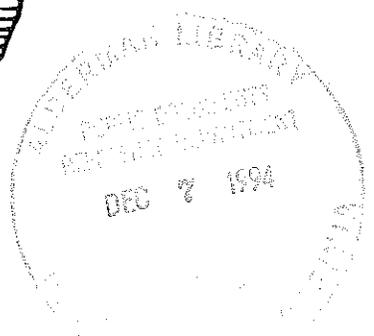
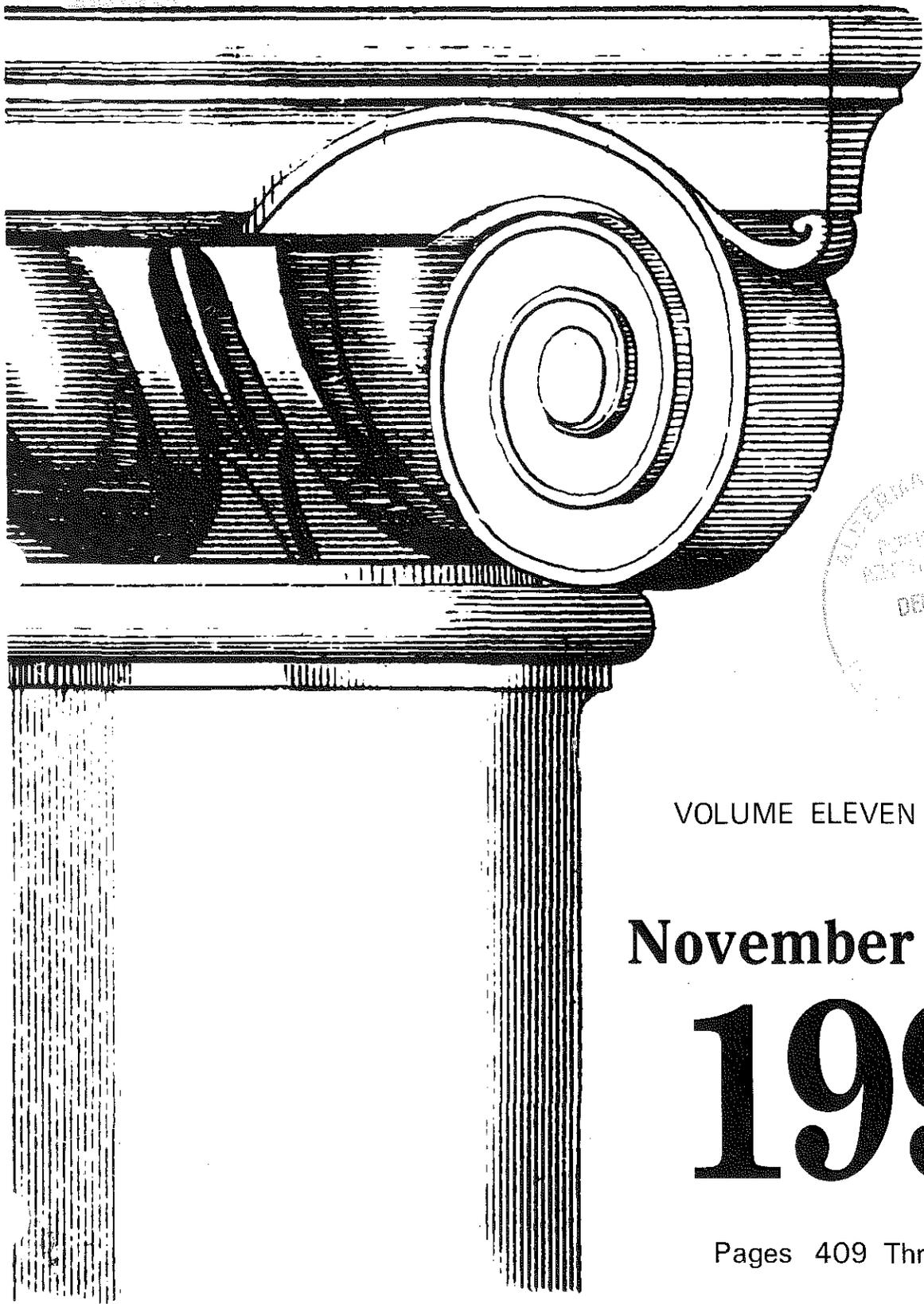


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THE VIRGINIA REGISTER

OF REGULATIONS

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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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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

BOARD OF CONSERVATION AND RECREATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Conservation and Recreation intends to consider amending regulations entitled: **VR 215-02-00. Stormwater Management Regulations.** The purpose of the proposed action is to update existing minimum technical criteria to reflect current engineering methods. However, the entire regulation will be reviewed to provide for the efficient and economical performances of stormwater management programs in Virginia.

The basis for this action is the Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia and all other Acts of Assembly and the Code of Virginia references conferring powers, duties and responsibilities of the board.

The basic goal of the Virginia Stormwater Management Program is to manage the quality and quantity of stormwater runoff resulting from land conversion and development to protect water quality, living resources and property. Section 10.1-603.1 of the Act states, "The General Assembly has determined that the lands and waters of the Commonwealth are great natural resources; that as a result of intensive land development and other land use conversions, degradation of these resources frequently occurs in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent localized flooding; that these impacts adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters; that existing authorities under the Code of Virginia do not adequately address all of these impacts. Therefore, the General Assembly finds it in the public interest to enable the establishment of stormwater management programs."

The Act further authorizes the Virginia Conservation and Recreation Board to promulgate regulations which specify minimum technical and administrative procedures for stormwater management programs in Virginia. Among other things, the Act requires that these regulations be periodically modified to reflect current engineering methods. Stormwater management technologies and approaches have evolved rapidly over the past several years. The board finds it necessary to modify these regulations to reflect these changes and provide flexibility as well as consistency with other regulatory programs affecting stormwater management in the Commonwealth.

There are anticipated impacts on regulated entities and the public since the proposed modifications impose new requirements. Regulated entities and the public should benefit from enhancement of the regulation by increased flexibility of new engineering technologies and improvements in coordinating with other regulatory program requirements.

Alternatives:

1. Draft revisions to the existing regulation VR 215-02-00 and provide the regulated community with increased flexibility through the use of expanded engineering technologies and administrative procedures, and improve consistency with other regulatory requirements affecting stormwater management programs.
2. Take no action to amend the regulations. However, if the board does not amend the regulation, it will not fulfill the legislative intent to periodically modify regulations and incorporate new engineering technologies. Additionally, the regulated community will not benefit from flexibility and consistency of regulatory requirements currently available for stormwater management programs.

The Department of Conservation and Recreation is soliciting comments on the cost and benefits of the alternatives stated above or other alternatives.

The board seeks comments from interested persons on the intended action to include recommendations on the regulations and costs and benefits of any alternatives. To be considered, written comments should be directed to David S. Nunnally at the address below and must be received by 4 p.m. on January 4, 1995.

The Director of the Department of Conservation and Recreation has decided to form an ad-hoc advisory committee to assist the department in the development of the regulations. In addition, the department's staff will hold a public meeting at 8 p.m. on Monday, December 19, 1994, in the Board Room of the Henrico County Government Center, Administration Building, 4301 East Parham Road, Richmond, Virginia 23273, to receive views and comments and to answer questions of the public.

The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Nunnally at the address below or telephone at (804) 786-3998 or TDD (804) 786-2121. Persons needing

Notices of Intended Regulatory Action

interpreter services for the deaf must notify Mr. Nunnally no later than Monday, December 5, 1994.

The board intends to hold an informational proceeding (informal hearing) on the proposed regulations after the proposed regulations are published in The Virginia Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed regulations after the regulations are published in The Virginia Register of Regulations.

Statutory Authority: § 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 4, 1995.

Contact: David S. Nunnally, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998.

V.A.R. Doc. No. R95-79; Filed October 26, 1994, 11:44 a.m.

DEPARTMENT OF CONSERVATION AND RECREATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider promulgating regulations entitled: **VR 217-02-00. Nutrient Management Training and Certification Regulations.** The purpose of the proposed action is to enable the department to operate a voluntary nutrient management training and certification program to certify the competence of persons preparing nutrient management plans. The nutrient management plans are prepared for the purpose of assisting land owners and operators in the management of land application of fertilizers, municipal sewage sludges, animal manures, and other nutrient sources for agronomic benefits, and for the protection of the Commonwealth's ground and surface waters. To accomplish this, the department would establish and implement certification procedures relating to certificate issuance and revocation, provide for nutrient management plan criteria, establish fees relating to a training and certification fund, and provide for other necessary procedures in order to operate a nutrient management training and certification program.

The basis for this action is the addition of § 10.1-104.2 to Article 1 (§ 10.1-100 et seq.) of Chapter 1 of Title 10.1 of the Code of Virginia, to provide for the promulgating of regulations to establish a voluntary nutrient management training and certification program, and a nutrient management training and certification fund.

This proposed regulatory action is necessary to develop and implement a voluntary nutrient management training and certification program required by the amendments of the 1994 Virginia General Assembly to Article 1 of Chapter

1 of Title 10.1 of the Code of Virginia.

There are anticipated impacts on potential nutrient management plan developers from the levy of training course and certification fees, time devoted to training, and program compliance. The public should benefit from increased consistency in nutrient management plans; increased protection of groundwater used for drinking; and increased protection of rivers, streams, lakes, Chesapeake Bay and other surface waters used for economic, recreational, and other beneficial uses. Additionally, the proposed regulatory action should increase the number of nutrient management plans prepared by private sector individuals, thereby resulting in the availability of more qualified persons to nutrient management plan users, and reducing the need for additional public sector personnel.

The department is unaware of any alternatives to this proposed action at this time which would meet the requirements of § 10.1-104.2 of the Code of Virginia.

The department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternative actions. To be considered, written comments should be directed to Mr. H.R. Perkinson at the address below, and must be received by 4 p.m. on December 30, 1994. In addition, the department's staff will hold a public meeting on Monday, December 19, 1994, at 7 p.m. in the Board Room of the Henrico County Government Center, Administration Building, 4301 East Parham Road, Richmond, Virginia 23273, to receive views and comments and to answer questions of the public.

The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. H.R. Perkinson at the address below or by telephone at (804) 786-2064. Persons needing interpreter services for the deaf must notify Mr. Perkinson no later than December 8, 1994.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on December 30, 1994.

Contact: H.R. Perkinson, Manager, Nutrient Management Program, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2064.

V.A.R. Doc. No. R95-78; Filed October 26, 1994, 11:43 a.m.

Notices of Intended Regulatory Action

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 amend regulations entitled: **VR 355-29-100. Regulations Governing Vital Records (formerly VR 355-29-01)**. The purpose of the proposed action is to amend regulations to allow for the electronic reporting of birth data directly from hospitals to the State Health Department as required by 1994 General Assembly passage of HB 1044. One public hearing is planned during the public comment period following publication of the proposed regulations.

Statutory Authority: § 32.1-257 of the Code of Virginia.

Written comments may be submitted until November 30, 1994.

Contact: Deborah M. Little, Director, Office of Vital Records and Health Statistics, Department of Health, 305 James Madison Bldg., 109 Governor St., Richmond, VA 23219-3623, telephone (804) 371-6077 or FAX (804) 371-4800.

VA.R. Doc. R95-45; Filed October 12, 1994, 11:02 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-04-8.7. Client Appeals**. The purpose of the proposed action is to eliminate from the regulations the additional level of appeal provided by the Medical Assistance Appeals Panel (MAAP). The MAAP is not required by either federal law, regulation or state law. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until November 30, 1994, to Diana Salvatore, Director, Division of Client Appeals, 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) 371-8850.

VA.R. Doc. No. R95-46; Filed October 12, 1994, 11:29 a.m.

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 OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: VR 320-01-3. Regulations for Preneed Funeral Planning.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Hearing Date: January 10, 1995 - 9:30 a.m.

Written comments may be submitted through January 13, 1995.

(See Calendar of Events section for additional information)

Basis: Section 54.1-2400 of the Code of Virginia provides the statutory basis for promulgation of the regulations. Section 54.1-2803 authorizes the board to regulate preneed funeral contracts and preneed funeral trust accounts.

Purpose: Proposed amendments are designed to (i) amend requirements on disclosures and pricing to bring regulations and forms into compliance with changes to federal law made by the Federal Trade Commission in 1994, and (ii) clarify disclosure requirements and record keeping for consumer understanding and protection.

The amendments better ensure protection for the public's health, safety, and welfare by requiring clarified and more explanatory disclosures to the public when making preneed funeral arrangements, ensuring that the public receives all disclosures mandated by the Federal Trade Commission for consumer education and awareness, and ensuring that records kept ensure the consumer that the funding vehicle used for the preneed arrangement meets state Code.

Substance: In addition to editorial changes made to provide clarification or to correct formatting of sections, the following amendments are proposed:

1. § 3.1 D adds requirement that funeral establishments keep on file and available for inspection a written verification from the company that has sold a preneed contract that they are in compliance with state law.

2. § 5.1 adds requirements for providing full disclosure to the consumer on pricing, an itemized statement of goods and services and copies of the preneed and funding contracts.

Appendix I amends the form for a preneed contract to bring requirements into compliance with the Funeral Rule for Funeral Industry Practices amended

by the Federal Trade Commission in 1994. Proposed amendments add some items, consolidate some items into other sections, and eliminate itemized charges that are now prohibited in a funeral contract.

Issues:

A. Issue: Section 54.1-2820 B of the Code of Virginia requires that companies which provide preneed contracts guarantee the consumer a rate of return on their investment. Current regulations on record keeping do not address disclosure and verification of that information.

Solution: Add a requirement for funeral establishments to keep on file a written verification from the company that they are in compliance with Virginia statutes. (See § 3.1 D)

B. Issue: Current regulations have implied, but not stated clearly, that a general price list and preneed disclosure questions and answers must be furnished to the consumer at the time of initial inquiry and copies of contracts given at the time of an agreement. Without an explicit disclosure requirement, consumers may not fully understand the contract and the protection it provides.

Solution: Add regulations to clarify the responsibilities of the funeral establishment to provide adequate information to the consumer on pricing of goods and services and on the terms of a financial contract. Consumers are better protected by receiving clear disclosure at the time of their inquiry and by receiving a copy of the preneed arrangement contract and the funding contract on conclusion of the agreement. Funeral establishments are also better protected by a clarification of the required itemized statement of goods and services. (See § 5.1)

C. Issue: The Federal Trade Commission amended its Funeral Rule for Funeral Industry Practices on January 10, 1994, to become effective July 19, 1994. New requirements on disclosure of charges for goods and services necessitated a review of the current prescribed preneed contract (Appendix I of these regulations). The listing of charges on the current contract does not conform to and in some cases conflicts with federal law.

Solution: Revise the prescribed contract to clearly specify charges for supplies and services and to bring language into compliance with federal law. In the proposed amendments, some itemized charges are added, some are consolidated and others which are now prohibited are eliminated. (See Appendix I)

Advantages to the Public: Amendments require full

Proposed Regulations

disclosure to the consumer regarding state law, goods and services selected, and accrual rates on funding mechanisms. These disclosures prevent the consumer from being placed into a "buyer-beware" situation and provides education to the consumer on this purchase. Full understanding and clarity allow the consumer freedom of choice to price shop for the most affordable funeral service.

Disadvantages to the Public: The board sees no disadvantages to the consumer.

Advantages to the Implementing Agency: The agency will have the assurance that disclosures which may have only been verbal in the past will now be in writing for consumer protection. This written documentation will allow more effective monitoring of the preneed industry.

Disadvantages to the Implementing Agency: A minimal amount of paperwork will be required to enforce these requirements. On-site inspection time may increase as may disciplinary cases. There will be no need for additional funds or staff to handle this increase.

Impact:

A. Numbers of Regulated Entities: There are currently 488 funeral establishments regulated by the board. Offering preneed services is optional. As a consequence, the board has no record of how many funeral establishments do so, but it is estimated that a majority of the establishments in Virginia offer preneed contracts.

B. Projected Costs for Regulated Entities: Funeral establishments will incur minimal expense for record keeping and for revising preneed contracts. Most preneed funding companies provide preprinted contracts. It is estimated that fewer than 50 funeral establishments in Virginia will incur the expense of reprinting their own preneed forms. Costs for those establishments should be minimal since most are computerized and do their own printing in-house.

Fines up to \$10,000 can be imposed if an inspection by the Federal Trade Commission reveals violations of the Funeral Rule on disclosures and misrepresentation of charges for goods and services. Conforming state regulations and forms to federal requirements is intended to ease the burden of compliance for regulated entities.

C. Projected Cost for Implementation: All funds of the Board of Funeral Directors and Embalmers are derived from fees paid by licensees, registrants and applicants. The agency will absorb these additional costs for the promulgation and implementation of the regulations in its current budget. No fee increase is required.

Funeral establishments and licensees will receive a copy of the final regulations at a projected cost for printing and mailing of \$2,500.

Complaints or reports of noncompliance are expected to increase minimally as a result of the proposed amendments. Noncompliance will be determined through routine inspections which will not increase in number as a result of the requirements. Cost to adjudicate complaints is projected to increase at a rate of \$3,000 which is a usual increase for the first year or two when changes occur in federal law to pricing forms. Violations will decrease after initial impact.

A total estimated cost is projected at \$5,500 for staff time, postage, printing, mailing and adjudication costs.

D. Localities Affected: There are no localities particularly affected.

Summary

The proposed amendments (i) require funeral establishments to keep on file and make available for inspection a written verification from the company providing preneed contracts that they are in compliance with state law; (ii) bring regulations into compliance with changes to federal law made by the Federal Trade Commission in 1994 concerning requirements for disclosure; and (iii) clarify disclosure requirements for more effective consumer understanding and protection.

VR 320-01-3. Regulations for Preneed Funeral Planning.

PART I. GENERAL INFORMATION.

§ 1.1. Definitions.

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

"At need" means at the time of death or while death is imminent.

"Board" means the Board of Funeral Directors and Embalmers.

"Capper" means a person who serves as a lure or decoy to entice another to purchase a product. A shill.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

Proposed Regulations

“Consideration” means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties, and payments required to be made to a governmental agency at the time the contract is entered into.

“Contract” means a written, preneed funeral contract and all documents pertinent to the terms of the contract under which, for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

“Contract beneficiary” means the individual for whom the funeral services and supplies are being arranged.

“Contract buyer” means the purchaser of the preneed contract.

“Contract provider” means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

“Contract seller” means the funeral service licensee who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

“Contract price” means the same as consideration.

“Department” means the Department of Health Professions.

“Designee” means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

“Executive director” means the administrator of the Board of Funeral Directors and Embalmers.

“Funding source” means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

“Funds” means the same as “consideration.”

“Funeral supplies and services” means the items of merchandise sold or offered for sale or lease to consumers which will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery which complies with §

57-35.11 et seq. of the Code of Virginia. In addition, “funeral supplies and services” does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment which are sold by a cemetery operating in accordance with § 57-35.11 et seq. of the Code of Virginia.

“Funeral service establishment” means any main establishment, branch, or chapel where any part of the profession of funeral directing or the act of Embalmer is performed.

“General advertising” means advertisement directed to a mass market including, but not limited to, direct mailings; advertisements in magazines, flyers, trade journals, newspapers; advertisements on television and radio; bulk mailings; and direct mailing to a mass population.

“Guaranteed contract price” means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

“Income” means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

“In-person communication” means face-to-face communication and telephonic communication.

“Nonguaranteed contract price” means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and supplies that were nonguaranteed. Cash advance items are not guaranteed.

“Preneed” means at any time other than at-need.

“Preneed funeral contract” means any agreement where payment is made by the contract buyer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

“Preneed funeral planning” means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

“Solicitation” means initiating contact with consumers with the intent of influencing their selection of a funeral plan or a funeral service provider.

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"Steerer" means an individual used to direct the course of action and choice of the buyer in a preneed funeral contract sale.

§ 1.2. Legal base.

The following legal base describes the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations governing preneed funeral planning and plans in the Commonwealth of Virginia:

Title 54.1, Chapter 28, Article 1, § 54.1-2803 and Article 5 (§ 54.1-2820 et seq.) of the Code of Virginia.

§ 1.3. 1.2. Purpose.

These regulations establish the standards to regulate preneed funeral contracts and preneed funeral trust accounts as prescribed in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1 of the Code of Virginia.

§ 1.4. 1.3. Applicability.

Subject to these regulations are (i) funeral service licensees, (ii) funeral establishments, and (iii) resident trainees assisting the licensee in the preneed arrangement. All of the above shall be operating in the Commonwealth of Virginia in order to qualify to sell preneed.

Exemptions: These regulations do not apply to the preneed sale of cemetery services or supplies regulated under Article 3.2 ; (§ 57-35.11 et seq.) of Chapter 3 ; of Title 57 (§ 57-35.11 et seq.) of the Code of Virginia.

PART II. SALE OF PRENEED PLANS.

§ 2.1. Qualifications of seller.

A. A person shall not engage in or hold himself out as engaging in the business of preneed funeral planning unless he is licensed for funeral service by the Board of Funeral Directors and Embalmers.

B. All individuals selling preneed funeral plans shall comply also with the Rules and Regulations for Funeral Directors and Embalmers promulgated by the board.

§ 2.2. Solicitation.

A. A licensee shall not initiate any preneed solicitation using in-person communication by the licensee, his agents, assistants, or employees.

Exception: General advertising and solicitation other than in-person communication is acceptable.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee.

C. A licensee shall not employ persons known as "cappers" or "steerers," or "solicitors," or other such persons to participate in preneed sales.

D. A licensee shall not employ directly or indirectly any agent, employee, or other person, part or full time, or on a commission, for the purpose of calling upon individuals to influence, secure, or otherwise promote preneed sales.

E. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing preneed sales is prohibited.

F. No licensee engaged in the business of preneed funeral planning or any of his agents shall accept, advertise, or offer enticements, bonuses, rebates, discounts, restrictions to, or otherwise interfere with the freedom of choice of the general public in making preneed funeral plans.

PART III. OPERATIONAL RESPONSIBILITIES.

§ 3.1. Records: general.

A. A licensee shall keep accurate accounts, books, and records of all transactions required by these regulations.

B. Preneed contracts shall be retained on the premises of the establishment for three years after the death of the contract beneficiary.

C. Required preneed reporting documents shall be retained on the premises of the establishment for three years. (See §§ 3.2A and 6.1D subsection A of § 3.2 and subsection D of § 7.1)

D. ~~When insurance or annuity contracts are used to fund preneed arrangements, a licensee shall keep on file a written verification from the insurance company that the insurance or annuity contract complies with § 54.1-2820 B of the Code of Virginia. (See subdivisions 6 a and 6 b of § 5.9 of these regulations.) A funeral home shall keep on file a written verification from the insurance company that the insurance or annuity contract complies with § 54.1-2820 B of the Code of Virginia. (See subdivision 6 of § 6.9 of these regulations.)~~

E. All preneed records shall be available for inspection by the department.

§ 3.2. Record reporting.

A. A contract provider shall keep a chronological listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;
2. Date of contract;

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3. How contract was funded;

4. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and

5. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider who discontinues its business operations shall notify the board and each existing contract buyer in writing.

PART IV. CONTRACT.

§ 4.1. Content and format.

A. A person residing or doing business within the Commonwealth shall not make, either directly or indirectly by any means, a preneed contract unless the contract:

1. Is made on forms prescribed by the board (see Appendix I); or

2. Is made on forms approved by the board prior to use (see subsection B of this section).

B. Prior to use, contracts or disclosures which are not identical in format, wording, and content to that prescribed in Appendices I and II shall be approved by the board.

C. Contracts and disclosure forms prescribed in Appendices I and II shall be received in the board office no later than 10 days prior to a regularly scheduled meeting of the board to be considered for approval by the board at that meeting.

D. All preneed contracts shall be in writing.

E. All information on a preneed contract and disclosure statement shall be printed in a clear and easy-to-read type, style, and in a type size not smaller than 10 points.

F. Preneed contracts and disclosure statements shall be written in clear, understandable language.

G. The contract shall identify the following:

1. The contract seller;
2. Funeral license number of the contract seller;
3. The contract buyer;
4. The contract beneficiary;
5. The date of the contract;
6. The contract number;

7. A complete description of the supplies or services purchased;

8. Whether the price of the supplies and services purchased is guaranteed;

9. Whether the price of the supplies and services purchased is not guaranteed;

10. Any penalties or restrictions:

a. Geographic restrictions including maximum number of miles traveled without charging an extra fee;

b. Geographic restrictions including maximum number of miles the establishment is willing to travel;

c. The inability of the provider to perform the request of the buyer on merchandise, services, or prearrangement guarantees;

11. All disclosure requirements imposed by the board (see Appendix II); and

12. The designee agreement when applicable.

H. The contract or the disclosure statement as a part of the contract shall contain the name, address, and telephone number of the board and list the board as the regulatory agency which handles consumer complaints.

I. All preneed contracts shall be signed by the contract seller and the contract buyer.

PART V. DISCLOSURES.

§ 5.1. Disclosures.

A. Licensees shall furnish to each person inquiring about preneed arrangements a copy of the:

1. General price list; and
2. Preneed disclosure questions and answers.

The licensee shall furnish such information at the time of the inquiry.

B. Licensees shall furnish to each person who makes a preneed arrangement a copy of the:

1. Preneed contract; and
2. Funding contract.

The licensee shall furnish such documents immediately upon concluding the arrangement conference.

C. An itemized statement of funeral goods and services shall be given at the time of need even if the arrangements were made through a preneed contract.

PART V. VI. FUNDING.

Article 1: General.

§ 5.1. 6.1. Finance charges prohibited.

A licensee shall not charge finance charges on a preneed arrangement.

§ 5.2. 6.2. Cancellation of contract.

A. Any person who makes payment under this contract may terminate the agreement at any time prior to the time for which the services or supplies are furnished.

A. Cancellation within 30 days of contract date.

B. If the contract buyer terminates the contract within 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered; and
2. Any interest or income accrued thereon.

B. Cancellation after 30 days of contract date.

C. If the purchaser uses a funding source other than an insurance or annuity policy and terminates the contract after 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered on nonguaranteed items;
2. At least 90% of all consideration paid for guaranteed items; and
3. All interest or income accrued thereon.

§ 5.3. 6.3. Escrow account.

Within two banking days after the day of receipt of any money from the contract buyer and until the time the money is invested in a trust, life insurance, or annuity policy, the contract seller or the contract provider shall deposit the money into an escrow account in a bank or savings institution approved to do business in the Commonwealth.

§ 5.4. 6.4. Real estate.

When the consideration consists in whole or in part of any real estate, the following shall occur:

1. The preneed contract shall be recorded as an attachment to the deed whereby the real estate is conveyed; and

2. The deed shall be recorded in the clerk's office in the circuit court of the city or county in which the real estate being conveyed is located.

§ 5.5. 6.5. Personal property.

When the consideration consists in whole or in part of any personal property, the following shall occur:

1. Personal property shall be transferred by:

- a. Actual delivery of the personal property; or
- b. Transfer of the title to the personal property.

2. Within 30 days of receiving the personal property or the title to the personal property, the licensee or person delivering the property shall:

a. Execute a written declaration of trust setting forth the terms, conditions, and considerations upon which the personal property is delivered; and

b. Record the trust agreement in the clerk's office of the circuit court of the locality in which the person delivering the property is living; or

c. Record the preneed contract in the clerk's office of the circuit court of the locality in which the person delivering the property or trust agreement is living provided that the terms, conditions, and considerations in § 5.4 2 a subdivision 2 of § 6.4 are included in the preneed contract.

§ 5.6. 6.6. Right to change contract provider.

The contract buyer shall have the right to change the contract provider and the trustee at any time prior to the furnishing of the services or supplies contracted for under the preneed contract.

§ 5.7. 6.7. Exemption from levy, garnishment or distress.

Any money, personal property, or real estate paid, delivered, or conveyed subject to §§ 54.1-2822 through 54.1-2823 shall be exempt from levy, garnishment, or distress.

Article 2: Trust Accounts.

§ 5.8. 6.8. Trust accounts.

A. If funds are to be trusted, the following information shall be disclosed in writing to the contract buyer:

1. The amount to be trusted;

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2. The name of the trustee;
3. The disposition of the interest;
4. The fees, expenses, and taxes which may be deducted from the interest;
5. Whether up to 10% is retained by the contract provider; and
6. A statement of the contract buyer's responsibility for taxes owed on the interest.

B. If the contract buyer chooses a trust account as the funding source, within 30 days following the date of the receipt of any money paid for a trust-funded preneed contract or interest or income accrued (see § 5.3 § 6.3), the licensee shall transfer the money from the escrow account and deposit the following amount in a trust account in a bank or saving institution doing business in Virginia:

1. Nonguaranteed prices. All consideration shall be deposited for a preneed funeral contract in which prices of supplies and services are not guaranteed.
2. Guaranteed prices. At least 90% of all consideration shall be deposited for a preneed contract in which the prices of goods and services are guaranteed.

C. The trust funds shall be deposited in separate, identifiable accounts setting forth:

1. Name of depositor;
2. Contract beneficiary;
3. Trustee for contract beneficiary; and
4. Name of establishment which will provide the goods and services.

~~Article 3.~~ Life Insurance or Annuity.

~~§ 5.9.~~ 6.9. Life insurance or annuity.

If a life insurance or annuity policy is used to fund the preneed funeral contract, the following shall be disclosed in writing:

1. The fact that a life insurance policy or annuity contract is involved or is being used to fund the preneed contract;
2. The following information:
 - a. Name of the contract provider;
 - b. Name of contract seller;

- c. Funeral license number of contract seller;
- d. Place of employment of contract seller;
- e. Name of insurance agent;
- f. Identification as to whether the insurance agent is a funeral service licensee, and if so, license number;
- g. Insurance agent's insurance license number;
- h. Insurance agent's employer;
- i. Insurance company represented by insurance agent.

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract;

4. The nature and existence of any guarantees relating to the preneed contract from the policy or annuity;

5. The impact on the preneed contract of:

- a. Any changes in the life insurance policy or annuity contract including changes in the assignment, contract provider, or use of the proceeds;
- b. Any penalties to be incurred by the policy holder as a result of failure to make premium payments;
- c. Any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract; and
- d. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

6. The fact that the life insurance or annuity contract complies with § 54.1-2820 B of the Code of Virginia which states that the life insurance or annuity contract shall provide that either:

- a. The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or
- b. A benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest thereon at the annual rate of at least 5.0% compounded annually.

PART ~~VI.~~ VII.

BONDING.

§ 6.1. 7.1. Bonding.

A. A performance bond shall be required on the following:

- 1. The contract provider which retains up to 10% of the consideration invested in a trust account; or
2. The retail price of funeral goods and supplies which are stored by the contract provider for the contract beneficiary prior to the death of the contract beneficiary.

B. The establishments described in subsection A of this section shall arrange for their own bonding.

C. The amount of bond required shall be based upon the risk of loss determined by the bonding company.

D. The following information concerning the bond shall be maintained at the funeral establishment: (See § 3.1 A, C and D subsections A, C, and D of § 3.1.)

- 1. Amount of the bond;
2. Company holding the bond;
3. Documentation that company holding the bond is duly authorized to issue such bond in the Commonwealth; and
4. Renewal requirements of the bond.

PART VII. VIII.
SUPPLIES AND SERVICES.

§ 7.1. General.

§ 8.1. Supplies and services.

A. If the contract seller will not be responsible for furnishing the supplies and services to the contract buyer, the contract seller shall attach to the preneed funeral contract a copy of the contract seller's agreement with the contract provider.

B. If any funeral supplies are sold and delivered prior to the death of the contract beneficiary, and the contract seller, contract provider, or any legal entity in which the contract provider or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the contract seller or contract provider during such period of storage.

C. If the particular supplies and services specified in the contract are unavailable at the time of delivery, the contract provider shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship.

D. The representative of the deceased shall have the right to choose the supplies or services to be substituted in subsection C of this section.

PART VIII. IX.
DESIGNEE AGREEMENT.

§ 8.1. 9.1. Designee.

A. A designee agreement shall be used only when the contract beneficiary is mentally alert and capable of appointing his own designee.

B. Any person may designate through the use of the designee agreement a designee who shall make arrangements for the contract beneficiary's burial or the disposition of his body for burial.

C. The designee agreement shall be:

- 1. In writing;
2. Accepted in writing by designee and the designee's signature notarized; and
3. Attached to the preneed contract as a valid part of the contract.

APPENDIX I.

PRENEED FUNERAL CONTRACT PRESCRIBED BY THE BOARD.

Date:
Contract #:

PRENEED FUNERAL CONTRACT
for

(Name of Recipient of Services)
.....
..... (Zip).....

I. SUPPLIES AND SERVICES PURCHASED

The prices of goods and services below MAY BE GUARANTEED provided the total is paid in full and all interest earned is allowed to accumulate in your account. If any of the prices are guaranteed, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document).

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use an item, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not select if you select

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arrangements such as a direct cremation or immediate burial.

Guaranteed Services Purchased

Minimum services of staff	\$.....
Optional services	\$.....
Basic facilities	\$.....
Facilities for viewing	\$.....
Facilities for ceremony	\$.....
Other facilities/equipment	\$.....
Embalmer	\$.....
Other preparation of body	\$.....
Alternate care	\$.....
Transfer of remains	\$.....
Funeral coach	\$.....
Flower car	\$.....
Lead/service car	\$.....
Mileage @ \$..... (Outside service area)	
Other	\$.....
(Direct Cremation)	
(Immediate Burial)	
(Forwarding to Another Funeral Home)	
(Receiving from Another Funeral Home)	
Sub-Total Cost of (Guaranteed) Services Purchased:	\$.....

I. BASIC SERVICES OF FUNERAL DIRECTOR AND STAFF \$.....

II. FUNERAL HOME FACILITIES

A. Facilities and Staff for visitation/viewing	\$.....
B. Facilities and Staff for funeral ceremony	\$.....
C. Facilities and Staff for memorial service	\$.....
D. Equipment and Staff for graveside service	

..... \$.....

(NOTE TO FUNERAL HOME: If you have additional charges such as facilities and staff for home/church viewing, or a charge for additional staff per person or through calculation of manhours, etc., add here as extra items. If you have a charge for equipment for interment, add here.)

III. EMBALMING

A. Normal remains	\$.....
B. Autopsy remains	\$.....

IV. OTHER PREPARATION OF THE BODY

(NOTE: List all items that you placed under Other Preparation on your General Price List.)

V. IMMEDIATE BURIAL	\$.....
VI. DIRECT CREMATION	\$.....

VII. TRANSFER OF REMAINS TO FUNERAL ESTABLISHMENT \$.....

VIII. FORWARDING REMAINS TO ANOTHER FUNERAL HOME \$.....

IX. RECEIVING REMAINS FROM ANOTHER FUNERAL HOME \$.....

X. AUTOMOTIVE EQUIPMENT

A. Hearse	\$.....
B. Limousine	\$.....

NOTE: List all others that you placed on General Price List.)

XI. FUNERAL MERCHANDISE

A. Casket (*describe)
.....	\$.....
B. Outer Burial Container (*describe)
.....	\$.....
C. List any others

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policy or annuity contract is used to fund this agreement:

Telephone Number 804-662-9907
Toll Free Number 1-800-533-1560

A. Buyer:

B. Insurance Company:

C. Insurance Agent:

Employed by: (Insurance Company)

Licensed Funeral Director in Virginia:
.....yesno

Funeral Director License Number
(If Applicable):

Employed by (If Applicable):
(Funeral Home).....

D. The life insurance or annuity contract provides either that:

..... The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or

..... A benefit payable at death under such contract that will be equal or exceed the sum of all premiums paid for such contract plus thereon at the annual rate of at least 5.0%, compounded annually.

Method of Funding

A. Insurinee

B. Trust

1. Amount to be trusted:

2. Name of trustee:

3. Disposition of Interest:

4. Fees, expenses, taxes deducted from earned interest:

5. Buyer's responsibility for taxes owned on interest:

III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by § 54.1-2800 et seq. of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers
1601 Rolling Hills Drive 6606 West Broad Street,
4th Floor
Suite 200
Richmond, Virginia 23229-5005 23230-1717

IV. DISCLOSURES

The Disclosure statements will be available for your review. The General Price List shall be furnished to you by the preneed arranger. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within 30 days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than 30 days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) agrees to the statement checked below (check one):

..... Prefinancing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page 4 for Grand Total amount). Payment of the difference will be required for the nonguaranteed

estimated items if they increase in price.

..... The prices for items under supplies and services are not guaranteed.

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowledge that you have been provided access to and the opportunity to read the Disclosure Statements.

..... (Designee of Funeral Home) (Buyer)

..... (Funeral Home) (Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home)....., has the following penalties or restrictions on the provisions of this contract.

