from licensing under Sections 46.2-662 through 46.2-683, are not required to be inspected.

NOW, THEREFORE, I, Lawrence Douglas Wilder, Governor of the Commonwealth of Virginia, do hereby proclaim that, with the exception of those vehicles specifically exempted heretofore in this document, all motor vehicles, trailers or semi-trailers bearing a Virginia registration plate or plates, or registered as a motor vehicle, trailer or semi-trailer under any provision of Virginia law and operated upon the highways of this Commonwealth shall be submitted to inspection at an official inspection station and shall have corrected all defects thus found to exist.

Given under my hand and under the lesser seal of the Commonwealth, at Richmond, this first day of July, in the year of Our Lord, one thousand nine hundred and ninety-two, and in the two hundred seventeenth year of the Commonwealth.

/s/ Lawrence Douglas Wilder  
Governor

**GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS**

(Required by § 9-6.12:9.1 of the Code of Virginia)

**STATE AIR POLLUTION CONTROL BOARD**

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision U).**

Governor's Comment:

I approve of the form and content of this proposal.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 19, 1992

**DEPARTMENT FOR THE DEAF AND HARD OF HEARING**

Title of Regulation: **VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.**

Governor's Comment:

I concur with the form and content of this proposal.

/s/ Lawrence Douglas Wilder

Governor  
Date: December 2, 1992

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

Title of Regulation: **VR 460-01-74. Drug Utilization Review Program (§ 4.26).  
VR 460-04-4.2600. Drug Utilization Review Program Regulations.**

Governor's Comment:

I approve of the form and content of this proposal. My final comment will be contingent upon a review of comments from the public.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 19, 1992

**DEPARTMENT OF MOTOR VEHICLES**

Title of Regulation: **VR 485-60-9202. Salvage Act Regulations.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 16, 1992

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS**

Title of Regulation: **VR 672-02-01. Board for Professional Soil Scientists Regulations.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 16, 1992



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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 published as a separate section at the beginning of each issue of the Virginia Register.

#### DEPARTMENT OF CRIMINAL JUSTICE SERVICES

##### Notice to the Public

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 not later than December 4, 1992, and will request \$10,015,000 in federal funds, which is Virginia's allocation for federal fiscal 1993 under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

The Department of Criminal Justice Services will use these funds to make grants to localities and state agencies to support drug control and criminal justice system improvement projects.

In addition to the Standard Form 424, "Application For Federal Assistance," the application 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.

#### DEPARTMENT OF HEALTH

##### Alternative Discharging Regulations

The Virginia Department of Health is soliciting public comment on the Alternative Discharging Sewage Treatment Regulations, VR 355-34-400 adopted July 30, 1992. Five

public hearings were held between May 18, 1992 and June 10, 1992 on these regulations. During this time the Department of Health heard and responded to many concerns of citizens and special interest groups.

After the public comment period, it became increasingly apparent that several specific issues in the regulations may not have been resolved as completely as possible. In particular, the Department of Health is soliciting additional comment on the following areas:

1. How recreational waters should be defined and what standards should be applied to measure health risks associated with the recreational use of waters receiving wastewater effluent.
2. What mechanisms should be applied to assure the continued proper operation, maintenance and repair of discharging systems after they are installed. How can these mechanisms be assured when a property is sold?

Comments concerning any other aspect of these regulations will also be accepted. Comments must be received by the Health Department prior to 4:00 p.m. on January 29, 1993. Comments should be sent to Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, P.O. Box 2448, Suite 117, Richmond, Virginia 23218.

#### VIRGINIA CODE COMMISSION

##### NOTICE TO STATE AGENCIES

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

#### **FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS**

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

## FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08  
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

Page 500, column 1, VR 325-03-1, § 13, last 2 lines, strike duplicate text that reads "weights below the hook)."

Page 500, column 1, VR 325-03-2, § 4, line 2, strike "Crooked Creek,"

Page 502, column 1, VR 325-03-2, § 14-1, line 15, strike "natural"

Page 502, column 1, VR 325-03-2, § 14-1, line 18, strike duplicate text that reads "general trout regulations and the above restrictions will not apply."

## ERRATA

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution - New and Modified Stationary Sources.

Publication: 9:3 V.A.R. 289-336 November 2, 1992.

#### Corrections to Final Regulation:

Page 293, column 1, § 120-08-01 D 1, line 3, after "emissions unit" insert "subject to this section"

Page 304, column 2, § 120-08-02 B 3, Definition of "Significant," subdivision (3), line 1, after "(3) Notwithstanding subdivision (1)," insert "means"

Page 305, column 2, § 120-08-02 F 1, line 3, after "unit" insert "subject to this section"

Page 306, column 1, § 120-08-02 F 4, line 2, strike "D 1" and insert "F 3"

Page 310, column 2, § 120-08-02 N 1 g, line 2, strike "subdivision N 1 e" and insert "subdivision N 1 c"

Page 321, column 2, § 120-08-03 D 1, line 3, after "unit" insert "subject to this section"

### DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

Title of Regulations: VR 325-03-1. Fishing Generally.  
VR 325-03-2. Trout Fishing.

Publication: 9:4 V.A.R. 499-503 November 16, 1992.

#### Corrections to Final Regulation:

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ♿ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

## EXECUTIVE

## BOARD FOR ACCOUNTANCY

† January 19, 1993 - 10 a.m. - Public Hearing  
Department of Commerce, 3600 West Broad Street, Third Floor, Room 395, Richmond, Virginia.

February 12, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to amend regulations entitled: **VR 105-01-2. Board for Accountancy Regulations.** The proposed regulations (i) establish professional limited liability companies; (ii) amend the education requirement to sit for the CPA examination effective in the year 2000; (iii) amend the conditioning requirements for passing the CPA examination to accommodate format changes to the exam; (iv) amend reinstatement procedures; and (v) clarify the CPE requirement.

## STATEMENT

Basis, purpose, issues and impact: Pursuant to § 54.1-201(5) of the Code of Virginia and in accordance with § 9-6.14:7.1, the Board for Accountancy proposes to amend its current regulations by establishing professional limited liability companies; by increasing the education requirements to 150 semester hours for candidates to sit for the Uniform Certified Public Accountants' examination in the year 2000; by requiring, effective January 1, 1994, that the education requirements be met prior to applying for the CPA examination; by establishing conditioning requirements to accommodate format changes to the Uniform CPA Examination which will become effective with the May 1994 administration; by requiring regulants who fail to renew their license in excess of 12 months to complete prescribed continuing professional education; by establishing late fees for regulants who fail to maintain their CPA certificate or renew their license, professional corporation or limited liability company registration for a period of 12 months or longer; by modifying the provisions for the use of a sole proprietor name, partnership name and professional corporation; by establishing standards of practice for the use of a professional limited liability name; by modifying the standards of practice in reference to client records; by clarifying the CPE reporting period; by clarifying services as a lecturer or instructor for CPE credit; and by clarifying the acceptable subject areas for CPE.

The proposed regulations apply to approximately 4,510 CPA certificate holders, 5,421 licensed CPAs, and 292 professional corporations.

This statement outlines the general basis, purpose, issues and impact of the proposed amendments:

1. The Board is proposing, in § 1.1 the definition of "credit hour," to clarify the requirements for continuing professional education.
2. The Board is proposing the definition of "manager," "member" and "professional limited liability company" as a result of amendments to Chapter 13 of Title 13.1 of the Code of Virginia which became effective on July 1, 1992. The Board prior to that date enacted emergency regulations which become effective July 1 to accommodate the law change. As required by the Administrative Process Act, the Board is initiating the regular review process within the required 12-month period.
3. The Board is amending § 2.1 B 1 d as a result of the Board's decision to increase the education requirement to 150 hours to sit for the CPA examination in the year 2000. At the present time,

candidates must possess the baccalaureate degree (averaging 125 hours in Virginia) to sit for the examination.

This proposed amendment applies to approximately 800 first-time candidates who sit for the semi-annual CPA examination. Of those first-time candidates who sit for the examination, approximately 130 will pass all four parts on the first sitting.

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

**Contact:** Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Pesticide Control Board

† **January 14, 1993 - 10 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, Richmond, Virginia. ☐

Committee meetings.

† **January 15, 1993 - 9 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, Richmond, Virginia. ☐

A general business meeting. 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.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

### Virginia Winegrowers Advisory Board

† **January 13, 1993 - 10 a.m.** – Open Meeting  
Virginia Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Richmond, Virginia. ☐

The board will hear committee and project monitor reports and review old and new business.

**Contact:** Wendy Rizzo, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

## ALCOHOLIC BEVERAGE CONTROL BOARD

**December 21, 1992 - 9:30 a.m.** – Open Meeting  
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

**Contact:** Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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

### Board for Interior Designers

**December 18, 1992 - 1 p.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from November 20, 1992 meeting; (ii) review applications; and (iii) review correspondence.

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

## DEPARTMENT OF COMMERCE (BOARD OF)

**January 4, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Commerce intends to **repeal regulations** entitled **VR 190-05-1. Asbestos Licensing Regulations** and **adopt new regulations** entitled **VR 190-05-1.1. Asbestos Licensing Regulations**. The proposed regulations include a "Standard of practice and conduct" section to establish guidelines for professionalism and grounds for disciplinary action within the regulated disciplines. To eliminate duplication, a "General entry and renewal requirements" section has been added and requirements for an asbestos worker and supervisor license have been combined. Changes also require employers, with employees exempted from licensure, to develop and maintain a safety program, as opposed to training, to enhance the quality and safety of asbestos work. The proposed regulations set training provider criteria for record keeping, certificate information, length of training, training upgrade, number and ratio of instructors to students, primary instructor approval, use of videos, and training course approval.