- 1. (Insert geographic restrictions);
- 2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);
- 3. (Insert a description of any other circumstances which apply);
- 4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship; and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

Addendum to Preneed Contract

DESIGNEE AGREEMENT

I designate..... of (address)..... to assist with the preneed arrangements in my behalf. This individual is also authorized to work with the funeral home after my death to ensure that these arrangements are fulfilled. The relationship of my designee to me is.....

Buyer:..... Date:.....

I accept the request of (buyer)..... to assist with his/her preneed arrangements and to work with the funeral home after his/her death to ensure that these arrangements are fulfilled.

Designee:..... Date:.....

The foregoing was acknowledged before me this.... day of, 19....

Notary:.....

Date Commission Expires:.....

APPENDIX II.

DISCLOSURE STATEMENTS PRESCRIBED BY THE BOARD.

DISCLOSURES

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

- Is there more than one type of preneed agreement?

Yes.

Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Nonguaranteed means just the opposite. (See the section entitled "General Funding Information" for more information on guaranteed and nonguaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

- What are my protections?

You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

CANCELLATION

- Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust, the preneed arranger will refund all the money you have paid plus any interest or income you have earned.

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If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30 day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust you will not be able to cancel the trust agreement or receive a refund. An irrevocable trust is one that cannot be cancelled.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

PAYMENT

– What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

– May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the preneed arranger, will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The preneed arranger will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the preneed arranger of your preneed contract. In this situation, you will have to submit information to the preneed arranger in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be separate document.

GENERAL FUNDING INFORMATION

– If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose could have insufficient value to cover all expenses.

– What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the preneed arranger, you family or estate will not have to pay any more for those items provided that you have paid the Grand Total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account ; and any items increase in price, your family or estate would be responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

– What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

Sometimes After funeral expenses are paid, there may be money left over. Because of the on-going risk that a funeral home takes in guaranteeing prices for you, the funeral home may not be required to return this excess

money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements. Please review your preneed contract and/or funding agreement for answers to these questions.

– What happens to my preneed contract if I change my assignment from one funeral home to another?
(*Funeral home shall place answer here*)

– What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding.

If you make such changes, it could void your contract. You should request specific information from the preneed arranger and the funding arrangement.

– What will happen to my preneed contract if I fail to make agreed to premium payments to my funding source?
(*Funeral home shall place answer here*)

– Do I get any money back if I surrender or cancel my funding arrangements?
(*Funeral home shall place answer here*)

TRUST ACCOUNT

– If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account; the name of the trustee; information about what happens to the interest your trust account will earn; and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified as to what the expenses are and whether you or the preneed arranger is the responsible party for paying those.

– What happens to the interest earned by the trust?

You should be aware that The interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Service and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account. Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees were deducted. Please ask your preneed arranger for a written list of any fees so you will have a clear understanding about them before you sign the contract.

– If I pay my trust in premium payments, what happens if I die before the Grand Total of the funeral has been placed in trust?

(*Funeral home shall place answer here*)

LIFE INSURANCE POLICY OR ANNUITY CONTRACT

The following question applicable to your policy will be answered in writing. The answer will depend upon the terms and conditions of the individual's policy and/or preneed contract.

If I die during the period of time when my insurance policy only guarantees to pay back my premiums plus the interest, will that amount be considered payment in full for my preneed contract?

(Place answer here)

CLAIMS AGAINST THIS CONTRACT

– Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

– Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

GENERAL GOODS AND SERVICES

– If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home which you selected ~~selected~~ select is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death. Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However, if the substitute is more expensive than the item originally selected by you, your designee or next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

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If, before your death, the funeral home were to go goes out of business or were is otherwise unable to fulfill their obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

– May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or preneed arranger agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket which is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (1) damage occurs, (2) the funeral home or supplier goes out of business (3) the funeral home or supplier is sold, etc? You need to be assured in writing of protection in these types of situations.

– What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services. They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of penalties (fees) fees which you will be charged.

– Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restrictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

– I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die

and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the penalties (fees) fees involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding may be is considered portable. This means that they are usually available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

PRICING

– How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your preneed arranger will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the preneed arranger will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, you family or estate will be given an itemized statement which will list all of the specific charges. This is a requirement of the Federal Trade Commission. Although not required to do so, some funeral homes may also choose to give you an itemized statement when you make these arrangements.

– What is meant by guaranteed and nonguaranteed prices?

Some preneed arrangers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and the interest it earns. Nonguaranteed prices are those which might increase or decrease. The nonguaranteed prices may be written in at the time of this contract with you understanding that the price is an estimate only and may increase or decrease. A settlement to that effect may

have to be made with your family or representative after your death.

- Can the preneed arranger and I negotiate a projected charge for the nonguaranteed items based on the rate of inflation?

It is entirely up to the preneed arranger to inform you of the funeral home policy in that regard.

CASKETS AND CONTAINERS

- Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

- Is a casket required?

A casket is not required for direct cremation. If you want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

- Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

Embalmer EMBALMING

- Is ~~Embalmer~~ *embalming* always required?

Except in certain special cases, ~~Embalmer~~ *embalming* is not required by law. ~~Embalmer~~ *Embalming* may be necessary, however, if you select certain funeral arrangements such as viewing or visitation with an open casket. You do not have to pay for ~~Embalmer~~ *embalming* you did not approve if you ~~selected~~ *select* arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an ~~Embalmer~~ *embalming*, your designee will be notified of the reasons in writing.

ASSISTANCE

- This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and preneed arranger either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

- Where can I complain if I have a problem concerning my preneed contract, the preneed arranger, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers
Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
Telephone Number (804) 662-9941 662-9907
Toll Free Number 1-800-533-1560
Fax: (804) 662-9943

VAR. Doc. No. R95-76; Filed October 19, 1994, 2:22 p.m.

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Title of Regulations: VR 320-01-04. Resident Trainee Program for Funeral Service.

Statutory Authority: §§ 54.1-2400, 54.1-2803 and 54.1-2817 of the Code of Virginia.

Public Hearing Date: January 10, 1995 - 9:30 a.m.

Written comments may be submitted through January 13, 1995.

(See Calendar of Events section for additional information)

Basis: Section 54.1-2400 of the Code of Virginia provides the statutory basis for promulgation of the regulations. Section 54.1-2803 authorizes the board to establish, supervise, regulate and control, in accordance with the law, programs for resident trainees.

Purpose: The proposed amendments provide new definitions for clarification and ease of compliance, set the maximum length of time an individual may be registered as an apprentice, provide supervision of a registrant who has completed the formal trainee program but has not yet become licensed, and establish a requirement for a final report from the supervisor.

Through the amendments, the public's health, safety and welfare are better ensured by requiring that individuals serving the public are qualified and licensed to do so or are supervised directly by a licensed professional while serving the public. The amendments ensure more consistent oversight of the apprentice who has completed the formal program and clarify definitions for ease of compliance by the licensee and the apprentice. These

Proposed Regulations

changes serve to protect the public as indicated in the first sentence of this paragraph.

Substance: In addition to editorial changes to correct grammar or formatting and numbering, amendments are proposed in the following sections.

1. § 1.1 adds a definition for direct supervision to clarify that the licensed supervisor must be present and in the same facility with the trainee. "Supervision" is undefined in current regulation, but has been interpreted by board policy as requiring the supervisor's presence in the same room with the trainee. The proposed definition is less restrictive for the licensee and trainee.
2. § 1.1 adds definitions for full-time and part-time school attendance to specify and clarify the number of semester hours required for each.
3. § 1.1 adds a definition for full-time work to specify a schedule of 40 hours a week.
4. § 2.1 B adds an amendment to limit the maximum allowable time that one may be registered as a trainee to four years with an extension at the discretion of the board.
5. § 2.4 clarifies the trainee work schedule to include hours in addition to the minimum 40 hours a week.
6. § 2.18 deletes confusing and unnecessary language in the selection of a new supervisor.
7. § 2.20 B restates in a new format the requirements for partial reporting on a trainee formerly found in §§ 2.23 and 2.24 of these regulations. In the new § 2.20 B, the proposed amendment is less burdensome by extending the time by which a report must be received by the board from five to 10 days.
8. § 2.20 C adds a requirement for the submittal of a written final report to be certified by the trainee and supervisors that they have each complied with responsibilities of the trainee curriculum.
9. New § 2.21 amends the section to specify that failure to submit a training report could result in disciplinary action against the trainee, supervisor and establishment.

Issues:

A. Definitions: Current regulations lack clear definitions of supervision, school attendance and full-time work. While the policy of the board has been to interpret supervision as presence in the same room with the trainee, there was no enforceable and consistent standard for licensees.

Solution: Add clear, reasonable definitions of "supervision," "full-time school attendance," "part-time

school attendance" and "full-time work." Make supervision less restrictive than the current board interpretation by requiring the presence of the supervisor in the facility rather than in the same room. (See § 1.1)

B. Limitation on traineeship: Current regulations have no limitation on the time a funeral service trainee may remain in their traineeship. Existing provisions allow the trainee to pursue "careers" as apprentices and engage in the scope of practice of the licensed funeral professional so long as they are supervised by a licensee. Some apprentices complete the formal apprenticeship program but remain unqualified for licensure since they are supervised by a licensee. Some apprentices complete the formal apprenticeship program but remain unqualified for licensure since they have not attended mortuary science school or taken the national or state examinations. Although there is a maximum allowable time for delaying examinations, the only penalty is losing credit for past formal apprenticeships. Some individuals simply reinstate their apprenticeships and the cycle begins again. The longer trainees remain in the facility, the less likely they will be provided supervision and unlicensed activity may result.

Solution: Place a limit of four years on the maximum allowable time that one may be registered as a trainee. The prelicensure process involves an 18-month apprenticeship and a maximum of two years of schooling. A four-year maximum would still allow the trainee six months to apply and prepare for the exam. (See § 2.1 B)

C. Work schedule: Current regulations require the trainee to work at least 40 hours each week and to receive training in all areas of funeral service. It may not always be possible for all the required training to be obtained in a 40-hour week. Moreover, the trainee or the supervisor may wish to schedule more than 40 hours per week.

Solution: Amend regulation on trainee work schedules to allow flexibility for hours beyond the 40 hours each week at the discretion of the supervisor. (See § 2.4)

D. Selection of supervisor: There is some confusion in the current requirement about the selection of a new supervisor and the resumption of training when training is interrupted.

Solution: Amend regulation to clarify that the trainee has the responsibility of obtaining a new supervisor and that credit for training is resumed when approval of that supervisor by the board has been obtained. (See §§ 2.18 and 2.19)

E. Need for assurance of continued supervision: Trainees who have completed the formal traineeship have often remained registered with the funeral establishment with no supervision provided. The consumer cannot be assured that services are being provided by licensed personnel.

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Solution: Require a final report in the form of an affidavit at the end of the 48-month registration period to include validation by the registrant and the supervisor that direct supervision was provided throughout. Also establish in regulation that failure to report may result in disciplinary action by the board. (See §§ 2.20 B and 2.21)

F. Curriculum compliance: Current regulations require no monitoring or oversight of the trainee curriculum. The curriculum checklist is for informal use only.

Solution: Require the trainee and supervisors to sign a notarized affidavit that they have each complied with responsibilities to the trainee curriculum and require that completion and submittal of the trainee checklist be mandatory. (See § 2.20.C)

Advantages for the Public: Current regulations allow individuals to be registered indefinitely as apprentices and continue to meet with families, embalm, and conduct funeral services without a full license. The amendments to the regulations would move the individual more expediently toward licensure and ensure that the public would have its funeral service needs met by licensed and qualified staff at the funeral home. The amendments also require that between the official end of the apprenticeship program and final licensure, the apprentice who continues to be registered with this board would be under the same supervision of licensed staff that he had been when in the apprenticeship program. Again, this would ensure the public of protection in the area of services provided by an unlicensed individual by ensuring that the unlicensed individual is under direct supervision from licensed staff.

Disadvantages for the Public: The amendments will not impact the consumer in a negative manner.

Advantages for the Implementing Agency: The Board of Funeral Directors and Embalmers will gain oversight of the registered apprentice who has completed the apprenticeship program but not yet sought licensure. Clarification of definitions will enhance enforceability of the requirements.

Disadvantages for the Implementing Agency: Additional papertracking will be required with the increased oversight. There is a possibility that disciplinary cases may increase slightly with the agency incurring the expense of adjudication of these cases. However, this will require no increase in licensure fees or staff. Present budget and staff are equipped to absorb any extra responsibilities.

Impact:

A. Numbers of Persons Affected:

187 registered trainees and approximately 250 licensed supervisors will be affected. Trainees are currently registered at approximately 195 of the 488 licensed establishments (several trainees serve more than one establishment).

B. Projected Cost to Agency for Implementation and Enforcement:

Printing and mailing regulations = \$1,000;

Printing applications = \$150;

Increased cost of adjudicating complaints = \$5,000;

Total estimated cost = \$6,150.

All funds of the board are derived from fees paid by licensees, registrants and applicants. No fee increase is proposed.

C. Projected Costs for Regulated Entities:

Funeral Establishments - Amended regulations clarify that a funeral establishment which elects to hire a trainee must supervise the trainee throughout the registration period. Currently, the board interprets supervision as presence in the same room with the trainee. However, the proposed definition of supervision is less restrictive and requires that the supervisor be on site whenever the trainee is on duty. Therefore, costs for new requirements on supervision will be minimal or nonexistent.

Trainees - Proposed regulations require trainees to complete their program within four years. There should be no impact to trainees who qualify for and receive licensure within that time period. Trainees who have not completed requirements and who do not qualify for an extension by the board will not be able to perform the services of a trainee under supervision; however, the individual can remain and perform services that do not require a license. There is no cost associated with this requirement.

D. Localities Affected:

There are no localities particularly affected.

Summary:

The proposed amendments to these regulations provide new definitions for clarification and ease of compliance, set the maximum length of time an individual may be registered as a trainee, provide supervision of a registrant who has completed the formal trainee program but has not yet become licensed, and establish a requirement for a final report from the supervisor.

VR 320-01-04. Resident Trainee Program for Funeral Service.

PART I. GENERAL PROVISIONS.

Article 1.

Proposed Regulations

Definitions, Legal Base, Purpose, Applicability.

§ 1.1. Definitions.

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

“Applicant” means a person applying for registration by the board.

“Board” means the Board of Funeral Directors and Embalmers.

“Conduct” means to carry out and perform.

“Direct supervision” means that a licensed funeral service professional is present and on the premises of the facility with the trainee.

“Full-time school attendance” means that the individual attending mortuary science school is enrolled in 12 or more semester hours of coursework per semester.

“Full-time work schedule” means that the resident trainee works at least 40 hours per week.

“Part-time school attendance” means that the individual attending mortuary science school is enrolled in 11 or fewer semester hours of coursework per semester.

“Registration” means the process of applying to the board to seek approval to serve as a trainee or supervisor.

“Resident trainee” means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the board.

“Supervisor” means a licensed employee of the establishment which is the training site. The employee is licensed as an embalmer, funeral director, or funeral service licensee and has agreed to supervise the training program of the resident trainee and has been approved by the board to provide supervision.

“Training site” means the licensed funeral establishment which has agreed to serve as the location for resident training and has been approved by the board for the training.

§ 1.2. Legal base.

Section 54.1-2817 of the Code of Virginia describes the responsibility of the Board of Funeral Directors and Embalmers to regulate the resident trainee program for funeral service in the Commonwealth of Virginia.

§ 1.3. 1.2. Purpose.

These regulations establish the standards for qualifications, training and practice of persons as resident

trainees; sites of training; and supervisors of training in the Commonwealth of Virginia.

§ ~~1.4~~ 1.3. Applicability.

Individuals and establishments subject to these regulations are (i) funeral service resident trainees; (ii) licensed funeral homes serving as training sites; and (iii) funeral service licensees, funeral directors, and embalmers serving as training supervisors.

Article 2. Fees.

§ ~~1.5~~ 1.4. Initial fees.

The following fees shall be paid as applicable for registration:

1. Funeral service resident trainee registration ... \$25
2. Resumption of traineeship after interruption ... \$10

§ ~~1.6~~ 1.5. Renewal fee.

The following annual fee shall be paid for registration renewal:

- Resident trainee registration renewal \$25

§ ~~1.7~~ 1.6. Reinstatement fee.

The following reinstatement fee shall be paid in addition to annual renewal fees for reinstatement of an expired registration up to three years following expiration:

- Resident trainee registration reinstatement \$10

Article 3. Other Fees.

§ ~~1.8~~ Other fees: 1.7. Duplicates.

A. Duplicates.

- Duplicate trainee registration \$25

B. Other.

§ 1.8. Additional fee information.

1. A. There shall be a fee of \$25 for returned checks.
2. B. Fees shall not be refunded once submitted.

Article 3: 4. Renewals.

§ 1.9. Expiration date.

- A. The resident trainee registration shall expire on

January 31 of each calendar year.

B. A person who fails to renew a registration by the expiration date shall be deemed to have an invalid registration.

C. No credit will be allowed for a traineeship period served under an expired registration.

§ 1.10. Renewal of registration.

A person who desires to renew his registration for the next year shall not later than the expiration date:

1. Return the renewal notice;
2. Submit the applicable fee; and
3. Notify the board of any changes in name, address, employment, or supervisor.

§ 1.11. Reinstatement of expired registration.

The board may consider reinstatement of an expired registration for up to three years following expiration. A written application request for reinstatement shall be submitted to the board and shall include payment of all applicable delinquent renewal fees prescribed in § 1.6 1.5, plus the additional reinstatement fee prescribed in § 1.7 1.6 .

§ 1.12. Reapplication for registration.

When a registration is not reinstated within three years of its expiration date, an applicant for registration shall restart the training program and reapply for traineeship.

PART II. TRAINEE PROGRAM REQUIREMENTS.

Article 1. Training Program: General.

§ 2.1. Resident training.

~~For applicants applying for initial traineeships after November 1, 1990, the~~ A. The trainee program shall consist of at least 18 months of resident training.

B. An individual may hold an active traineeship registration for a maximum of 48 months from the date of initial registration for the traineeship program. The board, in its discretion, may grant an extension of the traineeship registration.

~~§ 2.2.~~ C. A resident trainee shall not attend school full time while serving his traineeship (see § 1.1) .

§ 2.3. 2.2. Number of trainees limited.

When more than two trainees are requested by a

licensed funeral establishment, not more than two trainees will be registered per licensed supervisor at any time.

§ 2.4. 2.3. Approval of funeral training.

The approval shall apply to and be valid only to:

1. The resident trainee;
2. The licensed person(s) under whom the training is to be given; and
3. The funeral service establishment(s) named in the approval statement.

~~§ 2.5.~~ 2.4. Trainee work schedule.

Every resident trainee shall be assigned a work schedule of at least 40 hours each week in order to obtain credit for such training. The trainee shall be required to serve weekday, evening, and weekend shifts to receive training in all areas of funeral service. Additional and further hours may be at the discretion of the supervisor or may be a requirement of the facility.

Article 2. Resident Trainees: Requirements and Application Process for Registration.

§ 2.6. 2.5. Resident trainee requirements.

To be approved for registration as a resident trainee, a person shall:

1. Be a graduate of an accredited high school or the equivalent;
2. Obtain a supervisor approved by the board to provide training;
3. Have not been convicted of a felony. The board, in its discretion, may approve an individual convicted of a felony if he has been pardoned or has had his civil rights restored.

§ 2.7. 2.6. Trainee application package.

Every qualified person seeking registration with the board as a trainee under the Program for Training of Resident Trainees shall submit an application package which shall include:

1. Completed and signed application;
2. Fee prescribed in § 1.5 1.4 ;
3. Additional documentation as may be required by the board to determine eligibility of the applicant.

~~§ 2.8.~~ 2.7. Submission of incomplete application package; exception.

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All required parts of the application package shall be submitted at the same time. An incomplete package will be returned to the applicant.

Exception: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board. National examination scores where applicable will also be accepted from the examining authority.

§ ~~2-9~~ 2.8. Resumption-of-traineeship application.

When a traineeship is interrupted by the trainee, the trainee shall submit a resumption-of-traineeship application to the board prior to resuming his traineeship.

Article 3.

Establishment Application Requirements.

§ ~~2-10~~ 2.9. Training sites.

Funeral training shall be given at the main office of the licensed funeral service establishment approved for training or at any branch of such establishment that complies with the provisions of these regulations and is approved by the board as a training site.

§ ~~2-11~~ 2.10. Qualifications of training site.

The board shall approve only an establishment or two combined establishments to serve as the training site(s) which:

1. Have a full and unrestricted Virginia license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. Have 35 or more funerals and 35 or more bodies for embalming per calendar year for each person to be trained. This total must be maintained throughout the period of training.

§ ~~2-12~~ 2.11. Approval of training site.

An individual, firm, or corporation owning or operating any funeral service establishment shall apply to and be approved by the board prior to permitting funeral training to be given or conducted in the establishment.

§ ~~2-13~~ 2.12. Establishment application package.

Every qualified establishment or combined establishments seeking approval as a training site(s) shall submit an application package which shall include:

1. Completed and signed application; and
2. Additional documentation as may be required by the board to determine eligibility of the establishment.

Article 4.

Supervisor Application Requirements.

§ ~~2-14~~ 2.13. Training supervision.

Training shall be conducted under the direct supervision of a licensee(s) approved by the board.

§ ~~2-15~~ 2.14. Qualifications of supervisor.

The board shall approve only funeral service licensees, licensed funeral directors, or licensed embalmers to give funeral training who:

1. Have a full and unrestricted Virginia funeral license;
2. Have complied in all respects with the provisions of the regulations of the Board of Funeral Directors and Embalmers; and
3. Are employed full time in the establishment where training occurs.

§ ~~2-16~~ 2.15. Supervisor approval.

An individual shall apply to and be approved by the board prior to serving as a supervisor.

§ ~~2-17~~ 2.16. Supervisor application package.

Every qualified person seeking approval of the board as a supervisor shall submit an application package which shall include:

1. Completed and signed application; and
2. Additional documentation as may be required by the board to determine eligibility of the applicant.

§ ~~2-18~~ 2.17. Curriculum compliance.

An approved supervisor shall comply with and shall provide supervision and training as prescribed by these regulations.

Article 5.

Program Requirements.

§ ~~2-19~~ 2.18. Selection of new supervisor.

If the program is interrupted because the approved supervisor is unable to serve, the trainee shall obtain a new supervisor.

§ ~~2-20~~ 2.19. Resumption of training.

Credit for training shall resume when a new supervisor is obtained by the trainee and approved by the board.

Article 6.

Proposed Regulations

Reporting Requirements.

~~§ 2.21.~~ 2.20. Report to the board : *six-month report; partial report; final report .*

A. The trainee, the supervisor(s), and the establishment shall submit a written report to the board at the end of every six months of training. The report shall:

1. Verify that the trainee has actually served in the required capacity during the preceding six months; and
2. Be received in the board office no later than 10 days following the end of the six-month period. A late report automatically will have credit deducted in two week increments from the completed training time.

B. If the training program is terminated or interrupted prior to completion of a six-month period, the trainee and the supervisor shall submit a partial report to the board. The partial report shall provide the amount of time served and the dates since the last reporting period. Credit for partial reports shall be given in increments of one month.

Written explanation of the causes of program termination or interruption shall be provided by the trainee and the supervisor.

Partial reports shall be received in the board office no later than 10 days after the interruption or termination of the trainee program. Credit may be deducted for late reports.

C. The trainee, the supervisor(s) and the establishment manager shall submit written final reports to the board at the end of the apprenticeship period as follows:

1. A Final Trainee Report, which certifies that the trainee has conducted 25 funerals and 25 embalmings, shall be submitted.
2. A trainee, his supervisor and the establishment manager shall submit a notarized affidavit to the board at the end of the trainee program that full compliance has been met with the trainee curriculum.
3. A trainee shall submit a completed checklist showing a chronological history of training to the board at the end of the trainee program.

All final reports shall be received in the board office no later than 10 days after the completion of the traineeship. Late reports may result in additional time being added to the traineeship.

~~§ 2.22.~~ 2.21. Failure to submit training report.

If the trainee, supervisor, or establishment manager fails to submit the reports required in ~~§ 2.21~~ 2.20 , the trainee

shall forfeit all credit for training since the last report made; or disciplinary action may be taken against the trainee, supervisor and establishment manager. The board may waive such forfeiture.

~~§ 2.23.~~ Terminated or interrupted training.

If the training program is terminated or interrupted prior to completion of a six-month period, the trainee and the supervisor shall submit the following information to the board within five working days:

1. Trainee:

- a. All partial progress reports to the date of termination for the six-month period; and
- b. Written explanation of the causes of program termination/interruption.

2. Supervisor: The supervisor shall submit written explanation of the causes of program termination/interruption.

~~§ 2.24.~~ Credit for partial reports.

Credit for partial reports shall only be given in increments of one month.

PART III. TRAINING PROGRAM: FUNERAL SUPERVISORS' RESPONSIBILITIES.

Article 1. Regulations and Forms.

§ 3.1. Regulations.

The supervisor shall provide the trainee with regulations or sections of regulations relating to the funeral industry as follows:

1. Regulations of the Board of Funeral Directors and Embalmers;
2. Preened regulations of the Board of Funeral Directors and Embalmers;
3. Virginia Department of Health regulations governing:
 - a. Vital statistics reporting;
 - b. Responsibilities of the medical examiner;
 - c. Cremations and burial at sea;
 - d. Disinterments and reinterments;
 - e. Shipping bodies to another country;

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f. Shipping bodies by public transport; and

g. Filing of death certificates;

4. Occupational Safety and Health Administration (OSHA) regulations;

5. Regulations governing the filing of Veteran's Administration and Social Security claims;

6. Federal Trade Commission's Funeral Rule on funeral industry practices.

§ 3.2. Forms.

The supervisor shall provide the trainee with copies of and explanations for the use of:

1. General price list;
2. Itemized statement of funeral goods and services;
3. Casket price list;
4. Outer burial container price list; and
5. Preneed contract.

§ 3.3. Forms completion.

The supervisor shall instruct the trainee in how to complete, and allow the trainee to complete, final forms for business as follows:

1. Itemized statements of funeral goods and services;
2. Preneed contracts;
3. Death certificates;
4. Veteran and Social Security Administration forms;
5. Cremation forms; and
6. Vital statistic reports.

§ 3.4. Preneed funding forms.

The supervisor shall instruct the trainee on the requirements and use of forms used by funding companies for the investment of preneed funds.

Article 2.

Knowledge of the Community and Others.

§ 3.5. Community resources.

The supervisor shall provide the trainee with a list of the following and a contact person whom the funeral home uses as a resource at each place, with a contact at each of the following:

1. Area hospitals;

2. Area nursing homes;

3. Regional medical examiner;

4. City or county morgue;

5. Police department;

6. Cemeteries and crematoriums; and

7. Churches, mosques, synagogues.

§ 3.6. Community funeral customs.

The supervisor shall instruct the trainee on the funeral customs of the following:

1. Nationalities served by the funeral home;
2. Religious rites;
3. Fraternal rites; and
4. Military rites.

Article 3. Merchandising.

§ 3.7. Merchandising.

The supervisor shall instruct the trainee on:

1. The features and prices of merchandise offered by the establishment, both special order and in-stock merchandise;
2. How to display merchandise and stock the selection room;
3. How to complete information cards to be displayed on caskets; and
4. How to order merchandise.

Article 4.

Initial Arrangements and Meeting with the Family.

§ 3.8. Initial contact.

The supervisor shall allow the trainee to observe and then conduct the following:

1. Taking a death call;
2. Removing a body and transporting it to the funeral home;
3. Placing the body in the preparation or holding room;

4. Obtaining permission for embalming;
5. Documenting verbal permission for embalming; and
6. Documenting the reason for proceeding with an embalming when the next-of-kin cannot be contacted.

§ 3.9. Confidentiality and dignity.

The supervisor shall instruct the trainee in the meaning of, and ensure that the trainee adheres to, the funeral home policy for:

1. Honoring the confidentiality of every family and family member; and
2. Honoring the dignity of the dead and the families of the dead at all times.

§ 3.10. Initial arrangements.

The supervisor shall allow the trainee to observe and then to practice with the supervisor the following:

1. Giving prices over the telephone;
2. The required time to offer the general price list, casket price list, outer burial container price list, and presenting the itemized statement of funeral goods and services to the family;
3. Meeting with the family and discussing prices and disclosures;
4. Taking vital statistics information;
5. Taking information for obituary notices and filing the notices with the newspaper;
6. Showing the family the merchandise in the selection room;
7. Making cash advance arrangements with a third party; and
8. Arranging with and completing the paperwork for cremations and cemetery burials.

§ 3.11. Meeting with the family.

With the supervisor present and in the same room, the supervisor shall allow the trainee to:

1. Meet with families to discuss prices, disclosures, and making arrangements for at need services;
2. Complete itemized statements of funeral goods and services for presentation to the families;
3. Complete preneed arrangements with families;

4. Explain the features and prices of merchandise to families; and
5. Assist families in choosing at need substitute merchandise when merchandise that is chosen during a preneed arrangement is not available at need.

Article 5. The Service.

§ 3.12. Disposition.

The supervisor shall allow the trainee to observe and then conduct the following arrangement for disposition of the body.

1. Making cemetery and crematory arrangements;
2. Taking a body to the crematorium; and
3. Disposing of cremains as requested by the family.

§ 3.13. Services.

The supervisor shall allow the trainee to observe and then conduct with the supervisor present, the following arrangements:

1. Visitation/viewing;
2. Chapel, church, and graveside services;
3. Services for disposition of cremains;
4. Funeral processions;
5. Multiple services taking place simultaneously;
6. Direct cremations;
7. Immediate burials;
8. Receiving bodies from another funeral home;
9. Shipping bodies to another funeral home; and
10. Preparing information sheet on services for receptionist to use in answering questions for the public.

PART IV. RESPONSIBILITIES OF EMBALMING SUPERVISOR.

Article 1. Preparation Room.

§ 4.1. Preparation room.

The supervisor shall instruct the trainee on the following:

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1. Stocking the preparation room to meet compliance with regulations;
2. Purpose and use of protective clothing and gear during the preparation of a body;
3. Cleanliness, disinfection, and sanitation requirements for the preparation room;
4. Hazardous and infectious waste management; and
5. Cleaning and sterilizing reusable instruments.

Article 2. The Embalming.

§ 4.2. Embalming: general.

The supervisor shall instruct the trainee on the following:

1. Use and purpose of the embalming instruments;
2. Use and purpose of the embalming fluids; and
3. Use and purpose of the embalming report.

§ 4.3. Embalming.

The supervisor shall allow the trainee to observe, and then conduct with the supervisor present and in the same room, the following:

1. External disinfection of bodies;
2. Cleaning bodies after the embalming;
3. Using precautions in an embalming of bodies harboring an infectious disease;
4. Preparing bodies with tissue gas;
5. Setting the features on bodies;
6. Using restorative techniques on damaged bodies;
7. Using cosmetology on bodies;
8. Clothing bodies;
9. Casketing bodies; and
10. Embalming bodies.

§ 4.4. Embalming reports.

The supervisor shall have the trainee observe and then complete embalming reports.

PART V. THE TRAINEE'S RESPONSIBILITIES.

Article 1. Regulations and Forms.

§ 5.1. Regulatory agencies.

The trainee shall be able to list the state and federal agencies that regulate the funeral industry and be able to describe the roles and functions of each agency as it relates to the funeral industry.

§ 5.2. Regulations.

The trainee shall be knowledgeable of the contents of the regulations prescribed in § 3.1 and be able to explain to the supervisor and the board those regulations and how they apply to the funeral industry.

§ 5.3. Forms.

The trainee shall complete the forms prescribed in § 3.3 and be able to explain to the supervisor and the board the use and content requirements of the forms.

§ 5.4. Preneed.

The trainee shall be able to explain to the supervisor and the board preneed funding requirements.

Article 2. Knowledge of the Community and Others.

§ 5.5. Community resources.

The trainee shall contact at a time of need the funeral home's resource person at each of the facilities prescribed in § 3.5 and make arrangements as pertinent for transporting, removing, services, or disposition of the dead.

§ 5.6. Funeral customs.

The trainee shall be knowledgeable of and be able to explain to the supervisor and the board the funeral customs prescribed in § 3.6.

Article 3. Merchandising.

§ 5.7. Merchandising.

The trainee shall:

1. Display merchandise and learn to stock the selection room;
2. Prepare pricing and information cards to be displayed on the caskets;
3. Be able to explain to the supervisor the features and prices of merchandise; and
4. Place an order for merchandise.

Article 4.

Initial Arrangements and Meeting with the Family.

§ 5.8. Initial contact.

The trainee shall conduct the activities prescribed in § 3.8 under the supervision of the supervisor.

§ 5.9. Meeting with the family.

The trainee shall conduct arrangements with families in the presence of and in the same room with the supervisor as prescribed in §§ 3.10 and 3.11.

Article 5. The Service.

§ 5.10. Disposition and services.

The trainee shall plan and conduct 25 funerals during the traineeship as prescribed in §§ 3.12 and 3.13.

Article 6. Embalming.

§ 5.11. Embalming.

The trainee shall conduct 25 embalmings in the room with and under the supervision of the embalming supervisor. The trainee will conduct all procedures prescribed in § 4.3.

§ 5.12. Embalming preparation.

The trainee shall have a knowledge of and be able to explain to the supervisor and the board the purpose and procedures as prescribed in §§ 4.1 and 4.2.

§ 5.13. Embalming reports.

The trainee shall complete embalming reports on the 25 embalmings the trainee conducts.

PART VI. REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

§ 6.1. Disciplinary action.

The board may refuse to issue or renew a license, registration, or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license, registration, or approval, or reprimand any person, or place his license or registration on probation with such terms and conditions and for such time as it may designate or impose a monetary penalty for failure to comply with the regulations of the training program or the Regulations of the Board of Funeral Directors and Embalmers.

NOTICE: The forms used in administering the Resident Trainee Program for Funeral Service regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Funeral Directors and Embalmers, 6606 West Broad Street, 4th Floor, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Street, 2nd Floor, Room 262, Richmond, Virginia.

Application for Apprenticeship

Application for Apprenticeship Supervisor

General Information for All Trainees, DHP (revised 11/93)

Resident Trainee Report, DHP-14-004 (revised 11/93)

Certification of Embalmings, DHP-14-005 (revised 11/93)

Certification of Funerals, DHP-14-006 (revised 11/93)

Training Program - Funeral Service Supervisor's Responsibilities

Training Program - Trainee Responsibilities

V.A.R. Doc. No. R95-77; Filed October 19, 1994, 2:22 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Title of Regulation: VR 240-04-4. Crime Prevention Specialists.

Statutory Authority: §§ 9-170, 9-173.14 and 9-173.15 of the Code of Virginia.

Effective Date: December 14, 1994.

Summary:

The Crime Prevention Specialist Regulations provide guidance on minimum qualifications required for a law-enforcement officer to be designated a crime prevention specialist by the Department of Criminal Justice Services.

The duty of a crime prevention specialist is to provide information and assistance to citizens, businesses and organizations concerning personal safety, security of property, Neighborhood and Business Watch, employee security and other matters relating to reduction of criminal opportunity.

Designation of staff for certification as a crime prevention specialist is done at the discretion of the chief law-enforcement officer. No agency is mandated to designate staff as crime prevention specialists, and activities performed by crime prevention specialists may be performed by persons who are not so designated.

The regulations establish minimal training and experience standards for certification, and are applicable to sworn and unsworn employees of law-enforcement agencies, including auxiliary officers.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Paula Scott-Dehetre, Regulatory Coordinator, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-8730. There may be a charge for copies.

VR 240-04-4. Crime Prevention Specialists.

§ 1. Definitions.

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

"Agency administrator" means any chief of police, sheriff, or any agency head of a local or state law-enforcement agency.

"Crime prevention services" means providing for the anticipation, recognition, and appraisal of a crime risk and the initiation of an activity to remove or reduce the opportunity for crime.

"Department" means the Department of Criminal Justice Services.

"Employee" means any sworn or civilian individual [, including auxiliaries,] employed by a local or state law-enforcement agency.

"General law-enforcement instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, contained in VR 240-01-12 (§ 1), and is eligible to instruct, teach or lecture approved or mandated training.

"Law-enforcement agency" means any government agency or identifiable subunit which has as its principal duty or duties the prevention, detection, and investigation of crime; the apprehension, detection, and prosecution of alleged offenders.

§ 2. Duties of a crime prevention specialist.

The duties of a crime prevention specialist are:

1. To provide citizens within his jurisdiction information concerning personal safety and the security of property, and other matters relating to the reduction of criminal opportunity.

2. To provide business establishments within his jurisdiction information concerning business and employee security, and other matters relating to the reduction of criminal activity.

3. To provide citizens and businesses within his jurisdiction assistance in forming and maintaining neighborhood and business watch groups and other community-based crime prevention programs.

4. To provide assistance to other units of government

within his jurisdiction in developing plans and procedures related to the reduction of criminal activity within government and the community.