For Asbestos Analytical Laboratory Licensure, participation in the PAT program will be extended to each branch facility and each on-site analyst will be required to register with the AIHA Analyst Registry. After April 1, 1993, project designer applicants will need to submit an experience form (Form A) with

# Calendar of Events

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their application.

For clarification purposes, the following definitions have been added or altered: "Asbestos," "Asbestos Project," "Asbestos Project Design," "Asbestos Management Plan," "Demolition," "Full Approval," "Occupied," "Preliminary Review," "Primary Instructor," "Removal," "Site," "Substantial Change," and "Structure."

In addition, fees have been lowered for an Asbestos Contractors license, an RFS Asbestos Contractors license, an Asbestos Analytical laboratory license, and for training course evaluations.

Statutory Authority: §§ 54.1-500 through 54.1-517 of the Code of Virginia.

**Contact:** Kent Steinruck, Regulatory Boards Administrator, Department of Commerce, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-2567.

**February 1, 1993 - 10 a.m. – Open Meeting**  
Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A regular quarterly meeting of the board. Agenda items likely to include a report and discussion of current General Assembly bills with an impact upon agency operations; reports of subcommittees on occupational and professional continuing education, and citizen members of regulatory boards at the agency.

**Contact:** Alvin D. Whitley, Staff Assistant to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8564.

## COMPENSATION BOARD

**December 30, 1992 - 5 p.m. – Open Meeting**  
Room 913/913A, 9th Floor, Ninth Street Office Building, 202 North Ninth Street, Richmond, Virginia. ☐ (Interpreter for the deaf provided upon request.)

A routine meeting to conduct business of the Compensation Board.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

## DEPARTMENT OF CONSERVATION AND RECREATION

### Falls of the James Scenic River Advisory Board

**December 18, 1992 - Noon – Open Meeting**  
Planning Commission Conference Room, Fifth Floor, City Hall, Richmond, Virginia.

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

**December 15, 1992 - 10 a.m. – Open Meeting**  
**December 16, 1992 - 10 a.m. – Open Meeting**  
**December 17, 1992 - 10 a.m. – Open Meeting**  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A formal hearing (Tomac Corporation) regarding alleged violations of the regulations of the Board for Contractors.

**Contact:** A.R. Wade, Assistant Director of Investigation and Adjudication, 3600 W. Broad St., Richmond, VA, telephone (804)367-0946.

**January 13, 1993 - 9 a.m. – Open Meeting**  
3600 West Broad Street, Richmond, Virginia. ☐

A regular quarterly meeting of the board to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in Executive Session.

**Contact:** Florence R. Brassier, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8557.

## Applications Review Committee

**January 5, 1993 - 9 a.m. – Open Meeting**  
3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☐

A regular meeting to review applications with convictions and/or complaints for Class A contractors licenses and Class B contractors registrations.

**Contact:** Florence R. Brassier, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8557.

## Recovery Fund Committee

**January 6, 1993 - 9 a.m. – Open Meeting**  
3600 West Broad Street, Richmond, Virginia. ☐

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Holly Erickson, Assistant Administrator, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

December 16, 1992 - 10 a.m. - Open Meeting
† January 13, 1993 - 10 a.m. - Open Meeting
† February 10, 1993 - 10 a.m. - Open Meeting
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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January 30, 1993 - Written comments may be submitted through this date.

February 10, 1993 - 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 repeal regulations entitled VR 230-01-003, Regulations Governing the Certification Process, and adopt regulations entitled VR 230-01-003:1, Regulations Governing the Certification Process. The proposed regulation establishes guidelines for certification evaluation, frequency, appeals and types of certification awarded the program. These standards will replace VR 230-01-003, Rules and Regulations Governing the Certification Process.

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia.

Contact: Cynthia J. Evans, Certification Analyst, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237.

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January 30, 1993 - Written comments may be submitted through this date.

February 10, 1993 - 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 repeal regulations entitled VR 230-30-004, Standards for Adult Community Residential Services, and adopt regulations entitled VR 230-30-004:1, Standards for Community Residential Programs. The proposed regulation establishes the

minimum standards that must be met for a facility or program to be properly certified to operate. These standards will replace VR 230-30-004, Adult Community Residential Services Standards.

Statutory Authority: §§ 53.1-5 and 53.1-178 of the Code of Virginia.

Contact: R.M. Woodard, Regional Manager, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3732.

Liaison Committee

† January 14, 1993 - 9:30 a.m. - Open Meeting
6900 Atmore Drive, Richmond, Virginia.

The committee will continue to address and discuss criminal justice issues.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

GOVERNOR'S COMMISSION ON DEFENSE CONVERSION AND ECONOMIC ADJUSTMENT

† January 6, 1993 - 9 a.m. - Public Hearing
New River Community College, Dublin, Virginia. ☒
(Interpreter for the deaf provided upon request)

A public hearing to give interested parties (employers/workers) an opportunity to express their concerns to the commission. Individuals wishing to speak should preregister by calling Jeffrey A. Windom.

Contact: Jeffrey A. Windom, Deputy Commissioner, Virginia Employment Commission, 703 E. Main St., Richmond, VA 23219, telephone (804) 786-1697 or (804) 371-8050/TDD ☒

BOARD OF DENTISTRY

† December 18, 1992 - 10 a.m. - Open Meeting
6606 West Broad Street, Richmond, Virginia. ☒

A formal hearing.

† January 13, 1993 - 8:30 a.m. - Open Meeting
6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

Informal conferences. This meeting is open to the public. No comment will be taken.

† January 14, 1993 - 8 a.m. - Open Meeting
† January 15, 1993 - 8 a.m. - Open Meeting
† January 16, 1993 - 8 a.m. - Open Meeting
Cascades Conference Center, 104 Visitor Center Drive, Williamsburg, Virginia. ☒

# Calendar of Events

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A full board meeting to receive Legislative/Regulatory and Continuing Education Committee reports. These meetings are open to the public. No public comment will be taken.

**Contact:** Nancy Durrett, Acting Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

## DEPARTMENT OF EDUCATION (BOARD OF)

**January 15, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Education intends to amend regulations entitled: **VR 270-01-0002. Regulations Governing the Educational Program for Gifted Students.** This proposed regulation amends the existing regulations governing the educational program for gifted learners in Virginia. The changes reflect the most current literature and research relative to the identification of and programming for gifted students. These regulations are being promulgated to ensure that gifted students in kindergarten through grade 12 are identified and provided with an education program that will enable them to achieve to their abilities.

Statutory Authority: § 22.1-253.13:1 of the Code of Virginia.

**Contact:** Valerie Barrett, Associate Specialist, Gifted Programs, P.O. Box 2120, 20th Floor, Richmond, VA 23216, telephone (804) 225-2652.

## STATE BOARD OF ELECTIONS

† **December 21, 1992 - 10 a.m.** – Open Meeting  
200 North 9th Street Office Building, 6th Floor Conference Room, Room 625, Richmond, Virginia. ☒

A meeting to ascertain and certify the results of the December 15, 1992, Special Elections in the 2nd Senatorial District and 38th House of Delegates District.

**Contact:** Margaret O. "Jane" Jones, Executive Secretary Senior, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551 or toll-free 1-800-552-9745.

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

**January 7, 1993 - 5:30 p.m.** – Open Meeting  
**February 4, 1993 - 5:30 p.m.** – Open Meeting  
Chesterfield County Administration Building, 10,001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund

Amendment and Reauthorization Act of 1986.

**Contact:** Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

## VIRGINIA EMPLOYMENT COMMISSION

### State Advisory Board

† **February 9, 1993 - 11 a.m.** – Open Meeting  
† **February 10, 1993 - 8 a.m.** – Open Meeting  
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular meeting to conduct general business.

**Contact:** Nancy L. Munnikhuisen, 703 E. Main St., Richmond, VA 23219, telephone (804) 371-6004.

## DEPARTMENT OF GENERAL SERVICES

† **February 12, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of General Services intends to adopt regulations entitled **VR 330-03-02. Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies and Public Agencies and Public Colleges and Universities in the Commonwealth of Virginia.** The purpose of the proposed regulation is to establish a safe, effective, and standard methodology for obtaining aggressive air samples to monitor air for clearance and area reoccupancy after a removal, encapsulation or enclosure project invoking asbestos-containing material in local education agencies and public colleges and universities.

### STATEMENT

Basis, purpose, substance, issues and impact: The purpose of these regulations is to establish a safe, effective, and standard methodology for obtaining aggressive air samples to monitor air for clearance and area reoccupancy after a removal, encapsulation or enclosure project invoking asbestos-containing material in local education agencies and public colleges and universities.

The aggressive air sampling standards are applicable to final clearance inspection procedures for asbestos abatement projects in local education agencies (LEAs) and public colleges and universities in the Commonwealth of Virginia, and are promulgated pursuant to § 2.1-526.14:1 of the Code of Virginia enacted by the 1990 Virginia General Assembly.



DEPARTMENT OF HEALTH (STATE BOARD OF)

The application of these standards is not mandatory for small scale, short duration activities involving asbestos-containing materials as defined in 29 CFR 1926.58, the federal Occupational Safety and Health Administration's (OSHA) asbestos construction standard.

The Asbestos Hazard Emergency Response ACT (AHERA, 40 CFR Part 763, Subpart E) addresses, at a federal level, procedures for aggressive air sampling in LEAs. These standards are not intended to replace AHERA guidelines for aggressive air sampling in LEAs, but are designed to supplement standards for LEAs in the Commonwealth of Virginia.

The Department of General Services, Bureau of Capital Outlay Management, intends to promulgate the regulations entitled "Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies and Public Colleges and Universities in the Commonwealth of Virginia" in order to comply with requirements of § 2.1-526.14:1 of the Code of Virginia, enacted by the 1990 Virginia General Assembly.

These regulations describe the process that will be used.

Statutory Authority: § 2.1-526.14:1 of the Code of Virginia.

Contact: Henry G. Shirley, Director, Bureau of Capital Outlay Management, 805 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 786-3581.

BOARD FOR GEOLOGY

December 18, 1992 - 10 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, (804) 367-9753/TDD ☎

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

December 14, 1992 - 10:30 a.m. - Open Meeting
December 15, 1992 - 10:30 a.m. - Open Meeting
The Hyatt Hotel, 6624 West Broad Street, Richmond, Virginia. ☒

A general meeting.

Contact: Abria M. Singleton, Executive Secretary, The Commonwealth Building, 4615 W. Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816 or (804) 367-6283/TDD ☎

January 29, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled VR 355-11-02. Rules and Regulations Governing the Detection and Control of Phenylketonuria (PKU), and adopt regulations entitled VR 355-11-200. Regulations Governing Newborn Screening and Treatment Program. The purpose of the proposed Rules and Regulations Governing the Newborn Screening and Treatment Program is to clarify the respective responsibilities of the Department of Health, Division of Consolidated Laboratory Services, physicians, midwives, nurses, administrators of hospitals and other agencies, and persons in the Commonwealth in the detection, control, and treatment of newborn infants identified with diseases as specified in § 32.1-65 of the Code of Virginia.

Statutory Authority: § 32.1-12 and Article 7 (§ 32.1-65 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia.

Contact: Alice Linyear, MD, MPH, Director, Division of Maternal and Child Health, P.O. Box 2447, Suite 136, Richmond, VA 23218, telephone (804) 786-7367.

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January 31, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled VR 355-40-600. Regulations for the Conduct of Human Research. Chapter 603 of the 1992 Acts of Assembly (House Bill 220) requires the Board of Health to develop regulations for human research to be conducted or authorized by the Department of Health or any facilities or other entities operated, funded or licensed by the department. In accordance with the legislation, the proposed regulations define requirements for obtaining informed consent and require the establishment of human research committees by institutions or agencies conducting or proposing to conduct or authorize human research. The proposed regulations require annual reporting of human research committees to the State Health Commissioner. Human research which is subject to federal regulations is exempt from the regulations.

Statutory Authority: § 32.1-12.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.



# Calendar of Events

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**Contact:** Roseanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

## Executive Committee Meeting

† **December 21, 1992 - 2 p.m.** – Conference Call  
Department of Health, 1500 East Main Street, Suite 214, Richmond, Virginia.

A conference call to discuss the Governor's budget as released on December 20, 1992.

**Contact:** Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-3564.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**December 15, 1992 - 1:30 pm.** – Open Meeting  
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☒

A regular monthly meeting.

**Contact:** Marcia Melton, Executive Secretary, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-3671.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **December 22, 1992 - 1 p.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, 9th Floor Conference Room, Richmond, Virginia. ☒

A meeting to discuss proposed regulations for the Tuition Assistance Grant Program.

**Contact:** Stephen R. Merritt, Coordinator, Financial Aid Programs, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

**December 16, 1992 - 2 p.m.** – Open Meeting  
General Assembly Building, Senate Room A, Richmond, Virginia. ☒

A meeting to receive comments and answer questions on (i) the department's intent to develop and adopt a regulation setting forth the evaluation criteria and the procedure for nominating property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark; and (ii) the board's intent to develop and adopt a regulation setting forth the evaluation criteria and the procedures for designating

Virginia landmarks.

**Contact:** Margaret T. Peters, Information Officer, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804)786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**January 5, 1993 - 9 a.m.** – Open Meeting  
**February 2, 1993 - 9 a.m.** – Open Meeting  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**December 15, 1992 - 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 it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

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

† **January 18, 1993 - 10 a.m.** – Public Hearing  
State Water Control Board Room, 4900 Cox Road, Glen Allen, Virginia.

**February 12, 1993** - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations

entitled **VR 394-01-4. Virginia Amusement Device Regulations.** The proposed amendments add requirements for bungee jumping activities.

## STATEMENT

**Substance:** The 1990 edition of the Virginia Amusement Device Regulations (VADR) provides for the administration and enforcement of uniform, statewide standards for the construction, maintenance, operation and inspection of amusement devices, whether mobile or fixed to a site. These regulations supplement the provisions of the Uniform Statewide Building Code for the purpose of protecting the health, safety and welfare of amusement device users. The technical requirements of the regulations are based primarily on standards developed by the American Society for Testing and Materials (ASTM). Provisions are included in the regulations for the inspection of amusement devices, reports and investigation of accidents, certification and conduct of operators and an administrative appeals system for the resolution of disagreements between the building officials and amusement device owners and operators. Proposed amendments by the Board of Housing and Community Development to the 1990 edition of the Virginia Amusement Device Regulations (VADR) add requirements for bungee jumping activities.

### Issues:

1. To add to the definition section the term and meaning for "bungee jumping."
2. To add a reference for bungee jumping to require that this activity comply with applicable section of the VADR.
3. To require that this activity also comply with new requirements which are established in Article 2 of the regulation.

**Basis:** Sections 36-98 and 36-88.3 of the Code of Virginia.

**Purpose:** To provide for the administration and enforcement of uniform statewide standards for the operation and inspection of amusement devices that supplement the Uniform Statewide Building Code to protect the public from hazards relating to amusement devices.

### Estimated impact:

1. Estimated impact with respect to the number of persons affected: all citizens of the Commonwealth who own, operate, use or participate in bungee jumping activities will be affected by these amendments.
2. Projected costs for implementation and compliance: No appreciable increase in cost to the agency is anticipated other than the time to incorporate these requirements into the training curriculum for the amusement device inspector certification program. Costs incurred by the locality to inspect these operations would be defrayed

through the permit fee process.

Statutory Authority: § 36-98.3 of the Code of Virginia.

**Contact:** Carolyn R. Williams, Building Code Supervisor, Code Development Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

† **December 21, 1992 - 10 a.m.** – Open Meeting  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

The board will meet to consider the following:

1. Occupational Exposure to Cadmium, §§ 1910.1027 and 1926.63, Final Rule, including (i) Amendment to Special Provisions for Air Contaminants, § 1910.19, and (ii) Amendment to Air Contaminants Standard, § 1910.1000.
2. Occupational Exposure to 4,4' - Methyleneedianiline (MDA), §§ 1910.1050 and 1926.60, Final Rule, including Amendment to Special Provisions for Air Contaminants, § 1910.19.

**Contact:** John Crisanti, Director, Office of Enforcement Policy, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

## STATE COUNCIL ON LOCAL DEBT

**December 16, 1992 - 11 a.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting of the council subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

**Contact:** Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804)225-4928.

## STATE LOTTERY BOARD

† **December 21, 1992 - 10 a.m.** – Open Meeting  
2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for

# Calendar of Events

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public comment are scheduled.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

## MARINE RESOURCES COMMISSION

† **December 22, 1992 - 9:30 a.m.** – Open Meeting  
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for the deaf provided upon request)

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 12 noon. Items to be heard are as follows: (i) regulatory proposals; (ii) fishery management plans; (iii) fishery conservation issues; (iv) licensing; and (v) shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-8088, toll-free (800) 541-4646 or (804) 247-2292/TDD ☎

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**December 14, 1992 - 1 p.m.** – Open Meeting  
600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☒

A meeting to discuss medical assistance services and issues pertinent to the board.

**Contact:** Patricia A. Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll-free 1-800-343-0634/TDD ☎

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**December 18, 1992** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical

Assistance Services intends to adopt regulations entitled: **VR 460-01-74 and 460-04-4.2600. Drug Utilization Review Program Regulations.** The purpose of this proposal is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws. The sections of the State Plan for Medical Assistance affected by this action are section 4 to which is added new preprinted pages 74 through 74b and new state regulations VR 460-04-4.2600.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving outpatient drugs who do not reside in a nursing home. Currently, the Commonwealth does not have a DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and often, inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

OBRA 90 § 4401 placed four key DUR requirements on DMAS: (i) implementation of a retrospective DUR; (ii) provision for prospective DUR before the dispensing of prescriptions; (iii) establishment of a DUR board; and (v) development of physician and pharmacist educational interventions and programs.

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

Written comments may be submitted through December 18, 1992, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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**January 2, 1993** – Written comments may be submitted through 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical

Assistance Services intends to adopt regulations entitled: **VR 460-04-8.14. Managed Care: "Medallion" Regulations.** The purpose of this proposal is to promulgate permanent regulations to supersede the current emergency regulation containing substantially the same policies.

House Bill 30, passed by the 1990 session of the General Assembly, directed the Department of Medical Assistance Services (DMAS) to develop a plan to test the feasibility of establishing a statewide managed care system for Medicaid patients. The plan was developed and submitted to the Committee of Health Care for All Virginians (SJR 118) on October 1, 1990. The committee examined the plan based on three criteria: (i) the feasibility of expanding the system, (ii) alternatives for the design and staffing of such a system, (iii) costs and benefits associated with the preferred options. DMAS subsequently was instructed to proceed with its coordinated care program, named "MEDALLION."