5. To promote the reduction and prevention of crime within his jurisdiction and the Commonwealth.

§ 3. Eligibility.

A. Any employee of a local or state law-enforcement agency [, or auxiliary officer or deputy,] is eligible to be trained and certified as a crime prevention specialist.

B. The agency administrator of any local or state law-enforcement agency may designate one or more employees in his department or office to be trained and certified as a crime prevention specialist. Applicants for recertification shall be recommended by agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Certification Application - Form A.

C. These regulations do not limit or prohibit the chief executive of any local or state law-enforcement agency from assigning personnel to crime prevention tasks who are not certified as crime prevention specialists.

§ 4. Crime prevention specialist certification requirements.

A. The following requirements must be met to be certified as a crime prevention specialist. The applicant shall have:

1. Been certified as a general law-enforcement instructor within the past five years, or successfully completed a comparable instructor development course approved by the department.

2. Received 40 hours of approved introductory crime prevention training. Completion of the following compulsory minimum training topics is required for designation as a crime prevention specialist:

- a. Theory and Practice of Crime Prevention
- b. Neighborhood Watch
- c. Home and Business Security
- d. Security Liability
- e. Security Hardware (locks, lighting, and alarms)
- f. Personal Safety
- g. Crime Analysis

3. Received 80 hours of additional crime prevention training within the past five years of the date of application. This additional training must address at least two of any of the following topics:

- a. Crime Prevention Through Environmental Design
- b. Community Crime Prevention Planning
- c. Advanced Data Collection and Analysis
- d. School Safety and Security
- e. Security Lighting
- f. Computer Security
- g. Managing Volunteers
- h. Grant and Proposal Writing
- i. Legislation, Ordinance and Regulation Development
- j. Prevention of Youth Violence
- k. Prevention of Family Violence
- l. Drug Abuse Prevention
- m. Public Speaking
- n. Media Relations
- o. Other topics approved by the department

4. At least three years experience in a criminal justice agency.

5. At least one year experience, within the past five years of the date of application, in providing crime prevention services. Such experience shall have included:

- a. [~~Developed and maintained~~ Developing and maintaining] Neighborhood or Business Watch groups.
- b. [~~Conducted~~ Conducting] security assessments of homes and businesses.
- c. [Making] public presentations on home or business security and personal safety.
- d. [~~Distributed~~ Distributing] crime prevention information to the public.
- e. Other experience approved by the department.

B. The department retains the right to waive all or part of the prescribed training requirements when relevant crime prevention certifications awarded by recognized criminal justice or security organizations or by other state criminal justice agencies are provided.

Crime prevention specialist certifications awarded by

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organizations or other states will be reviewed on a case-by-case basis.

§ 5. Recertification.

A. Recertification is required every three years.

B. Applicants for recertification shall be recommended by the agency administrator or his designee. Application shall be made on the Crime Prevention Specialist Recertification Application - Form B.

C. Applicants for recertification must complete 40 hours of additional crime prevention training since initial designation as a crime prevention specialist. This additional training must address at least one of the following topics:

1. Crime Prevention Through Environmental Design
2. Community Crime Prevention Planning
3. Advanced Data Collection and Analysis
4. School Safety and Security
5. Security Lighting
6. Computer Security
7. Managing Volunteers
8. Grant and Proposal Writing
9. Legislation, Ordinance and Regulation Development
10. Prevention of Youth Violence
11. Prevention of Family Violence
12. Drug Abuse Prevention
13. Public Speaking
14. Media Relations
15. Other topics approved by the department

D. Individuals whose certification expires shall comply with the requirements set forth in § 4 and meet any certification requirements in effect at that time.

E. The department retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury
2. Military service
3. Special duty required and performed in the public

interest

4. Leave without pay or suspension pending investigation or adjudication of a crime

5. Any other reason documented by the agency administrator

F. Requests for extensions of the time limit must be requested prior to certification expiration.

V.A.R. Doc. No. R95-82; Filed October 26, 1994, 12:05 p.m.

FORM A CRIME PREVENTION SPECIALIST CERTIFICATION APPLICATION

Department of Criminal Justice Services

Applicant's Name: _____

Employing Agency: _____

Address: _____

Recommended by: _____

Signature: _____

Telephone: _____ Date: _____

A. Have you been certified by DCJS as a General Law Enforcement Instructor within the past five (5) years?

YES ___ NO ___

If you answered "NO" to question A, have you completed a comparable instructor development course?

YES ___ NO ___ If YES, list type of course, dates of attendance, and who provided training.

B. Have you completed forty (40) hours of introductory crime prevention training?

YES ___ NO ___ If YES, when and where did you complete your training:

Training provided by: _____

C. Have you received eighty (80) hours of additional crime prevention training in the past five (5) years?

YES ___ NO ___ If YES, please provide the following information:

Dates	Hours	Training provided by
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. Do you have at least three years (3) of experience working in a criminal justice agency?

YES ___ NO ___ If YES, please list experience:

Dates	Agency
_____	_____
_____	_____
_____	_____

E. Do you have at least one (1) year of experience, within the past five (5) years, in providing crime prevention services?

YES ___ NO ___

F. Do you possess a crime prevention related designation from a nationally recognized organization or from another state?

YES ___ NO ___ If YES, please provide the following:

Designation name: _____

Designating organization or state: _____

Date issued: _____

PLEASE ATTACH DOCUMENTATION FOR ALL COMPLETED TRAINING TO THIS APPLICATION AND RETURN TO:

Virginia Crime Prevention Center
Department of Criminal Justice Services
805 East Broad Street
Richmond, VA 23219

(804)786-8467

FORM B
CRIME PREVENTION SPECIALIST
RECERTIFICATION APPLICATION

Department of Criminal Justice Services

Applicant's Name: _____

Employing Agency: _____

Address: _____

Recommended by: _____

Signature: _____

Telephone: _____ Date: _____

Employer at time of initial certification: _____

Date of initial certification: _____

A. Have you received forty (40) hours of additional crime prevention training since initial certification as a Crime Prevention Specialist or within the past three (3) years?

YES ___ NO ___ If YES, please provide the following information:

Dates	Hours	Training provided by
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. Are you requesting an extension of the time limit before the Crime Prevention Specialist certification expires?

YES ___ NO ___ If YES, please justify the extension request.

Final Regulations

VIRGINIA EMPLOYMENT COMMISSION

Title of Regulation: VR 300-01-1. Definitions and General Provisions.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation, VR 300-01-1, adds new definitions to those already present in the regulation, and amends language in certain existing definitions.

These added definitions codify current practice, setting forth no additional rights or responsibilities under the agency's regulations.

The amendment also makes permanent the 1993 emergency amendments to the agency's Public Participation Guidelines. These amendments provide that the VEC shall receive and respond to all petitions for regulatory amendment, and shall seek the participation of its State Advisory Board in meetings of the agency's Regulatory Review Committee.

No substantive changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-1. Definitions and General Provisions.

§ 1. Definitions.

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

"Act" means the Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia.

"Additional claim" means a claim for unemployment compensation benefits filed within an existing benefit year by a claimant who has had an intervening period of employment since filing a prior claim.

"Agent state" means any state in which an individual files a claim for benefits from another state.

"Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Area of high unemployment" means that geographic area of Virginia, including all cities and counties served by a particular full-service unemployment insurance office, where the average unemployment rate as determined by the commission has been 10% or more during the first four of the last five completed calendar quarters. A full-service unemployment insurance office is any office offering tax, benefits and adjudicatory services.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

"Cash value of remuneration" means with respect to rent, housing, lodging, board, or any other payment in kind, considered as payment for services performed by a worker, in addition to or in lieu of (rather than a deduction from) money wages, the value agreed upon between the employing unit and the worker at the time of entering into the contract of hire or as mutually agreed thereafter. the value of rent, housing, lodging, board, or any other payment in kind, in addition to or in lieu of money wages, as agreed upon by the employing unit and the worker at the time of entering into the contract of hire or thereafter. If there is no such agreement, the value thereof shall be an amount equal to a fair estimate of what the worker would, according to his custom and station, pay for similar goods, services, or accommodations in the same community at premises other than those provided by the employing unit.

"Combined-wage claimant" means a claimant who has covered wages under the unemployment compensation law of more than one state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

"Commission" means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

"Continued claim" means a request for the payment of unemployment compensation benefits which is made after the filing of an initial claim.

"Initial claim" means any new, additional, or reopened claim for unemployment compensation benefits.

"In-person hearing" means a hearing where the parties, witnesses and representatives personally appear before the appeals examiner or special examiner.

"Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

"Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term *"interstate claimant"* shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under regulation VR 300-01-2, Part V, VR 300-01-5 is sent for its approval and *"interested agency"* means the agency of such jurisdiction.

"Job service office" means an office of the commission providing job information and referral services.

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands ; ~~or with respect to the federal government, the coverage of any federal unemployment compensation law .~~

"Liable state" means any state against which an individual files, through another state, a claim for benefits.

"Mass separation" means a separation (permanently ~~or for an indefinite period or~~ , for an expected duration of at least seven days , or ~~more for any indefinite period~~) at or about the same time and for the same reasons (i) of at least 20% ; ~~or more~~, of the total number of workers employed in an establishment, or (ii) of at least 50% ; ~~or more~~, of the total number of workers employed in any division or department of any establishment, or (iii) notwithstanding any of the foregoing, a separation at or about the same time and for the same reason of 25 or more workers employed in a single establishment.

"New claim" means a claim for unemployment compensation benefits filed in person at an unemployment insurance office , or other location designated by the commission , by an individual who does not have an existing benefit year established.

"Partially unemployed individual" means an individual who during a particular week (i) had earnings, but less than his weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Arrangement for Combining Employment and Wages and whose adherence thereto has not terminated.

"Part-total unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and during which he is not attached to a regular employer; or, in any week in which he has wages such as holiday or vacation pay which are less than his weekly benefit amount, but where no actual work has been performed regardless of his attachment to a regular employer.

"Paying state" means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount, or (ii) if the state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in (i) above, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

"Reopened claim" means the first claim for unemployment compensation benefits filed within an existing benefit year after a break in the claim series caused by any reason other than intervening employment.

"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

"Severance and dismissal pay" means, for the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation , *except that payments [directly attributable to service which are exclusively for services] performed prior to separation shall not be treated as severance or dismissal pay* . Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

"Split hearing" means an in-person hearing where one or more parties, representatives or witnesses are allowed to participate telephonically.

"State" means one of the United States, Puerto Rico, the

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U.S. Virgin Islands, and the District of Columbia.

"Telephone hearing" means a hearing where all parties, witnesses and representatives participate before the appeals examiner by way of a telephone conference call.

"Total unemployment" means the unemployment of an individual in a week regardless of whether he is separated or attached to an employing unit's payroll, when for any week in which he performs no work and has no wages payable to him, regardless of whether or not he is attached to an employing unit's payroll.

"Transferring state" means a state in which a combined-wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

"Unemployment insurance office" means an office of the commission providing unemployment insurance services.

§ 2. Development of regulations.

A. Pursuant to § 9-6.14:7.1 of the Code of Virginia, the commission shall solicit the input of interested parties in the formulation and the development of its rules and regulations. *The commission shall receive petitions from any party proposing new regulations or amendment of existing regulations. All such proposals shall be reviewed by the commission and receive response within 180 days. Formulation and development of all new or amended regulations shall be subject to the following public participation guidelines shall be used for this purpose.*

B. Interested parties for the purpose of this regulation shall be:

1. The Governor's Cabinet Secretaries.
2. Members of the Senate Committee on Commerce and Labor.
3. Members of the House Committee on Labor and Commerce.
4. Members of the State Advisory Board.
5. Special interest groups known to the Virginia Employment Commission.
6. Any individual or entity requesting to be an interested party.
7. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

C. Prior to the formulation of a proposed regulation, notice of an intent to draft a regulation shall appear in a

Richmond newspaper and may appear in any newspaper circulated in localities particularly affected by the proposed regulation. Other media may also be utilized where appropriate, including but not limited to, trade or professional publications. Notice of an intent to draft a regulation shall also be mailed to all interested parties and shall be posted in all VEC offices across the Commonwealth. These individuals, groups and the general public shall be invited to submit written data, views, and arguments on the formulation of the proposed regulation to the commission at its administrative office in Richmond, Virginia.

D. Publication of the intent to draft a regulation, as well as the proposed regulation, shall also appear in The Virginia Register of Regulations.

E. ~~The State Advisory Board and special interest groups, including but not limited to, the A.F.L.-C.I.O., Virginia Manufacturers' Association, Retail Merchants' Association, State Chamber of Commerce, the Virginia Poverty Law Center, and the State Employer Advisory Committee, shall be invited by mail to submit data, views and arguments orally to the Commission. The Virginia Employment Commission intends for the State Advisory Board to participate in all meetings of the agency's Regulatory Review Committee during the process in which regulatory amendments are being formulated. Any proposed amendments shall be submitted to members of the advisory board and to special interest groups and others registering interest in working with the commission. If sufficient interest is expressed to the commission in forming additional advisory groups, the commission will constitute such advisory groups as may be appropriate to solicit a full range of views. These groups shall be invited to submit data, views, and arguments regarding the proposed amendments. Any responses to such solicitation shall be considered by the commission in its deliberations.~~

F. Failure of any interested party to receive notice to submit data, views, or oral or written arguments to the commission shall not affect the implementation of any regulation otherwise formulated, developed and adopted pursuant to the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

G. The public participation guidelines of this regulation shall not apply to emergency regulations or those regulations excluded or exempted by any section of the Administrative Process Act.

H. ~~Once the public participation guidelines have been implemented, the Commission may draft a regulation and proceed with adoption in accordance with the Administrative Process Act. During the formal procedures required by the Administrative Process Act; and these public participation guidelines, written input will be solicited from the interested parties and the general public in writing to the Commission and at public hearings held at Richmond and, in the discretion of the Commission, at other locations. At the discretion of the commission, and~~

in accordance with applicable law, one or more public hearings will be held in Richmond and at any other location deemed appropriate to ensure adequate public participation.

§ 3. Review of regulations.

At least yearly, or more often as may be mandated by statute or Executive Order, a regulatory review committee consisting of one member from each division and office of the commission shall meet to review these regulations and general rules. The committee shall recommend the retention, deletion, and amendment of the existing rules and regulations, and additions thereto, as needed, in light of their impact upon the general public and employers with emphasis upon the requirements of the Paperwork Reduction Project as mandated by Executive Order. The committee shall also recommend additions to the regulations and general rules under the same criteria.

V.A.R. Doc. No. R95-60; Filed October 18, 1994, 1:50 p.m.

* * * * *

Title of Regulation: VR 300-01-2. Unemployment Taxes.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation, VR 300-01-2, involves minor clarifications of existing provisions and deletion of a number of provisions concerning reporting requirements, employer accounts, and employer elections to cover multistate workers under the unemployment laws of a single jurisdiction.

The clarifying language does not affect the substantive rights or responsibilities of any party under the agency's regulations. The deleted provisions, which concern varied subject matter, are to be adopted under new regulations and will remain substantively the same.

No changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-2. Unemployment Taxes.

PART I. LIABILITY FOR TAXES OR PAYMENTS IN LIEU THEREOF.

§ 1-1. 1. Taxable employers.

A. Taxes shall become due and be payable quarterly for all taxable employers on the last day of the month next following the end of the calendar quarter for which they have accrued by all employers except the Commonwealth of Virginia, Governmental entities and those nonprofit organizations which have elected to finance their benefit costs on a reimbursable basis, pursuant to the provisions of §§ 60.2-501 through 60.2-507 of the Code of Virginia. This subsection shall not apply to reimbursable employers, including governmental entities and nonprofit organizations electing coverage under the provisions of §§ 60.2-501 through 60.2-507 of the Code of Virginia.

B. The first tax payment of an employer who becomes liable for taxes in any year shall become due and be payable on the next due date following the month in which he became subject to the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of Code of Virginia Act. The first payment of such an employer becoming liable in the course of a calendar year, shall include taxes with respect to for all wages payable for employment for each such employing unit from the first day of the calendar year.

C. The Payment for each of said quarters calendar quarter shall include taxes with respect to for wages payable for employment in all pay periods (weekly, biweekly, semi-monthly, monthly) ending within each such calendar quarter.

D. Upon written request of any employer filed with the commission on or before the due date of any tax payment, the commission for good cause may grant in writing an extension of time for the payment of such taxes, but (i) no extension of time shall exceed thirty 30 days, and (ii) no extension shall postpone payment beyond the last date for filing tax returns under the Federal Unemployment Tax Act, and (iii) interest as provided in § 60.2-519 of the Code of Virginia shall be payable from the original due date as if no extension had been granted.

§ 1-2. 2. Reimbursable employers.

A. Bond to be furnished by reimbursable employers.

A. All nonprofit organizations, pursuant to the provisions of § 60.2-501 of the Code of Virginia shall file with the Chief of Tax at the Commission's administrative office a surety bond equal to 1.0% of the employer's taxable wages, as defined in § 60.2-229 of the Code of Virginia, for the most recent four calendar quarters prior to the election to make payments in lieu of taxes; such bond to be. Such bond shall be executed by an approved bonding company. Any such nonprofit organization having made the election to make payments in lieu of taxes prior to the

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effective date of these rules and regulations shall file with the Chief of Tax at the commission's administrative office a surety bond equal to 1.0% of the employer's taxable payroll for the most recent four calendar quarters prior to the effective date of these rules and regulations. If the nonprofit organization did not pay wages in each of such four calendar quarters the amount of the bond or deposit shall be 1.0% of the taxable payroll estimated for four calendar quarters from any such quarters in which the organization did pay wages. If the nonprofit organization did not pay wages in any quarter, then the amount of bond or deposit shall be 1.0% of taxable payroll estimated by the organization, such estimate to be adjusted at the end of four calendar quarters by the commission.

B. Deposit in lieu of bond:

B. In lieu of the bond set forth in subsection A, any nonprofit organization may elect to deposit with the commission money or securities equal to 1.0% of the employer's taxable payroll for the most recent four calendar quarters prior to the election to make payments in lieu of taxes rather than filing the above mentioned bond. Any deposit of money or securities shall be retained in an escrow account until liability is terminated, at which time it shall be returned to the organization less any deductions. The commission may deduct from the money deposited funds, or sell the securities to the extent necessary to provide, a sum sufficient to satisfy any due and unpaid payments in lieu of taxes, or any unpaid taxes and any applicable interests and penalties. Within thirty 30 days following any such deduction the employer must deposit sufficient additional money or securities to make whole its deposit at the prior 1.0% level.

If any nonprofit organization fails to file such bond with the Commission within thirty 30 days after such election, the commission may terminate the organization's election to make payments in lieu of taxes.

PART II: REQUIRED RECORDS AND REPORTS:

§ 2.1: Employing unit records:

A. Each employing unit as defined under § 60.2-211 of the Code of Virginia having services performed for it, shall maintain records reasonably protected against damage or loss as hereinafter indicated and shall preserve such records. These records shall include for each worker:

1. Full legal name;
2. Social security account number;
3. State or states in which his services are performed; and if any of such services are performed outside the Commonwealth of Virginia not incidental to the services within the Commonwealth of Virginia, his base of operations with respect to such services (or if there is no base of operations then the place from

which such services are directed or controlled) and his residence (by state). Where the services are performed outside the United States, the country in which performed;

4. The date of hire, rehire, or return to work after temporary lay-off;

5. The date when work ceased and the reason for such cessation;

6. Scheduled hours (except for workers without a fixed schedule of hours, such as those working outside their employer's establishment in such a manner that the employer has no record or definite knowledge of their working hours);

7. a. Wages earned in any week of partial unemployment as such week is defined in VR 300-01-1;

b. Whether any week was in fact a week of less than full-time work;

c. Time lost, if any, by each such worker, and the reason therefor;

8. Total wages in each pay period and the total wages payable for all pay periods ending in each quarter showing separately (i) money wages, including tips and dismissal or severance pay and (ii) the cash value of other remuneration.

9. Any special payments for service other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately, (i) money payments, (ii) other remuneration, and (iii) nature of said payments;

10. Amounts paid each worker as advancement, allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of expenditures actually incurred and accounted for by such worker;

11. Location in which the worker's services are performed within or outside of the United States and dates such services are performed out of the United States. For the purposes of this subsection, "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

B. Records required by this regulation to be maintained by employing units under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia shall be preserved for four years from the date of payment of the tax based thereon and shall be subject to examination and audit by the Commission.

C. If such records are not maintained, there shall be a presumption in favor of the party making an allegation;

and the burden of overcoming such presumption shall rest upon the party which has failed to maintain the required records.

PART III. EMPLOYER REPORTS.

§ 3.1. Required reports.

A. Each employer as defined in § 60.2-210 of the Code of Virginia, shall report to the Commission for each calendar quarter all the information concerning the number of workers subject to the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia and the total wages payable with respect to employment in pay periods ending within each such quarter. Upon request, each such employer shall furnish the Commission additional information revealing the wages earned by an individual in his employment during the time intervening between the last pay period for which wages were paid in any quarter and the end of such quarter.

B. Each employer shall report quarterly, not later than the last day of the month following the end of the calendar quarter, on forms prescribed by the Commission the following:

1. Employer's name, address, and any registration number assigned to him by the Commission;
2. The quarterly period covered by the report;
3. The social security account numbers of the workers;
4. The full legal names of workers with surnames last;
5. Each worker's total wages paid for the quarter. Such reports shall be submitted for each of the calendar quarters of each year.

C. An employer shall immediately notify the Commission of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Code and, also, of the commencement of any receivership or similar proceeding, or of any assignment for benefit of creditors, and of any order of court under the laws of Virginia with respect to the foregoing.

D. Employing unit reports.

1. Each employing unit shall make such reports as the Commission may require and shall comply with instructions printed upon any report form issued by the Commission pertaining to the preparation and return of such report.
2. Any employing unit which becomes an employer shall give notice to the Commission of that fact within thirty days. The notice shall contain the employer's name, home address, business address, and name of

business, if any.

3. Any employer who terminates his business for any reason or transfers or sells the whole or any part of his business or changes the name or address, or both, of his business shall within thirty days of such action give notice of such fact in writing to the Commission. The notice shall contain the employer's name, address, and account number along with the name, address, and account number of any new owner or part owner.

E. Officers of Corporation.

Every corporation shall file with the Commission a verified list of its officers and registered agent. Where it is claimed that any of the officers are not in the corporation's employment, a complete statement of the reasons shall be presented with said list.

An officer of a corporation to be considered as being in the employment of a corporation shall perform services, and these services shall be performed either (i) for remuneration or (ii) under a contract of hire.

PART IV. COMBINED EMPLOYER ACCOUNTS.

§ 4.1. Group accounts for employers.

A. All applications for the establishment of a group account pursuant to the provisions of § 60.2-505 of the Code of Virginia shall show:

1. Name, address, and established account number of member employing units;
2. Name and address of the authorized group representative;
3. Signature of authorized representative of each employing unit;
4. An authorization for the representative named by the group to act for the group.

B. Approval of an application for a group account shall be contingent upon the active employing unit account of each proposed member being currently paid with no existing delinquencies.

C. A group account shall:

1. Become effective after approval by the Commission, as of the first day of the calendar year succeeding the year in which the application is received by the Commission; however, such application shall be received by the Commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;
2. Remain in effect for not less than two calendar

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years;

3. Be terminated upon written request received by the Commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the Commission.

D. An active employing unit which is a member of a continuing group account may withdraw from such group account effective January 1, or other date at the discretion of the Commission:

1. Any employing unit which is a member of a group account may apply for withdrawal from such group account upon written notice to the Commission not less than 60 days prior to the desired date of withdrawal.

2. Within 10 days of receipt of such notice, the Commission shall approve or deny such application and give notice thereof to the employing unit and the group account.

3. If the withdrawal will eliminate the group account, notice will be given to the account by the Commission and the account will be terminated effective as of the date of withdrawal.

4. If there are two or more employers who will remain in the group account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of this section not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such group account shall become effective January 1, or such other date as determined by the Commission.

E. An active employer may be added to an existing authorized group account provided that the authorized representative submits an amended application to the Commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the Commission.)

F. Initial responsibility to the Commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the group account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the Commission, each member of the group shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia.

G. Past due or unpaid amounts in lieu of taxes by a group account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and

60.2-519 through 60.2-524 of the Code of Virginia. Although responsibility for payment of the group account to the Commission shall rest with the authorized representative of the group account, each member of the group account continues to be legally liable for his part of the group account until it is paid.

H. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the group on forms furnished by the Commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

I. The Commission shall issue a quarterly billing for each group account with respect to the combined benefit charges of all members of the group and shall mail such billing to the last known address of the authorized representative of the group.

§ 4.2. Joint accounts for governmental entities.

A. All applications for the establishment of a joint account pursuant to the provisions of § 60.2-507 of the Code of Virginia shall show:

1. Name, address, and established account number of member employing units;
2. Name and address of the authorized joint account representative;
3. Signature of authorized representative of each employing unit;
4. An authorization for the representative named by the member units to act for the joint account.

B. Approval of an application for a joint account shall be contingent upon the active employing unit account of each proposed member being currently paid with no existing delinquencies.

C. A joint account shall:

1. Become effective after approval by the Commission, as of the first day of the calendar year succeeding the year in which the application is received by the Commission; however, such application must be received by the Commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;

2. Remain in effect for not less than two calendar years;

3. Be terminated upon written request received by the Commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the Commission.

D. An active employing unit which is a member of a continuing joint account may withdraw from such joint account effective January 1, or other date at the discretion of the Commission, provided that:

1. Any employing unit which is a member of a joint account may apply for withdrawal from such joint account upon written notice to the Commission not less than 60 days prior to the desired date of withdrawal.

2. Within 10 days of receipt of such notice, the Commission shall approve or deny such application and give notice thereof to the employing unit and the joint account.

3. If the withdrawal will eliminate the joint account, notice will be given to the account by the Commission and the account will be terminated effective as of the date of withdrawal.

4. If there are two or more employers who will remain in the joint account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to paragraph A of this part not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such joint account shall become effective January 1, or such other date as determined by the Commission.

E. An active employer may be added to an existing authorized joint account provided that the authorized representative submits an amended application to the Commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the Commission.)

F. Each joint account may elect to finance benefits to its employees by either taxes, (as set forth in §§ 60.2-526 through 60.2-533 of the Code of Virginia), or payments in lieu of taxes as set forth in § 60.2-501 of the Code of Virginia. Such election shall be made upon forms provided by the Commission and shall become effective on the first day of the calendar year succeeding such election and shall remain effective for at least one calendar year. Such election shall be received by the Commission at least 30 days prior to the date on which the election becomes effective.

Nothing contained in this subsection shall prevent a joint account which has elected a method for financing benefits to its employees from electing to finance benefits by the alternative method during any subsequent year.

G. Any joint account electing to finance benefits to its employees by taxes shall receive a tax rate computed, pursuant to the provisions of §§ 60.2-526 through 60.2-533 of the Code of Virginia, on the combined experience of

each of its member units.

H. Initial responsibility to the Commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the joint account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the Commission, each member of the joint account shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia. Past due or unpaid amounts in lieu of taxes by a joint account are subject to the same interest, penalty, assessment, or other collection provisions of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia.

I. Any joint account electing to finance benefits to its employees by taxes pursuant to §§ 60.2-526 through 60.2-533 of the Code of Virginia shall follow the procedures set forth in Part I, § 1-1 of these regulations.

J. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the joint account on forms furnished by the Commission; however, the failure to furnish such forms shall not relieve the representative from filing such reports.

K. The Commission shall issue a quarterly billing for each joint account with respect to the combined benefit charges of all members of the joint account and shall mail such billing to the last known address of the authorized representative of said joint account.

PART V: EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS.

§ 5.1. Interstate Reciprocal Coverage Arrangement.

A. This section shall govern the Commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement pursuant to Title 60.2 of the Code of Virginia, hereinafter referred to as "the Arrangement."

B. Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement is made as follows:

1. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (i) any part of the individual's services are performed, (ii) the individual has his residence, or (iii) the

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employing unit maintains a place of business to which the individual's services bear a reasonable relation.

2. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

3. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproved the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and reasons therefor.

4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

C. Effective period of elections.

1. Commencement.

An election duly approved under this section shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay taxes for the earlier period in question.

2. Termination.

a. The application of any election to any individual under this section shall terminate if the agency of

the elected jurisdiction finds the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in subparagraph a, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

e. Whenever an election under this section ceases to apply to any individual under subparagraph a or b, the electing unit shall notify the affected individual accordingly.

D. Reports and notices by the electing unit.

1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this section is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

E. Approval of reciprocal coverage elections.

The authority to approve or disapprove reciprocal coverage elections in accordance with this section shall be vested in the Commissioner or his duly authorized representative.

VA.R. Doc. No. R95-61; Filed October 18, 1994; 1:51 p.m.

* * * * *

Title of Regulation: VR 300-01-3. Benefits (REPEALING).

Title of Regulation: VR 300-01-3:1. Required Records and Reports.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation repeals all provisions under VR 300-01-3 and promulgates "VR 300-01-3:1, Required Records and Reports." The new regulation contains provisions specifying the type and nature of records to be maintained by employers for unemployment compensation purposes, and the manner of reporting necessary information to the Virginia Employment Commission.

All provisions subject to the repeal of this regulation are to be adopted in a modified form under new regulations, but will remain substantively the same.

No changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-3:1. Required Records and Reports.

§ 1. Employing unit records.

A. Each employing unit as defined under § 60.2-211 of the Code of Virginia, having services performed for it, shall maintain records reasonably protected against damage or loss as hereinafter indicated and shall preserve such records. These records shall include for each worker:

1. A full legal name;
2. A social security account number;
3. The state or states in which his services are performed; and if any of such services are performed outside the Commonwealth of Virginia not incidental to the services within the Commonwealth of Virginia, his base of operations with respect to such services (or if there is no base of operations then the place from which such services are directed or controlled) and his residence (by state). Where the services are performed outside the United States, the country in which performed;
4. The date of hire, rehire, or return to work after

temporary lay off;

5. The date when work ceased and the reason for such cessation;

6. Scheduled hours (except for workers without a fixed schedule of hours, such as those working outside their employer's establishment in such a manner that the employer has no record or definite knowledge of their working hours);

7. a. Wages earned in any week of partial unemployment as such week is defined in VR 300-01-1;

b. Whether any week was in fact a week of less than full-time work;

c. Time lost, if any, by each such worker, and the reason therefor;

8. Total wages in each pay period, and the total wages payable for all pay periods ending in each quarter, showing separately (i) money wages, including tips and dismissal or severance pay, and (ii) the cash value of other remuneration;

9. Any special payments for service other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately (i) money payments, (ii) other remuneration, and (iii) nature of said payments;

10. Amounts paid each worker as advancement, allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of expenditures actually incurred and accounted for by such worker;

11. Location in which the worker's services are performed within or outside of the United States and dates such services are performed outside of the United States. For the purposes of this subdivision, "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

B. Records required by this regulation to be maintained by employing units under the Act shall be preserved for four years from the date of payment of the tax based thereon and shall be subject to examination and audit by the commission.

C. If such records are not maintained, there shall be a presumption in favor of the party making an allegation, and the burden of overcoming such presumption shall rest upon the party failing to maintain the required records.

§ 2. Required reports.

A. Each employer, as defined in § 60.2-210 of the Code of Virginia, shall report to the commission for each

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calendar quarter all the information concerning the number of workers subject to the Act and the total wages payable with respect to employment in all pay periods ending within each such quarter. Upon request, each such employer shall furnish the commission additional information revealing the wages earned by an individual in his employment during the time between the last pay period for which wages were paid in any quarter and the end of such quarter.

B. Each employer shall report quarterly, not later than the last day of the month following the end of the calendar quarter, on forms prescribed by the commission, the following:

1. Employer's name, address, and any registration number assigned to him by the commission;
2. The quarterly period covered by the report;
3. The social security account numbers of the workers;
4. The full legal names of workers, with surnames last;
5. Each worker's total wages paid for the quarter.

Such reports shall be submitted for each calendar quarter of each year.

C. An employer shall immediately notify the commission of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Code, the commencement of any receivership or similar proceeding, or of any assignment for benefit of creditors, and any order of court under the laws of Virginia with respect to the foregoing.

D. Each employing unit shall make such reports as the commission may require and shall comply with instructions printed upon any report form issued by the commission pertaining to the preparation and return of such report.

1. Any employing unit which becomes an employer shall give notice to the commission of that fact within 30 days. The notice shall contain the employer's name, home address, business address, and name of business, if any.
2. Any employer who terminates his business for any reason or transfers or sells the whole or any part of his business or changes the name or address, or both, of his business, shall within 30 days of such action give notice of such fact in writing to the commission. The notice shall contain the employer's name, address, and account number, along with the name, address, and account number of any new owner or part owner.

E. Every corporation shall file with the commission a verified list of its officers and registered agent. Where it is claimed that any of the officers are not in the

corporation's employment, a complete statement of the reasons shall be presented with said list.

An officer of a corporation, to be considered as being in the employment of a corporation, shall perform services, and these services shall be performed either (i) for remuneration or (ii) under a contract of hire.

V.A.R. Doc. Nos. R95-62 and R95-63; Filed October 18, 1994, 1:53 p.m.

* * * * *

Title of Regulation: VR 300-01-4. Adjudication (REPEALING).

Title of Regulation: VR 300-01-4:1. Combined Employer Accounts.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation repeals all provisions under VR 300-01-4 and promulgates a new regulation VR 300-01-4:1 entitled "Combined Employer Accounts." The new regulation will contain provisions setting forth the process for establishment of group accounts and joint accounts for unemployment compensation purposes, and provisions governing maintenance and termination of such accounts. These provisions remain substantively the same as current regulatory provisions governing group and joint accounts, which are being repealed concurrent with the promulgation of this regulation.

All provisions subject to the repeal of this regulation are to be adopted in a modified form under new regulations.

No changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-4:1. Combined Employer Accounts.

§ 1. Group accounts for employers.

A. All applications for the establishment of a group account pursuant to the provisions of § 60.2-505 of the Code of Virginia shall show:

1. The name, address, and established account number of member employing units;
2. The name and address of the authorized group representative;
3. The signature of an authorized representative of each employing unit;
4. An authorization for the representative named by the group to act for the group.

B. Approval of an application for a group account shall be contingent upon the active employing unit account of each proposed member being currently paid.

C. A group account shall:

1. Become effective after approval by the commission, as of the first day of the calendar year succeeding the year in which the application is received by the commission; however, such application shall be received by the commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;
2. Remain in effect for not less than two calendar years;
3. Be terminated upon written request received by the commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the commission.

D. An active employing unit which is a member of a continuing group account may withdraw from such group account effective January 1, or other date at the discretion of the commission, according to the following provisions:

1. Written notice must be provided to the commission not less than 60 days prior to the desired date of withdrawal.
2. Within 10 days of receipt of such notice, the commission shall approve or deny such application and give notice thereof to the employing unit and the group account.
3. If the withdrawal will eliminate the group account, notice will be given to the account by the commission and the account will be terminated effective as of the date of withdrawal.
4. If there are two or more employers who will remain in the group account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of this section not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such group account shall become effective January 1, or such other date as determined by the commission.

E. An active employer may be added to an existing authorized group account provided that the authorized representative submits an amended application to the commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the commission.)

F. Initial responsibility to the commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the group account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the commission, each member of the group shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia.

G. Past due or unpaid amounts in lieu of taxes by a group account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia. Although responsibility for payment of the group account to the commission shall rest with the authorized representative of the group account, each member of the group account continues to be legally liable for his part of the group account until it is paid.

H. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the group on forms furnished by the commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

I. The commission shall issue a quarterly billing for each group account with respect to the combined benefit charges of all members of the group and shall mail such billing to the last known address of the authorized representative of the group.

§ 2. Joint accounts for governmental entities.

A. All applications for the establishment of a joint account pursuant to the provisions of § 60.2-507 of the Code of Virginia shall show:

1. The name, address, and established account number of member employing units;
2. The name and address of the authorized joint representative;
3. The signature of an authorized representative of each employing unit;
4. An authorization for the representative named by the member units to act for the joint account.

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B. Approval of an application for a joint account shall be contingent upon the active employing unit account of each proposed member being currently paid.

C. A joint account shall:

1. Become effective after approval by the commission, as of the first day of the calendar year succeeding the year in which the application is received by the commission; however, such application must be received by the commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;
2. Remain in effect for not less than two calendar years;
3. Be terminated upon written request received by the commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the commission.

D. An active employing unit which is a member of a continuing joint account may withdraw from such joint account effective January 1, or other date at the discretion of the commission, according to the following provisions:

1. Written notice must be provided to the commission not less than 60 days prior to the desired date of withdrawal.
2. Within 10 days of receipt of such notice, the commission shall approve or deny such application and give notice thereof to the employing unit and the joint account.
3. If the withdrawal will eliminate the joint account, notice will be given to the account by the commission and the account will be terminated effective as of the date of withdrawal.
4. If there are two or more employers who will remain in the joint account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of § 1 of this regulation not less than 30 days prior to the effective date of the withdrawal.
5. Upon approval of such application for withdrawal, the withdrawal from such joint account shall become effective January 1, or such other date as determined by the commission.

E. An active employer may be added to an existing authorized joint account provided that the authorized representative submits an amended application to the commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the commission.)

F. Each joint account may elect to finance benefits to its employees by either taxes (as set forth in §§ 60.2-526 through 60.2-533 of the Code of Virginia) or payments in lieu of taxes as set forth in § 60.2-501 of the Code of Virginia. Such election shall be made upon forms provided by the commission and shall become effective on the first day of the calendar year succeeding such election and shall remain effective for at least one calendar year. Such election shall be received by the commission at least 30 days prior to the date on which the election becomes effective. Nothing contained in this subsection shall prevent a joint account which has elected a method for financing benefits to its employees from electing to finance benefits by the alternative method during any subsequent year.

G. Any joint account electing to finance benefits to its employees by taxes shall receive a tax rate computed, pursuant to the provisions of §§ 60.2-526 through 60.2-533 of the Code of Virginia, on the combined experience of each of its member units.

H. Initial responsibility to the commission for payment of the quarterly cumulate billing shall rest with the authorized representative of the joint account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the commission, each member of the joint account shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia. Past due or unpaid amounts in lieu of taxes by a joint account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia.

I. Any joint account electing to finance benefits to its employees by taxes pursuant to §§ 60.2-526 through 60.2-533 of the Code of Virginia shall follow the procedures set forth in § 1 of VR 300-01-2.

J. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the joint account on forms furnished by the commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

K. The commission shall issue a quarterly billing for each joint account with respect to the combined benefit charges of all members of the joint account and shall mail such billing to the last known address of the authorized representative of said joint account.

V.A.R. Doc. Nos. R95-64 and R95-65; Filed October 18, 1994, 1:58 p.m.

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Title of Regulation: VR 300-01-5. Employer Elections to Cover Multistate Workers.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-5, establishes provisions for governing of employing units electing to cover multistate workers under the unemployment compensation laws of a single state. The regulation sets forth criteria for administrative cooperation with other states who have subscribed to a reciprocal agreement concerning such workers. These provisions remain substantively the same as current regulatory provisions governing coverage of multistate workers, which are being repealed concurrent with the promulgation of this regulation.

No changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-5. Employer Elections to Cover Multistate Workers.

§ 1. Interstate Reciprocal Coverage Arrangement.

A. This section shall govern the commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement pursuant to Title 60.2 of the Code of Virginia hereinafter referred to as "the Arrangement."

B. Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement is made as follows:

1. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (i) any part of the individual's services are performed, (ii) the individual has his residence, or (iii) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

2. The agency of the elected jurisdiction shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

3. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproved the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and reasons therefor.

4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

C. The effective period of elections shall be as follows:

1. An election duly approved under this section shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay taxes for the earlier period in question.

2. a. The application of any election to any individual under this section shall terminate if the agency of the elected jurisdiction finds the services customarily performed by the individual for the electing unit are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in subdivision a, each election approved hereunder shall remain in effect through the close of the calendar year in which it is

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submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this section ceases to apply to any individual under subdivision a or b, the electing unit shall notify the affected individual accordingly.

D. 1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this section is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

E. The authority to approve or disapprove reciprocal coverage elections in accordance with this section shall be vested in the commissioner or his duly authorized representative.

VA.R. Doc. No. R95-66; Filed October 18, 1994, 1:57 p.m.

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Title of Regulation: VR 300-01-6. Benefits.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-6, establishes provisions governing the application for, and payment of, benefits under the Virginia Unemployment Compensation Act. These provisions remain substantively the same as current regulatory provisions governing benefits, which are being repealed concurrent with the promulgation of this regulation.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-6. Benefits.

§ 1. Total and part-total unemployment.

A. An individual's week of total or part-total unemployment shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim at the local unemployment insurance office and registers with a Job Service office, except as provided in subdivisions 1 and 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such employment, provided the individual reports as required by subsection C of this section.

1. A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity following the commencement of his total or part-total unemployment except as provided in subdivision 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment provided the individual reports as required by subsection C of this section.

2. A week of total or part-total unemployment of an individual affected by a mass separation or a labor dispute with respect to which arrangements are made for group reporting by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group reporting is conducted within 13 days following the first day of unemployment.

B. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the commission informing it that an individual has filed a claim for benefits, such employing unit shall within five calendar days after receipt of such information form complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

1. The date the worker began working;
2. The last day on which he actually worked;

3. A check mark in the block indicating the reason for separation and a brief statement of the reason for the separation;

4. Such other information as is required by such form. The employing unit's official name and account number, if any, assigned to such employing unit by the commission shall appear on the signed report;

5. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

C. In cases involving a mass separation, as defined in VR 300-01-1, an employer shall file a list of workers involved in the mass separation with the unemployment insurance office nearest such workers' place of employment within 24 hours of the date of separation (except as provided below), and shall not be required to file individual reports for such workers as otherwise provided by this section. Such list shall include the workers' social security account numbers.

Where the total unemployment is due to a labor dispute, the employer shall file with the local unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request by the commission, such employer shall furnish to the commission the names and social security account numbers of the workers ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.

D. To file a claim for benefits, a claimant shall appear personally at the unemployment insurance office most accessible to him or at a location designated by the commission, and shall there file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work.

1. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. The commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the unemployment insurance office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.

2. The commission shall permit continued claims to be filed by mail, or such other means as the commission may authorize, unless special conditions require in-person reporting. Such special conditions may include:

a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;

b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;

c. When, in the opinion of the local unemployment insurance manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;

d. When a claimant who would normally be reporting by mail receives no additional claim forms and he wishes to continue claiming benefits;

e. When a claimant requests to report in person due to problems associated with the receipt of mail.

E. All initial total or part-total unemployment claims shall be effective consistent with the provisions set forth in subsection A of this section, except that an earlier effective date may apply for late filing of claims in the following cases:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;

2. A previous claim was filed against a wrong liable state;

3. Filing was delayed due to circumstances attributable to the commission;

4. A transitional claim is filed within 14 days from the date the Notice of Benefit Year Ending was mailed to the claimant by the commission;

5. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;

6. [~~When~~] The wrong type of claim was taken by a local unemployment insurance office;

7. With respect to reopened or additional claims only, [~~when~~] the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

F. [~~An individual shall be deemed to have reported at the proper time if he claims benefit rights within 28 days after either the calendar week ending date of his last continued claim filed, or the calendar date on which the initial claim was filed. If the 28th day falls upon a date when the local unemployment insurance office is closed,~~

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the final date for late filing shall be extended to the next day the office is open. Failure to file within the time limit shall automatically suspend the claim series and the claimant must file an additional or reopened claim in accordance with this section in order to begin a new claim series. In order to claim benefit rights with respect to a given week, the claimant must file a continued claim form for such week. The first continued claim form must be filed within 28 days of the day the initial claim was filed. Thereafter, subsequent continued claim must be filed within 28 days after the last week claimed. If the 28th day falls upon a date when the unemployment insurance office is closed, the final date for filing shall be extended to the next day the office is open. Failure to file a continued claim within the 28-day period will result in the denial of benefits for the weeks in question unless good cause is shown, and an additional or reopened claim must be filed in order to initiate any further claim for benefits. Good cause for a delay in filing may be shown for any of the following reasons:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;
2. Filing was delayed due to circumstances attributable to the commission; or
3. The claimant can show circumstances beyond his control which prevented or prohibited him from filing earlier.]

G. Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of § 60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

H. In areas of high unemployment as defined in § 1 of VR 300-01-1, the commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Act. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 10% through 19.9% to make one job contact with an

employer each week.

2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 20% or more.

3. No adjustment will be made for claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate below 10%.

§ 2. Partial unemployment.

A. With respect to a partially unemployed individual, a week of partial unemployment shall consist of a calendar week beginning on Sunday and ending at midnight on Saturday. Total wages payable to partially unemployed workers are to be reported on a calendar week basis.

B. Upon filing of a new claim for partial benefits in each claimant's benefit year the commission shall promptly notify the employer of such claimant's weekly benefit amount, the date on which his benefit year commenced, and the effective date of the claim for partial benefits. Similar notice shall likewise be given at least once during the claimant's benefit year to each subsequent employer to whom the claimant is attached during a period of partial unemployment for which he claims benefits. Upon receipt of the notice the employer shall record this information for use in the preparation of the evidence he is required to furnish periodically as required in subsection C of this section.

C. After the employer has been notified of the benefit year, the weekly benefit amount, and the effective date of the claim for partial benefits of any worker in his employ (pursuant to subsection B of this section) the employer shall, within seven days, furnish the employee with written evidence concerning any week or weeks of partial unemployment which ended on or before the receipt of such notice and which began on or after the effective date of the employee's claim for partial benefits. The employer, until otherwise notified, shall, within 14 days after the termination of any pay period which includes a week or weeks of partial unemployment, and which ends after the date of receipt of such notification, furnish the employee with written evidence concerning his partial unemployment with respect to such week or weeks. Written evidence of partial unemployment required by this subsection shall be furnished by means of a Statement of Partial Unemployment, Form VEC-B-31, or other suitable medium approved by the commission. Such evidence need not be furnished, however, where the worker's earnings for a week of partial unemployment equals or exceeds his weekly benefit amount.

The information contained on such medium shall be in ink or typewritten and shall show:

1. The name of the employer and employer account number;
2. The name and social security account number of the worker;
3. The date delivered to the worker;
4. The calendar week ending date;
5. The gross amount of wages earned in such week, by day;
6. The reason and the number of days or hours involved where the worker's earnings were reduced for any cause other than lack of work;
7. The following certification, or one similar:

"During the week or weeks covered by this report, the worker whose name is entered worked less than full time and earned less than his weekly benefit amount for total unemployment because of lack of work, or otherwise shown. I certify that to the best of my knowledge, this information is true and correct";

8. A signature (actual or facsimile) by the employer to the above certification or other identification of the authority supplying the evidence.

D. The new claim for benefits for partial unemployment shall be dated to the first day of the beginning of the individual's week of partial unemployment as defined in subsection A of this section. However, in no event shall such new claim be back dated to include a week which ended more than 28 days prior to the date the individual was furnished the Statement of Partial Unemployment, or other written evidence concerning his partial unemployment, as provided in subsection C, by the employer.

E. 1. Upon filing a claim as specified in subsection D of this section, the commission shall cause the notice referred to in subsection B of this section to be sent to the employer. Thereafter, the employer shall make available to the claimant the Statement of Partial Unemployment, Form VEC-B-31, or other written evidence concerning his partial unemployment, as provided in subsection C of this section. Such written evidence of partial unemployment shall be presented to the local unemployment insurance office within 14 days after it is delivered to him by the employer, and failure to do so, within that time, shall render the claim invalid as to the week or weeks to which the statement or other evidence relates.

2. For each subsequent week the partial claim is continued the employer shall furnish the claimant with the evidence of partial unemployment as provided in subsection C of this section and the claimant shall continue to present such evidence to the local

unemployment insurance office within 14 days after it is delivered to him by the employer. Failure to do so shall render the claim invalid with respect to the week or weeks to which the statement or other evidence relates.

3. Notwithstanding the provisions of subdivisions 1 and 2 of this subsection, the commission shall permit the claimant to file a continued claim by mail, or otherwise, in the same circumstances applicable to a claimant for total or part-total unemployment compensation.

F. With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

§ 3. Disposition of benefit checks payable to a deceased claimant.

If a claimant has met the eligibility requirements of the Act and completed all forms prescribed by the commission prior to his death, upon proof thereof, the check(s) for all benefits due shall be payable to the decedent's estate.

§ 4. Commission approval of training other than that under Section 302 of the Job Training Partnership Act or Section 2296 of the Trade Act.

A. Training shall be approved for an eligible claimant under the provisions of § 60.2-613 of the Code of Virginia only if the commission finds that:

1. Prospects for continuing employment for which the claimant is qualified by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits;

2. The proposed training course of instruction is vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable. The training course shall require a minimum of 30 hours attendance each week;

3. The proposed training course has been approved by an appropriate accrediting agency or, if none exists in the state, the training complies with quality and supervision standards established by the commission, or is licensed by an agency of the state in which it is being given;

4. The claimant has the required qualifications and aptitude to complete the course successfully;

5. The training does not include programs of instruction which are primarily intended to lead toward a baccalaureate or higher degree from an

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institution of higher education.

B. Benefits may be paid to an otherwise eligible claimant while he is attending training only if the commission finds that the claimant is enrolled in and regularly attending the course of instruction approved for him by the commission.

C. A claimant shall request training approval on forms provided by the commission. The claimant's enrollment and attendance shall be reported to the commission periodically as directed by the local unemployment insurance office to which he reports.

V.A.R. Doc. No. R95-67; Filed October 18, 1994, 1:56 p.m.

* * * * *

Title of Regulation: VR 300-01-7. Interstate and Multistate Claimants.

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

Effective Date: December 14, 1994.

Summary:

The amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-7, establishes provisions governing the VEC in administrative cooperation with other states maintaining comparable provisions for treatment of unemployment compensation claims by individuals involving two or more states. These provisions remain substantively the same as current regulatory provisions which are being repealed concurrent with the promulgation of this regulation.

No changes were made to this regulation since it was published in its proposed form.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1070. There may be a charge for copies.

VR 300-01-7. Interstate and Multistate Claimants.

§ 1. Cooperative agreement.

A. This section shall govern the commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

B. A week of unemployment for an interstate claimant shall consist of any week of unemployment as defined in

the law of the liable state from which benefits with respect to such week are claimed.

C. Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

D. If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

E. Claims for benefits or a waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed and processed in accordance with the type of week in use in the agent state.

Claims shall be filed in accordance with agent state regulations for intrastate claims in local unemployment insurance offices, at an itinerant point or by mail.

1. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.

2. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

F. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state. The liable state may utilize the telephone or mail to directly ascertain facts from the parties.

The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

G. The agent state shall afford all reasonable cooperation in the holding of hearings in connection with appealed interstate benefit claims.

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state, or the date it was mailed by the claimant, whichever is earlier.

H. This section shall apply in all its provisions to claims taken in and for Canada.

§ 2. Interstate cooperation.

A. This section, approved by the Secretary of Labor pursuant to § 3304(a)(9)(B), Federal Unemployment Tax Act and adopted under § 60.2-609 of the Code of Virginia, shall govern the Virginia Employment Commission in its administrative cooperation with other states relating to the Interstate Arrangement for Combining Employment and Wages.

B. A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the unemployment insurance law of the paying state.

C. Benefits, in all cases, shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state, and all benefit rights shall be determined by the paying state pursuant to its unemployment insurance law.

D. Wages paid to a claimant during the paying state's applicable base period, including wages reported for that period by a transferring state as available for the payment of benefits under the arrangement, shall be included by the paying state in determining such claimant's benefit rights.

Wages, once they have been transferred and used in a determination which established monetary eligibility for benefits in the paying state, shall be unavailable for determining monetary eligibility for benefits under the unemployment insurance law of the transferring state, except to the extent that wages are usable for redetermination purposes.

E. Each state, with respect to any combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall:

1. Promptly request any other state in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state as well as his current eligibility under the law of such state.

2. When acting as the transferring state, report promptly upon the request of any state the amount of any claimant's unused covered wages during the applicable base period and the current monetary eligibility of such claimant under the law of the transferring state.

3. When acting as the paying state, send to each transferring state a copy of the initial determination, together with an explanatory statement.

4. When acting as the paying state, send to the claimant a copy of the initial determination, noting his rights to appeal.

5. When acting as the paying state, send to each transferring state a statement of the benefits chargeable to each state. This is done at the end of each quarter in which any benefits have been paid, and each statement shall include the benefits paid during such quarter as to each combined-wage claimant. The ratio of each charge to total benefits paid shall be equal to the ratio of the wages reported by the transferring state (and used in the monetary determination) to the total wages used in the determination.

F. A transferring state shall, as soon as practicable after receipt of a statement as set forth in subsection E, reimburse the paying state accordingly.

G. A claimant's wages shall not be combined, notwithstanding any other provision of this arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the interstate benefit payment arrangement shall apply to each claimant.

H. Whenever this plan applies, it will supersede any inconsistent provision of the Interstate Benefit Payment Plan and the regulation thereunder.

VA.R. Doc. No. R95-68; Filed October 18, 1994, 1:55 p.m.

* * * * *

Title of Regulation: VR 300-01-8. Adjudication.

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

Effective Date: December 14, 1994.

Summary:

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The amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-8, establishes provisions governing the administrative adjudication of benefit claims filed with the Virginia Employment Commission pursuant to the Virginia Unemployment Compensation Act. This regulation will replace current VR 300-01-4, of the same title, which is being repealed concurrent with promulgation of this regulation.

In addition to reorganizing and recodifying the provisions currently found in VR 300-01-4, certain provisions are being amended as follows:

1. A presumption identifying postmark date (if placed in U.S. mail) or receipt date as the filing date of an administrative appeal is set forth, codifying current agency practice.

2. The criteria for granting of a split hearing is set forth; namely, for interstate claimants who wish to appear personally, and (at the request of a party or at the discretion of commission) when an intrastate claimant files a claim involving an out-of-state employer or in cases of a "bona fide emergency or other compelling circumstance." Notice requirements for such hearings are also set forth.

3. Concerning the reopening of a case prior to issuance of the decision, the new provision allows for a hearing on the issue where good cause (in the discretion of the examiner) is given. The current regulation states that, in such circumstances, the hearing shall be granted upon request (regardless of whether good cause exists).

4. A conclusive presumption controlling the filing date of a request for a hearing in an appeal before the commission is set forth, specifically granting the authority to remand a case to an appeals examiner where the record is defective or insufficient. A provision setting forth a right to oral argument on request is modified with a proviso that the case may be remanded where necessary for the taking of additional evidence. The language of this provision is different from that which was contained in this regulation in its proposed form. The substance, however, has not changed.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Michael P. Maddox, Regulatory Coordinator, Virginia Employment Commission, 703 East Main Street, Richmond, VA 23219, telephone (804) 786-1040. There may be a charge for copies.

VR 300-01-8. Adjudication.

§ 1. Deputy's determinations.

A. Whenever, after a claim is filed, a deputy obtains information from a claimant, employer, or third party which could affect the claimant's entitlement to benefits, he shall initiate further investigation. The deputy may contact the parties in person or by telephone to obtain information. Documentary evidence prepared specifically for the claim or for other purposes may be considered by the deputy. Any party to an investigation may be represented by counsel or a duly authorized representative. No information or evidence shall be considered by the deputy unless the claimant has been given the opportunity to see or hear it and comment upon it. Information concerning eligibility or qualification for benefits shall be entered into commission records.

B. A predetermination fact-finding proceeding may be scheduled by the deputy whenever a request is made by the claimant, his last 30-day employing unit, or his interested subsequent employing unit, for the purpose of gathering information to determine benefit eligibility or qualification. Notice of the date, time and location will be mailed to the parties five days before the scheduled proceeding, but such notice may be waived with the parties' consent.

The proceeding may be conducted telephonically or in person with the deputy presiding. This informal interview shall not be recorded in any way, although notes can be taken by the deputy. Statements made by parties or witnesses shall not be taken under oath and formal examination or cross-examination shall not be permitted. The deputy shall direct questions to the parties and witnesses. The parties may also ask questions of each other and the witnesses. Rebuttal to statements made by opposing parties or witnesses shall be permitted. Any party to a predetermination proceeding may be represented by counsel or other duly authorized agent. The record of facts of the proceeding shall become a part of the commission's records.

C. As soon as possible following the acquisition of facts necessary to make a determination, either from the parties' submissions or from a predetermination proceeding, the deputy shall render a determination in writing which shall include the effective date of any qualification or disqualification, the dates of any eligibility or ineligibility, the law or regulation upon which the determination is based, and the reasons for the determination, together with information concerning the filing of an appeal. This determination shall be promptly mailed to the parties at their last known addresses.

§ 2. First level appeals.

A. The claimant, his last 30-day employing unit, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse deputy's determination.

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as specified in § 60.2-619 of the Code of Virginia.

1. Appeals shall be filed with the commission through the local unemployment insurance office where the claim was filed, or at the administrative office of the commission in Richmond, Virginia. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the United States Postal Service.

2. Appeals shall be in writing and should set forth the grounds upon which they are sought, as well as the social security account number of the claimant; however, any document in writing submitted by a party or his authorized representative expressing a desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or his authorized representative whatever assistance is necessary to file an appeal.

B. After the filing of an appeal, the record in connection with the claim, together with the notice of appeal, shall be assigned to an appeal tribunal consisting of a salaried examiner only. Should evidence indicate that the appeal was not filed within the time prescribed by law, the first issue to be considered at the hearing shall be whether the appeal was timely filed or whether there exists good cause for extending the appeal period.

1. In all cases except those coming under the provisions of subdivisions 2 and 3 of this subsection, an in-person hearing shall be scheduled in the local unemployment insurance office where the claim was filed or subsequently transferred. At the discretion of the commission, an in-person hearing may be scheduled at some other convenient location, provided that the alternate location is not such a distance from the claimant's residence as to cause undue hardship or unreasonable travelling expense.

2. In cases where the claimant has filed an interstate claim, or upon the consent of all parties, a telephone hearing shall be scheduled. An interstate claimant, upon request, shall be allowed to personally appear for participation in an in-person or split hearing. In such case, the claimant will be scheduled to appear at the local unemployment insurance office of the commission located nearest his residence, or any other convenient location.

3. A split hearing may be scheduled upon the request of any party, or at the discretion of the commission, when:

a. The claimant has worked for an employer in another state, and thereafter returns to Virginia and files an intrastate claim naming the out-of-state employer as an interested party; or

b. A bona fide emergency or other compelling

circumstance makes attendance at an in-person hearing by a party, material witness, or representative unreasonably difficult.

4. After an in-person hearing has been scheduled and the notice of hearing mailed, either the Chief Appeals Examiner or the appeals examiner assigned to the case may grant a request for a split hearing for any of the reasons set forth in subdivision 3 of this subsection. In such case, a new notice of hearing need not be issued, but all interested parties and their representatives should be informed of the agency's action and the telephonic procedures as soon as practicable.

5. The notice of hearing shall set forth the particular statutory provisions and points at issue which must be considered to resolve the case. The appeals examiner may consider any other applicable issues which are raised or become evident during the course of the hearing provided that all parties in interest are present and all agree on the record to waive the statutory notice requirement with respect to such new issue. The appeals examiner may refer a new issue back to the deputy if it has not been ruled upon at that level and may, upon his own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper statutory notice in order to proceed.

C. The Office of First Level Appeals shall endeavor to schedule hearings as soon as possible in the order in which appeals are received. Special requests regarding dates or times of hearings will be given consideration; however, they need not always be honored. Requests for postponement of scheduled hearings shall be granted only when a party or his authorized representative demonstrates good cause for an inability to appear at the scheduled date and time. Good cause shall be deemed to exist if a likelihood of material and substantial harm is shown. Postponements may be granted only by the Chief Appeals Examiner, the Clerk of the Commission-Lower Authority, the examiner assigned to hear the case, or an appeals examiner acting in charge of the Office of First Level Appeals, although they may be communicated to the parties by other authorized persons. A postponed hearing may be rescheduled without notice if all parties in interest agree. Otherwise, notice of a postponed hearing shall be given as if it were a new hearing.

D. Once a hearing has commenced, it may be continued only by the presiding appeals examiner, either upon his own motion or that of a party. Continuances may be granted in situations where: (i) there is insufficient time to properly hear the evidence; or (ii) unexpected or unavoidable circumstances arise during the course of a hearing which require a continuance in order to protect the substantive or procedural rights of the parties.

A continued hearing may be rescheduled by the presiding appeals examiner without written notice if all

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parties in interest are present and all concur. Otherwise, notice of a continued hearing shall be given as if it were a new hearing.

E. If the appellant wishes to withdraw his appeal, a request, together with the reasons therefor, must be made in writing and sent to the Clerk of the Commission-Lower Authority at the commission's administrative office in Richmond, Virginia. The request will be granted only if the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, and potential overpayment;
2. The request is not the result of any coercion, collusion, or illegal waiver of benefits prohibited under § 60.2-107 of the Code of Virginia; and
3. The appealed determination is not clearly erroneous based upon the existing record.

Once granted, a withdrawal cannot be rescinded unless an evidentiary hearing on the issue of rescission is held before an appeals examiner and the former appellant demonstrates that the criteria required for withdrawal were not fully met.

F. In any hearing before an appeals examiner, all testimony shall be taken under oath or affirmation and a record of the proceedings shall be made by the presiding appeals examiner who shall inform all parties of this fact. No other recording of the proceedings other than that specifically authorized by the Act shall be permitted.

The appeals examiner shall conduct the hearing in such a manner as to ascertain the substantive rights of the parties without having to be bound by common law, statutory rules of evidence, or technical rules of procedure. In addition to testimony, the appeals examiner may accept relevant documents or other evidence into the record as exhibits, upon the motion of a party.

1. Where a party is unrepresented, the appeals examiner shall assist that party in presenting his case and testing the case of the opposing party.
2. At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. All such persons will be permitted to attend the entire hearing.
3. An employer shall be permitted one representative, in addition to counsel or duly authorized agent, who may attend the entire proceeding. The appeals examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken. Observers may be permitted to attend the hearing so long as there is no objection by a party.

4. The appeals examiner shall control the order of proof, rule upon the admission of evidence, and may examine and cross-examine witnesses. The examiner shall have the authority to maintain order and eject disruptive or unruly individuals. At a hearing, the parties, counsel, or duly authorized representatives shall be given an opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation and rebuttal. On motion of the appeals examiner alone, documents already in a claimant's file or obtained during the course of a hearing may be admitted into the record as exhibits. Before the hearing is closed, the parties shall be given an opportunity to present oral argument on all the issues of law and fact to be decided. In addition, the appeals examiner may permit the parties to submit written arguments.

G. The decision of the appeals examiner shall be reduced to writing and shall state the issues, findings of fact, opinion or reasons for the decision, and final judgement of the examiner. A copy of the decision shall be mailed to each of the interested parties and their known representatives who have requested to be notified of the decision. If the decision is rendered by an appeals examiner other than the one who presided at the hearing, that examiner shall review the record of the hearing and so state in the decision.

H. If any party believes that the appeals examiner exhibits bias towards one or more parties in a case, a challenge to the interest of such appeals examiner shall be made promptly after the discovery of facts on which such challenge is based, but not later than the date on which the decision is issued. Unless made at the hearing, such challenge shall be set forth in writing with the reasons therefor, and sent to the Chief Appeals Examiner at the administrative office of the commission in Richmond, Virginia. If the Chief Appeals Examiner does not disqualify the challenged appeals examiner, the appeals examiner shall continue to participate in the hearing and render a decision in the case. If the challenged appeals examiner is disqualified, or chooses to withdraw, the Chief Appeals Examiner, or another appeals examiner appointed by him, shall decide the case. Failure to disqualify shall be subject to review by the commission on appeal by the aggrieved party, in the same manner as any other issue in the case.

I. Any party who is unable to appear for the scheduled hearing, or who appeared but wishes to present additional evidence, may request a reopening of the case, which will be granted if good cause is shown. The request, together with the reasons therefor, shall be made in writing and sent to the Chief Appeals Examiner in the administrative office of the commission in Richmond, Virginia.

1. Where a request for reopening is received before the decision of the appeals examiner is issued, the decision shall be withheld if the Chief Appeals Examiner, or the appeals examiner assigned to the case, finds that the reasons given in the request, if

proven, would establish good cause to reopen the hearing. In that event, a hearing will be scheduled on the reopening issue. If, after the hearing, the appeals examiner should decide that reopening is warranted, the case shall be reopened for the taking of additional evidence. If no reasons are given for the reopening request, or if the reasons given would not establish good cause to reopen the hearing, the appeals examiner shall render a decision denying the request and adjudicating the merits of the case. In any event, the decision concerning the issue of reopening shall be subject to review by the commission on appeal by the aggrieved party.

2. A request for reopening after the appeals examiner has issued his decision on the merits of the case, but within the appeal period, shall be mailed to the Office of Commission Appeals and shall set forth in writing the reasons therefor. If the commission is of the opinion that the written request establishes good cause for reopening it shall remand the case to the Chief Appeals Examiner. If the commission is of the opinion that the written request does not set forth good cause for reopening it shall treat the request as an appeal to the commission on the merits of the case pursuant to this part.

3. Once a decision is rendered and becomes final, it cannot be reopened for any reason. A request for a reopening after the decision of the appeals examiner has become final shall be treated as an untimely appeal to the commission pursuant to this regulation. In the discretion of the commission, a hearing on the issue of reopening may be held.

§ 3. Commission review.

A. The commission may acquire jurisdiction over a case in any of the following ways:

1. Any party to a hearing before an appeals examiner may appeal the decision within the time limit set forth in § 60.2-620 of the Code of Virginia. The party appealing shall file with the commission, through the local unemployment insurance office where the claim was filed or at the administrative office of the commission in Richmond, Virginia, a notice of appeal which shall be in writing and should set forth the grounds upon which the appeal is sought. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the United States Postal Service.

2. At any time before the decision of the appeals examiner becomes final, the commission may on its own motion assume jurisdiction of any case pending before an appeals examiner and place such case on the appeal docket of the commission. The commission may consider and review the case and affirm, modify, or set aside and vacate the decision of the appeals

examiner on the basis of the evidence previously submitted as shown by the record, or may direct the taking of additional evidence before the commission or the appeals examiner. Such additional evidence may not be taken unless notice of the time and place of the taking thereof has been mailed to all parties to the case at least seven days before such time.

3. If the appeal to the commission is not filed within the statutory time limit set forth in § 60.2-620 of the Code of Virginia, the appellant shall set forth in writing the reasons for the late filing. If the reasons set forth, if proven, would show good cause for extending the appeal period, the commission shall schedule a hearing to take testimony on the issue of good cause for late filing. If the reasons set forth in the notice of appeal are insufficient to show good cause for late filing, the appeal shall be dismissed and the decision of the appeals examiner shall become the final decision of the commission.

B. Except as otherwise provided by this rule, all appeals to the commission shall be decided on the basis of a review of the evidence in the record. The commission, in its discretion, may direct the taking of additional evidence after giving written notice of such hearing to the parties, provided:

1. It is shown that the additional evidence is material and not merely cumulative, corroborative or collateral, could not have been presented at the prior hearing through the exercise of due diligence, and is likely to produce a different result at a new hearing; or

2. The record of the proceedings before the appeals examiner is insufficient to enable the commission to make proper, accurate, or complete findings of fact and conclusions of law.

A party wishing to present additional evidence or oral argument before the commission must file a written request within 14 days from the date of delivery or mailing of the Notice of Appeal. A request for a hearing shall be deemed to be filed on the date of receipt by the commission. A request for a hearing mailed to the Office of Commission Appeals shall be deemed to be filed on the date of postmark by the United States Postal Service. In such cases, the postmark date shall be conclusive as to the date of filing. The commission shall notify the parties of the time and place where additional evidence will be taken or oral argument will be heard. Such notice shall be mailed to the parties and their last known representatives at least seven days in advance of the scheduled hearing. A request to present additional evidence will be granted only if the aforementioned guidelines are met. [If A timely request for oral argument will be granted unless] , after a review of the record of the case, the commission determines that the record is either defective or insufficient, [under which circumstances] the case may be remanded to the appeals examiner for further proceedings[; even if a request for a hearing or transcript

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has been received] .

C. Postponements, continuances and withdrawals of appeals before the commission shall be handled in the same manner as lower authority appeals, as set forth in this regulation, except that requests shall be made through the Office of Commission Appeals or through the special examiner assigned to hear the case. Only a special examiner shall have the authority to grant a postponement.

D. Prior to a hearing before the commission for the purpose of taking additional evidence or for oral argument, and upon the request of an interested party, a transcript of the hearing held before the appeals examiner shall be furnished to all interested parties. Where no request for a transcript is made and the hearing lasted less than 45 minutes, the tape may be replayed for the parties prior to the commission hearing in lieu of furnishing a transcript. A hearing before the commission for additional evidence shall be conducted under the same rules as outlined in subsection F of § 2 of this regulation for the conduct of hearings at the lower authority level, except that the party being granted the right to present additional evidence shall proceed first. If both parties are allowed to present additional evidence, the appellant shall proceed first. Oral argument shall commence with the appellant, allowing the appellee the chance to respond with oral argument and rebuttal, and close with the appellant in rebuttal.

E. The decision of the commission affirming, modifying, or setting aside any decision of an appeals examiner shall be in writing and shall be delivered or mailed to each party to the appeal as well as to their known representatives who have requested to be notified of the decision. The date of such notification shall be recorded on the commission's appeal docket.

F. Any party to an appeal before the commission who was unable to appear for the scheduled hearing may request a reopening of the matter. The request shall be in writing to the Office of Commission Appeals and shall set forth the basis upon which it is being made. If the commission is of the opinion that the reasons in the request show good cause to reopen, the request for reopening shall be granted. If the commission is of the opinion that the reasons given in the request do not show good cause, reopening shall be denied. In the discretion of the commission, a hearing on the issue of reopening may be held. Once a decision is rendered and has become final, the case may not thereafter be reopened for any reason.

G. A challenge to the interest of the commission may be made orally during a hearing or in writing before or after a hearing, but only prior to the date the commission's decision becomes final. The commission shall promptly hear the challenge, and proceedings with respect to the matter at issue shall not continue until the challenge is decided. In case of a written challenge, the challenge should be addressed to the Office of Commission Appeals,

at the commission's administrative office in Richmond, Virginia.

§ 4. Oaths and subpoenas.

A. The special examiner, the appeals examiner, and the Clerk of the Commission shall have the power to administer oaths, to take depositions, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records, and to take such action as may be necessary in any hearing.

B. Upon the request of any party to a proceeding, the Clerk of the Commission, in the name of the commission, may issue subpoenas requiring the attendance of witnesses at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

Upon a written request of any party specifying with reasonable certainty any books, papers, correspondence, memoranda, or other desired records, the Clerk of the Commission may issue a subpoena duces tecum requiring the production of such evidence at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

A request for a subpoena ad testificandum or subpoena duces tecum may be denied if there is no showing of relevance to the subject of the appeal, if it appears that the request would only produce cumulative evidence or testimony, or if it appears that the request would not serve the interest of the party making it. If such request is denied, it may be renewed at the hearing and a proffer of evidence or testimony may be made. The appeals examiner or special examiner hearing the case shall continue the hearing if it appears that the subpoena should be issued.

C. Witnesses subpoenaed for appeals before the appeals examiner or the commission, or both, shall, upon request, be allowed expenses as provided in § 14.1-190 of the Code of Virginia.

V.A.R. Doc. No. R95-69; Filed October 18, 1994, 1:54 p.m.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A of the Code of Virginia in promulgating regulations regarding management of wildlife; however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulation: VR 325-02-24. Game: Waterfowl and Waterfowl Blinds.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: December 14, 1994.

Summary:

Section 18 of this regulation is being amended to provide for the use of bismuth-tin shot in addition to steel shot for waterfowl hunting in Virginia, effective with the 1994-95 waterfowl hunting season, if such shot is permissible under federal migratory waterfowl law.

VR 325-02-24. Game: Waterfowl and Waterfowl Blinds.

§ 1. "Blind" defined.

The term "blind" as used in the waterfowl blind laws and in the regulations of the board shall mean and include camouflaged rowboats, whether in motion or anchored, and other lawful floating devices or things constructed or erected and used on land or in the water for the purpose of shooting waterfowl therefrom in, on or over the public waters and from the shores thereof and which are so constructed or erected as to be deceptive or which provide a place of concealment or obscure the hunter from view and all such devices or things shall come within the provisions of the laws for hunting waterfowl, which require that blinds be licensed.

§ 2. Determining depth of water for purpose of licensing blinds to persons other than riparian owners.

In determining whether or not stationary blinds shall be licensed to persons other than riparian owners pursuant to § 29.1-345 of the Code of Virginia, the department shall presume that the correct depth of water at mean high tide at a given location as required by said statute is that obtained by using the most recent "Tide Tables" and adjustments thereto published by the National Ocean Survey, National Oceanic and Atmospheric Administration of the United States Department of Commerce. Any person requesting the department to use an alternative method of calculating such depth, at a given location, shall bear the burden and expense of establishing to the satisfaction of the department, that such depth is in fact other than that obtained as described therein.

§ 3. Violation of federal law or regulation pertaining to migratory game birds.

A violation of federal statute or a regulation based thereunder as relates to the taking, capturing, killing or attempting to take, capture or kill any migratory game bird shall constitute a violation of this section.