The Commonwealth has requested and received approval from the Health Care Financing Administration (HCFA) for a waiver under § 1915(b) of the Social Security Act. DMAS will provide coordinated care services to those selected Medicaid recipients of the Commonwealth.

The services provided by this waiver would establish and support Primary Care Providers (PCP) who would become recipient care managers responsible for coordination of "MEDALLION" recipients' overall health care. The PCP will assist the client in gaining access to the health care system and will monitor on an ongoing basis the client's condition, health care needs, and service delivery to include referrals to specialty care. This form of health care delivery is expected to foster a more productive physician/patient relationship, reduce inappropriate use of medical services, and increase client knowledge and use of preventive care.

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

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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**January 15, 1993** - Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled **VR 460-01-79.7, 460-02-3.1100, 460-02-3.1200, 460-03-3.1100, 460-03-3.1105, 460-02-4.1920.** **Amount, Duration, and Scope of Services: Discontinue**

**Coverage of Certain Optional Drugs and Fertility Services.** The purpose of these proposed regulations is to (i) conform with federal requirements for rebates on certain drugs; (ii) redefine family planning services to exclude the coverage of certain fertility drugs and services; (iii) discontinue coverage of certain optional drugs; and (iv) modify the method of the payment of pharmaceutical dispensing fees to allow for more or less frequent dispensing as is appropriate per drug.

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

Written comments may be submitted until 5 p.m. on January 15, 1993, to Rebecca Miller, Pharmacy Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

## BOARD OF MEDICINE

### Informal Conference Committee

† **December 16, 1992 - 9 a.m.** - Open Meeting  
Sheraton Inn, I-95 and Route 3, Fredericksburg, Virginia. ☒

† **December 17, 1992 - 9 a.m.** - Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

† **December 18, 1992 - 9 a.m.** - Open Meeting  
Sheraton Inn, I-95 and Route 3, Fredericksburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comments will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-9943/TDD ☒

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

† **December 21, 1992 - 11 a.m.** - Public Hearing  
James Madison Building, Main Floor Conference Room, 109 Governor Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to obtain public comment on the state plan for Comprehensive Community Mental Health Services and Community Mental Health Services Block Grant Application for federal Fiscal

# Calendar of Events

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Year 1993.

Contact: Janet Lung, James Madison Bldg., 109 Governor St., Richmond, VA 23214, telephone (804) 371-0359 or (804) 371-8977/TDD ☎

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February 15, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled VR 460-06-01. Rules and Regulations to Assure the Protection of the Subjects of Human Research and adopt regulations entitled VR 470-06-01:1. Regulations to Assure the Protection of Participants in Human Research. These regulations respond to Chapter 603 of the 1992 Acts of Assembly (HB 220), passed by the General Assembly, which limits the scope of the DMHMRSAS' oversight responsibility for human research to the department and institutions operated, funded or licensed by the DMHMRSAS. Current regulations require all human research be conducted in compliance with regulations promulgated by DMHMRSAS. The regulations further require that all organizations conducting human research forward reports of their reviews and any violations pertaining to the conduct of human research to the Commissioner of the DMHMRSAS. Other proposed changes to the regulations are intended to increase consistency with federal regulations (i.e., 45 CFR Part 46).

## STATEMENT

Basis and authority: These regulations are promulgated under the authority of §§ 37.1-24.01 and § 37.1-10 6 of the Code of Virginia to effectuate the provision of § 32.1-162.16 et seq. of the Code of Virginia.

Summary and analysis: The regulations reflect the following actions:

1. Limit applicability of regulations to community services boards and to any facility operated, funded or licensed by the department as required by the state Code.
2. Extend the requirement that participants in biomedical research be informed of risks discovered after the research has been conducted to participants in all types of research.
3. Human research has been revised to be consistent with the Code of Virginia. As in the Code, the exceptions have been removed because they are not necessary. More specifically defined exemptions are described in a separate section.

"Legally authorized representative" has been revised to clarify that an official or employee of the institution conducting the research cannot act as the authorized representative and to authorize the use of an attorney-in fact.

"Informed consent" has been rewritten to clarify the basic elements of informed consent. Requirements have been added that informed consent must include a description of the expected duration of participation and the extent to which confidentiality will be maintained. The participants rights regarding refusal to participate and withdrawal from the study are clarified.

"To present a hazardous risk" has been replaced with a definition of "minimal risk" as appears in federal regulations.

4. Clarify that the summary of the human research must be submitted prior to the initiation of the research project.

5. Adds the requirement that consideration be given to race, gender and cultural background in assuring diversity in the membership of the research review committee.

Change the requirement that each committee must include "several members" who are not affiliated with the institution sponsoring the research to "at least one member," and adds the requirement that this member must be part of the immediate family of a person who is affiliated with the institution.

Adds the requirement that a quorum must include at least one member whose primary concerns are in nonscientific areas.

6. A provision that has been added allowing an institution or agency to expedite the review of a human research project if the project has been reviewed and approved by the human research review committee of another institution.

Committees are required to review human research proposals within 30 days rather than 60 days.

7. In reviewing human research, the review committee must consider whether or not the selection of subjects is "equitable," rather than "valid" as previously indicated.

8. Specify types of research that present no risk to participants and would, therefore, be exempt from these regulations are defined. This would increase the consistency with federal regulations.

9. Define the conditions under which and the procedures for conducting an "expedited" review for particular types of research as provided for in federal

regulations. Expedited review may be used for minor changes in previously approved research and specific types of research as identified in federal regulations.

10. Clarify conditions required to assure truly voluntary and informed consent.

Conditions are also defined under which the research review committee may allow some elements of informed consent to be omitted or altered and for the requirement of written informed consent to be waived. This may be allowed when the research involves no more than minimal risk, the waiver or alteration will not adversely affect the participants, the research could not otherwise be conducted, and additional pertinent information is provided to the participant after participation.

11. Outline new requirements for the preparation and maintenance of committee records. Committees must prepare and retain copies of all research proposals, progress reports, reports of injuries to participants, minutes of committee meetings, etc. for three years.

**Impact:** The proposed regulations or failure to adopt the proposed regulations would have no direct impact on any DMHMRSAS programs or client services. The regulations as proposed change the reporting requirement for any human research conducted outside the DMHMRSAS, reducing inappropriate reporting to the DMHMRSAS. In addition, the rights of individual clients are better protected by providing for review and oversight of research by agencies with expertise in the area of investigation and knowledge of the client population.

The proposed regulations provide for greater efficiency by adding a provision allowing an institution or agency to expedite or waive the review of a human research project if the project has been reviewed and approved by the human research review committee of another institution (§ 32.1-162.19 B).

There is no budgetary impact expected for this agency.

Written comments may be submitted through February 15, 1993, to J. Randy Koch, Director of Research and Evaluation, P.O. Box 1797, Richmond, Virginia 23214.

Statutory Authority: §§ 37.1-10 and 37.1-24.01 of the Code of Virginia.

**Contact:** Rubyjean Gould, Director of Administrative Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**February 3, 1993 - 10 a.m. – Public Hearing**  
Department of Mines, Minerals and Energy Office Building, Mountain Empire Community College, Big Stone

Gap, Virginia.

**February 3, 1993 –** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled **VR 480-03-19. Virginia Coal Surface Mining Reclamation Regulations**. The purpose of the proposed amendments is to be consistent with changes in corresponding federal rules, as required by law. The amendments (i) establish requirements for operations where the weight of coal is 16 2/3% or less of the total tonnage of mineral mined; (ii) clarify the applicability of certain reclamation operations; (iii) clarify the notice and permitting requirements for exploration for coal; (iv) establish additional protection for prime farmland; (v) clarify the definition of "road" and identify plans and descriptions to be included in the permit application for the road system for the permit area; (vi) enhance public safety by changing requirements for the operation of impoundments; (vii) clarify the revegetation success standards and provide for the planting of wildlife enhancement shrubs; (viii) clarify the applicability of preparation plants not at the mine site; (ix) delete the definition of support facilities; and (x) make changes for consistency in numbering.

Statutory Authority: §§ 45.1-1.3(4) and 45.1-230 of the Code of Virginia.

**Contact:** Bill Edwards, Policy Analyst, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-6855 or toll-free 1-800-552-3831/TDD ☎

## BOARD OF NURSING HOME ADMINISTRATORS

† **January 19, 1993 - 10 a.m. – Open Meeting**  
Brookfield Office Park-Southern States Building, Room 6, 6606 West Broad Street, Richmond, Virginia. ☒

Informal conferences.

† **January 20, 1993 - 10 a.m. – Open Meeting**  
Brookfield Office Park-Southern States Building, Rooms 1 and 2, 6606 West Broad Street, Richmond, Virginia. ☒

Formal conferences and board meeting.

† **January 21, 1993 - 10 a.m. – Open Meeting**  
Brookfield Office Park-Southern States Building, Rooms 1 and 2, 6606 West Broad Street, Richmond, Virginia. ☒

A meeting of the board.

**Contact:** Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9111.

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## VIRGINIA OUTDOORS FOUNDATION

† **December 14, 1992 - 10:30 am.** – Open Meeting  
State Capitol, House Room 2, Richmond, Virginia. ☒

A general business meeting.

**Contact:** Tyson B. Van Auken, Executive Director, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539.

## DEPARTMENT OF STATE POLICE

**December 18, 1992** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-00-01. Public Participation Policy.** This regulation sets forth the policy of the Department of State Police to seek public participation when proposing regulations or substantive changes to present regulations.

Statutory Authority: §§ 9-6.14:7.1, 46.2-1165, 52-8.4, and 54.1-4009 of the Code of Virginia.

**Contact:** Captain J. P. Henries, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

**December 14, 1992 - 10 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia 23230. ☒

A general meeting of the board.

**Contact:** Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎ (804) 367-8595.

## RAPPAHANNOCK-RAPIDAN DIVISION OF COURT SERVICES

### Executive Board

**December 14, 1992 - 5:30 p.m.** – Open Meeting  
300 Sunset Lane Ext., Suite 3110, Culpeper, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A quarterly business meeting of the District 9 Virginia Alcohol Safety Action program. Items for review include budget, program activities and personnel.

**Contact:** R. Dean Irvine, Director, 300 Sunset Lane Ext.,

Suite 3110, Culpeper, VA 22701, telephone (703) 825-4550.

## REAL ESTATE APPRAISER BOARD

**December 15, 1992 - 10 a.m.** – Open Meeting  
**January 5, 1993 - 10 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general business meeting.

**Contact:** Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

## REAL ESTATE BOARD

† **January 14, 1993 - 9 a.m.** – Open Meeting  
Richmond Marriot Hotel, 500 East Broad Street, Richmond, Virginia. ☒

A meeting to conduct board business including review of applications, disciplinary cases, correspondence, etc. The board will also consider publishing a notice of intent to commence regulatory review.

**Contact:** Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

## INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

### Coordinating Committee

**December 18, 1992 - 8:30 a.m.** – Open Meeting  
Tyler Building, Suite 208, Office of Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Richmond, Virginia. ☒

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

**Contact:** John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**January 15, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social

Services intends to adopt regulations entitled VR 615-01-48. General Relief Program - Deeming Income From Alien Sponsors. This regulation makes policy in the General Relief Program consistent with policy in the Aid to Families with Dependent Children Program which requires considering the income and resources of the alien's sponsor for three years after the alien's entry into the U.S. as a permanent resident when determining program eligibility.

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

Written comments may be submitted through January 15, 1993, to Diana Salvatore, Program Manager, Medical Assistance Unit, 8007 Discovery Dr., Richmond, VA 23229.

Contact: Peggy Friedenber, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

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† January 19, 1993 - 5:30 p.m. — Public Hearing Koger Center, West End, Wythe Building, Conference Room A, 1604 Santa Rosa Road, Richmond, Virginia.

† January 20, 1993 - 5:30 p.m. — Public Hearing Virginia Beach Public Library (Central), Auditorium, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

† January 21, 1993 - 5:30 p.m. — Public Hearing Albemarle County Office Building, Meeting Room 7, 2nd Floor, 401 McIntire Road, Charlottesville, Virginia.

February 12, 1993 — Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled VR 615-34-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Contracting Organizations. The proposed regulation sets forth the requirements for organizations that shall administer the voluntary registration program for small family day care homes on behalf of the Commissioner of Social Services.

STATEMENT

Basis: Section 63.1-196.04C of the Code of Virginia, pursuant to House Bill 1862, provides the statutory basis for developing regulations for contracting organizations to administer the voluntary registration program.

Purpose: In response to HB 1862, the 1991 General Assembly mandated the creation of a new voluntary registration program for small family day care homes. An emergency regulation was adopted by the State Board of Social Services on March 18, 1992, to implement the

program on July 1, 1992. This regulation expires June 30, 1993. As a result, a permanent regulation must be promulgated to replace the emergency regulation.

The proposed permanent regulation sets forth eligibility and qualifications and administrative guidelines for contracting organizations selected to administer the voluntary registration program. The provisions of this regulation are estimated to become effective on July 21, 1993.

Substance: This regulation has similar requirements to the emergency regulation. The following requirements constitute the additions and revisions to the regulation:

1. A definition for "Commissioner's designee" is added to identify the agent that the Commissioner may delegate authority to deny, revoke, or refuse to renew the certificate of registration.
2. The definitions for "cooperative agreement" and "substitute provider" are revised.
3. The frequency and type of inspection which will be conducted of the contracting organization and the types of financial records to demonstrate financial soundness are specified.
4. Requirements are added on the number of board members and the meeting records which must be available for review.
5. A statement is added that the Commissioner may modify a contractor's territory to facilitate administration of the program.
6. The Privacy Protection Act was added to the Freedom of Information Act as laws which the contractors must adhere to in administering the program.
7. A sworn disclosure statement is included as part of the required information in a completed application that certifies that those in contact with children do not have a criminal background.
8. A statement is added to allow the contract period to be greater or less than two years.
9. The information on compliance plans is condensed and stipulations are added that a contract may be revoked for failure to perform certain activities, conduct, or policies.
10. The standards stipulate a provider may reapply for a certificate of registration six months after one has been denied, revoked or refused renewal by the Commissioner.
11. A requirement is added that changes in staff and office locations are to be reported.



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12. The provider is required to report to the contracting organization an incident in which a child is lost or missing, the provider found it necessary to seek assistance from local emergency or police personnel, the contractor ends the registration program, or the provider is exceeding the number of children.

Further, the proposed regulation:

1. Adds records which must be maintained in contract files.
2. Adds the Code citation requiring social security numbers.
3. Lists the elements of information required by the division in quarterly reports and adds narrative reports to those which are to be submitted.
4. Specifies that contractors may not charge the public for more than the cost of copying information on registered providers.
5. Specifies that the staff responsible for approving providers for registration and the food program may not be the same person.
6. Lists the materials which should be reviewed as part of an application for registration.
7. Increases the qualifications for the executive director and staff and sets forth qualifications for trainers.
8. Clarifies the role of the contractor and Commissioner in issuing a certificate of registration.
9. Adds information on fees to be consistent with the requirements for providers.
10. Clarifies how complaints shall be handled by contractors.
11. Specifies that contractors shall monitor those homes not participating in the food program and that visits shall be unannounced. Also states that the division will be monitoring homes directly as part of their monitoring of the contractor.
12. Adds the name, address and phone number of the contractor to the Information to Parents Statement. Also directs complaints against the contractor to the division and corrects the requirements for reporting child abuse and neglect.
13. Reiterates the reasons specified in the requirements for providers that a certificate may be denied, revoked, or refused renewal.
14. Clarifies the review and appeals process for

providers which is also set forth in the Requirements for Providers.

15. Adds that a provider whose certificate of registration is revoked is responsible for notifying the parent(s) of each enrolled child "within 10 days after receipt of notification of the action."

16. Adds required reports in the Appendix of the regulations.

Issues: This regulation addresses the following issues which affect contractors administering the voluntary registration program: eligibility and qualifications, administrative responsibility, inspection and monitoring of contracting organizations and family day care homes, reporting requirements, records maintenance and public access, collection of fees, processing and evaluating applications, training, technical assistance and public relations, complaints and violations, denials, revocations and refusals to renew certificates of registration, and the review and appeals process.

Impact: This regulation will affect contracting organizations, small family day care home provider who voluntarily register and adult members of their household, any assistants or substitute providers, children and parents of children who are enrolled in registered homes, food sponsors, the Department of Social Services (DSS), local departments of social services and state and federal agencies.

Written comments may be submitted through February 12, 1993, to Mary Zoller, Department of Social Services, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

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† **January 19, 1993 - 5:30 p.m.** – Public Hearing  
Koger Center, West End, Wythe Building, Conference Room A, 1604 Santa Rosa Road, Richmond, Virginia.

† **January 20, 1993 - 5:30 p.m.** – Public Hearing  
Virginia Beach Public Library (Central), Auditorium, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

† **January 21, 1993 - 5:30 p.m.** – Public Hearing  
Albemarle County Office Building, Meeting Room 7, 2nd Floor, 401 McIntire Road, Charlottesville, Virginia.

**February 12, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled **VR 615-35-01. Voluntary Registration of Small Family Day Care Homes - Requirements for Providers.** The proposed regulation sets forth registration procedures and general information for providers operating small family day care homes who voluntarily register.

## STATEMENT

**Basis:** Section 63.1-196.04C of the Code of Virginia, pursuant to House Bill 1862, provides the statutory basis for the State Board of Social Services to prescribe general standards for the voluntary registration of providers who operate small family day care homes and to whom a certificate of registration may be issued by the Commissioner of Social Services.

**Purpose:** In response to HB 1862, the 1991 General Assembly mandated the creation of a new voluntary registration program for small family day care homes. An emergency regulation was adopted by the State Board of Social Services on April 15, 1992, to implement the program on July 1, 1992. This regulation expires June 30, 1993. As a result, a permanent regulation must be promulgated to replace the emergency regulation.

The proposed permanent regulation sets forth registration procedures and general information for providers operating small family day care homes who voluntarily register. This includes information on staffing requirements, adult-child ratios and a self-administered health and safety checklist. The provisions of this regulation are estimated to become effective on July 1, 1993.

**Substance:** This regulation has similar requirements to the emergency regulation. The following requirements are substantive revisions to the regulation:

1. A definition for "Commissioner's designee" is added to identify the agent that the Commissioner may delegate authority to deny, revoke, or refuse to renew the certificate of registration.
2. The definition for "substitute provider" is revised.
3. Provider eligibility criteria is added that addresses § 63.1-196.04 E of the Code of Virginia and specifies that a provider applicant shall not be subject to licensure.
4. The requirement that providers who are interested in receiving referrals must indicate a preference to have their phone number included on lists of registered providers is deleted.
5. Persons who care for children in the family day care home less than 15 hours a week shall also obtain a tuberculosis examination.