§ 4. Distance between floating blind and stationary blind.

It shall be unlawful to tie out or anchor a mat blind, or other floating blind, within 500 yards of a stationary shore or stationary water blind on which license has been paid

for the season, except by the consent of the owner of such stationary shore blind or water blind, whether the same be occupied for shooting or not.

§ 5. Blinds in the City of Virginia Beach.

In the City of Virginia Beach, except for blinds and floating blind sites which may be erected by the department, no new blinds shall be erected and no licenses shall be issued for the erection of new shore or stationary water blinds upon the shores or in the public waters, nor may floating or mat blinds anchor within 500 yards of the shores of lands or blinds owned or controlled by the department except floating blinds may be stationed at sites designated by the department. Blinds and floating blind sites erected by the department shall not be licensed, but there shall be a metal plate affixed to such blinds for identification purposes.

§ 6. Blinds adjacent to Chickahominy Wildlife Management Area.

No license shall be issued for stationary waterfowl blinds on Morris Creek and the Chickahominy River in Charles City County adjacent to the Chickahominy Wildlife Management Area.

§ 7. Blinds on Game Farm Marsh Wildlife Management Area.

No stationary waterfowl blinds shall be licensed, and no stationary or floating blind license shall be required for hunting waterfowl on the Game Farm Marsh Wildlife Management Area, or in, or on, the public waters of the Chickahominy River, north of the New Kent-Charles City County line adjacent thereto; provided, however, that this section shall not abridge the privileges prescribed for landowners, and their lessees and permittees, in §§ 29.1-344 and 29.1-347 of the Code of Virginia.

§ 8. Blinds adjacent to Ragged Island Wildlife Management Area.

No license shall be issued for stationary waterfowl blinds in the adjacent waters to mid-channel of Kings Creek and Ragged Island Creek or in the adjacent waters of the James River and Batten Bay within 1000 yards of the Ragged Island Wildlife Management Area in Isle of Wight County.

§ 9. Blinds prohibited in sections of Accomack County.

The waters adjacent to the Free School and Michael marshes in the vicinity of the Town of Saxis in Accomack County shall be closed to stake and floating waterfowl blinds starting from a stake on the north shore of Back Creek S 230° 37' E for a distance of 7560' more or less to a point 1500' more or less west of South Point, then S 58° 00' E for a distance of 9380' more or less to the center of the mouth of Cattail Creek. The waters of Messongo Creek shall be closed to stake and floating blinds from the

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above-described line to Mill Creek. The waters of Cattail Creek shall be closed to stake and floating blinds from its mouth following the center of the creek to the southeast corner stake of Michael's marsh.

§ 10. Disturbing waterfowl on New River within boundaries of Radford Army Ammunition Plant.

It shall be unlawful to take, attempt to take or pursue waterfowl on that portion of the New River that lies entirely within the boundaries of Radford Army Ammunition Plant located in the counties of Montgomery and Pulaski.

§ 11. Disturbing, taking, etc., waterfowl within Mason Neck State Park.

It shall be unlawful to take, attempt to take, pursue or disturb waterfowl on those waters within the boundaries of Mason Neck State Park located in Fairfax County, known as Kane Creek Water Fowl Refuge.

§ 12. Repealed.

§ 13. Repealed.

§ 14. Special sea duck season area.

Whenever federal migratory waterfowl regulations permit a special season for taking scoter, eider and old-squaw ducks within an area designated as a special sea duck hunting area under regulations adopted by the board, such special sea duck hunting area shall be designated and delineated as follows:

The ocean waters of the City of Virginia Beach below the Chesapeake Bay Bridge Tunnel, seaward of U.S. Route 60 and of Back Bay and its tributaries, the tidal waters of Northampton and Accomack counties, and the Chesapeake Bay and each of its tributaries up to the first highway bridge, but exclusive of that portion of the Chesapeake Bay known generally as Pocomoke Sound bounded by a line beginning on the western shore of Smiths Island and extending southeastward to the southwest shore of the hook of Tangier Island, and thence extending easterly to the southern tip of Parkers Marsh at the mouth of Onancock Creek. The highways with bridges making up the boundary are: Route No. 644 and No. 200 in Northumberland County, Route No. 3 from Kilmarnock in Lancaster County to Middlesex County, Route No. 3 in Middlesex and Mathews counties, Route No. 3 and No. 17 in Gloucester County to York County, Route No. 17 in York County, and Route No. 17 and Interstate No. 64 in Newport News and Hampton. Hunting of waterfowl within 800 yards of any shore, island or emergent vegetation is prohibited during special sea duck season.

§ 15. Bonus scaup area.

Whenever federal migratory waterfowl regulations permit a special season for taking scaup ducks outside the regular

duck hunting season, or permit an extra bag limit on scaup ducks during the regular duck hunting season, within an area designated under regulations adopted by the board, the area to which such special season or extra bag limit shall apply shall be designated and delineated as follows:

The tidal waters of Accomack and Northampton counties; the waters of Virginia Beach seaward of, but not including, Back Bay and all of its tributaries, and seaward of Route 60; Virginia waters bordering on and tributary to the Potomac River below the mouth of Chopawamsic Creek at Quantico Marine Reservation, but in no case above any highway bridge across such tributaries; and the waters of Chesapeake Bay and its tributaries upstream to Routes 644 and 200 in Northumberland County, Route 360 on the Rappahannock River, Route 3 on the Piankatank River, Route 33 of the York River, a line between Jamestown ferry dock and Scotland ferry dock on the James River, Route 17 on Chuckatuck Creek and the Nansemond River, Routes 17 and 58 on the Elizabeth River, and Route 337 on the Lafayette River.

§ 16. Repealed.

§ 17. Repealed.

§ 18. Steel shot required for waterfowl hunting effective ~~1991-1992~~ 1994-95 .

Effective with the ~~1991-92~~ 1994-95 waterfowl hunting season, it shall be unlawful to take or attempt to take ducks, geese (*including brant*), swans or coots while possessing shotshells loaded with shot other than steel ~~shot~~ or bismuth-tin shot if such shot is permissible under federal migratory waterfowl laws .

§ 19. Great Hunting Creek and Dyke Marsh; no hunting area established.

The waters of the Great Hunting Creek embayment within the City of Alexandria, and the waters of the Potomac River in Fairfax County north of Dyke Marsh and south of the City of Alexandria and between the shore and a line 1,000 feet from the Maryland state line, are declared a no hunting area. It shall be unlawful to hunt migratory waterfowl within this no-hunting area (although waterfowl that have been wounded elsewhere may be pursued into this area), and no stationary or floating blind shall be located within this no-hunting area.

§ 20. Great Hunting Creek and Dyke Marsh; Floating blind area.

No license shall be issued for stationary waterfowl blinds on the Potomac River in Fairfax County adjacent to National Park Service Lands in the Great Hunting Creek and Dyke Marsh areas. Waterfowl hunting in Commonwealth waters adjacent to the above mentioned lands shall be by licensed floating blind only. Such floating blinds must be attached securely to a post or buoy affixed

to the river bottom by the department, and are limited to one floating blind per post at any time. Hunters in licensed floating blinds may hunt from designated locations during legal shooting hours on Thanksgiving Day and on Mondays, Wednesdays and Fridays during the open seasons for hunting waterfowl in Virginia. Blind sites shall be occupied on a daily first-come basis, such sites to be occupied no earlier than 4 a.m. or later than one-half hour after sunset. All such blinds shall be removed each day.

V.A.R. Doc. No. R95-80; Filed October 26, 1994, 11:32 a.m.

BOARD OF MEDICINE

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A 18 of the Code of Virginia, which excludes the Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

Title of Regulation: VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases, including Abnormal Conditions, of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.2 of the Code of Virginia.

Effective Date: October 25, 1994.

Summary:

The amendment adds Levocabastine as a therapeutic agent to the Optometric Formulary as established in § 54.1-2957.2 of the Code of Virginia. The addition to the formulary is consistent with appropriate standards of care for the eye and its adnexa.

The amendment responds to continuing review of the regulations for the certification of optometrists to prescribe and treat certain diseases or abnormal conditions of the eye with therapeutic pharmaceutical agents.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Russell Porter, Ph.D., Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD. There may be a charge for copies.

VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases, including Abnormal Conditions, of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Approved school" means those optometric and medical schools, colleges, departments of universities or colleges or schools of optometry or medicine currently accredited by the Council on Postsecondary Accreditation or by the United States Department of Education.

"Board" means the Virginia Board of Medicine.

"Certification" means the Virginia Board of Medicine certifying an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa and administer certain therapeutic pharmaceutical agents.

"Certified optometrist" means an optometrist who holds a current license to practice optometry in the Commonwealth of Virginia, is certified to use diagnostic pharmaceutical agents by the Virginia Board of Optometry, and has met all of the requirements established by the Virginia Board of Medicine to treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Examination" means an examination approved by the Board of Medicine for certification of an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Invasive modality" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive modalities include surgery, lasers, ionizing radiation, therapeutic ultrasound, medication administered by injection, and the removal of foreign bodies from within the tissues of the eye. For purposes of these regulations, the administration of a topical agent specified in § 4.3 of these regulations is not considered an invasive modality.

"Postgraduate clinical training" means a postgraduate program approved by the board to be eligible for certification.

"Protocol" means a prescribed course of action developed by the certified optometrist which defines the procedures for responding to any patient's adverse reaction or emergency.

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§ 1.2. Public Participation Guidelines.

Separate Board of Medicine regulations, VR ~~465-01-01~~ 465-01-1.1, entitled Public Participation Guidelines, which provide for involvement of the public in the development of all regulations of the Virginia Board of Medicine, are incorporated by reference in these regulations.

PART II. APPLICATION FOR CERTIFICATION EXAMINATION.

§ 2.1. Application for certification by examination.

An applicant for certification by examination shall be made on forms provided by the board. Such application shall include the following information and documents:

1. A complete application form;
2. The fee specified in § 7.1 of these regulations to be paid at the time of filing the application;
3. Additional documents required to be filed with the application are:
 - a. A letter from the Virginia Board of Optometry certifying that:
 - (1) The applicant holds a current license to practice optometry in Virginia, and
 - (2) The applicant is certified to use diagnostic pharmaceutical agents;
 - b. Documented evidence of satisfactory completion of the postgraduate optometric training approved and prescribed by the board or documentation of graduate optometric training equivalent to the postgraduate optometric training required by the board;
 - c. Verification of licensure status in other states from the Board of Examiners in Optometry or appropriate regulatory board or agency.

PART III. EXAMINATION.

§ 3.1. Examination for certification.

The following general provisions shall apply to optometrists who apply to take the board's examination for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

A. The certification examination for an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be in one part.

B. A candidate for certification by the board who fails the examination following three attempts shall take additional postgraduate training approved by the board to be eligible to take further examinations, as required in § 6.1.

PART IV. SCOPE OF PRACTICE FOR AN OPTOMETRIST CERTIFIED TO USE THERAPEUTIC DRUGS.

§ 4.1. Certification.

An optometrist, currently licensed by the Board of Optometry, who has completed didactic and clinical training to ensure an appropriate standard of medical care for the patient and has met all other requirements and has passed an examination administered by the board, shall be certified to administer and prescribe certain therapeutic pharmaceutical agents in the treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa.

§ 4.2. Diseases and conditions which may be treated by an optometrist.

Diseases and conditions which may be treated by an optometrist certified by the board are:

1. Hordeolum, conjunctivitis, blepharitis, chalazion, and dry eye.
2. Superficial foreign bodies of the eye and its adnexa which can be treated by noninvasive modalities.
3. Superficial epithelial damage secondary to contact lens wear provided that no corneal opacity is present.

§ 4.3. Therapeutic pharmaceutical agents.

Therapeutic pharmaceutical agents which a certified optometrist may administer and prescribe are all topical and are as follows:

1. Tetracycline
2. Erythromycin
3. Bacitracin
4. Polymyxin B/Bacitracin
5. Chlorotetracycline
6. Sodium Sulfacetamide - 10%
7. Sodium Sulfacetamide - 30%
8. Sulfisoxazole - 4.0%
9. Sulfacetamide - 15% / Phenylephrine - 0.125%

10. Cromolyn Sodium - 4.0%
11. Naphazoline HCl - 0.1%
12. Phenylephrine HCl - 0.125% / Pheniramine Maleate - 0.5%
13. Phenylephrine HCl - 0.12% / Pyrilamine Maleate - 0.1% / Antipyrine - 0.1%
14. Naphazoline HCl - 0.025% / Pheniramine Maleate - 0.3%
15. Naphazoline HCl - 0.05% / Antazoline Phosphate - 0.5%
16. Hydroxypropyl Cellulose Ophthalmic Insert
17. Polytrim Ophthalmic Solution
18. Neomycin
19. *Levocabastine*

§ 4.4. Standards of practice.

A. A certified optometrist after diagnosing and treating a patient who has a disease or condition as defined in § 4.2, which disease or condition failed to improve appropriately, usually within 72 hours, shall refer the patient to an ophthalmologist. A patient with a superficial corneal abrasion which does not improve significantly within 24 hours shall be referred to an ophthalmologist.

B. The certified optometrist shall establish a written protocol for the management of patient emergencies and referrals to physicians.

C. The list in § 4.3 does not preclude optometrists treating emergency cases of anaphylactic shock with intra-muscular epinephrine, such as obtained from a beesting kit.

D. The treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa with the administration of certain therapeutic pharmaceutical agents by certified optometrists is prohibited in children five years of age or younger.

PART V. RENEWAL OF CERTIFICATION.

§ 5.1. Renewal of certification.

Every optometrist certified by the board shall renew his certification biennially on or before July 1 and pay the prescribed fee in § 7.1 in each odd number year.

§ 5.2. Expiration of certification.

An optometrist who allows his certification to expire

shall be considered not certified by the board. An optometrist who proposes to resume the treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa and administer certain therapeutic pharmaceutical agents shall make a new application for certification and pay a fee prescribed in § 7.1.

PART VI. POSTGRADUATE TRAINING.

§ 6.1. Postgraduate training required.

Every applicant applying for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be required to complete a full-time approved postgraduate optometric training program prescribed by the board or to document that his graduate optometric program contained equivalent elements to the postgraduate optometric program approved by the board.

A. The approved postgraduate program shall be the Ocular Therapy for the Optometric Practitioner #750B conducted by the Pennsylvania College of Optometry or any other postgraduate optometric program approved by the board.

B. Upon completing the required postgraduate optometric training program, the applicant may apply to sit for the certification examination administered by the board.

C. The certification examination shall be a one-part comprehensive examination in accordance with § 3.1 of these regulations.

PART VII. FEES.

§ 7.1. Fees required by the board.

A. Application fee for the examination to be certified to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be \$300. The examination fee is nonrefundable. An applicant may, upon written request 21 days prior to the scheduled examination and payment of a \$100 fee, be rescheduled for the next administration of the examination.

B. The fee for biennial renewal of certification shall be \$125.

C. The fee for reinstating an expired certification shall be \$150.

D. The fee for a letter of good standing/verification to another state for a license shall be \$10.

E. The fee for reinstatement of a revoked certificate

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shall be \$750.

VA.R. Doc. No. R95-75; Filed October 25, 1994, 3:06 p.m.

REAL ESTATE APPRAISER BOARD

Title of Regulation: VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.

Statutory Authority: §§ 54.1-2013, 54.1-2014 and 54.1-2016 of the Code of Virginia.

Effective Date: January 1, 1995.

Summary:

The Virginia Real Estate Appraiser Board is amending its existing regulations to reflect current board policies and prevailing federal guidelines and standards, as well as to permit a renewal grace period and reinstatement period for previous licensees. The fees charged to regulants are also being modified in accordance with § 54.1-113 of the Code of Virginia. Most of the fees currently being charged will be reduced with some new fees being added to reflect the changes to the regulations.

The regulations will reduce the number of classroom hours required for certified residential appraisers from 165 to 120 hours. This reduction is consistent with the federal minimum standards.

A trainee licensure classification is being created in accordance with federal guidelines to afford individuals the opportunity to satisfy the prelicensure requirement of 2,000 hours of appraisal work experience.

The regulations will allow a 30-day grace period within which appraisers may renew their license without penalty and will create a three-month reinstatement period within which appraisers may renew their licensure without requalification. Such grace and reinstatement periods are consistent with other licensing programs in Virginia.

Existing board policy will be incorporated into the regulations, such as the required documentation of work experience and acceptable prelicensure and continuing educational courses.

The regulations will require that prior to license renewal, individuals must complete a four-hour course (which is an increase of one hour) on recent developments in appraisal law and regulation and, every six years, must complete the 15-hour USPAP course required for original licensure.

Summary of Public Comment and Agency Response: A

summary of comments made by the public and the agency's response may be obtained on the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-0500. There may be a charge for copies.

VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.

PART I. GENERAL.

§ 1.1. Definitions.

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

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

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financing institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended.

"Appraiser" means any person who, for valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of property.

"Appraiser classification" means any category of appraiser which the board creates by designing criteria for qualification for such category and by designing the scope

of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means for the purpose of these regulations any corporation, partnership, association or other organization business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise nonresidential properties with a transaction value up to \$250,000.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Experience" as used in these regulations includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study, and teaching of appraisal courses.

For the purpose of these regulations experience has been divided into five major categories: (i) fee and staff appraisal, (ii) ad valorem appraisal, (iii) review appraisal, (iv) real estate consulting, and (v) teaching of real estate courses.

1. "Fee/staff appraiser experience": "Fee/staff appraiser experience" means experience acquired as either a sole appraiser or as a cosigner.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following ; where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :

- a. An adequate identification of the real estate and the interests being appraised;
- b. The purpose of the report, date of value, and date of report;
- c. A definition of the value being appraised;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any; and
- i. Signature of appraiser.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in Standard 2 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals

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or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following ; ~~where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :~~

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in the Uniform Standards of Professional Appraisal Practice in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal files which meet minimum standards. For mass appraisals dated prior to July 1, 1991, these minimum standards include the following ; ~~where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :~~

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;

d. A determination of highest and best use;

e. An estimate of land value;

f. Those recognized methods and techniques that are necessary to produce a credible appraisal.

For mass appraisal reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 6 of the Uniform Standards of Professional Appraisal Practice in the ~~1990 edition or~~ the edition in effect at the time of the reports' preparation.

In addition to the preceding, to qualify for ad valorem appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. ~~In cases where Reviewer experience is the sole category of experience being claimed by an individual, shall not constitute more than 1,000 hours of total experience claimed and at least 25% 50% of the required 2,000 hours (500 hours) review experience claimed must be in field review wherein the individual has personally inspected the real estate property which is the subject of the review.~~

To qualify for reviewer experience, an individual must have prepared written reports recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions, which written reports must meet minimum standards. For appraisal reviews dated prior to July 1, 1991, these minimum standards include the following ; ~~where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :~~

a. An identification of the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;

b. A description of the review process undertaken;

c. An opinion as to the adequacy and appropriateness of the report being reviewed, and the reasons for any disagreement;

d. An opinion as to whether the analyses, opinions, and conclusions in the report under review are

appropriate and reasonable, and the development of any reasons for any disagreement;

e. Signature of reviewer.

For appraisal review reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 3 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the Cosigner subcategory of Fee/staff appraiser experience.

4. "Real estate counseling experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real estate property. Real estate counseling experience includes, but is not necessarily limited to, the following:

Absorption Study	Ad Valorem Tax Study
Annexation Study	Assemblage Study
Assessment Study	Condominium Conversion Study
Cost-Benefit Study	Cross Impact Study
Depreciation/Cost Study	Distressed Property Study
Economic Base Analysis	Economic Impact Study
Economic Structure Analysis	Eminent Domain Study
Feasibility Study	Highest and Best Use Study
Impact Zone Study	Investment Analysis Study
Investment Strategy Study	Land Development Study
Land Suitability Study	Land Use Study
Location Analysis Study	Market Analysis Study
Market Strategy Study	Market Turning Point Analysis
Marketability Study	Portfolio Study
Rehabilitation Study	Remodeling Study
Rental Market Study	Right of Way Study
Site Analysis Study	Utilization Study
Urban Renewal Study	Zoning Study

To qualify for real estate counseling experience, an individual must have prepared written reports which meet minimum standards. For real estate counseling reports dated prior to July 1, 1991, these minimum standards include the following; where applicable (if any item is not applicable, the applicant shall so state the reasons for the exclusions):

- a. A definition of the problem;
- b. An identification of the real estate under consideration (if any);
- c. Disclosure of the client's objective;
- d. The effective date of the consulting assignment and date of report;

e. The information considered, and the reasoning that supports the analyses, opinions, and conclusions;

f. Any assumptions and limiting conditions that affect the analyses, opinions, and conclusions;

g. Signature of real estate counselor.

For real estate counseling reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 4 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation. Real estate counseling shall not constitute more than 1,000 500 hours of experience for any type of appraisal license.

5. "Teaching experience" means experience obtained by an individual in the instruction of real estate appraisal or real estate related seminars/courses as well as in the authorship of real estate appraisal and analysis publications. Experience in these areas will be considered on the following basis:

a. Seminar and course instructions: The number of approved hours is based on the published number of classroom hours stated in the official college catalog or similar publication of other educational bodies or professional organizations.

b. Authorship: Authorship of published books, journal articles and theses may count toward an applicant's experience credit as follows:

(1) Topic must relate to real estate valuation or analysis;

(2) A book will be credited 150 hours, a journal article will be credited 20 hours, and a thesis will be credited 50 hours.

Credit may be earned only once for instruction of courses having substantially equivalent content. In cases where there is more than one instructor, credit will be pro-rated based on each instructor's participation.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value is less than \$1 million. Licensed residential real estate appraisers may also appraise noncomplex, nonresidential properties with a transaction value up to \$250,000.

"Licensee" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in

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§ 54.1-2009 of the Code of Virginia and in these regulations.

“Local, state or federal government agency, board or commission” means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

“Proprietary school” means a privately owned school offering appraisal or appraisal related courses approved by the board.

“Provider” means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

“Real estate appraisal activity” means the act or process of valuation of real property or preparing an appraisal report.

“Real estate appraisal” or *“real estate related organization”* means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

“Reciprocity agreement” means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

“Registrant” means any corporation, partnership, association or other ~~organization~~ business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

“Reinstatement” means having a license or registration restored to effectiveness after the expiration date has passed.

“Renewal” means continuing the effectiveness of a license or registration for another period of time.

“Sole proprietor” means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 56.1-69 through 59.1-76 of the Code of Virginia.

“Substantially equivalent” is a ~~description~~ for any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in these regulations and Chapter 20.1 of Title 54.1 of the Code of Virginia for licensure and renewal.

“Supervising appraiser” means any individual holding a

license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in these regulations.

“Transaction value” means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

“Uniform Standards of Professional Appraisal Practice” means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

“Valuation” means an estimate of the value of real property.

“Valuation assignment” means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate of the value of an identified parcel of real property as of a specified date.

“Waiver” means the voluntary, intentional relinquishment of a known right.

PART II. ENTRY.

§ 2.1. Requirement for registration.

A business entity seeking to provide appraisal services shall register with the board by completing an application furnished by the board describing the location, nature and operation of its practice, and the name and address of the registered agent, an associate, or a partner of the business entity. Along with a completed application form, domestic corporations shall provide a copy of the Certificate of Incorporation as issued by the State Corporation Commission, foreign (out-of-state) corporations shall provide a copy of the Certificate of Authority from the State Corporation Commission, partnerships shall provide a copy of the certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

§ 2.2. General qualifications for licensure.

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Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of ~~Commerce~~ *Professional and Occupational Regulation* or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of ~~Commerce~~ *Professional and Occupational Regulation* or its agent.

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

4. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

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

6. *The applicant shall have successfully completed 75 hours for the licensed residential classification, 120 hours for the certified residential classification, and 165 hours for the certified general classification, of approved real estate appraisal courses, including a course of at least 15 hours on the Uniform Standards of Professional Appraisal Practice, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the*

certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

7. *The applicant shall have a minimum of 24 months and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in a 12-month period is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as part of the application for licensure attesting to his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.*

For all applicants for a certified general real estate appraiser license, at least 50% of the appraisal experience required (1,000 hours) must be in nonresidential appraisal assignments and include assignments which demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties which do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser which include the use of the income approach.

8. *Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.*

6. 9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration of their application by the board.

§ 2.3. Additional qualifications for licensure of licensed residential real estate appraisers.

An applicant for a license as a licensed residential real estate appraiser shall meet the following educational, experience and examination requirements in addition to those set forth in § 2.2 of these regulations:

1. The applicant shall have successfully completed 75 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior

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and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as an appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the licensed residential real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

§ 2.4. Additional qualifications for licensure for certified residential real estate appraisers.

An applicant for a license as a certified residential real estate appraiser shall meet the following educational, experience and examination requirements in addition to those set forth in § 2.2 of these regulations:

1. The applicant shall have successfully completed 105 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations or other providers approved by the board. The 105 classroom hours may include the 75 classroom hours required for the licensed residential real estate appraiser.

After January 1, 1994, applicants must complete 165 classroom hours of real estate appraisal courses which shall include coverage of required subjects.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file

memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the certified residential real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

§ 2.5. Additional qualifications for licensure for certified general real estate appraisers.

An applicant for a license as a certified general real estate appraiser shall meet the following educational, experience, and examination requirements in addition to those set forth in § 2.2 of these regulations:

1. The applicant shall have successfully completed 165 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The 165 classroom hours may include the 75 classroom hours required for the licensed residential real estate appraiser, or the 105 classroom hours required for the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. For all applicants for a certified general real estate appraiser license, at least 50% of the appraisal experience required (1,000 hours) must be in nonresidential appraisal assignments.

The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the certified general real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

§ 2-6. 2.3. Qualifications for licensure by reciprocity.

Every applicant to the Real Estate Appraiser Board for a license by reciprocity shall have met the following qualifications:

1. An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a Virginia real estate appraiser license by providing documentation that the applicant has met educational, experience and examination requirements that are substantially equivalent to those required in Virginia for the appropriate level of licensure. ~~All reciprocal applicants shall be required to pass the Virginia appraiser law and regulation section of the licensing examination prior to licensure.~~
2. The applicant shall be at least 18 years of age.
3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.
4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
5. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. 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.
7. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 6 of this section may be approved for licensure following consideration by the board.

§ 2-7. 2.4. Qualifications for temporary licensure as a ~~certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser~~.

An individual who is currently licensed or certified as a

real estate appraiser in another jurisdiction may obtain a temporary Virginia real estate appraiser's license as required by Section 1121 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The appraiser's *permanent* certification or license issued by another state shall be recognized as equivalent to a Virginia license provided that:

1. The appraiser's business is of a temporary nature, and is limited to one specific assignment *not to exceed 12 months. The temporary assignment must be complete prior to the expiration date of the permanent certification or license issued by another state*.
2. The education, experience and general examination completed in the jurisdiction of original licensure is deemed to be substantially equivalent to those required for the appropriate level of licensure in Virginia.
3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.
4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
5. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a real estate appraiser in such a manner as to safeguard the interest of the public.
6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. 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.
7. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 6 of this section may be approved for licensure following consideration by the board.
8. The applicant shall be at least 18 years of age.

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Applicants for temporary licensure shall verify the above information on an application form provided by the board. A temporary license cannot be renewed.

§ 2.5. Qualifications for licensure as an appraiser trainee.

An applicant for licensure as an appraiser trainee shall meet the following educational, experience, and examination requirements in addition to those set forth in §§ 2.2 1 through 2.2 5 and 2.2 9.

1. [~~There is no examination requirement for the appraiser trainee classification. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.~~]

2. The applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include 15 hours relative to the Uniform Standards of Professional Appraisal Practice.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers [~~include~~: are described in this subdivision.]

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be state licensed or certified in good standing.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

c. The appraiser trainee is permitted to have more than one supervising appraiser.

~~§ 2.8.~~ 2.6. Requirement for the certification of appraisal education instructors.

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, and § 54.1-2013 of the Code of Virginia, ~~instructing appraisal educational offerings to satisfy the prelicensure education qualifications for licensure of real estate appraisers shall be certified by the board. Instructors employed or contracted by accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs are not required to be certified by the board. Instructors teaching prelicense educational offerings who are not employed or contracted by accredited colleges, universities, junior and community colleges, adult distributive or marketing education programs are required to be certified by the board. Instructors teaching the required continuing education course on recent developments in federal, state and local real estate appraisal law and regulation shall also be certified by the board and, at the board's discretion, may be required to attend training sessions sponsored by the board.~~

~~§ 2.9.~~ 2.7. Qualifications for the certification of instructors.

Qualifications for certification:

The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia, and [shall have] :

1. [A] baccalaureate degree in real estate, economics, finance or business, and have satisfied the state appraisal licensing educational requirements for the level being instructed; or

2. [A] baccalaureate degree , an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed; or

3. Seven years of ~~discipline-free~~ active experience acquired in the appraisal field in the past 10 years , an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed.

~~§ 2.10.~~ 2.8. Application and registration fees.

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

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1. Application fees for registrations, certificates and licenses are as follows:

Registration of business entity	\$ 75	\$100
Certified General Real Estate Appraiser ...	\$120	\$141
Temporary Certified General Real Estate Appraiser	\$120	\$ 50
Certified Residential Real Estate Appraiser	\$120	\$141
Temporary Certified Residential Real Estate Appraiser	\$120	\$ 50
Licensed Residential Real Estate Appraiser	\$120	\$141
Temporary Licensed Residential Real Estate Appraiser	\$120	\$ 50
Appraiser Trainee	\$	96
Upgrade of license	\$	70
Certification of licensure	\$	25
Instructor Certification	\$200	\$135
Bad check penalty	\$	25
Duplicate wall certificate	\$	25

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. Examination fees are identical for all appraiser licensing examinations.

[Entire examination	\$95
General or Residential Section only	\$85
Rules and Regulations Section only	\$50

These examination fees are subject to fees charged to the department by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act. Fees may be adjusted and charged to the candidate in accordance with this contract. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act

(§ 11-35 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.]

Examination fee to take the General or Residential section, and the State Laws and Regulations section .. \$95

Examination fee to take the General or Residential section only

Examination fee to take the State Rules and Regulations section only

3. National Registry Fee Assessment for all permanent license applicants

To be assessed of each applicant in accordance with Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. *This fee may be adjusted and charged to the applicant in accordance with the Act.* If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

PART III. RENEWAL OF LICENSE/REGISTRATION/CERTIFICATION.

§ 3.1. Renewal required.

Licenses issued under these regulations for certified general real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers [and appraiser trainees] and registrations issued for business entities shall expire two years from the last day of the month in which they were issued, as indicated on the license or registration. Certifications issued under these regulations for instructors shall expire two years from the last day of the month in which they were issued, as indicated on the certification.

§ 3.2. Qualifications for renewal.

A. ~~Continuing education requirements.~~ As a condition of renewal, and under § 54.1-2014 of the Code of Virginia, all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers, resident or nonresident, shall be required to complete continuing education courses satisfactorily within each licensing term as follows:

1. Continuing education requirements for certified general real estate appraisers:

a. 1. Certified general All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions;

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proprietary schools; or real estate appraisal or real estate related organizations of not less than 20 classroom hours during each licensing term.

b. Certified general 2. All real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including, but not limited to teaching, program development, or authorship of textbooks.

e. 3. ~~Three~~ Four of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation *and the Uniform Standards of Professional Appraisal Practice*.

B. In addition to the continuing education requirements specified in subsection A of this section all applicants for renewal shall complete a 15-hour course in the *Uniform Standards of Professional Appraisal Practice* once every six years.

2. Continuing education requirements for certified residential real estate appraisers:

a. Certified residential real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 20 classroom hours during each licensing term.

b. Certified residential real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including but not limited to teaching, program development, or authorship of textbooks.

e. Three of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

3. Continuing education requirements for licensed residential real estate appraisers:

a. Licensed residential real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local,

state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organization of not less than 20 classroom hours during each licensing term.

b. Licensed residential real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including, but not limited to teaching, program development, or authorship of textbooks.

e. Licensed residential real estate appraisers must satisfactorily complete a three classroom hour continuing education course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

B. C. Applicants for renewal of a license shall meet the standards for entry as set forth in subdivisions 1, 3 and 4 of § 2.2 of these regulations.

E. D. Applicants for the renewal of a registration shall meet the requirement for registration as set forth in § 2.1.

D. E. Applicants for the renewal of a certificate *as an instructor* shall meet the standards for entry as set forth in § 2.9 2.7.

§ 3.3. Procedures for renewal.

A. The board will mail a renewal application form to the licensee and certificate holder at the last known home address and to the registered firm or at the last known business address. This form shall outline the procedures for renewal. Failure to receive the renewal application form shall not relieve the licensee, certificate holder or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee, certificate holder or registrant desiring to renew the license or registration shall return to the board the completed renewal application form and the appropriate renewal and registry fees as outlined in § 3.4 of these regulations.

C. The date on which the renewal application form and the appropriate fees are received by the Department of Commerce *Professional and Occupational Regulation* or its agent will determine whether the licensee, certificate holder or registrant is eligible for renewal. If either the renewal application form or renewal fee, including the registry fee, is *not* received by the Department of Commerce *Professional and Occupational Regulation* or its agent *after within 30 days* of the expiration date, the license, certification or registration cannot be renewed and the licensee, certificate holder or registrant must reinstate his license by meeting all requirements listed in § 3.2 of these regulations and pay a reinstatement fee as specified.

in § 3.4 of these regulations. Three months after the expiration date on the license, certificate or registration, reinstatement is no longer possible. To resume practice, the former licensee, certificate holder, or registrant shall reapply for licensure as a new applicant, meeting current education, examination and experience requirements.

§ 3.4. Fees for renewal and reinstatement .

A. All fees are nonrefundable.

A. B. National registry fee assessment. In accordance with the requirements of Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, \$50 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. ~~All remaining fees for renewal are nonrefundable.~~ The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

B. C. Renewal fees are as follows:

Certified general real estate appraiser	.....	\$165	\$121
Certified residential real estate appraiser	..	\$165	\$121
Licensed residential real estate appraiser	..	\$165	\$121
Appraiser trainee	.....		\$ 71
Registered business entity	.....	\$ 75	\$ 70
Certified instructor	.....	\$200	\$135

D. Reinstatement fees are as follows:

Certified general real estate appraiser	.....	\$171
Certified residential real estate appraiser	.....	\$171
Licensed residential real estate appraiser	.....	\$171
Appraiser Trainee	.....	\$121
Registered business entity	.....	\$100
Certified instructor	.....	\$270

§ 3.5. Status of licensee during the period prior to

reinstatement.

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A licensee or certificate holder who is reinstated shall be regarded as having been continuously licensed without interruption. Therefore, the licensee or certificate holder shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period. A licensee or certificate holder who is not reinstated shall be regarded as unlicensed from the expiration date of the license forward. Nothing in these regulations shall divest the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the appraiser was licensed.

§ 3.5. 3.6. Board discretion to deny renewal or reinstatement .

The board may deny renewal or reinstatement of a license, certification or registration for the same reasons as it may refuse initial licensure or registration or discipline a current licensee or registrant.

PART IV.
STANDARDS.

§ 4.1. Grounds for disciplinary action.

The board has the power to fine any licensee, registrant or certificate holder, to place any licensee, registrant or certificate holder on probation, and to suspend or revoke any license, registration or certification issued under the provisions of Chapter 20.1 of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with §§ 54.1-201(7), 54.1-202 and the provisions of the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia, when any licensee, registrant or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapter 20.1 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board. An appraiser trainee shall be subject to disciplinary action for his actions even if acting under the supervision of a supervising appraiser.

§ 4.2. Standards of ethical conduct.

In obtaining a real estate appraiser license and performing a real estate appraisal, a licensee shall comply with the Ethics Provisions of the Uniform Standards of Professional Appraisal Practice and the following standards of ethical conduct:

1. All applicants for licensure shall follow all rules

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established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instruction communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board or a testing service acting on behalf of the board with regard to conduct at the examination shall be grounds for denial of a license.

2. A licensee, certificate holder or registrant shall not obtain or attempt to obtain a license, certification or registration by false or fraudulent representation.

3. A licensee, registrant or certificate holder shall not make any misrepresentation.

§ 4.3. Standards of professional practice.

A. The provisions of subsections C through J of this section shall not apply to local, state and federal employees performing in their official capacity.

~~*B. Maintenance of licenses. The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.*~~

1. Change of address.

~~a. Certified general All licensed real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change .~~

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their current business address and shall report any change of address to the board within 30 days of such change .

~~e. Certified instructors as defined in §§ 2.8 and 2.9 of these regulations, shall at all times keep the board informed in writing of their current home address.~~

2. Change of name.

~~a. Certified general All real estate appraisers, certified residential real estate appraisers, licensed residential real estate appraisers appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.~~

b. Registered real estate appraisal business entities shall promptly notify the board of any change of

name or change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.

4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.

5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.