6. The recency of tuberculosis tests obtained prior to the date of initial application for registration is specified. Additional screenings are required to be conducted every two years thereafter and if an individual comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms. In addition, an "exception is added that allows an individual to delay obtaining the tuberculosis test for medical reasons.

7. The recency of criminal records checks and CPS Central Registry clearances prior to the date of initial application and application for renewal is specified.

8. A sworn disclosure statement is included as part of the required information of a completed application that certifies that those in contact with children do not have a criminal background.

9. The registration fees is required when an application is submitted for registration.

10. The process for issuance of the certificate of registration is explained.

11. A provider shall be ineligible for issuance of a certificate of registration for six months from the date a certificate is denied, revoked or refused renewal by the Commissioner to the provider.

12. The required information to be included with a completed renewal application form is specified.

13. It is established that the decision of the designee to whom the Commissioner delegates authority to deny, revoke or refuse to renew a certificate of registration, i.e., the Director of Licensing Programs, may be appealed by requesting a hearing.

14. A provider whose certificate of registration is revoked is responsible for notifying the parent(s) of each enrolled child "within 10 days after receipt of notification of the action."

15. The provider is required to report to the contracting organization an incident in which a child is lost or missing and the provider found it necessary to seek assistance from local emergency or police personnel.

16. The provider is required to maintain a record of "any known or suspected allergies and any chronic or recurrent diseases or disabilities" for each enrolled child.

17. The medical information required for each enrolled child must also be in the provider's possession when he or she leaves the home with the child(ren).

18. Clarification is given on staffing limitations and on

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the number of children that can receive care who are unrelated to the provider.

19. A registered home is required to have indoor running water and an indoor bathroom equipped with a flush toilet and a sink with running water.

20. An evacuation plan is required to be posted in the home.

21. Two items regarding firearms and kitchen appliances are added to section 2 of the checklist that were inadvertently omitted in the final draft of the emergency regulation.

22. Section 3 of the checklist specifies that bathrooms in the home shall have disposable or individually assigned towels.

23. Items in sections 3 and 5 of the checklist are revised for consistency with changes in related standards.

**Issues:** This regulation addresses the following issues which affect providers operating small family day care homes who voluntarily register: provider eligibility, application procedures, registration fees, issuance of certificates of registration, renewals, denials, revocations and refusals to renew certificates of registration, appeals procedures, reporting and record-keeping requirements, staffing requirements, adult-child ratios and health and safety checklist requirements.

**Impact:** This regulation will affect small family day care home providers who voluntarily register and their adult household members, any assistants or substitute providers, children and parents of children who are enrolled in registered homes, the Department of Social Services (DSS), contracting organizations, local departments of social services and state and federal agencies.

According to the 1989 JLARC report findings, approximately 33,000 small family day care homes in Virginia are not regulated by the State. These homes now have access to voluntary registration. As of September, 1992, an estimated 978 of these homes have been approved through the federal alternate approval process and participate in the Child and Adult Care Food Program, sponsored by the United States Department of Agriculture (USDA). It is expected that most of these homes will voluntarily register because the USDA is requiring that they be registered or licensed to continue their participation in the food program. Similarly, an estimated 2,014 homes certified by local departments of social services are participating in the food program. Approximately 25% of these homes are expected to transfer to voluntary registration because some local agencies will choose not to continue local agency approvals.

Written comments may be submitted through February 12,

1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

**Contact:** Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

\* \* \* \* \*

**February 12, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled **VR 615-01-50. Food Stamp Program - Income Conversion Method**. The income conversion method of multiplying weekly income by 4.3 and bi-weekly amounts by 2.15 will be required to determine eligibility for food stamp benefits.

## STATEMENT

**Basis:** §§ 63.1-25 and 63.100 of the Code of Virginia and the Food Stamp Act of 1977, as amended.

**Purpose:** This regulation will require that food stamp eligibility and benefit amount be calculated by multiplying weekly and bi-weekly income amounts by 4.3 or 2.15 to determine monthly amounts.

**Substance:** This regulation will require the income conversion method to be used in all calculations for food stamp eligibility.

**Issues:** The issue to be addressed by this regulation is to select conversion as the income calculation method to be used for all households applying for or receiving food stamp benefits. The U.S. Department of Agriculture requires each state to select one income calculation method.

**Impact:** The eligibility and benefit amount determinations for every food stamp household begins with an evaluation of the household's income. The impact of selecting the income conversion method should result in fewer changes being needed for individual cases. The potential also exists that a few applicants may be determined ineligible because more income will be calculated than is actually received. Fewer eligibility worker errors in calculating the income should also result.

Written comments may be submitted through February 12, 1993, to Burt Richman, Food Stamp Program Manager, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Statutory Authority: §§ 63.1-25 and 63.1-110 of the Code of

Virginia.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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February 14, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled VR 615-37-01. Regulations for Criminal Records Checks for Homes for Adult Day Care Centers. The purpose of the proposed regulation is to protect adults in licensed homes for adults and adult day care centers from persons charged or convicted of certain crimes. The proposed regulation will require a sworn disclosure statement prior to employment and a criminal record check within 30 days of employment for all compensated employees. The sworn disclosure statement indicates that the individual has neither a conviction nor pending charges in or outside the Commonwealth of Virginia of those crimes which act as barriers to employment. The criminal record check is conducted to ensure that the employee does not have any convictions of barrier crimes.

STATEMENT

Basis: Section 63.1-194.13 of the Code of Virginia provides the statutory basis for promulgation of criminal record check standards. The State Board of Social Services has approved the proposed regulation for criminal record checks.

Substance: As of July 1, 1992, § 63.1-192.13 of the Code of Virginia, states that in order to be eligible for compensated employment in a licensed home for adults, licensed district home for adults, or licensed adult day care center the prospective employee must not have convictions of any crime that the law specifies as a barrier to employment. Emergency regulations were implemented to enforce this requirement on July 1, 1992. This regulation will supersede the emergency requirements.

Issues: The proposed regulation spells out the requirements that must be adhered to by providers of care in order for the Department of Social Services to effectively enforce the law.

Estimated impact: Regulated entities: There are currently 516 homes for adults and 36 adult day care centers licensed to serve a total of 25,037 residents and 1,011 participants respectively. Information on the number of staff persons who will be impacted is unavailable.

Projected costs to the regulated: The Department of State

Police charges \$10.00 to process a request for a criminal record report. The cost will most likely be incurred by employers, although some employers may choose to pass these costs to prospective employees.

Expected costs for the agency: The Department of Social Services will enforce this regulation and pay for publishing and disseminating regulations and forms. Since this is already a function of the department, no increase in funds is needed.

Source of funds: The department's regulatory activities are supported by general funds.

Written comments may be submitted through February 12, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Statutory Authority: § 63.1-174 of the Code of Virginia.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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

February 14, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services and the Child Day-Care Council intend to repeal regulations entitled VR 615-32-02. Regulations for Criminal Record Checks: Licensed Child Caring Institutions and VR 175-04-01. Criminal Record Checks for Licensed Child Care Centers. These regulations are proposed for repeal while concurrently promulgating Criminal Record Checks for Child Welfare Agencies.

STATEMENT

Basis: Section 63.1-198.1 of the Code of Virginia, as amended by the 1992 General Assembly, increased protection for children in child welfare agencies and streamlined the criminal record check process. The State Board of Social Services and the Child Day Care Council have approved new regulations for criminal record checks that incorporate the changes made during the 1992 General Assembly session.

Purpose: These regulations are being proposed for repeal. These regulations were superseded by emergency regulations entitled: Regulation for Criminal Record Checks for Child Welfare Agencies that became effective July 1, 1992.

Substance: Amendments to §§ 19.2-389, 63.1-196.04, and 63.1-198.1 of the Code of Virginia regarding criminal record checks requirements were made during the 1992

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General Assembly session. The changes made provide additional protection to children receiving out-of-home care in small family day care homes and group family day care homes and streamline the criminal record check process. The department was receiving criminal record reports and issuing certificates to facilities indicating that the new employee had not committed any crimes that would prohibit employment. The changes in the law allow facilities to request and receive criminal record check reports directly from the Department of State Police. The Department of Social Services determined that developing new regulations to reflect the changes made during the 1992 General Assembly session was the most efficient way to implement the law by its effective date.

Issues: This regulation addresses the following issues which impact child welfare agencies subject to the criminal record check law: individuals required to obtain certificates, routing of certificates, validity of certificates, duplicate certificates, and maintenance and responsibility of certificates by facilities.

Impact: The repeal of this regulation will have little or no impact on child welfare agencies as emergency regulations have been implemented and new regulations are currently being promulgated.

Written comments may be submitted through February 14, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

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

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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**February 14, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14.7.1 of the Code of Virginia that the Board of Social Services and the Child Day-Care Council intend to adopt regulations entitled **VR 615-36-01 and VR 175-10-01. Regulations for Criminal Record Checks for Child Welfare Agencies.** The proposed regulations replace VR 615-32-02 and VR 175-04-01 and apply to all licensed or registered child welfare agencies. The regulations incorporate statutory changes made during the 1992 General Assembly session.

## STATEMENT

Basis: Section 63.1-198.1 of the Code of Virginia provides the statutory basis for promulgation of criminal record check standards. The State Board of Social Services and the Child Day Care Council have approved the proposed regulation for criminal record checks.

Purpose: This regulation incorporates statutory changes made during the 1992 General Assembly and supersedes previous criminal record check regulations. The regulation includes the following changes:

1. Facility operators, board presidents, and applicants for licensure have the authority to request and receive criminal record checks on compensated or voluntary employment applicants, caretakers, adults living in family day care homes or homes approved by family day care systems, and foster and adoptive parent applicants of private child placing agencies.
2. Registered small family day care homes are subject to this regulation.
3. The grace period for receipt of the criminal record report has been increased from 15 to 21 days. This change allows the Department of State Police more time for processing criminal record check reports since employees or other programs will be subject under similar laws passed during the 1992 General Assembly session.
4. The Department of Social Services will no longer issue certificates of criminal record clearance to individuals.

Substance: The Department of Social Services requested amendments to §§ 19.2-389, 63.1-196.04, and 63.1-198.1 of the Code of Virginia regarding criminal record check requirements during the 1992 General Assembly session. The changes made provide additional protection to children receiving out-of-home care in small family day care homes and group family day care homes and streamlines the criminal record check process. The department was receiving criminal record reports and issuing certificates to facilities indicating that the new employee had not committed any crimes that would prohibit employment. The changes in the law allows facilities to request and receive criminal record check reports directly from the Department of State Police.

Issues: This regulation addresses the following issues which impact adequate enforcement of the criminal record check law: validity of criminal record check reports, maintenance of criminal record check reports and requirements for board members.

Estimated impact: Regulated entities: These requirements will apply to all licensed or registered child welfare agencies which will include small family day care homes. Information on the number of affected persons that will be impacted is unavailable.

Projected costs to the regulated: The Department of State Police charges \$10.00 to process a request for a criminal record report. The law does not specify who is responsible for payment of the fee. The Department of State Police will waive this fee for foster care applicants.

Expected costs for the agency: The Department of Social Services will enforce this regulation and pay for publication and dissemination of the regulations and forms. Since this is already a function of the department, no increase in funds is needed.

Source of funds: The Department of Social Services' regulatory activities are supported by general funds.

Written comments may be submitted through February 14, 1993, to Cheryl Worrell, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

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

**Contact:** Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

## BOARD OF SOCIAL WORK

† **December 15, 1992 - 10 a.m.** – Open Meeting  
6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A special board meeting to discuss written examinations and examination services. No public comment will be received.

† **January 29, 1993 - 10 a.m.** – Open Meeting  
6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to conduct general board business and respond to correspondence.

**Contact:** Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

## VIRGINIA STUDENT ASSISTANCE AUTHORITIES

### Board of Directors

† **December 17, 1992 - 10 a.m.** – Open Meeting  
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia. ☒

A general business meeting.

**Contact:** Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-LOAN.

## DEPARTMENT OF TAXATION

**December 18, 1992** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-442. Consolidated and Combined Returns.** The purpose of the proposed regulation is to provide guidance to filers of consolidated and combined Virginia tax returns in computing the Virginia modification to the federal N.O.L. and other areas.

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

**Contact:** Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

\* \* \* \* \*

**December 18, 1992** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-446. Intragroup Transactions and VR 630-3-446. Corporation Income Tax: Foreign Sales Corporations.** The purpose of this amendment is to clarify and provide guidance for the Virginia tax treatment of transactions between members of a corporate group.

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

**Contact:** Alvin H. Carpenter, III, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

## COMMONWEALTH TRANSPORTATION BOARD

**December 16, 1992 - 2 p.m.** – Open Meeting  
Virginia Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**December 17, 1992 - 10 a.m.** – Open Meeting  
Virginia Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to

# Calendar of Events

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select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

## TREASURY BOARD

December 16, 1992 - 9 a.m. - Open Meeting  
† January 20, 1993 - 9 a.m. - Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☒

A regular meeting of the board.

† January 6, 1993 - 9:45 a.m. - Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☒

A special meeting.

Contact: Linda F. Bunce, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Advisory Committee on Services

January 9, 1993 - 11 a.m. - Open Meeting  
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request.)

The Advisory Committee on Services will meet to advise the board on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, (804) 371-3140/TDD ☎, or toll-free (800) 622-2155.

## VIRGINIA VOLUNTARY FORMULARY BOARD

January 14, 1993 - 10:30 a.m. - Open Meeting  
1100 Bank Street, Washington Building, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† January 11, 1993 - 2 p.m. - Public Hearing  
Headquarters Branch, Roanoke County Library, 3131 Electric Road, Roanoke, Virginia.

† February 9, 1993 - 2 p.m. - Public Hearing  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

February 18, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waste Management Facility Operators intends to adopt regulations entitled VR 674-01-02. **Waste Management Facility Operators Regulations.** The purpose of the proposed regulations is to establish standards, certification qualifications and fees for individuals acting as waste management facility operators.

## STATEMENT

Basis, purpose, summary and impact: Pursuant to Chapters 1 through 3 and Chapter 22.1 of Title 54.1 of the Code of Virginia, the Virginia Board for Waste Management Facility Operators proposes initial regulations (VR 674-01-02) to establish standards, certification qualifications and fees for individuals acting as waste management facility operators. The board estimates these regulations apply to approximately 500 individuals.

The proposed fees will assure that the variance between projected revenues and expenditures for the board does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia.

1. Proposed regulations will establish fees for the following services:

- a. The initial application fee for full certification shall be \$100.00.
- b. The fee for renewal of full certification is \$100.00.
- c. The fee for late renewal for full certification is \$100.00.
- d. The fee for reinstatement shall be \$100.00.
- e. The fee for taking the examination and reexamination shall be \$65.00.
- f. The application fee for training course approval is \$150.00.
- g. The application fee for CPE sponsor approval is \$150.00.

h. The application fee for interim certification is \$85.00.

i. The fee for renewal of interim certification is \$85.00.

2. The proposed regulations apply to all individuals acting as waste management facility operators. A waste management facility operator is defined as "any person, including an owner who is in charge of the actual, on-site operation of a waste management facility during any period of operation." A waste management facility is "a site used for the planned treatment, storage, or disposal of nonhazardous solid waste."

3. The regulations establish the standards and qualifications for the training and certification of a waste management facility operator. The standards and qualifications include definitions, requirements for interim and full certification, applications procedures, fees, examination requirements, exemption from training through experience, reciprocity, continuing education, approval of training courses and continuing education sponsors, and standards of conduct and disciplinary action.

4. Interim certification established by emergency regulations promulgated by the board on July 6, 1992, was extended to allow the board time to approve training courses and develop an examination. The extension further allows individuals time to complete required training and successfully pass the examination. Also the extension will accommodate successfully those facilities closing due to the more stringent amendments of RCRA, Subtitle D, a federal regulation. Individuals employed by these facilities will not have to meet the higher standard of full certification.

5. The regulations establish classification of certification to accommodate different types of facilities.

6. The regulations allow for the waiver of training for those with seven or more years of experience, three years of which is since the promulgation of Department of Waste Management Regulations in January of 1988.

7. The regulations also recognize the training requirements mandated by the 1990 amendments of the Clean Air Act. This will provide individuals the ability to take only one course and fulfill both federal and state law simultaneously.

#### Estimated impact:

1. The board estimates these regulations apply to approximately 500 individuals.

2. The program is supported through certification fees.

3. There are no anticipated costs to the department which are not covered by the fee structure.

4. The proposed regulations apply to all individuals acting as a waste management facility operator. A waste management facility operator is defined as "any person, including an owner who is in charge of the actual, on-site operation of a waste management facility during any period of operation." A waste management facility is "a site used for the planned treatment, storage, or disposal of nonhazardous solid waste."

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

**Contact:** Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

#### **DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)**

**December 16, 1992 - 7 p.m. – Public Hearing**  
New County Administration Building, 2nd and Washington, Amherst, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (SWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the proposed draft permit for an industrial landfill to be located on Georgia Pacific property adjacent to the James River in the township of Big Island. The permit was drafted by the Department of Waste Management for Georgia Pacific, in accordance with Part VII of the SWMR. The purpose of the public hearing will be to solicit comments concerning the technical merits of the permit as they pertain to the landfill design, operation and closure. The public comment period will extend until December 28, 1992. Comments concerning the draft permit must be in writing and addressed to Brian McReynolds. Copies of the draft permit may also be obtained by writing Brian McReynolds.

**Contact:** Brian McReynolds, Environmental Engineer Senior, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-2520

**December 21, 1992 - 10 a.m. – Open Meeting**  
Virginia Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. ☒

An informational meeting will be held for Amendment 11 to the Virginia Regulations Governing the Transportation of Hazardous Materials. The proposed amendment will incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal



# Calendar of Events

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Regulations from July 1, 1991, to July 1, 1992.

**Contact:** C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761 or (804) 371-8737/TDD ☎

\* \* \* \* \*

**December 21, 1992 - 11 a.m. – Public Hearing**  
Department of Waste Management, 101 North 14th Street, 11th Floor, Monroe Building, Richmond, Virginia.

**December 21, 1992 –** Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials (Amendment 11).** The purpose of this proposed amendment is to incorporate by reference changes that were made by U.S. DOT Title 49, Code of Federal Regulations from July 1, 1992, to June 1, 1992.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Written comments may be submitted until 5 p.m., December 21, 1992, to John E. Fly, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

**Contact:** C. Ronald Smith, Hazardous Waste Enforcement Chief, Virginia Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-4761.

**December 22, 1992 - 9 a.m. – Open Meeting**  
State Water Control Board, 4900 Cox Road, Innsbrook, Richmond, Virginia. ☒

This will be a general business meeting. Staff will seek approval for amendment of the Solid Waste Management Regulations. The department staff will give a presentation on enforcement activities.

**Contact:** Loraine Williams, Executive Secretary, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2998 or (804) 371-8737/TDD ☎

**January 7, 1993 - 7 p.m. – Public Hearing**  
Chesapeake Sheriff Training Center, 401 Albemarle Drive, Chesapeake, Virginia.