7. All appraiser licenses issued by the board shall be visibly displayed.

~~B. C. Use of seal.~~

1. The authorized application of a licensed appraiser's seal shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall affix his seal to any appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with § 54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be issued under seal and signed by the licensed appraiser. For narrative and letter appraisals, the signature, seal, and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature and seal shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter.

- a. An appraiser may provide ~~written reports~~, market analysis studies or ~~valuations~~ *counseling reports*, which do not constitute appraisals of market value, provided, that such reports, studies or evaluations shall contain a conspicuous statement that such reports, studies or valuations are not an appraisal as defined in § 54.1-2009 of the Code of Virginia.
- b. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.
- c. The seal shall conform in detail and size to the design illustrated below:



*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

~~E. D.~~ *D. Development of appraisal.* In developing a real property appraisal, ~~an appraiser~~ *all licensees* shall comply with the provisions of Standard I of the Uniform Standards of Professional Appraisal Practice (USPAP) in the ~~1990 edition~~ or the edition in effect at the time of the reports' preparation. *If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."*

~~D. E.~~ *E. Appraisal report requirements.* In reporting a real property appraisal, ~~an appraiser~~ *a licensee* shall meet the requirements of Standard II of the Uniform Standards of Professional Appraisal Practice in the ~~1990 edition~~ or the edition in effect at the time of the reports' preparation.

~~E. F.~~ *F. Reviewing an appraisal.* In performing a review appraisal, a licensee shall comply with the requirements of Standard III of the Uniform Standards of Professional Appraisal Practice in the ~~1990 edition~~ or the edition in effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

~~F. G.~~ *G. Mass appraisals.* In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of Standard VI of the Uniform Standards of Professional Appraisal Practice in the ~~1990 edition~~ or the edition in effect at the time of the reports' preparation.

~~G. H.~~ *H. Record keeping requirements.*

1. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.

2. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

3. Supervising appraisers shall make appraisal reports prepared by appraiser trainees available to the board, at the appraiser trainee's expense, upon request of the appraiser trainee for the purpose of documenting experience when applying to the board for licensure.

~~H. I.~~ *I. Disclosure requirements.* A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this regulation, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

~~F. J.~~ *J. Competency.* A licensee shall abide by the Competency Provision as stated in the Ethics Provision of the Uniform Standards of Professional Appraisal Practice in the ~~1990 edition~~ or the edition in effect at the time of the reports' preparation.

~~F. K.~~ *K. Unworthiness.*

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence

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of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. *A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, § 36-96.1 et seq. of the Code of Virginia.*

7. *A licensee who has direct knowledge that another licensee may be violating any of these regulations, or the provisions of Chapters 1 through 3 and Chapter 20.1 of Title 54.1 of the Code of Virginia shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required.]*

§ 4.4. Standards of conduct for certified appraiser education instructors.

A. Instructors shall develop a record for each student which shall included the student's name and address, the course name, the course hours and dates given, and the date the course was passed. This record shall be retained by the course provider.

B. The instructor shall not solicit information from any person for the purpose of discovering past licensing examination questions or questions which may be used in future licensing examinations.

C. The instructor shall not distribute to any person copies of license examination questions, or otherwise communicate to any person license examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

D. The instructor shall not, through an agent or otherwise, advertise its services in a fraudulent, deceptive or misrepresentative manner.

E. Instructors shall not take any appraiser licensing examination for any purpose other than to obtain a license

as a real estate appraiser.

PART V. EDUCATIONAL OFFERINGS.

§ 5.1. Requirement for the approval of appraisal educational offerings.

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, § 54.1-2013 of the Code of Virginia, and the qualifications criteria set forth by the Appraisal Qualifications Board of the Appraisal Foundation, all educational offerings submitted for prelicensure and continuing education credit shall be approved by the board. Although educational offerings which have been approved by the Appraisal Foundation's Educational Offering Review Panel may be considered to have met the standards for approval set forth in these regulations, all educational offerings must be approved by the board.

§ 5.2. Standards for the approval of appraisal educational offerings for prelicensure credit.

A. Content.

1. Prior to licensure, the applicant shall have successfully completed coverage of the Uniform Standards of Professional Appraisal Practice either as a portion of a qualified course of at least 15 classroom hours, or in a single, qualified course of at least 15 classroom hours. After July 1, 1992, applicants shall have successfully completed a 15 classroom hour course in the Uniform Standards of Professional Appraisal Practice.

2. While various appraisal courses may be credited toward the classroom requirement specified for each level classification of licensure, all applicants for licensure as an appraiser trainee, a licensed residential or a certified residential, or certified general real estate appraiser must demonstrate that their course work included coverage of all the topics listed below.

- Appraisal standards and ethics
- Influences on real estate value
- Legal considerations in appraisal
- Types of value
- Land economic principles
- Real estate markets and analysis
- Valuation process
- Property description and analysis
- Highest and best use analysis
- Appraisal statistical concepts
- Sales comparison approach
- Site valuation
- Cost approach
- Income approach
- Valuation of partial interests

3. All appraisal and appraisal-related offerings presented for prelicensure credit must have a final, written examination.

4. Credit toward the classroom hour requirement to satisfy the educational requirement prior to licensure shall be granted only where the length of the educational offering is at least 15 classroom hours.

B. Instruction. With the exception of courses taught at accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs, all other prelicensure educational offerings given after ~~April 1, 1992~~ *January 1, 1993*, must be taught by instructors certified by the board.

§ 5.3. Standards for the approval of appraisal educational offerings for continuing education credit.

A. Content.

1. The content of courses, seminars, workshops or conferences which may be accepted for continuing education credit includes, but is not limited to those topics listed in § 5.2 A 2 and below.

- Ad valorem taxation
- Arbitrations
- Business courses related to the practice of real estate appraisal
- Construction estimating
- Ethics and Uniform Standards of Professional Appraisal Practice
- Land use planning, zoning, and taxation
- Property development
- Real estate appraisal (valuations/evaluations)
- Real estate financing and investment
- Real estate law
- Real estate related computer applications
- Real estate securities and syndication
- Real property exchange

2. Courses, seminars, workshops or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased his knowledge, skill and competency in real estate appraisal.

3. Credit toward the classroom hour requirement to satisfy the continuing education requirements shall be granted only where the length of the educational offering is at least two hours and the licensee participated in the full length of the program.

4. ~~As outlined in Part III of these regulations all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall complete 20 classroom hours prior to the renewal of any license. Three classroom hours shall cover recent developments in federal, state and local real estate~~

~~appraisal law and regulation.~~

B. Instruction. Although continuing education offerings, *except the four-hour required course on recent developments in federal, state and local real estate appraisal law and regulation and the Uniform Standards of Professional Appraisal Practice*, are not required to be taught by board certified instructors, these offerings must meet the standards set forth in § ~~5.3~~ *subsection A of these regulations this section*.

§ 5.4. Procedures for awarding prelicensure and continuing education credits.

A. Course credits shall be awarded only once for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate, letter of completion or in any such written form as may be required by the board. All courses, seminars and workshops submitted for prelicensure and continuing education credit must indicate the number of classroom hours.

C. Information which may be requested by the board in order to further evaluate course content includes, but is not limited to, course descriptions, syllabi or textbook references.

D. All transcripts, certificates, letters of completion or similar documents submitted to verify completion of seminars, workshops or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop or conference. Applicants must furnish written proof of having received a passing grade in all ~~prelicensure and continuing prelicensure~~ education courses submitted.

E. Credit may be awarded for prelicensure courses completed by challenge examination without classroom attendance, if such credit was granted by the course provider prior to July 1, 1990, and provided that the board is satisfied with the quality of the challenge examination that was administered by the course provider.

F. All courses seminars, workshops, or conferences, submitted for satisfaction of continuing education requirements must be satisfactory to the board.

G. Correspondence courses, video and remote TV educational offerings may be acceptable to meet the classroom hour requirements for ~~prelicensure and continuing education prelicensure~~ courses provided each course or offering is approved by the board and has been presented by an accredited college, university, junior or community college; the student passes a written examination administered at a location by an official approved by the college or university; the subject matter was appraisal related; and that the course or offering is a minimum of 15 classroom hours in length.

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H. A teacher of appraisal courses may receive either education credit for the classroom hour(s) taught or experience credit for the classroom hour(s) taught, but not both. These credits shall be awarded only once for courses having substantially equivalent content.

§ 5.5. Course approval fees.

Course Approval Fee \$200 \$135

§ 5.6. Re-approval of courses required.

Approval letters issued under these regulations for educational offerings shall expire two years from the last day of the month in which they were issued, as indicated in the approval letter.

Footnotes

¹ The Uniform Standards of Professional Appraisal Practice ("USPAP") Copyright (c) 1987, 1990 are published by the Appraisal Foundation. All rights reserved. Copies of the Uniform Standards of Professional Appraisal Practice are available from the Appraisal Foundation, 1020 Vermont Avenue, NW, Suite 900, Washington D.C. 20005. The cost is \$25.

Some of the provisions contained in the Uniform Standards of Professional Appraisal Practice are inapplicable to real estate appraisals, and therefore are not applicable to Virginia Appraiser Board licensees. For example, the USPAP includes standards for the performance of personal property appraisals and a license is not required to perform such appraisals.

² The board shall not be responsible for the licensee's/registrant's failure to receive notices, communications and correspondence

caused by the licensee's/registrant's failure to promptly notify the board of any change of address.

³ The board shall not be responsible for the licensee's/registrant's failure to receive notices, communications and correspondence caused by the licensee's/registrant's failure to promptly notify the board of any change of name.

⁴ Application of the Departure Provision of USPAP is not allowed for all federally related transactions requiring the services of an appraiser.

VA.R. Doc. No. R95-58; Filed October 17, 1994, 11:56 a.m.

REAL ESTATE APPRAISER
LICENSE APPLICATION FORM

Lic. No. _____
Date _____
Code _____
Initials _____

Please Print

1. Name: _____
(Last) (First) (Middle)
2. Generation: ___ Jr. ___ Sr. ___ I. ___ II. ___ III. ___ IV. ___ V.
3. Social Security Number: _____
Not Required; but will assist in the maintenance of accurate license files and the reporting of your name to the National Registry.
4. Date of Birth: ___ Month ___ Day ___ Year
5. Address: _____
(Street)

(P. O. Box)
6. City: _____
7. State: _____ 8. Zip Code: _____
9. Telephone: _____
Where you can be reached between 9:00am & 5:00pm.
10. Application Type: ___ Original ___ Reciprocal
11. License Type: ___ Certified General
___ Certified Residential
___ Licensed Residential
___ Temporary Certified General
___ Temporary Certified Residential
___ Temporary Licensed Residential
12. If you are applying for a Temporary License, identify the specific assignment below by type and location (Address, City, & State).

- 12A. Project Termination Date: ___ Month ___ Day ___ Year
13. Have you had a real estate appraiser license or certification which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction? ___ Yes ___ No

If yes, provide the name of the jurisdiction and the date of the disciplinary action.

14. Have you ever been convicted found guilty or plead guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony?
___ Yes ___ No

If yes, the following items may be required to be included with this application: 1. Original FBI Record; and 2. Original State Police Criminal History Record. And the following will be required to be included with the application: 1. Certified True Copies of Court Papers; and 2. your brief written account of the part you played as well as the final resolution of the matter. _____

15. Have you ever been issued a real estate appraiser license in Virginia? ___ Yes ___ No

If Yes, please give date(s) and license number(s) below.

16. Have you ever been issued a real estate appraiser license or certification in any other jurisdiction? ___ Yes ___ No

If Yes, please name those jurisdictions:

17. All applicants must complete this section:

I hereby certify that I have attained the number of months and hours of experience as a real estate appraiser as defined in the regulations of the Real Estate Appraiser Board for the type of license for which I am applying. I understand that the Real Estate Appraiser Board may request proof of this experience in the form of written reports or file memoranda which shall be made available to the Board upon request.

I also hereby certify that I have met the educational requirements as set forth in the Real Estate Appraiser Board regulations for the type of license for which I am applying.

Further, if my address listed on this application or at any time in the future is not within the state of Virginia, I do hereby irrevocably consent that suits and legal actions may be commenced against me in the proper courts of the state of Virginia in accordance with the provisions of Chapter 20, Title 54.1, Section 54.1-2019 of the Code of Virginia.

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application, and that I have read and understand the Real Estate Appraiser Board Regulations, the Uniform Standards of Professional Appraisers Practice, Virginia license laws and this statement.

Signature of Applicant _____ Date _____

REAL ESTATE APPRAISER
 TRAINEE
 LICENSE APPLICATION FORM

Lic. No. _____
 Date _____
 Code _____
 Initials _____

Please Print

1. Name: _____
 (Last) (First) (Middle)
 2. Generation: ___ Jr. ___ Sr. ___ I. ___ II. ___ III. ___ IV. ___ V.

3. Social Security Number: _____
Not Required; but will assist in the maintenance of accurate license files and the reporting of your name to the National Registry.

4. Date of Birth: ___ Month ___ Day ___ Year

5. Address: _____
(Street)

(P. O. Box)

6. City: _____

7. State: _____ 8. Zip Code: _____

9. Telephone: _____
Where you can be reached between 9:00am & 5:00pm.

10. Have you had a real estate appraiser license or certification which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction? ___ Yes ___ No

If yes, provide the name of the jurisdiction and the date of the disciplinary action.

11. Have you ever been convicted found guilty or plead guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony?
 ___ Yes ___ No

If yes, the following items may be required to be included with this application: 1. Original FBI Record; and 2. Original State Police Criminal History Record. And, the following will be required to be included with the application 1. Certified True Copies of Court Papers; and 2. your brief written account of the part you played as well as the final resolution of the matter.

12. Have you ever been issued a real estate appraiser license in Virginia? ___ Yes ___ No

If Yes, please give date(s) and license number(s) below.

13. Have you ever been issued a real estate appraiser license or certification in any other jurisdiction? ___ Yes ___ No

If Yes, please name those jurisdictions and provide original letters of good standing not less than 60 days of age:

14. All applicants must complete this section:

I also hereby certify that I have met the educational requirements as set forth in the Real Estate Appraiser Board regulations for the type of license for which I am applying.

Further, if my address listed on this application or at any time in the future is not within the state of Virginia, I do hereby irrevocably consent that suits and legal actions may be commenced against me in the proper courts of the state of Virginia in accordance with the provisions of Chapter 20, Title 54.1, Section 54.1-2019 of the Code of Virginia.

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application, and that I have read and understand the Real Estate Appraiser Board Regulations, the Uniform Standards of Professional Appraisers Practice, Virginia license laws and this statement.

 Signature of applicant Date

The consideration and approval of this application is conditionally dependant upon the supervision of the applicant by a licensed Virginia Appraiser in good standing (§ 2.5.4 of the Board's Regulations).

The following information is to be completed by the applicant's supervisor.

15. Name: _____
 (Last) (First) (Middle)

16. Generation: ___ Jr. ___ Sr. ___ I. ___ II. ___ III. ___ IV. ___ V.

17. Social Security Number: _____
Not Required; but will assist in the maintenance of accurate license files and the reporting of your name to the National Registry.

18. Address: _____
(Street)

(P. O. Box)
19. City: _____
20. State: _____ 10. Zip Code: _____
21. Telephone: _____
Where you can be reached between 9:00am & 5:00pm.
22. Business Name: _____
23. Trading Name: _____
24. Address: _____
(Street)

(P. O. Box)
25. City: _____
26. State: _____ 10. Zip Code: _____
27. Business Telephone: _____
28. Appraiser License Number: _____
29. Level of Licensure: _____
30. Business License Number: _____
If applicable.

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application, and that I have read and understand the Real Estate Appraiser Board Regulations, the Uniform Standards of Professional Appraisers Practice®, Virginia license laws and this statement.

 Signature of Supervising Appraiser Date

REAL ESTATE APPRAISER
 BUSINESS REGISTRATION APPLICATION

Lic. No.	_____
Date	_____
Code	_____
Initials	_____

Please Print

1. Business Name _____
2. Trading-as-Name _____
3. Tax I.D. Number _____
(not required)
4. Business Type Corporation Partnership Association Sole Proprietor
5. Business Address _____
(street name)
6. Business Address _____
(P.O. Box number only)
7. City _____
8. State _____ 9. Zip Code _____
10. Telephone Number _____
(where you can be reached between 9:00 a.m. and 5:00 p.m.)
11. Registered Agent, Partner, Associate or Sole Proprietor
(last name) (first name) (middle initials)
12. Generation Jr. Sr. I II III
13. Address _____
(street name)
14. Address _____
(P.O. Box number only)
15. City _____
16. State _____ 17. Zip Code _____
18. Has the above corporation, partnership or other business entity qualified to do business in Virginia in accordance with the laws of the state?
 Yes No
- If you, domestic corporations shall provide a copy of the Certificate of Incorporation as issued by the State Corporation Commission, foreign (out-of-state) corporations shall provide a copy of the Certificate of Authority as issued by the State Corporation Commission; partnerships shall supply a copy of a Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the Clerk of the Court where business is to be conducted. All applicants must provide the above information or your application cannot be processed.
19. I hereby certify that the above information is correct and that no information has been suppressed that might affect this application.

(print name and signature of President, General Partner, Attorney in Charge)

 Title Date

4794

APPLICATION FOR APPROVAL OF APPRAISAL COURSE OFFERING

COMMONWEALTH OF VIRGINIA

Department of Professional and Occupational Regulation
 Real Estate Appraiser Board
 P. O. Box 11066
 Richmond, Virginia 23230-1066

Application Fee \$135.00 (per course submitted)

.....

1. Course Title _____
 (Attach comprehensive course outline; syllabus; list of books, pamphlets, articles to be used by students and instructor in course)
2. Sponsor Organization Name _____
3. Street Address _____
 City _____ State _____ Zip Code _____
4. Individual responsible for the administration of the course _____
5. Grading _____

 (State minimum requirements, provide sample examination)
6. Attendance Policy _____

 (State minimum requirements)
7. Course Length: Number of Meetings _____ Hours Per Meeting _____ Meetings Per Week _____ Total Hours _____
8. Course Prerequisites, if any _____
9. Type of Institution: Proprietary School _____ Real Estate or Real Estate Appraisal Organization _____
10. Scheduling: Quarter _____ Semester _____ Other _____
11. Promotion _____

 (If advertising is used, please submit copies of typical advertisements and brochures)

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application.

Signature of Applicant _____ Date _____

9/6/94

APPLICATION FOR CERTIFICATION AS AN APPRAISAL INSTRUCTOR

COMMONWEALTH OF VIRGINIA
 Department of Professional and Occupational Regulation
 Real Estate Appraiser Board
 P. O. Box 11066
 Richmond, Virginia 23230-1066

Application Fee \$135.00

1. Name _____
 Last First Middle
2. Street Address _____
 City _____ State _____ Zip Code _____
3. Social Security Number _____
 Not Required; but will assist in the maintenance of accurate license files.

To receive a certificate as an appraiser instructor the applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. You must provide a letter of certification from each state of licensure!

Additionally, the applicant must meet one of the three following qualifications. Please indicate preference.

- () 1. Baccalaureate degree in real estate, economics, finance, or business, and have satisfied the state appraisal licensing education requirements for the level being instructed; or
- () 2. Baccalaureate degree, an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed; or
- () 3. Seven years of active experience acquired in the appraisal field in the past 10 years, an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed.

If qualifying under Item 1, please provide a copy of transcript, and proof of completion of the required number of hours of appraisal education. Evidence of coursework may be provided in the form of a transcript, certificate or letter of completion.

If qualifying under Item 2, please provide a copy of a transcript, a letter of good standing, and a current appraiser license.

If qualifying under Item 3, please provide an affidavit of experience, a letter of good standing, and a current appraiser license.

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application.

Signature _____ Date _____

9/6/94

EMERGENCY REGULATIONS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993.

Statutory Authority: §§ 36-98 and 36-99.10:1 of the Code of Virginia.

Effective Date: October 17, 1994, through October 16, 1995, or until permanent regulations are adopted, whichever occurs first.

Pursuant to the authorization of the Governor for adoption of emergency regulations and the authority of § 9-6.14:7.1 of the Code of Virginia, the following regulations become effective on an emergency basis.

Duration of Emergency Regulation - This regulation shall remain in effect through October 16, 1995, or until permanent regulations are adopted under the Administrative Process Act, whichever first occurs.

Submitted by:

/s/ Robert J. Adams
Acting Director
Department of Housing and Community Development
Date: September 19, 1994

Approved by:

/s/ Robert T. Skunda
Secretary of Commerce and Trade
Date: September 27, 1994

Approved by:

/s/ George Allen
Governor
Commonwealth of Virginia
Date: October 11, 1994

Filed with:

/s/ Joan W. Smith
Registrar of Regulations
Date: October 17, 1994

Preamble:

Section 36-99.10:1 of the Code of Virginia requires the Board of Housing and Community Development to promulgate, by October 1, 1994, regulations for installation of acoustical treatment measures for construction of residential buildings and structures, or portions thereof, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. The adoption of these regulations as emergency regulations will enable

the board to carry out its statutory responsibilities. The board will initiate actions to develop final regulations as required by the Administrative Process Act in § 9-6.14:4.1 of the Code of Virginia.

VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993.

CHAPTER 1.

ADOPTION, ADMINISTRATION AND ENFORCEMENT.

SECTION 100.0.

GENERAL.

100.1. Title. These regulations shall be known as Volume I - New Construction Code of the 1993 edition of the Virginia Uniform Statewide Building Code. Except as otherwise indicated, USBC, and code, as used herein, shall mean Volume I - New Construction Code of the 1993 edition of the Virginia Uniform Statewide Building Code.

Note: See Volume II - Building Maintenance Code for maintenance regulations applying to existing buildings.

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

100.3. Purpose and scope. The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility. As provided in the Uniform Statewide Building Code Law, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any construction, reconstruction, alterations, conversion, repair or use of buildings and installation of equipment therein. The USBC does not supersede zoning ordinances or other land use controls that do not effect the manner of construction or materials to be used in the construction, alteration or repair of a building.

100.4. Adoption. The 1993 edition of the USBC was adopted by order of the Board of Housing and Community Development on December 13, 1993. This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.5. Effective date. The 1993 edition of the USBC shall become effective on April 1, 1994.

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100.6. Application. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after April 1, 1994. Buildings and structures that were designed within one year prior to April 1, 1994, shall be subject to the previous edition of the code provided that the permit application is submitted by April 1, 1995. This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

100.7. Exemptions. The following buildings, structures and equipment are exempted from the requirements of the USBC:

1. Farm buildings and structures not used for residential purposes; however, such buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to the applicable flood proofing or mudslide regulations.

2. Equipment installed by a provider of publicly regulated utility service and electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights; however, the buildings, including their service equipment, housing such public service agencies shall be subject to the USBC.

3. Manufacturing and processing machines and the following service equipment:

a. All electrical equipment connected after the last disconnecting means.

b. All plumbing appurtenance connected after the last shutoff valve or backflow protection device.

c. All plumbing appurtenance connected before the equipment drain trap.

d. All gas piping and equipment connected after the outlet shutoff valve.

4. Parking lots and sidewalks; however, parking lots and sidewalks which form part of an accessible route, as defined by the Americans With Disabilities Act Accessibility Guidelines shall comply with the requirements of Chapter 11.

5. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is a residential accessory use not regulated by the Virginia Amusement Device Regulations.

SECTION 101.0.

REFERENCE STANDARDS AND AMENDMENTS.

101.1. Adoption of model codes and standards. The following model building codes and all portions of other model codes and standards that are referenced in this Code are hereby adopted and incorporated in the USBC. Where differences occur between provisions of the USBC and the referenced model codes or standards, the provisions of the USBC shall apply. Where differences occur between the technical provisions of the model codes and their referenced standards, the provisions of the model code shall apply.

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/1993 EDITION

(also referred to herein as BOCA Code)

Published by:

Building Officials and Code Administrators
International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60478-5795
Telephone No. (708) 799-2300

Note: The following major subsidiary model codes are among those included by reference as part of the BOCA National Building Code/1993 Edition:

BOCA National Plumbing Code/1993 Edition

BOCA National Mechanical Code/1993 Edition

NFiPA National Electrical Code/1993 Edition

The permit applicant shall have the option to select as an acceptable alternative for detached one and two family dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:

CABO ONE AND TWO FAMILY DWELLING CODE/1992 EDITION and 1993 Amendments (also referred to herein as One and Two Family Dwelling Code)

Jointly published by:

Building Officials and Code Administrators
International, Inc.

Southern Building Code Congress International, Inc.

and International Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the referenced model codes that relate to fees, permits, certification of fitness, unsafe notices, unsafe conditions, maintenance, disputes, condemnation, inspections, existing buildings, existing structures, certification of compliance, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the provisions of Chapter 1 of the USBC.

Note: The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration and enforcement of the USBC.

101.3. Amendments to the BOCA Code. The amendments noted in Addendum 1 of the USBC shall be made to the specified chapters and sections of the BOCA National Building Code/1993 Edition for use as part of the USBC.

101.4. Amendments to the One and Two Family Dwelling Code. The amendments noted in Addendum 2 of the USBC shall be made to the indicated chapters and sections of the One and Two Family Dwelling Code/1992 Edition and 1993 Amendments for use as part of the USBC.

SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

102.1. Responsibility of local governments. Enforcement of the USBC Volume I shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Whenever a local government does not have such a building department, it shall enter into an agreement with another local government or with some other agency, or a state agency approved by the Virginia Department of Housing and Community Development for such enforcement. The local building department and its employees may be designated by such names or titles as the local government considers appropriate.

102.2. Building official. Each local building department shall have an executive official in charge, hereinafter referred to as the building official.

102.2.1. Appointment. The building official shall be appointed in a manner selected by the local government having jurisdiction. After appointment, he shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. The local government shall notify the Training and Certification Office within 30 days of the appointment or release of the building official. A Virginia certified building official shall complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment. A building official not certified by Virginia shall attend the core program of the Virginia Building Code Academy, or an

approved regional academy, within 90 days after appointment.

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.2.3. Certification. The building official shall be certified in accordance with Part III of the Virginia Certification Standards (VR 394-01-2) within three years after the date of employment.

Exception: An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment as the building official in another jurisdiction.

102.3. Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.3.1. Certification of technical assistants. Any person employed by, or under contract to, a local governing body for determining compliance with the USBC shall be certified in his trade field within three years after the date of employment in accordance with Part III of the Virginia Certification Standards (VR 394-01-2).

Exception: An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or

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other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal representative.

102.5. Control of conflict of interests. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

SECTION 103.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

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

103.2. Modifications. The building official may grant modifications to any of the provisions of the USBC upon application by the owner or the owner's agent provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.

Note: The current editions of many nationally recognized model codes and standards are referenced by the Uniform Statewide Building Code. Future amendments do not automatically become part of the USBC; however, the building official should give consideration to such amendments in deciding whether a requested modification should be granted. See State Building Code Technical Review Board Interpretation Number 64/81 issued November 16, 1984.

103.2.1. Supporting data. The building official may require the application to include architectural and engineering plans and specifications that include the seal of a professional engineer or architect. The building official may also require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

103.2.2. Records. The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of use and occupancy in the permanent records

of the local building department.

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

103.4. Department records. The building official shall keep records of applications received, permits and certificates issued, reports of inspections, notices and orders issued and such other matters as directed by the local government. A copy of the certificate of use and occupancy and a copy of any modification of the USBC issued by the building official shall be retained in the official records, as long as the building to which it relates remains in existence. Other records may be disposed of in accordance with the provisions of the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia), (i) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, or (ii) after three years in the case of all other buildings.

SECTION 104.0. FEES.

104.1. Fees. Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

104.2. When payable. A permit shall not be issued until the fees prescribed by the local government have been paid to the authorized agency of the jurisdiction, nor shall an amendment to a permit be approved until any required additional fee has been paid. The local government may authorize delayed payment of fees.

104.3. Fee schedule. The local government shall establish a fee schedule. The schedule shall incorporate unit rates which may be based on square footage, cubic footage, cost of construction or other appropriate criteria.

104.4. Refunds. In the case of a revocation of a permit or abandonment or discontinuance of a building project, the local government shall provide fee refunds for the portion of the work which was not completed.

104.5. Fee levy. Local governing bodies shall charge each permit applicant an additional 1.0% of the total fee for each building permit. This additional 1.0% levy shall be transmitted quarterly to the Department of Housing and Community Development and shall be used to support the training programs of the Virginia Building Code Academy.

Exception: Localities which maintain training academies that are accredited by the Department of Housing and Community Development may retain such levy.

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104.5.1. Levy adjustment. The Board of Housing and Community Development shall annually review the percentage of this levy and may adjust the percentage not to exceed 1.0%. The annual review shall include a study of the operating costs for the previous year's Building Code Academy, the current balance of the levy collected, and the operational budget projected for the next year of the Building Code Academy.

104.5.2. Levy cap. Annual collections of this levy which exceed \$500,000, or any unobligated fund balance greater than one-third of that fiscal year's collections shall be credited against the levy to be collected in the next fiscal year.

SECTION 105.0. APPLICATION FOR CONSTRUCTION PERMIT.

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

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities, ventilation or sanitary provisions.
3. Installing or altering any equipment which is regulated by this code.
4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation of or additions to buildings or structures.

Exceptions:

1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include the removal, disturbance, encapsulation, or enclosure of any asbestos containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:

- a. Painting.

b. Roofing when not exceeding 100 square feet of roof area.

c. Glass when not located within specific hazardous locations as defined in Section 2405.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.

d. Doors, except those in fire-rated wall assemblies or exitways.

e. Floor coverings and porch flooring.

f. Repairs to plaster, interior tile work, and other wall coverings.

g. Cabinets installed in residential occupancies.

h. Wiring and equipment operating at less than 50 volts.

2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fire-resistance rated assembly.

3. Detached utility sheds 150 square feet or less in area and eight feet six inches or less in wall height when accessory to any Use Group building except Use Groups H and F.

105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written application.

105.2. Who may apply for a permit. Application for a permit shall be made by the owner or lessee of the building or agent of either, or by the licensed professional engineer, architect, contractor or subcontractor (or their respective agents) employed in connection with the proposed work. If the application is made by a professional engineer, architect, contractor or subcontractor (or any of their respective agents), the building official shall verify that the applicant is either licensed to practice in Virginia, or is exempt from licensing under the Code of Virginia. The full names and addresses of the owner, lessee and the applicant, and of the responsible officers if the owner or lessee is a corporate body, shall be stated in the application. The building official shall accept and process permit applications through the mail. The building official shall not require the permit applicant to appear in person.

105.3. Form of application. The application for a permit shall be submitted on forms supplied by the building official.

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the

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site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of the architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

Exceptions:

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.
2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included in Addendum 9.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection. Any plan review comments requiring additional information, engineering details, or stating reasons for rejection of plans and specifications, shall be made in writing either by letter or a plans review form

from the building official's office, in addition to notations or markings on the plans.

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided adequate information and detailed statements have been filed indicating compliance with the pertinent requirements of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. For buildings more than two stories in height, the building official may require that plans indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems. The plans shall show the material and methods for protecting such openings so as to maintain the required structural integrity, fire-resistance ratings, and firestopping affected by such penetrations.

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building to be renovated or demolished until the local building department receives a certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 of the Code of Virginia and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.

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The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than 35 cubic feet of facility components where the length or area could not be measured previously.

105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or
2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

105.10.2. Reoccupancy. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

105.11. Amendments to application. Amendments to plans, specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for reasonable cause, the building official may grant one or more extensions of time.

SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as required by Section 1705.0.

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC, the building official shall approve items listed by nationally recognized independent testing laboratories or may consider the recommendations of engineers and architects licensed in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum 4. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

SECTION 109.0. CONSTRUCTION PERMITS.

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109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

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

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

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

109.8. Suspension of permit. Any permit issued shall become invalid if work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. It shall be the responsibility of the permit applicant to prove to the building official that work has not been suspended or abandoned. Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.
3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete is placed.
4. Structural framing and fastenings prior to covering with concealing materials.
5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.
6. Required insulating materials before covering with any materials.
7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms

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with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by Section 1705.0.

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and to confirm continuation of work per Section 109.8 or for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work in writing or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the USBC.

SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such person by mail to the last known address, delivering the notice in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC. Compliance with a notice of violation notwithstanding, the building official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain a required construction permit prior to commencement of work regulated under the USBC.

112.4. Violation penalties. Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than \$2,500.

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

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STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a certificate of use and occupancy has been issued by the building official. Final inspection approval(s) shall serve as the certificate of use or occupancy for any addition or alteration to a building or structure which already has a valid certificate of use or occupancy.

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of

use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations, conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

115.6. Suspension or revocation of certificate of occupancy. The building official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

SECTION 116.0. APPEALS.

116.1. Local Board of Building Code Appeals (BBCA). Each jurisdiction shall have a BBCA to hear appeals as authorized herein or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency approved by the Department of Housing and Community Development, to act on appeals. The BBCA shall also hear appeals under Volume II of the USBC, the Building Maintenance Code, if the jurisdiction has elected to enforce that code. The jurisdiction may have separate BBCAs provided that each BBCA complies with this section. An appeal case decided by a separate BBCA shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB).

116.2. Membership of BBCA. The BBCA shall consist of at least five members appointed by the jurisdiction and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and, as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed

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Written records of current membership, including a record of the current chairman and secretary, shall be maintained in the office of the jurisdiction. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

116.2.1. Chairman. The BBCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

116.2.2. Secretary. The jurisdiction shall appoint a secretary to the BBCA to maintain a detailed record of all proceedings.

116.3. Qualifications of BBCA members. BBCA members shall be selected by the jurisdiction on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. Employees or officials of the jurisdiction shall not serve as members of the BBCA. At least one member should be an experienced builder and one member a licensed professional engineer or architect.

116.4. Disqualification of member. A member shall not hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639 et seq.) of Title 2.1 of the Code of Virginia.

116.5. Application for appeal. The owner of a building or structure, the owner's agent or any other person involved in the design or construction of the building or structure may appeal a decision of the building official concerning the application of the USBC or his refusal to grant a modification to the provisions of the USBC covering the manner of construction or materials to be used in the erection, alteration or repair of that building or structure. The applicant shall submit a written request for appeal to the BBCA within 90 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written decision of the building official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the building official's decision.

116.6. Notice of meeting. The BBCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

116.7. Hearing procedures. All hearings before the BBCA shall be open to the public. The appellant, the appellant's representative, the jurisdiction's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

116.7.1. Postponement. When five members of the BBCA are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing. The BBCA shall reschedule the appeal within 30 calendar days of the postponement.

116.8. Decision. The BBCA shall have the power to reverse or modify the decision of the building official by a concurring vote of a majority of those present.

116.8.1. Resolution. The decision of the BBCA shall be by resolution signed by the chairman and retained as part of the record by the BBCA. The following wording shall be part of the resolution:

"Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to the State Building Code Technical Review Board within 21 calendar days. Application forms are available from the Office of the State Building Code Technical Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

Copies of the resolution shall be furnished to all parties.

116.9. Appeal to the TRB. After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Appeals by an involved state agency from the decision of the building official for state-owned buildings shall be made directly to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BBCA's resolution or building official's decision.

116.9.1. Information to be submitted. Copies of the decision of the building official and the resolution of the BBCA shall be submitted with the application for appeal. Upon request by the office of the TRB, the jurisdiction shall submit a copy of all pertinent information from the record of the BBCA. In the case of state-owned buildings, the involved state agency shall submit a copy of the building official's decision and other relevant information.

116.9.2. Decision of TRB. Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 (§ 36-107.1 et seq.) of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the building official shall take action

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accordingly.

SECTION 117.0. EXISTING BUILDINGS AND STRUCTURES.

117.1. Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fireresistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

117.1.1. Damage, restoration or repair in flood hazard zones. Buildings located in any flood hazard zone which are altered or repaired shall comply with the floodproofing requirements applicable to new buildings in the case of damages or cost of reconstruction or restoration which equals or exceeds 50% of the market value of the building before either the damage occurred or the start of construction of the improvement.

Exceptions:

1. Improvements required under Volume II of the USBC necessary to assure safe living conditions.
2. Alterations of historic buildings provided the alteration would not preclude the building's continued

designation as an historic building.

117.1.2. Requirements for accessibility. Buildings and structures which are altered or to which additions are added shall comply with applicable requirements of Chapter 11.

117.2. Conversion of building use. No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

117.3. Alternative method of compliance. Compliance with the provisions of Chapter 34 for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

SECTION 118.0. MOVED BUILDINGS.

118.1. General. Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or repairs made pursuant to the move have been done in compliance with the USBC.

118.2. Certificate of use and occupancy. Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

SECTION 119.0. UNSAFE BUILDINGS.

119.1. Right of condemnation before completion. Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise

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dangerous to human life or the public welfare, shall be deemed either a public nuisance or an unsafe building. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

119.1.1. Inspection of unsafe buildings; records. The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

119.1.2. Notice of unsafe building. If a building is found to be unsafe the building official shall serve a written notice on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

119.1.3. Posting of unsafe building notice. If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

119.1.4. Disregard of notice. Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

119.1.5. Vacating building. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

119.1.6. Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates

an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

119.2. Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to § 36-105 of the Code of Virginia.

119.3. Abatement or removal. Whenever the owner of a building that has been deemed to be a public nuisance or unsafe, pursuant to Section 119.1 or Section 119.2, fails to comply with the requirements of the notice to abate, the building official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

SECTION 120.0. DEMOLITION OF BUILDINGS.

120.1. General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and appurtenant equipment have been removed or sealed and plugged in a safe manner.
2. Any certificate required by Section 105.10 has been received by the building official.
3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

120.2. Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of Chapter 33 of the BOCA Code.

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ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL BUILDING CODE/1993 EDITION.

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/1993 Edition for use as part of the USBC.

CHAPTER 1. ADMINISTRATION AND ENFORCEMENT.

Entire chapter is deleted and replaced by Chapter 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

CHAPTER 2. DEFINITIONS.

(A) Change the following definitions in Section 202.0, General Definitions, to read:

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the USBC, but such buildings lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof" unless the context clearly requires a different meaning. The word "building" includes the word "structure."

Dwellings:

"Boarding house" means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

"Dormitory" means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

"Hotel" means any building containing six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Multi-family apartment house" means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

"One-family dwelling" means a building containing one dwelling unit.

"Two-family dwelling" means a building containing two dwelling units.

"Jurisdiction" means the local governmental unit which is responsible for enforcing the USBC under state law.

"Mobile unit" means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building.

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

(B) Add these new definitions to Section 202.0, General Definitions:

"Family" means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping unit in a dwelling unit.

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

"Historic building" means any building that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Virginia Department of Historic Resources' inventory of historic places; or

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4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Virginia Department of Historic Resources.

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

"Manufactured home" means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Night club" means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food or alcoholic beverages or both; and provides music and space for dancing.

"Plans" means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

"Public nuisance" means, for the purposes of this code, any public or private building, wall or structure deemed to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy or use, or the condition of which constitutes a menace to the health and safety of the occupants thereof or to the public.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

"Specifications" means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

CHAPTER 3. USE OR OCCUPANCY.

(A) Add an exception to Section 308.2 to read as follows:

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Reserved.

CHAPTER 4. SPECIAL USE AND OCCUPANCY.

(A) Add an exception to Section 417.6 to read as follows:

Exception: The storage, dispensing and utilization of flammable and combustible liquids, in excess of the exempt amounts, at automotive service stations shall be in accordance with the fire prevention code listed in Chapter 35.

(B) Change Section 420.0 to read as follows:

SECTION 420.0. MOBILE UNITS AND MANUFACTURED HOMES.

420.1. General. Mobile units, as defined in Section 202.0, shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

420.2. Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to withstand wind forces and uplift as required in Chapter 16 for buildings and structures, based upon the size and weight of the mobile unit.

420.3. Support and anchorage of manufactured homes. The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tiedowns, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

420.3.1. Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's

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specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greensville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

420.3.2. Flood hazard zones. Manufactured homes and mobile units which are located in a flood hazard zone shall comply with the requirements of Section 3107.1.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

420.4. Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Chapter 35 shall be accepted as meeting the USBC.

420.5. Skirting. Manufactured homes installed or relocated shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(C) Add new Section 422.0 to read as follows:

SECTION 422.0. MAGAZINES.

422.1. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(D) Add new Section 423.0 to read as follows:

SECTION 423.0. STORAGE TANKS.

423.1. General. The installation, upgrade, or closure of any storage tanks containing an accumulation of regulated substances, shall be in accordance with the Storage Tank Regulations adopted by the State Water Control Board. Storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Sections 417.0 and 418.0.

CHAPTER 9. FIRE PROTECTION SYSTEMS.

(A) Change Section 904.9 Exceptions to read as follows:

The following exceptions may be applied only when adequate water supply is not available at the proposed building site.

For the purposes of this section "adequate" means the necessary water pressure and volume provided by a water purveyor.

Exceptions.

1. Buildings which do not exceed two stories, including basements which are not considered as a story above grade, and with a maximum of 12 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Buildings where all dwelling units or bedrooms are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedrooms of a dormitory or boarding house and every two dwelling units or bedrooms of a dormitory or boarding house are separated from other dwelling units or bedrooms of a dormitory or boarding house in the building by fire separation assemblies (see Sections 709.0 and 713.0) having a fire resistance rating of not less than two hours.

(B) Add new Section 904.12 to read as follows:

904.12. Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.

2. Adequate public water supply is available to meet

the needs of the suppression system.

3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 503.3, 504.2, 506.3, 705.2.3, 705.3.1, 720.7.1, 720.7.2, 803.4.3, and any others not specifically listed shall be granted.

4. The requirements of Section 403.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and structures affected by this section.

(C) Change Section 917.4.6 to read as follows:

917.4.6. Use Group R-2. A fire protective signaling system shall be installed and maintained in all buildings of Use Group R-2 where any dwelling unit or bedroom is located three or more stories above the lowest level of exit discharge or more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedroom.

(D) Add new Section 917.8.3 to read as follows:

917.8.3. Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

CHAPTER 10. MEANS OF EGRESS.

(A) Reserved.

(B) Change Section 1017.4.1 Exception 6 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(C) Add new Section 1017.4.4.1.

1017.4.4.1. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

(D) Add new Section 1017.4.4.2.

1017.4.4.2. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

CHAPTER 11. ACCESSIBILITY.

Entire Chapter 11 is deleted and replaced with the following new Chapter 11.

1101.1. General. This chapter establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

1101.2. Where required. The provisions of this chapter shall apply to all buildings and structures, including their exterior sites and facilities.

Exceptions:

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.

2. Buildings and structures classified as Use Group U.

3. Those buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section.

4. Those buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.

1101.2.1. Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.

1101.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

Emergency Regulations

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).

2. Title 24 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and 35599-35602 (July 26, 1991).

CHAPTER 12. INTERIOR ENVIRONMENT.

(A) Add the following definitions to Section 1202.1:

"DAY-NIGHT AVERAGE SOUND LEVEL (*Ldn*)" means a 24-hour energy average sound level expressed in dBA, with a ten decibel penalty applied to noise occurring between 10:00 P.M. and 7:00 A.M.

"SOUND TRANSMISSION CLASS (*STC*) RATING" means a single number rating characterizing the sound reduction performance of a material tested in accordance with ASTM E 90-90, "Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions."

(A) (B) Add new Section 1208.5 as follows:

1208.5. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(C) Add new Section 1214.4 as follows:

1214.4. Aircraft noise attenuation: Pursuant to the provisions of § 15.1-491.03 of the Code of Virginia a local governing body may implement Section 1214.4.1.

1214.4.1. Acoustical isolation requirement: All residential use group buildings or portions thereof constructed or placed within an airport noise zone shall be constructed in accordance with the requirements of Section 1214.4.1.1 or Section 1214.4.1.2.

1214.4.1.1. Minimum sound transmission: Buildings located within airport noise zones shall be provided with minimum sound transmission class (*STC*) rated assemblies as follows:

1. 65-69 Day-Night average sound level (*Ldn*) zone; roof/ceiling and exterior walls 39 *STC*, doors and windows 25 *STC*.

2. 70-74 *Ldn* zone; roof/ceiling and exterior walls 44 *STC*, doors and windows 33 *STC*.

3. 75 or greater *Ldn* zone; roof/ceiling and exterior walls 49 *STC*, doors and windows 38 *STC*.

Note: For the purpose of this section *STC* ratings for doors and windows shall be determined by addition of the *STC* value of components used.

1214.1.2. Sound isolation design: Buildings located within airport noise zones shall be designed and constructed to limit the interior noise level to 45 *Ldn* maximum. Sound isolation design shall be permitted to include exterior structures, terrain and permanent plantings. The sound isolation design shall be certified by a licensed architect or engineer.

(B) (D) Add new Section 1216.0 as follows:

SECTION 1216.0. HEATING FACILITIES.

1216.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

1216.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

CHAPTER 13.

ENERGY CONSERVATION.

Entire Chapter 13 is deleted and replaced with the following new Chapter 13.

1301.1. General. This chapter establishes the requirements for energy conservation to be applied during the design, construction and alteration of buildings and structures.

1301.2. Scope. The provisions of this chapter shall apply to all buildings and structures.

1301.3. Referenced standard. The following standard is hereby incorporated by reference for use in determining compliance with this section:

CABO Model Energy Code (MEC) 1993 Edition

CHAPTER 16. STRUCTURAL LOADS.

(A) Revise Section 1612.1 by adding Exception 5 to read:

5. Buildings assigned to seismic performance Category B, according to Section 1612.1.7 and seismic hazard exposure group I according to Section 1612.1.5, which comply with all of the following, need only comply with Section 1612.3.6.1.

a. The height of the building does not exceed four stories.

b. The height of the building does not exceed 40 feet.

c. AvS is less than 0.10 and the soil profile type has been verified.

d. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(B) Revise Section 1612.3.5.2 by adding an exception to read:

Exception: Regular or irregular buildings assigned to Category B which are seismic hazard exposure group I are not required to be analyzed for seismic forces for the building as a whole, providing all of the following apply:

1. The height of the building does not exceed four stories.

2. The height of the building does not exceed 40 feet.

3. AvS is less than 0.10 and the soil profile type has been verified.

4. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(C) Revise Section 1612.3.6.2 by adding an exception to read:

Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for the building as a whole by Section 1612.3.5.2 need only comply with Section 1612.3.6.1.

CHAPTER 17. STRUCTURAL TESTS AND INSPECTIONS.

(A) Add new Section 1701.4 to read as follows:

1701.4. Lead based paint. Lead based paint with a lead content of more than .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1705.1 to read as follows:

1705.1. General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.

(C) Delete Section 1705.12, Special cases.

CHAPTER 21. MASONRY.

Revise Section 2104.2 by adding an exception to read:

Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for a building as a whole by Section 1612.3.5.2 are permitted to be designed in accordance with the requirements of either Section 2101.1.1 or 2101.1.2.

CHAPTER 23. WOOD.

Add new Section 2310.2.3 to read as follows:

2310.2.3. Acceptance. Fire retardant-treated plywood shall not be used as roof sheathing without providing the building official with nationally recognized test results, satisfactory past product performance, or equivalent indicators of future product performance that address longevity of service under typical conditions of proposed installation as well as the degree to which it retards fire, structural strength, and other characteristics.

CHAPTER 27.

Emergency Regulations

ELECTRIC WIRING, EQUIPMENT AND SYSTEMS.

(A) Change Section 2701.1 to read as follows:

2701.1. Scope. The provisions of this chapter shall control the design and construction of all new installations of electrical conductors, equipment and systems in buildings or structures, and all alterations to existing wiring systems therein to ensure safety. All such installations shall conform to the provisions of NFPA 70 listed in Chapter 35 as amended below:

Change Section 550-23(a) Exception 2 by deleting item (a).

(B) Add Section 2701.5 to read as follows:

2701.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

CHAPTER 28. MECHANICAL SYSTEMS.

(A) Change Section 2801.2 to read as follows:

2801.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Chapter 35, as amended below:

1. Delete Chapter 17, Air Quality.
2. Add note to M-601.1 to read as follows:

Note: Boilers and pressure vessels constructed under this chapter shall also be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

3. Change Section M-813.3 to read as follows:

M-813.3. Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel dispensing systems for CNG vehicles shall be designed and installed in accordance with NFPA 52 listed in Chapter 21. The referenced standard within NFPA 52 Section 2-11.5 and 6-1.2.6., shall be AGA/CGA NGV 1, Compressed Natural Gas Vehicles (NGV) Fueling Connection Devices.

CHAPTER 29. PLUMBING SYSTEMS.

(A) Change Section 2901.1 to read as follows:

2901.1. Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of

this chapter and the plumbing code listed in Chapter 35 (BOCA National Plumbing Code/1993) as amended below:

1. Change Section P-304.1 to read as follows:

P-304.1. General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section P-304.3 to read as follows:

P-304.3. Public systems available. A public water supply system or public sewer system shall be deemed available to premises used for human occupancy if such premises are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section P-309.4 to read as follows:

P-309.4. Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section P-312.0, Toilet Facilities for Workers.

5. Add new Section P-606.2.3 to read as follows:

P-606.2.3. Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Delete Section P-1205.0, Accessible Plumbing Facilities.

7. Add new Section P-1503.3 :

P-1503.3. Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the public water main; or, in the case of an owner of both public water supply system and

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the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

8. Add Note to P-1508.4 to read as follows:

Note: Water heaters which have a heat input of greater than 200,000 BTU per hour, a water temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

9. Delete Chapter 16, Individual Water Supply.

(B) Change Section 2905.3 to read as follows:

2905.3. Private water supply. When public water mains are not used or available, a private source of water supply may be used. The State Department of Health shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

(C) Change Section 2906.1 to read as follows:

2906.1. Private sewage disposal. When water closets or other plumbing fixtures are installed in buildings which are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

CHAPTER 31. SPECIAL CONSTRUCTION.

(A) Delete Section 3102.4.1, New signs.

(B) Delete Section 3102.4.4, Construction Documents and Owner's Consent.

(C) Delete Section 3107.10, Alterations and Repairs.

CHAPTER 33. SITEWORK, DEMOLITION AND CONSTRUCTION.

(A) Change Section 3301.1 to read as follows:

3301.1. Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia Department of Labor and Industry.

CHAPTER 35. REFERENCED STANDARDS.

Add the following standard:

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 420.4).

ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/1992 EDITION AND 1993 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the CABO One and Two Family Dwelling Code/1992 Edition and 1993 Amendments for use as part of the USBC.

Chapter 1. Administrative.

Any requirements of Sections R-101 through R-117 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Chapter 1, Adoption, Administration and Enforcement of the USBC.

Chapter 2. Building Planning.

(A) Change Section R-203.5 to read as follows:

R-203.5. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

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Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

(B) Add Section R-203.6, Insect Screens:

R-203.6. Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(C) Change Section R-206 to read as follows:

SECTION R-206. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(D) Add to Section R-211:

Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(E) Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.

(F) Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. All detectors shall be connected to a sounding device or other detectors to provide, when activated, an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturers instructions. When one or more sleeping rooms are added or created in existing dwellings, the addition shall be provided with smoke detectors located as required for new dwellings.

(G) Add new Section R-218.4 as follows:

Section R-218.4. Aircraft Noise Attenuation: All use group R-4 buildings shall comply with USBC Vol I - 1993, Section 1214.4 where applicable.

(H) Add new Section R-223:

SECTION R-223. TELEPHONE OUTLETS

Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. The telephone wiring shall terminate on the exterior of the building at a point prescribed by the telephone company.

(I) Add new Section R-224:

SECTION R-224. LEAD BASED PAINT

Lead based paint with a lead content of more than .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

Chapter 3. Foundations.

Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing body having jurisdiction shall be floodproofed in accordance with the provisions of Section 3107.0 of the 1993 BOCA National Building Code.

PART VII. ENERGY CONSERVATION.

Emergency Regulations

Revise Part VII as follows:

The energy conservation requirements shall conform to Chapter 13 of the USBC, Volume I.

VA.R. Doc. No. R95-57; Filed October 17, 1994, 1:48 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-03-19. Coal Surface Mining Reclamation Regulations.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Dates: October 19, 1994, through October 18, 1995.

Summary:

The Department of Mines, Minerals and Energy is promulgating emergency regulations to amend Virginia's coal surface mining reclamation program. These amendments modify the provisions for use of scalp rock in backfilling highwalls at mine sites, and are necessary to avoid increased hazards to the public safety and the environment which could result from the application of federal refuse pile regulations to highwalls containing scalp rock.

Statement of Emergency and Necessity for Action:

The Department of Mines, Minerals and Energy (DMME) must promulgate emergency regulations to amend Virginia's coal surface mining reclamation program, which DMME operates under primacy from the U.S. Department of the Interior, Office of Surface Mining (OSM). This action is required because OSM, under its program oversight authority, has changed its interpretation of the federal surface coal mining regulations. OSM's new interpretation calls for substantial modifications to the practice of placing certain types of waste rock in backfills on surface coal mines. These modifications would result in increased hazards to the public safety and the environment. Therefore this emergency regulation is required.

The Department of Mines, Minerals and Energy will promulgate a permanent regulation to replace this emergency regulation in accordance with the Administrative Process Act and the agency's Public Participation Guidelines. The Department will establish a regulatory working group representing the public, industry, and government agencies to develop the permanent regulations.

The emergency regulation is designated as VR 480-03-19 of the Department of Mines, Minerals and Energy. The regulation shall become effective on October 19, 1994. The Department plans to have permanent regulations in place

before the emergency regulations expire in one year.

The Department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this emergency regulation.

Approved by:

/s/ George Allen
Governor
Date: October 11, 1994

Filed with the Registrar of Regulations on October 18, 1994.

VR 480-03-19. Coal Surface Mining Reclamation Regulations.

§ 480-03-19.816.102 Backfilling And Grading: General Requirements

- (a) Disturbed areas shall be backfilled and graded to—
- (1) Achieve the approximate original contour, except as provided in Paragraph (k) of this Section;
 - (2) Eliminate all highwalls, spoil piles, and depressions, except as provided in Paragraph (h) (small depressions) and in Paragraph (k)(3)(iii) (previously mined highwalls) of this Section;
 - (3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;
 - (4) Minimize erosion and water pollution both on and off the site; and
 - (5) Support the approved postmining land use.
- (b) Spoil, except excess spoil disposed of in accordance with §§ 480-03-19.816.71 through 480-03-19.816.75, shall be returned to the mined-out area.
- (c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.
- (d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
- (1) All vegetative and organic material shall be removed from the area.
 - (2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 480-03-19.816.22.

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(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with §§ 480-03-19.816.81 and 480-03-19.816.83 as provided in subparagraphs (1) and (2) of this section, except that a long-term static safety factor of 1.3 shall be achieved.

(1) Disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with § 480-03-19.816.81.

(2) Disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas shall be in accordance with §§ 480-03-19.816.81 and 480-03-19.816.83. The Division may approve a variance to § 480-03-19.816.83(a)(2) if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 480-03-19.816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Acid- and toxic-forming materials shall not be buried or stored in proximity to any drainage course.

(g) Cut-and-fill terraces may be allowed by the Division where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 480-03-19.816.49 and 480-03-19.816.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when—

(1) The standards for thin overburden in § 480-03-19.816.104 are met;

(2) The standards for thick overburden in § 480-03-19.816.105 are met; or

(3) Approval is obtained from the Division for—

(i) Mountaintop removal operations in accordance with § 480-03-19.785.14;

(ii) A variance from approximate original contour requirements in accordance with § 480-03-19.785.16; or

(iii) Incomplete elimination of highwalls in previously mined areas in accordance with § 480-03-19.816.106.

§ 480-03-19.817.102 Backfilling And Grading: General Requirements

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in Paragraph (k) of this Section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in Paragraph (h) (small depressions) and in Paragraph (k)(2) (previously mined highwalls) of this Section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except as provided in Paragraph (1) of this Section, and except excess spoil disposed of in accordance with §§ 480-03-19.817.71 through 480-03-19.817.75, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore

Emergency Regulations

the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

- (1) All vegetative and organic material shall be removed from the area.
- (2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 480-03-19.817.22.
- (3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with §§ 480-03-19.817.81 and 480-03-19.817.83 as provided in subparagraphs (1) and (2) of this section, except that a long-term static safety factor of 1.3 shall be achieved.

(1) Disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with § 480-03-19.817.81.

(2) Disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas shall be in accordance with §§ 480-03-19.817.81 and 480-03-19.817.83. The Division may approve a variance to § 480-03-19.817.83(a)(2) if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with § 480-03-19.817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Acid- and toxic-forming materials shall not be buried or stored in proximity to any drainage course.

(g) Cut-and-fill terraces may be allowed by the Division where—

- (1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
- (2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and

erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 480-03-19.817.49 and 480-03-19.817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the Division for—

(1) A variance from approximate original contour requirements in accordance with § 480-03-19.785.16; or

(2) Incomplete elimination of highwalls in previously mined areas in accordance with § 480-03-19.817.106.

(l) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of Paragraph (l)(1) or (l)(2) of this Section are met.

(1)(i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.

(ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(iv) The surface of the spoil or underground development waste shall be vegetated according to § 480-03-19.817.116, and surface runoff shall be controlled in accordance with § 480-03-19.817.43.

(2) If it is determined by the Division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Division may allow the existing spoil or underground development waste pile to remain in

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place. The Division may require stabilization of such spoil or underground development waste in accordance with the requirements of Paragraphs (1)(1)(i)-(1)(1)(iv) of this Section.

VA.R. Doc. No. R95-59; Filed October 18, 1994, 4:13 p.m.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

October 17, 1994

ADMINISTRATIVE LETTER 1994-8

TO: All Insurers, Health Services Plans, and Health Maintenance Organizations licensed to write Accident and Sickness Insurance in Virginia

RE: Freedom of choice requirements - Pharmacies and Ancillary Service Providers

Chapter No. 963 of the 1994 Acts of the General Assembly of Virginia (1994 House Bill 840), took effect on July 1, 1994. The bill created six (6) new statutes, designated by the Virginia Code Commission as Sections 38.2-3407.7, 38.2-3407.8, 38.2-4209.1, 38.2-4209.2, 38.2-4312.1, and 38.2-4312.2 of the Code of Virginia, as amended. These new requirements, which are imposed upon insurers issuing "preferred provider" policies or contracts and upon health maintenance organizations, relate to coverage for services rendered and products furnished by out-of-network pharmacies and ancillary service providers. It has come to my attention that several issues have arisen regarding the interpretation of certain provisions of this legislation. The following is an explanation of how the Bureau of Insurance intends to administer certain requirements found in the new statutes listed above.

DEFINITION OF "ANCILLARY SERVICES"

The term "ancillary services" is defined in §§ 38.2-3407.8, 38.2-4209.2, and 38.2-4312.2 as: "those services required to support, facilitate or otherwise enhance medical care and treatment." These statutes also provide that: "the furnishing of durable medical equipment required for therapeutic purposes or life support" is an example of ancillary services. It is the Bureau's position that the statutory definition of ancillary services is an extremely broad one, and cannot reasonably be construed as limited to the provision of durable medical equipment. Unless and until the statutory definition is made more restrictive, then, it is our position that any person or class of persons that provides services that "support, facilitate or otherwise enhance medical care and treatment" meets the definition of an "ancillary service provider."

Each of the statutes cited above contains the following language:

The [State Corporation] Commission shall have no jurisdiction to adjudicate controversies arising out of this section.

Therefore, the Bureau does not have the authority to intervene in disagreements among parties affected by these new requirements. Questions of interpretation concerning whether or not a provider is providing "ancillary services" will have to be resolved in forums other than the State Corporation Commission.

CONTRACT PROVISIONS

All six statutes cited above contain specific language prohibiting the imposition of:

...any copayment, fee, or condition that is not equally imposed upon all individuals in the same benefit category, class, or copayment level, whether or not such benefits are furnished by [pharmacists or ancillary service providers] who are [non preferred or nonparticipating] providers. (emphasis added)

It is our position that each of these provisions prohibits an insurer or health maintenance organization from amending its contracts to provide that claimants obtaining services from out-of-network pharmacies or ancillary service providers must pay for the services and then seek reimbursement from the insurer or health maintenance organization, unless this same condition is imposed upon claimants utilizing the services of in-network pharmacists or ancillary service providers. Additionally, if information regarding coverage is available to in-network providers, such information must also be made available to out-of-network providers in the same or substantially similar manner.

All six statutes cited above also contain the following provision:

This right of selection extends to and includes [pharmacies or ancillary service providers] that are [non preferred or nonparticipating] providers and that agree to accept reimbursement for their services at rates applicable to [pharmacies or ancillary service providers] that are [preferred or participating] providers. (emphasis added)

It is our position that affected insurers and health maintenance organizations must maintain records of written agreements with out-of-network pharmacies and ancillary service providers that have agreed to accept the rates applicable to preferred or participating providers. Any reference by the insurer or health maintenance organization to the possibility of a pharmacy or ancillary service provider billing the insured for the difference between the network rates and those charged must clearly state that the insured can verify in advance of a purchase that the provider in question has entered into an agreement to accept the network rate as payment in full to avoid additional charges. This verification must be provided by the insurer or health maintenance organization providing coverage.

This letter serves as notice of our intention to withdraw approval, pursuant to § 38.2-316 of the Code of Virginia, as amended, of any forms of which we become aware that do not comply in all respects with the provisions of §§ 38.2-3407.7, 38.2-3407.8, 38.2-4209.1, 38.2-4209.2, 38.2-4312.1, and 38.2-4312.2 of the Code of Virginia, as amended. Insurers and health maintenance organizations are instructed to review their forms immediately and file

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amendments, within 45 days of the date of this letter, for the purpose of bringing any non-complying forms into compliance with the statutes discussed herein. Subsequently, any forms brought to our attention that do not comply will have their approval withdrawn, and the Bureau will consider initiation of any other disciplinary proceedings deemed appropriate in the circumstances. It should be noted that the wording of each of the statutes listed above is sufficiently broad so as to apply to in force contracts as well as newly issued contracts.

Insurers and health maintenance organizations are also hereby instructed to take appropriate steps to expedite communication and agreement with non-network providers wishing to enter into agreements to accept reimbursement at network rates.

Any questions regarding the administration of these requirements should be directed to the attention of Althelia P. Battle, Senior Insurance Market Examiner, or Robert R. Knapp, Senior Insurance Market Examiner, Life and Health Forms and Rates Section, Box 1197, Richmond, Virginia 23209. The telephone number for the Forms and Rates Section is (804) 371-9110.

/s/ Steven T. Foster
Commissioner of Insurance

V.A.R. Doc. No. R95-70; Filed October 20, 1994, 2:59 p.m.

PROPOSED REGULATIONS

STATE CORPORATION COMMISSION

Title of Regulation: Insurance Regulation No. 41. Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements.

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-1316.7 of the Code of Virginia.

AT RICHMOND, OCTOBER 20, 1994

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS940204

Ex Parte: In the matter of adopting revised Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements

ORDER TO TAKE NOTICE

WHEREAS, Virginia Code § 12.1-13 provides that the

Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and Virginia Code § 38.2-223 provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia;

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed revised regulation entitled "Revised Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements;" and

WHEREAS, the Commission is of the opinion that the proposed revised regulation should be adopted;

THEREFORE, IT IS ORDERED:

(1) That all interested persons TAKE NOTICE that the Commission shall enter an order subsequent to November 25, 1994, adopting the revised regulation proposed by the Bureau of Insurance unless on or before November 25, 1994, any person objecting to the adoption of such a regulation files a request for a hearing, and in such request specifies in detail their objection to the adoption of the proposed revised regulation, with the Clerk of the Commission, Document Control Center, P. O. Box 2118, Richmond, Virginia 23216;

(2) That an attested copy hereof, together with a copy of the proposed revised regulation, 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 proposed adoption of the regulation by mailing a copy of this order, together with a copy of the proposed regulation, to all insurers, health services plans, and health maintenance organizations licensed to write life, annuity or accident and sickness insurance in the Commonwealth of Virginia; and

(3) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

Insurance Regulation No. 41. Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements.

§ 1. Authority.

This Regulation is adopted and promulgated by the Commission pursuant to Virginia Code §§ 12.1-13, 38.2-223 and 38.2-1316.7.

§ 2. I. Purpose.

A. The purpose of this regulation is to set forth standards for reinsurance agreements involving life insurance, annuities, or accident and sickness insurance in order that the financial statements of the life and health insurers utilizing such agreements properly reflect the financial condition of the ceding insurer.

B. The commission recognizes that life and health insurers offering life insurance, annuities, or accident and sickness insurance routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

C. The commission has become aware that some life and health insurers, in the capacity of ceding insurers, have at times entered into reinsurance agreements, for the principal purpose of producing significant surplus aid for the ceding insurer, which provide little or no indemnification of policy benefits by the reinsurer. However, it is improper for a licensed insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival.

In addition, the commission is concerned with reserve credits taken under reinsurance agreements which provide some indemnification of policy benefits where those policy benefits are not included in the gross reserves established by the ceding insurer such as catastrophic mortality or extraordinary survival.

The commission believes that insurers should be precluded from claiming the surplus relief created by the terms of such agreements as referred to herein and described in § 4.3 of this regulation, since the recognition of such surplus would be in conflict with:

(1) 1. The provisions of Virginia Code §§ 38.2-1300 and 38.2-1301 of the Code of Virginia requiring insurers to file financial statements and reports that disclose full and accurate knowledge of their affairs and condition;

(2) 2. The provisions of Article 3.1, (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia relating to reinsurance reserve credits and a ceding insurer's ability to reduce liabilities or establish assets for reinsurance ceded; and

(3) 3. The provisions of Virginia Code §§ 38.2-1038 and 38.2-1040 of the Code of Virginia concerning the manner in which the commission may respond to an insurer whose condition or continued operation may be hazardous to policyholders, creditors and the public in this Commonwealth.

§ 3. 2. Scope and definitions.

A. This regulation shall apply to all domestic life and health insurers "insurers" and to all other licensed life and health insurers "insurers" who are not subject to substantially similar provisions in their states of domicile

or entry. B. For purposes of this Regulation, (1) "Life and health" and "life or health" mean (i) a class of insurance defined by Virginia Code § 38.2-102 through § 38.2-100 or (ii) any product or service sold or offered by a person organized and licensed in Virginia under Chapter 38 (cooperative nonprofit life benefit companies) Chapter 39 (mutual assessment life, accident and sickness insurers), Chapter 42 (health services plans) or Chapter 45 (dental and optometric services plans) of Title 38.2 of the Code of Virginia. (2) "Insurer" As used in this regulation, "insurer" means an insurance company or a cooperative nonprofit life benefit company or, a mutual assessment life, accident and sickness insurer or, a fraternal benefit society, a health services plan or, a dental services plan, or an optometric services plan as those terms are defined in licensed under Title 38.2 of the Code of Virginia; and also any insurance company (whether known as a life and health insurer, a property and casualty insurer, or a reciprocal) which is licensed in Virginia and authorized to write any class of life insurance, annuities, or accident and sickness insurance.

§ 4. 3. Accounting and actuarial requirements.

A. No life or health insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commission if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: mortality, morbidity, investment, or persistency;

(2) 1. The reserve credit taken by the ceding insurer is not in compliance with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission;

(3) 2. The reserve credit taken by the ceding insurer is greater than the amount which the ceding insurer would have reserved on the reinsured portion of the risk if there had been no reinsurance;

(4) 3. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses nor payment by the ceding insurer of an amount equal to the current and prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer, shall be considered such a reimbursement to the reinsurer for negative

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experience; provided, however, that any offsetting provisions (i) shall be limited to such reinsurance agreement, (ii) are specifically between the ceding insurer and the reinsurer and (iii) are provided for in such reinsurance agreement ; . *Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.*

~~(5)~~ 4. The ceding insurer can be deprived of surplus or assets (i) at the reinsurer's option ; or (ii) automatically upon the occurrence of some event, such as the insolvency of the ceding insurer or the appointment of a receiver ~~except that termination ; or (iii) upon the unilateral termination or reduction of reinsurance coverage by the reinsurer or by the terms of the reinsurance contract. Termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus ; or assets.~~

~~(6)~~ 5. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded ; .

~~(7)~~ 6. Settlements are made on an untimely basis or payments due from the reinsurer are not made in cash, but are instead made only in a "reinsurance account" and no funds in such account are available for the payment of benefits ; .

~~(8)~~ 7. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income ~~reasonably expected realized from the reinsured policies or; . For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.~~

8. *Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by*

the company at the time the business is reinsured.

~~(9)~~ 9. The terms or operating effect of the reinsurance agreement are such that it does not transfer ~~substantial liability or risk~~, all of the significant risk inherent in the business being reinsured. The table at Exhibit 1 identifies for a representative sampling of products or types of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

10. a. *The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision 10 b either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commission which legally segregates, by contract or contract provision, the underlying assets.*

b. *Notwithstanding the requirements of subdivision 10 a, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:*

- *Health Insurance – Long Term Care/Long Term Disability*
- *Traditional Nonparticipating Permanent*
- *Traditional Participating Permanent*
- *Adjustable Premium Permanent*
- *Indeterminate Premium Permanent*
- *Universal Life Fixed Premium (no dump-in premiums allowed)*

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. An acceptable formula appears at Exhibit 2.

11. *Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.*

12. *The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.*

13. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

14. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

B. Compliance with the conditions of subsection A of this section is not to be interpreted to diminish the requirement of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 in of Title 38.2 of the Code of Virginia that the reserve credits taken must be based upon the actual liability assumed by the reinsurer to reimburse the ceding company for benefits that the ceding company is obligated to pay under its direct policies and which gave rise to the requirement of statutory reserves.

C. Reinsurance agreements may be such that economic guarantees within the agreement may create a liability which did not exist prior to the agreement. Any contractual guarantees imposed by the agreement upon the ceding insurer must be valued and an appropriate liability otherwise established, or reduction made to otherwise allowable reserve credit, to recognize such obligations. This shall not apply to contractual guarantees that are not economical in nature, such as underwriting, accounting and premium payment procedures guarantees.

D. C. The ceding insurer's actuary responsible for the valuation of the reinsured business shall consider this regulation and any applicable actuarial standards of practice when determining the proper reinsurance credit in financial statements filed with the commission. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work that substantiates the reserves, reserve credits or any other reserve adjustments reported in the financial statement and to demonstrate to the satisfaction of the commission that such work conforms to the provisions of this regulation.

E. D. Notwithstanding subsection A of this section, an insurer subject to this regulation may, with the prior approval of the commission, take such reserve credit or establish such asset as the commission may deem consistent with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission. All of the insurer's financial statements filed with the commission pursuant to Virginia Code § 38.2-1300 or § 38.2-1301, 38.2-1301 of the Code of Virginia shall thereafter disclose the reduction in liability or the establishment of an asset.

E. 1. An agreement entered into after December 31, § 5: 4. Written agreements.

1994, which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding insurer with the commission within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall be subject to the standards set forth in subsection C of this section.

2. Any increase in surplus net of federal income tax resulting from arrangements described in subdivision E 1 shall be identified separately on the insurer's statutory financial statement as a surplus item (e.g., as part of the aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account reported at page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" portions of the Annual Statement (e.g., Exhibit 1 and Summary of Operations for the life insurer's blue blank and the Underwriting Exhibit and Statement of Income for the property and casualty insurer's yellow blank) as earnings emerge from the business reinsured.

Example: On the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus Account. \$6.8 million (34% of \$20 million) is reported as income (on the "Commissions and expense allowances on reinsurance ceded" line of the life insurer's Summary of Operations or as "Other underwriting expenses incurred" on the property and casualty insurer's Statement of Income).

At the end of year N+1 the business has earned \$4 million. ABC has paid \$0.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement (blue blank) would report \$1.65 million (66% of [\$4 million - \$1 million - \$0.5 million] up to a maximum of \$13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -\$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus Account. In addition, the experience refund would be reported separately as a miscellaneous income item in a life insurer's Summary of Operations and the "Other Income" segment of the property and casualty insurer's Underwriting and Investment Exhibit, Statement of Income.

State Corporation Commission

A. No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commission, unless the agreement, amendment or a letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

B. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

C. The reinsurance agreement shall at all times set forth the names of all parties to the agreement.

D. The reinsurance agreement shall contain provisions which provide that:

1. The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

2. Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

§ 6. 5. Existing agreements.

Notwithstanding ~~Subsection 4A~~ § 3 A of this regulation, insurers subject to this regulation may continue to reduce liabilities or establish assets in financial statements filed with the commission for reinsurance ceded under types of reinsurance agreements described in Sections ~~2C~~ and 4 §§ 1 C and 3 , provided:

A. 1. The agreements were executed and in force prior to the effective date of this regulation;

B. 2. No new business is ceded under the agreements after the effective date of this regulation;

C. 3. The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero (0) at least on a pro-rata basis by December 31, 1992, or such later date approved by the Commission as a result of an application made by the ceding insurer prior to July 1, 1992 1995 ;

D. 4. The reduction of the liability or the establishment of the asset was not prohibited by the commission's Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements which were in effect immediately prior to the effective date of these revised rules, and is otherwise permissible under all other applicable provisions of the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of

Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission; and

~~E.~~ 5. The commission is notified, within ninety (90) days following the effective date of this regulation, of the existence of such reinsurance agreements and all corresponding reserve credits taken or assets established in the ceding insurer's ~~1991~~ 1994 Annual Statement.

§ 7. 6. Severability.

If any provision in this regulation or the application thereof to any person or circumstance is held for any reason to be invalid, the remainder of the provisions in this regulation shall not be affected thereby.