Pursuant to the requirements of Part VII, Virginia Solid Waste Management Regulations (VSWMR), Permitting of Solid Waste Management Facilities, the Department of Waste Management will hold a public hearing on the draft permit amendment for Industrial

Landfill Permit No. 440 located at the Chesapeake Energy Center, between Route 13 and I-64, in the city of Chesapeake. The permit amendment was drafted by the Department of Waste Management for Virginia Power in accordance with Part VII of the VSWMR. The purpose of the public hearing will be to solicit comments regarding the technical merits of the amended issues. The public comment period will extend until January 19, 1993. Copies of the proposed draft permit may be obtained from Sanjay V. Thirunagari. Comments concerning the draft permit must be in writing and directed to Howard Freeland of the Department of Waste Management.

**Contact:** Sanjay V. Thirunagari, Environmental Engineer Senior, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 371-2518.

## STATE WATER CONTROL BOARD

**December 14, 1992 - 7 p.m. – Public Hearing**  
Prince William County Complex, Board Room, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

**December 16, 1992 - 2 p.m. – Public Hearing**  
State Water Control Board, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Glen Allen, Virginia.

**December 17, 1992 - 1 p.m. – Public Hearing**  
Virginia Beach City Council Chambers, City Hall, Courthouse Drive, Virginia Beach, Virginia.

**December 30, 1992 –** Written comments may be submitted until 4 p.m. on this date.

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 680-01-01. Fees for Permits and Certificates.** The purpose of the proposed regulation is to establish a fee assessment and collection system to recover a portion of costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue.

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on Monday, December 30, 1992, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5166.

**December 15, 1992 - 7 p.m. – Public Hearing**  
Elkton Town Council Chambers, 173 West Spotswood Avenue, Elkton, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0086576 for Weaver Mobile Home Park STP, 164 Sweetgum Street, Elkton, Virginia 22827. The purpose of this hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the proposed discharge on water quality or beneficial uses of state waters.

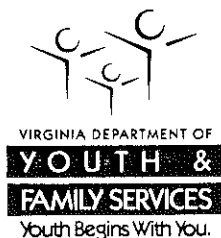
**Contact:** Lori F. Jackson, Hearings Reporter, Office of Policy Analysis, P.O. Box 11143, Richmond, VA 23230-1143, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5163.

## STATE WATER CONTROL BOARD AND THE AIR POLLUTION CONTROL BOARD

† **December 17, 1992 - 6:30 p.m.** – Public Hearing Windsor High School Cafeteria, 20 Church Street, Windsor, Virginia. ☒ (Interpreter for the deaf provided upon request)

The State Water Control Board will hold a public hearing to receive comments on the proposed VPDES Permit No. VA0087017 for Norfolk & Western Coal Ground Storage Facility, 8 North Jefferson Street, Roanoke, Virginia. The purpose of the hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the discharge on water quality or beneficial uses to state water; and the Air Pollution Control Board will hold a public hearing to consider the application to construct and operate a 40 million ton per year coal ground storage facility 2 miles southeast of Windsor. The primary pollutant emitted would be particulate. The purpose of the hearing is to obtain input that may not have been considered during the review process.

**Contact:** Lori Freeman Jackson, Hearings Reporter, State Water Control Board, Office of Policy Analysis, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5163.



## DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

† **January 14, 1993 - 8:30 a.m.** – Open Meeting

† **February 11, 1993 - 8: a.m.** – Open Meeting  
700 Centre Building, 7th and Franklin Streets, 4th Floor,  
Richmond, Virginia. ☒

Committee meetings begin at 8:30 to be followed by a general meeting at 10 a.m. to (i) review programs recommended for certification or probation; (ii) consider adoption of draft policies; and (iii) take up other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Coordinator, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

## State Executive Council

**December 15, 1992 - 7:30 a.m.** – Open Meeting  
700 East Franklin Street, Richmond, Virginia. ☒

A regular meeting to (i) discuss the Comprehensive Services Act for At-Risk Youth and Families, and (ii) conduct Trust Fund review.

**Contact:** Dian McConnell, Coordinator, Council on Community Services for Youth & Families, 700 Centre, Rm. 510, Richmond, VA 23219, telephone (804) 786-5394.

## LEGISLATIVE

### HOUSE COMMITTEE ON AGRICULTURE

#### Subcommittee C

† **December 17, 1992 - 10 a.m.** – Open Meeting  
General Assembly Building, 910 Capitol Street, 6th Floor  
Conference Room, Richmond, Virginia.

The subcommittee will hold a work session regarding companion animals and dangerous domestic animals.

**Contact:** Frank Munyan, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

### BLUE RIDGE ECONOMIC DEVELOPMENT COMMISSION

**December 14, 1992 - 10 a.m.** – Open Meeting  
Virginia Western Community College, Brown  
Library-Knisely Center, ground level, 3095 Colonial Avenue,  
S.W., Roanoke, Virginia.

An all day business meeting.

**Contact:** Edie T. Conley, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

### HOUSE COMMITTEE ON EDUCATION

† **December 17, 1992 - 2 p.m.** – Open Meeting  
General Assembly Building, House Room D, 910 Capitol

# Calendar of Events

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Street, Richmond, Virginia.

The full Committee on Education will meet with full Senate Committee on Education to hear presentations from members of the Department of Education.

**Contact:** Kathleen Harris, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### December 14

Blue Ridge Economic Development Commission  
Governor's Job Training Coordinating Council  
Medical Assistance Services, Board of  
† Outdoors Foundation, Virginia  
Professional Soil Scientists, Board for  
Rappahannock-Rapidan Division of Court Services  
Executive Board

#### December 15

Contractors, Board for  
Governor's Job Training Coordinating Council  
Health Services Cost Review Council, Virginia  
Real Estate Appraiser Board  
† Social Work, Board of  
Virginia Housing Development Authority  
Youth and Family Services, Department of  
- State Executive Council

#### December 16

Contractors, Board for  
Corrections, Board of  
Historic Resources, Board of  
Historic Resources, Department of  
Local Debt, State Council on  
† Medicine, Board of  
- Informal Conference Committee  
Transportation Board, Commonwealth  
Treasury Board

#### December 17

† Agriculture, House Committee on  
- Subcommittee C  
Contractors, Board for  
† Education, House Committee on  
† Medicine, Board of  
- Informal Conference Committee  
† State Water Control Board and Air Pollution Control  
Board  
† Student Assistance Authorities, Virginia  
- Board of Directors  
Transportation Board, Commonwealth

#### December 18

Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
Geology, Board for  
† Dentistry, Board of  
Interior Designers, Board for  
† Medicine, Board of  
- Informal Conference Committee  
Residential Facilities for Children, Interdepartmental  
Regulation of  
- Coordinating Committee

#### December 21

Alcoholic Beverage Control Board  
† Elections, State Board of  
† Health, State Board of  
† Lottery Department, State  
Waste Management Board, Virginia

#### December 22

† Marine Resources Commission  
† Higher Education, State Council of  
Waste Management Board, Virginia

#### December 30

Compensation Board

#### January 5, 1993

Contractors, Board for  
Hopewell Industrial Safety Council  
Real Estate Appraiser Board

#### January 6

Contractors, Board for  
- Recovery Fund Committee  
† Defense Conversion and Economic Adjustment,  
Governor's Commission on  
† Treasury Board

#### January 7

Local Emergency Planning Committee - Chesterfield  
County  
Middle Virginia Board of Directors and the Middle  
Virginia Community Corrections Resources Board

#### January 9

Visually Handicapped, Department for the  
- Advisory Committee on Services

#### January 13

Contractors, Board for  
† Corrections, Board of  
† Dentistry, Board of  
† Virginia Winegrowers Advisory Board

#### January 14

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board  
† Corrections, Board of  
- Liaison Committee  
† Dentistry, Board of

† Real Estate Board  
Voluntary Formulary Board, Virginia  
† Youth and Family Services, Board of

**January 15**

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board  
† Dentistry, Board of

**January 16**

† Dentistry, Board of

**January 19**

† Nursing Home Administrators, Board of

**January 20**

† Nursing Home Administrators, Board of  
† Treasury Board

**January 21**

† Nursing Home Administrators, Board of

**January 29**

† Social Work, Board of

**February 1**

Commerce, Board of

**February 2**

Hopewell Industrial Safety Council

**February 4**

Local Emergency Planning Committee - Chesterfield  
County

**February 9**

† Employment Commission, Virginia  
- State Advisory Board

**February 10**

† Corrections, Board of  
† Employment Commission, Virginia  
- State Advisory Board

**February 11**

† Youth and Family Services, Board of

**December 17**

Water Control Board, State  
† Water Control Board, State

**December 21**

† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
Waste Management, Department of

**January 6, 1993**

† Defense Conversion and Economic Adjustment,  
Governor's Commission on

**January 7**

Waste Management, Department of

**January 11**

† Waste Management Facility Operators, Board for

**January 18**

† Housing and Community Development, Board of

**January 19**

† Accountancy, Board for  
† Social Services, State Board of

**January 20**

† Social Services, State Board of

**January 21**

† Social Services, State Board of

**February 3**

Mines, Minerals and Energy, Department of

**February 9**

† Waste Management Facility Operators, Board for

**February 10**

Corrections, Department of

## PUBLIC HEARINGS

**December 14**

Water Control Board, State

**December 15**

Water Control Board, State

**December 16**

Waste Management, Department of  
Water Control Board, State

# Calendar of Events

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