EXHIBIT 1
Significant Risks Table

PRODUCT OR TYPE OF BUSINESS	**RISK CATEGORIES
	a b c d e f
Health Insurance - other than LTC/LTD*	.. + 0 + 0 0 0
Health Insurance - LTC/LTD*	..... + 0 + + + 0
Immediate Annuities	..... 0 + 0 + + 0
Single Premium Deferred Annuities	..... 0 0 + + + +
Flexible Premium Deferred Annuities	.... 0 0 + + + +
Guaranteed Interest Contracts	..... 0 0 0 + + +
Other Annuity Deposit Business	..... 0 0 + + + +
Single Premium Whole Life	..... 0 + + + + +
Traditional Nonparticipating Permanent	. 0 + + + + +
Traditional Nonparticipating Term	..... 0 + + 0 0 0
Traditional Participating Permanent	.... 0 + + + + +
Traditional Participating Term	..... 0 + + 0 0 0
Adjustable Premium Permanent	..... 0 + + + + +
Indeterminate Premium Permanent	.... 0 + + + + +
Universal Life Flexible Premium	..... 0 + + + + +
Universal Life Fixed Premium 0 + + + + +
Universal Life Fixed Premium 0 + + + + +

(dump-in premiums allowed)

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+ = Significant; 0 = Insignificant
* LTC = Long Term Care Insurance;
LTD = Long Term Disability Insurance

****Risk Categories:**

- (a) Morbidity
- (b) Mortality
- (c) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.
- (d) Credit Quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rates.
- (e) Reinvestment (C3). This is the risk that interest rates will fall and funds reinvested (coupon payments or moneys received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.
- (f) Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

EXHIBIT 2

Sample Formula for Determining Reserve Interest
Rate Adjustment
(Terms and data are as defined in the NAIC Annual
Statement blank)

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: *I* is the net investment income

CG is realized and unrealized capital gains less realized and unrealized capital losses

X is the current year cash and invested assets plus investment income due and accrued less borrowed money

Y is the same as *X* but for the prior year

V.A.R. Doc. No. R95-71; Filed October 24, 1994, 12:36 p.m.

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Title of Regulation: Standards for Electric Public Utilities Established by Section 111 of the Energy Policy Act of 1992.

Statutory Authority: § 12.1-13 of the Code of Virginia.

AT RICHMOND, OCTOBER 12, 1994

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE940067

Ex Parte, In re: Consideration of standards for integrated resource planning, investments in conservation and demand management, and energy efficiency in power generation and supply for electric utilities

ORDER ESTABLISHING COMMISSION INVESTIGATION

The 102d Congress of the United States adopted the Energy Policy Act of 1992 ("the Act" or "EPACT") on October 24, 1992. This Act adds Paragraphs (7), (8), and (9) to Section 111 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2621 ("PURPA"). These new Sections provide for standards related to integrated resource planning, investments in conservation and demand management, and energy efficiency in power generation and supply for electric utilities. Section 111(a), 16 U.S.C. § 2621(c)(3), further provides that if the Commission adopts the standard established by subsection (d)(7), the integrated resource planning standard, or subsection (d)(8), the investments in conservation and demand management standard, it must consider the impact that the standard's implementation would have on small businesses "engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures." Further, the Commission must implement the standard so as to assure that the utility's actions would not provide it with an unfair competitive advantage over these small businesses. Section 111(c), 16 U.S.C. § 2622(b)(2), provides that the Commission must complete its consideration of these standards not later than three years after the statute's enactment, i.e., not later than October 24, 1995.

Accordingly, by this Order we initiate an investigation to consider whether the standards set out in Section 111 of the Act or any portions thereof should be adopted and to consider rules, if appropriate, or a Commission policy regarding integrated resource planning, investments in conservation and demand management, and energy efficiency in power generation and supply for electric utilities. In furtherance of this investigation, we invite comments and testimony from interested parties on the standards and related issues set out in Appendix A. Interested parties may also address any other issues of concern to them regarding these standards.

Further, we will direct our Staff to summarize and evaluate the comments and testimony received herein and file its analysis thereof, together with any recommendations, with the Commission. A public hearing will be convened to take evidence on the recommendations set forth in the Staff's analysis and on the testimony received from interested parties. Interested

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parties who plan to participate in the hearing should prefile testimony. Interested persons who do not intend to appear at the hearing may file comments with the Clerk of the Commission regarding the standards, the issues identified herein, and other issues of concern to them regarding these standards.

Accordingly, IT IS ORDERED:

(1) That this matter shall be docketed and assigned Case No. PUE940067;

(2) That, on or before December 1, 1994, each investor-owned electric public utility and electric cooperative subject to the Commission's jurisdiction shall make a copy of this Order, together with the appendices thereto, available for public inspection during regular business hours at all of its business offices where customer bills may be paid. These utilities shall likewise make a copy of the Staff's analysis available for public inspection when it is filed. The Commission's Document Control Center shall forthwith make a copy of this Order available for public review in its office, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, during its regular business hours;

(3) That all investor-owned electric companies and electric cooperatives subject to the Commission's jurisdiction shall on or before December 1, 1994, serve a copy of this Order, by delivering a copy to the usual place of business or by depositing a copy in the United States mail, properly addressed and stamped, to all non-utility generators who currently provide or have offered to provide energy or capacity to the utility or cooperatives;

(4) That a public hearing shall be convened on June 12, 1995, at 10:00 a.m., in the Commission's Courtroom, located on the second floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence relevant to the adoption of the standards for electric utilities and the issues identified herein;

(5) That, on or before February 10, 1995, any interested party who does not plan to attend the public hearing scheduled herein but who desires to participate in this proceeding may file with the Clerk of the Commission an original and five (5) copies of comments concerning the standards for electric utilities and electric cooperatives and issues identified herein, as well as any other issues of concern to the party regarding the standards under consideration. All comments shall refer to Case No. PUE940067 and shall be addressed to William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216;

(6) That, on or before February 10, 1995, any interested party who expects to submit evidence, cross-examine witnesses or otherwise participate in the proceeding as a Protestant, pursuant to Rule 4:6, shall file an original and fifteen (15) copies of a Notice of Protest, as provided in Rule 5:16(a), with the Clerk of the State Corporation

Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, referring to Case No. PUE940067 and shall forthwith serve a copy of same on all parties of record. Any corporate entity or governmental unit that wishes to protest must be represented by legal counsel as required by Rule 4:8 of the Commission's Rules of Practice and Procedure;

(7) That, on or before March 10, 1995, each Protestant shall file with the Clerk of the Commission an original and fifteen (15) copies of a Protest conforming to Rule 5:16(b), and an original and fifteen (15) copies of the testimony and exhibits that it intends to present at the hearing scheduled herein. Said testimony and exhibits shall address the standards for electric utilities and issues identified herein, together with any other issues of concern to the party regarding these standards. An interested party's testimony and accompanying exhibits shall refer to Case No. PUE940067, and each interested party filing testimony shall serve a copy of his testimony upon all parties of record by no later than March 10, 1995;

(8) That, on or before April 10, 1995, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of its prefiled direct testimony in which it shall set forth its findings and recommendations and proposed rules or policy pronouncements, if any. The Staff's analysis shall include a summary of the comments received pursuant to Ordering Paragraph (5) hereof. A copy of the Staff's testimony shall be served on all parties filing testimony herein and upon any person filing comments requesting a copy of same;

(9) That any person desiring to make a statement at the public hearing concerning the standards applicable to electric utilities and the issues identified herein need only appear in the Commission's second floor courtroom at 9:30 a.m. on the day of the hearing and identify himself or herself to the Bailiff as a public witness;

(10) That, on or before May 10, 1995, any interested person filing direct testimony shall file with the Clerk of the Commission an original and fifteen (15) copies of all testimony he expects to introduce in rebuttal to all comments and direct prefiled testimony and exhibits filed by any interested party and by the Staff. Additional rebuttal evidence may be presented by interested parties filing testimony, provided it is in response to evidence which was not prefiled but elicited at the time of the hearing, and provided further the need for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted. Interested parties shall serve a copy of their prefiled rebuttal evidence upon all parties pre-filing direct testimony;

(11) That, on or before January 3, 1995, the Commission's Division of Economics and Finance shall complete publication of the following notice on one occasion as classified advertising to be published in major Virginia newspapers of general circulation throughout

Virginia:

NOTICE TO THE PUBLIC OF THE INVESTIGATION
OF THE STATE CORPORATION COMMISSION
INTO STANDARDS FOR ELECTRIC PUBLIC
UTILITIES ESTABLISHED BY SECTION 111 OF
THE ENERGY POLICY ACT OF 1992
CASE NO. PUE940067

On October 24, 1992, the Energy Policy Act of 1992 was enacted by the United States Congress. Among the provisions of that Act is a requirement that the State Corporation Commission ("Commission") provide public notice and conduct a hearing on the standards set out in Section 111 of the Energy Policy Act of 1992, governing integrated resource planning, investments in conservation and demand management, and energy efficiency in power generation and supply for electric utilities, including investor-owned electric utilities and electric cooperatives.

The Commission has initiated the captioned investigation to receive evidence regarding the standards specified in § 111 of the Energy Policy Act of 1992, as well as any appropriate policies or rules regarding these standards. It has scheduled a public hearing for June 12, 1995, at 10:00 a.m. in its courtroom located on the second floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to its investigation.

Interested persons desiring to participate in the investigation who do not plan to attend the public hearing scheduled herein may file on or before February 10, 1995, with the Clerk of the Commission an original and five (5) copies of comments concerning the standards for electric utilities and electric cooperatives and the issues identified in the Commission's Order for Notice and Hearing with the Clerk of the Commission at the following address: William J. Bridge, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. All written comments shall refer to Case No. PUE940067.

On or before February 10, 1995, any interested party who expects to submit evidence, cross-examine witnesses or otherwise participate in the proceeding as a Protester, pursuant to Rule 4:6, shall file an original and fifteen (15) copies of a Notice of Protest, as provided in Rule 5:16(a), with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, referring to Case No. PUE940067 and shall forthwith serve a copy of same on all parties of record. Any corporate entity or governmental unit that wishes to protest must be represented by legal counsel as required by Rule 4:8 of the Commission's Rules of Practice and Procedure.

On or before March 10, 1995, each Protester shall file with the Clerk of the Commission an original and fifteen (15) copies of a Protest conforming to Rule 5:16(b), and an original and fifteen (15) copies of the testimony and exhibits that it intends to present at the hearing scheduled for June 12, 1995. Said testimony and exhibits shall address the standards and issues identified in the Commission's Order for Notice and Hearing entered in this case and should refer to Case No. PUE940067. Each interested party filing testimony shall serve a copy of his Protest and testimony upon all parties of record by no later than March 10, 1995.

Any person desiring to make a statement as a public witness at the public hearing concerning the standards applicable to electric utilities, the issues identified in the Commission's Order for Notice and Hearing, and other issues of concern to them regarding these standards need only appear in the Commission's second floor courtroom at 9:30 a.m. on the day of the hearing and identify himself or herself to the Bailiff as a public witness.

On or before May 10, 1995, any interested person filing direct testimony shall file with the Clerk of the Commission an original and fifteen (15) copies of all testimony he expects to introduce in rebuttal to all comments and direct prefiled testimony and exhibits filed by any interested party and by the Staff. Additional rebuttal evidence may be presented by interested parties filing testimony, provided it is in response to evidence which was not prefiled but elicited at the time of the hearing, and provided further the need for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted. Interested parties shall serve a copy of their prefiled rebuttal evidence upon all parties pre-filing direct testimony.

The Commission's Order for Notice and Hearing governs the procedure in this case. This Order also identifies the standards specified in the Energy Policy Act of 1992 under investigation and the issues which the Commission has directed interested parties filing comments or testimony to address. A copy of this Order may be obtained by writing to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, and referring to Case No. PUE940067. A copy of this Order is also available for public review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia during its regular business hours of 8:15 a.m. to 5:00 p.m., Monday through Friday.

Copies of the Commission's Order for Notice and Hearing are also available for public review at the business offices where customers bills may be paid

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of all electric public utilities and electric cooperatives subject to the Commission's jurisdiction. Interested persons should review this Order for the details of the procedural schedule, issues to be addressed in testimony or comments, and instructions on how to participate in this proceeding.

VIRGINIA STATE CORPORATION COMMISSION DIVISION OF ECONOMICS AND FINANCE

(12) That the Division of Economics and Finance shall forthwith send a copy of this Order, together with its appendices to the Virginia Register for publication; and

(13) That, on or before April 12, 1995, the Division of Economics and Finance shall file with the Clerk of the Commission proof of publication.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all electric public utilities subject to the Commission's jurisdiction set forth in Appendix B hereto; all natural gas public utilities subject to the Commission's jurisdiction set forth in Appendix C hereto; all electric cooperatives subject to the Commission's jurisdiction set forth in Appendix D; the parties set out in Appendix E hereto; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

APPENDIX A

PURPA STANDARDS AND RELATED ISSUES

I.

INTEGRATED RESOURCE PLANNING STANDARD

(7) Integrated resource planning. Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

16 U.S.C. § 2621(d)(7).

ISSUES CONCERNING INTEGRATED RESOURCE PLANNING

1. Should the Integrated Resource Planning ("IRP") standard in Section 111 of the Energy Policy Act of 1992 ("EPACT") be adopted by the Commission? Why or why not?
2. Should the IRP standard in Section 111 be modified and adopted by the Commission? If so, what modifications should be made?
3. How does the Integrated Resource Planning standard promote the PURPA Title I objectives of:

- a. the conservation of energy supplied by electric utilities;
- b. optimization of the efficiency of use of facilities and resources by electric utilities; and
- c. equitable rates to electric consumers?

4. What incremental benefits would implementation of an IRP process in Virginia provide to utility ratepayers?

- a. What elements or requirements must be contained in the IRP process to produce these benefits?
- b. How could the process be managed in a timely and efficient manner?
- c. What would be the consequences of not implementing an IRP process?

5. Would IRP require the Commission to take a more proactive role in utility resource decisions than it has traditionally?

- a. If so, does this usurp the management responsibilities of utility executives?
- b. Should reduced utility responsibility be quantified in the development of utility rates?

6. Would an increased assumption of what has traditionally been viewed as management's prerogative by the Commission be consistent with the Commission's statutory responsibilities and limitations?

7. Planning is a management process to minimize threats and recognize opportunities in an environment of complex interwoven dynamic systems. Such an environment dictates that effective planning continue to evolve to recognize continuous and ever-changing factors. How can a formal IRP process which implies or refers to the implementation of a completed final product be reconciled with this basic planning tenet?

8. Would an IRP process represent increased regulation which could conflict with a movement toward increased competition among and between energy suppliers and substitute energy service providers?

9. What is an appropriate time frame for requiring:

- (a) the implementation of approved IRP plans;
- (b) the full planning period;
- (c) the lead time needed for the next resource requirement?

10. Does the requirement of public participation in the

IRP process require public hearings or can public participation be achieved through other means?

11. How can the time constraints imposed by public participation and comment in a formal review of integrated resource plans and a requirement that such plans be implemented be reconciled with the changing nature of load projections, fuel forecasts, changing technologies, and the ongoing need for updated information?

12. Will the requirement that approved IRP plans be implemented expose utility consumers and stockholders to unnecessary forecast uncertainty?

13. Given the uncertainties that are inherent in any long term planning process, do the proposed standards present barriers and risks that cannot be overcome?

14. For multi-jurisdictional utilities, would the adoption of the IRP standards result in the potential for contradictory requirements from the various jurisdictions or requirements for the implementation of incompatible IRP plans?

15. Does the definition of "system cost" as reflected in Section 111 of the EPACT prohibit the use of the Ratepayer Impact Measure ("RIM")?

16. Does the Section 111 definition of "system cost" preclude the use of environmental externalities since externalities cannot be readily quantified?

17. Is the Section 111 definition of "system cost" which states ". . . 'system cost' means all direct and quantifiable net costs for an energy resource over its available life, . . ." in conflict with the definition of integrated resource planning which requires, among other things, that "the process [integrated resource planning] shall take into account . . . other factors of risk . . ." since projection of costs over the life of a resource may impose a significant element of risk?

18. Does the IRP standard require that the State Corporation Commission approve electric utility resource plans?

19. What does it mean to "implement" an integrated resource plan in the context of the integrated resource planning standard?

20. Should the definition of "integrated resource planning" in Section 111 be modified?

21. The definition of "integrated resource planning" refers to "new" energy resources. What is the significance of the term "new" in this context?

22. What does the term "diversity" mean in the context of the definition of integrated resource planning?

23. What other alternatives, if any, should be included in the definition of integrated resource planning?

24. What other "factors of risk," if any, should be included in the definition of integrated resource planning?

25. What does it mean to treat demand and supply resources on a consistent and integrated basis?

26. What does it mean to "verify energy savings achieved through energy conservation and efficiency"?

27. What does the term "net cost" mean in the definition of "system cost"?

28. Is the intent of Section 111 to encourage only those programs that result in less energy usage through conservation measures and reduction in energy demand?

29. Should the terms demand side management and demand resources exclude programs that result in overall increases in electricity consumption?

30. What are "load management techniques" in the context of the definition of demand side management?

31. What is the likely impact of this standard on the citizens of Virginia?

32. Is the adoption of the Integrated Resource Planning standard appropriate in an increasingly competitive electric utility industry?

II.

INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT STANDARD

(8) Investments in conservation and demand management. The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

16 U.S.C. § 2621(d)(8).

ISSUES REGARDING CONSERVATION AND DEMAND MANAGEMENT

State Corporation Commission

1. Should the Investments in Conservation and Demand Management standard be adopted by the Commission? Why or why not?

2. Should the Investments in Conservation and Demand Management standard in Section 111 be modified and adopted by the Commission? If so, what modifications should be made?

3. How does the Investments in Conservation and Demand Management standard promote the PURPA Title I objectives of:

a. the conservation of energy supplied by gas utilities;

b. optimization of the efficient use of facilities and resources by electric utilities; and

c. equitable rates to electric consumers?

4. Should the adoption of an equal treatment standard for conservation and load management ("CLM") measures be predicated on a Commission finding that market barriers are deterring ratepayers from making cost effective investments in energy conservation?

5. In the absence of market barriers, are the Section 111 standards inappropriate to cost effective end-use conservation measures?

6. Section 111 of EPACT indicates that the Commission should consider adopting standards which, among other things, would require ratemaking treatment that assures that investments and expenditures in demand side measures be at least as profitable, giving consideration to lost revenues, as supply side initiatives.

a. Would the adoption of such a standard preclude the use of the "ratepayer impact measure" ("RIM") for evaluating CLM programs?

b. Or alternatively, does this provision require the use of the RIM test since lost revenues must be considered and such losses are by implication a cost to the utility?

7. Does the standard requiring that demand-side management ("DSM") investments and expenditures be at least as profitable as supply side alternatives require the approval of a deferral mechanism for "lost revenues" or are the Commission's existing ratemaking practices acceptable in that the recovery of both demand and supply side costs are subject to regulatory lag?

8. What does the term "profitable" in the Investments in Conservation and Demand Management standard mean? What should it mean?

9. Do DSM related "lost revenues" satisfy the Commission's traditional test for automatic adjustment clauses?

a. Specifically, do lost revenues represent a volatile cost?

b. Is this cost beyond a utility's control?

c. Will these costs have a significant impact on the utility's financial viability?

d. If the conditions surrounding lost revenues do not satisfy the Commission's historic test for automatic clauses, should the test be modified?

10. What constitutes "appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency" in the context of the investments in conservation and demand management standard?

11. Are utility funded CLM incentives workable given the increasingly competitive nature of the electric industry?

12. Does the term "demand side management" as defined in Section 111 of the EPACT include retail wheeling, dispersed energy facilities, on-site generation, interruptible services, fuel switching, etc.?

13. What is the likely impact of this standard on the citizens of Virginia?

14. At a minimum, what constitutes appropriate monitoring and evaluation of CLM measures in the context of Section 111 of the EPACT?

15. Would the Section 111 requirement that ". . . energy conservation, energy efficiency resources and other demand side management measures be appropriately monitored and evaluated" impose a higher verification standard for CLM measures than has typically been required in the past?

III.

ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY STANDARD

(9) Energy efficiency investments in power generation and supply. The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider

incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment.

16 U.S.C. § 2621(d)(9).

ISSUES REGARDING ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY STANDARD

1. Should the Energy Efficiency Investments in Power Generation and Supply standard be adopted by the Commission? Why or why not?
2. Should the Energy Efficiency Investments in Power Generation and Supply standard in Section 111 be modified and adopted by the Commission? If so, what modifications should be made?
3. Does the regulatory process in Virginia provide electric utilities with disincentives for making cost effective investments or expenditures for improvements in the efficiencies of power generation, transmission, and distribution?
4. What does it mean to "encourage" a utility to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution?
5. What is the likely impact of this standard on the citizens of Virginia?

IV.

SMALL BUSINESS IMPACT FINDING

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall—

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

16 U.S.C. § 2621(c)(3).

ISSUES REGARDING SMALL BUSINESS IMPACT FINDING

1. What constitutes a "small business" as envisioned by Section 111 of EPACT?
2. What is the Commission's statutory authority to

consider the impact of IRP standards on small businesses and to assure that the adoption of such standards do not provide utilities with an unfair competitive advantage?

3. Should certain small gas utilities be considered small businesses in the context of evaluating the impact of IRP standards for electric utilities?

4. Are non-utility providers of competing fuels "engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand side measures"?

5. What constitutes an "unfair competitive advantage" with respect to the impact of IRP standards on small businesses?

6. What issues should the Commission consider when evaluating the impacts of IRP standards on "small businesses"?

V.

OTHER ISSUES REGARDING AMENDMENTS TO PURPA

1. Should the same standards be applied to each electric utility in the state?
2. Are the Section 111 standards consistent with other objectives and policies of this Commission?

APPENDIX B

Electric Companies in Virginia

Appalachian Power Company
Mr. Joseph H. Vipperman, President
Post Office Box 2021
Roanoke, VA 24022-2121

Delmarva Power & Light Company
Mr. R. Erik Hansen
General Manager-Pricing and Regulation
800 King Street
Post Office Box 231
Wilmington, Delaware 19899

Kentucky Utilities Company
Mr. Robert M. Hewett
Vice President, Rates
Budget & Financial Forecasts
One Quality Street
Lexington, Kentucky 40507

The Potomac Edison Company
Mr. James D. Latimer, President
Downsville Pike
Hagerstown, Maryland 21740

State Corporation Commission

Virginia Electric and Power Company
Mr. Edgar M. Roach, Jr.
Vice President-Regulation
Box 26666
Richmond, VA 23261

A&N Electric Cooperative
Mr. Vernon N. Brinkley
Executive Vice President
P.O. Box 1128
Parksley, Virginia 23421

APPENDIX C

Gas Companies in Virginia

Commonwealth Gas Services, Inc.
Mr. Thomas E. Harris, President
800 Moorefield Park Drive
P.O. Box 35800
Richmond, Virginia 23236-3659

Commonwealth Public Service Corp.
Mr. R. E. Painter, Manager
P.O. Box 589
Bluefield, West Virginia 24701

Roanoke Gas Company
Mr. Frank A. Farmer, Jr., President
P.O. Box 13007
Roanoke, Virginia 24011

Shenandoah Gas Company
Mr. Kenneth G. Behrens, General Manager
P.O. Box 2400
Winchester, Virginia 22601

Southwestern Virginia Gas Company
Mr. Allan McClain, President
P.O. Drawer 5391
Martinsville, Virginia 24115

United Cities Gas Company
Mr. Gene Koonce, President & General Manager
5300 Maryland Way
Brentwood, Tennessee 37027

Virginia Natural Gas
Mr. William A. Fox
President & CEO
5100 East Virginia Beach Blvd.
Norfolk, Virginia 23502

Virginia Gas Distribution Company
Mr. Michael L. Edwards, President
120 South Court Street
Abingdon, Virginia 24210

Washington Gas Light Company
Mr. Jeremiah K. Hughitt, President
1100 H. Street, N.W.
Washington, D.C. 20005

B-A-R-C Electric Cooperative
Mr. Hugh M. Landes
General Manager
P.O. Box 264
Millboro, Virginia 24460-0264

Central Virginia Electric Cooperative
Mr. Howard L. Scarboro
General Manager
P.O. Box 247
Lovingsston, Virginia 22949

Community Electric Cooperative
Mr. J. M. Reynolds
General Manager
Post Office Box 267
Windsor, Virginia 23487

Craig-Botetourt Electric Cooperative
Mr. Gerald H. Groseclose
General Manager
Post Office Box 265
New Castle, VA 24127

Mecklenburg Electric Cooperative
Mr. John Bowman
General Manager
P.O. Box 2451
Chase City, Virginia 23924-2451

Northern Neck Electric Cooperative
Mr. Charles R. Rice, Jr.
General Manager
Post Office Box 288
Warsaw, Virginia 22572-0288

Northern Virginia Electric Cooperative
Mr. Stanley C. Feuerberg
General Manager
Post Office Box 2710
Manassas, VA 22110

Powell Valley Electric Cooperative
Mr. Randell W. Meyers
General Manager
Post Office Box 308
Church Street
Jonesville, VA 24263

Prince George Electric Cooperative
Mr. Gene G. Carr
General Manager
Post Office Box 168
Waverly, VA 23890

APPENDIX D

Electric Cooperatives in Virginia

Rappahannock Electric Cooperative
Mr. Cecil E. Viverette, Jr.
President
Post Office Box 7388
Fredericksburg, VA 22404-7388

Shenandoah Valley Electric Cooperative
Mr. C. D. Wine
Executive Vice President
Post Office Box 236
Route 257
Mt. Crawford, VA 22841-0236

Southside Electric Cooperative
Mr. John C. Anderson
Executive Vice President
Post Office Box 7
Crewe, VA 23930

Houston, Texas 77227-2427

Celanese Fibers, Inc.
Robert Gribben
Narrows, Virginia 24124

Chesapeake-Westvaco Corporation
Virginia Hydro Power Association
Chesapeake Paper Products Company
c/o Edward L. Flippen, Esquire
Mays & Valentine
P.O. Box 1122
Richmond, Virginia 23208-1122

City of Richmond
David B. Kearney, Esquire
900 East Broad Street
Suite 300
Richmond, Virginia 23219

Cogentrix, Inc.
T. Randolph Perkins, Esquire
9405 Arrow Point Boulevard
Charlotte, North Carolina 28217

Corning Glass Works
Hooker W. Horton, Purchasing Manager - Energy
HP-ME-1-10
Corning, New York 14831

Dan River Mills
K. W. Parrish, Director of Engineering and Utilities
P.O. Box 261
Danville, Virginia 24523

Department of Energy
Lawrence A. Gollomp
Assistant General Counsel for Regulatory Interventions and
Power Marketing
1000 Independence Avenue, S.W., Room 6D-033
Washington, D.C. 20585

Department of Environmental Quality
Peter W. Schmidt, Director
629 East Main Street
Richmond, Virginia 23219

Du Pont/Conoco
Steven A. Huhman
Coordinator-Regulatory Affairs
CH1002
P.O. Box 2197
Houston, Texas 77252

Electric Generation Association
Margaret A. Welsh
2715 M Street, N.W.
Suite 150
Washington, D.C. 20007

Fairfax County Board of Supervisors

APPENDIX E

PARTIES

Allied-Signal, Inc.
Edward R. Pruitt
P.O. Box 2006R
Morristown, New Jersey 07960

American Lung Association of Virginia
Stephen M. Ayres, M.D.
P.O. Box 7065
Richmond, Virginia 23221-0065

Anheuser-Busch Companies, Inc.
Gary Foster
One Busch Place
St. Louis, Missouri 63118

Apartment & Office Building Association
Frann G. Francis, Esquire
1050 17th Street, N.W., Suite 300
Washington, D.C. 20036

Appomattox Cogeneration, Ltd.
Hopewell Cogeneration, L.P.
Wythe Park Power
Enron-Richmond Power Corporation
Cogentrix of Virginia Leasing
Mark J. La Fratta, Esquire
McGuire, Woods, Battle & Boothe
One James Center
Richmond, Virginia 23219-4030

Browning-Ferris Gas Services
Philip F. Abraham
P.O. Box 788
Richmond, Virginia 23206

CRSS Capital, Inc.
Timothy R. Dunne, Esquire
P.O. Box 22477

State Corporation Commission

Dennis R. Bates, Esquire
1200 Government Center Parkway, Suite 549
Fairfax, Virginia 22035

Ford Motor Company
F.C. Corley, P.E.,
Energy Efficiency and Supply Department
15201 Century Drive, Suite 602 CPN
Dearborn, Michigan 48120

Owens-Brockway Glass Container, Inc.
John Wesolowski
One Seagate
Toledo, Ohio 43604

Griffin Pipe Products Co.
John Keenan
Director - Purchasing and Traffic
1400 Opus Place, Suite 700
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FINAL ORDERS

STATE CORPORATION COMMISSION

Title of Regulation: Telephone Regulatory Methods.

Statutory Authority: § 56-235.5 of the Code of Virginia.

Effective Date: January 1, 1995.

AT RICHMOND, OCTOBER 18, 1994

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC930036

Ex Parte: In the matter of
investigating telephone
regulatory methods pursuant
to Virginia Code § 56-235.5, etc.

State Corporation Commission

FINAL ORDER

I.

PROCEDURAL HISTORY

This investigation was initiated pursuant to Virginia Code § 56-235.5 by the Commission's Order for Notice and Hearing dated December 22, 1993, which immediately followed the conclusion of the Commission's evaluation of the Experimental Plan for Alternative Regulation of Virginia Telephone Companies in Case No. PUC920029 (Final Order dated December 17, 1993). That case resulted in the implementation of a modified version of the Experimental Plan, referred to therein as the Modified Plan.

The notice in the current case required persons to advise the Commission no later than January 20, 1994, if they wished to participate in the hearing and required such participants to file testimony and supporting exhibits on or before February 1, 1994. The filing date was subsequently changed to February 8, 1994. By that date, testimony and supporting exhibits were received from the Division of Consumer Counsel, Office of the Attorney General ("Attorney General"); Bell Atlantic-Virginia, Inc., ("Bell Atlantic - VA"); GTE South, Inc. and Centel of Virginia, Inc., d/b/a GTE Virginia ("GTE"); United Telephone-Southeast and Central Telephone Company of Virginia ("United/Centel"); AT&T Communications of Virginia, Inc.; MCI Telecommunications Corporation of Virginia; the Department of Defense and all other federal executive agencies; the American Association of Retired Persons; the Virginia Citizens Consumer Council; and the Virginia Cable Television Association, Cox Cable Hampton Roads, Inc., Continental Cablevision of Virginia, Inc., Adelpia Cable Communications, and Media General Cable of Fairfax County.

On March 15, 1994, the participants filed rebuttal testimony to the initial testimony. The Commission's Staff ("Staff") filed its testimony and exhibits on April 5, 1994, and on April 20, 1994, the other participants filed testimony and exhibits replying to the Staff testimony and/or to the rebuttal testimony. Those persons not formally participating in the hearing were allowed to file comments by April 20, 1994.

The hearing commenced April 27, 1994, and concluded on May 5, 1994. Post-hearing briefs were submitted by all participants on June 10, 1994.

II.

BACKGROUND

In 1993, the Virginia General Assembly enacted Virginia Code § 56-235.5, "Telephone regulatory alternatives." This statute is significant because it provides the Commission with broad authority to tailor regulation as needed to respond to competition and change in the Virginia

telecommunications industry.

The enactment of § 56-235.5 came near the end of our Experimental Plan for alternative telephone regulation, which began January 1, 1989, pursuant to our December 15, 1988, Final Order in Case No. PUC880035, 1988 SCC Ann. Rept. 249. As mentioned above, we completed our evaluation of that alternative regulation experiment in late 1993 in Case No. PUC920029 and implemented the Modified Plan. In that December 17, 1993, Final Order, we discussed at length the rapid changes occurring in the telecommunications industry and how important it is for regulatory mechanisms to keep pace with and encourage those changes that have positive impacts on consumers and telecommunications companies. As discussed in that Final Order, the Experimental Plan resulted in reduced rates, promoted rate stability, helped the local exchange companies ("LECs") adapt to emerging competition, and encouraged the LECs to invest in the Virginia telecommunications infrastructure.

For example, prior to the hearing in this case, Bell Atlantic - VA expanded some of its local calling areas, and some additional expansions are currently under way. Lost revenues resulting from these expansions, along with the elimination of local exchange mileage charges, could, by the company's estimate, exceed \$23 million per year. Additionally, Bell Atlantic - VA plans to deploy a state-of-the-art, interactive video distance learning network to link public schools and state-supported colleges throughout its Virginia service territory. Bell Atlantic - VA has created a special fund to help schools pay for the classroom equipment needed for the network and plans to contribute \$7 million to the fund. Other Virginia LECs are also forging ahead with forward-looking infrastructure investments to position the Commonwealth for the emerging "Information Age."

As we stated in our Final Order in Case No. PUC920029, however, "[w]hile the [Experimental] Plan has met the needs of telecommunications regulation to the present, the new day dawning in this industry warrants consideration of other possible responses in the future." Though the Modified Plan we implemented in that Order as an interim regulatory solution appears to be working well, we believe that we must fashion a more long-term solution which will, among other things, recognize the differences among Virginia LECs, which the Modified Plan does not, and adapt to growing competition and change in the telecommunications industry.

III.

PLANS ADOPTED

In this proceeding, each of the LECs has proposed a regulatory plan of its own. Both Bell Atlantic - VA and United/Centel proposed price indexing plans, while GTE proposed an earnings regulation plan based upon the Modified Plan. We believe that it is permissible, and appropriate, for LECs to be regulated under

individually-tailored regulatory plans. Indeed, Virginia Code § 56-235.5B envisions such an approach, stating in part:

Alternatives may differ among telephone companies and may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation.

We have a history and comfort level with earnings-based regulation, but we believe that regulation based on pricing constraints, while new, has features that will facilitate LEC adaptation to emerging competitive markets. LECs faced with competitive pressures must be able to respond quickly and be innovative. Removal of traditional cost-based regulation eliminates the need for justifying prices based on costs. A price indexing plan recognizes the effects of inflation on both consumers and businesses and enables the LEC to regain some of the loss of purchasing power.

We have reviewed each of the proposed plans in detail. Modifications were required for each to ensure that the public interest will continue to be protected. We should note here that Bell Atlantic - VA made changes, as a means of compromise, to its proposed plan during the course of these proceedings, and we have adopted many of those modifications herein, as well as others of our own. Each of the plans (Attachments 2-5), with Commission modifications, are described below, and we adopt them herein. If the companies should decide to adopt these plans, they will become effective on January 1, 1995. The current Modified Plan will be changed slightly and renamed the Earnings Incentive Plan. Upon Commission approval, the Earnings Incentive Plan will be available as an alternative for any LEC at any time, as will, of course, traditional rate-of-return regulation under § 56-235.2 of the Code of Virginia.

We have decided that the service category definitions must be the same for all plans. The telecommunications services of each LEC will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary Services, and Competitive Services. We adopt for all plans the following definitions for these service categories:

1. "Competitive Services" are, pursuant to § 56-235.5F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.
2. "Discretionary Services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than [the LEC], but which do not conform to the definition of Competitive services.
3. "Basic Local Exchange Telephone Services"

("BLETS") are telecommunications services which are not Competitive or Discretionary and, due to their nature or legal/regulatory restraints, only [the LEC] can provide, and other services the Commission determines to be BLETS.

The Commission's authority to define BLETS is established by Virginia Code § 56-235.5B. The first criterion for an alternative regulatory plan found in that section requires that we protect the affordability of such service, Va. Code § 56-235.5B(i). In the Commission's opinion, the evidence establishes that at current rate levels, those services that are classified as BLETS on the attached Market Classifications of LEC Services (Appendix A to the attached plans) are affordable. For instance, rates for the LECs participating in the Experimental Plan and the Modified Plan were last increased pursuant to rate cases in 1983, 1984, and 1985. Since then, BLETS rates have only decreased. If adjusted for inflation, the decreases since 1983 are even more significant. Meanwhile, the penetration rate of Virginia households with telephone service has risen. It stands today near 94%. Given these indicators, we do not believe that rate cases are necessary to determine affordability.

For Bell Atlantic - VA and United/Centel, the existing affordability of BLETS can be protected in the future by the Staff's monitoring of LEC financial, economic, and accounting information; by a temporary moratorium on rate increases as specified by the plans; by limiting future increases for those LECs choosing a price indexing plan to no more than one half the rate of inflation; and by expanding the Virginia Universal Service Plan ("VUSP").

The Staff's monitoring of LEC financial, economic, and accounting information and the expansion of the VUSP will also apply to GTE's Plan and the Earnings Incentive Plan. These earnings-based plans also protect affordability by imputing Competitive services "above the line" if a rate increase is sought.

As further assurance of rate affordability, before entering their price indexing plans, we find that both Bell Atlantic - VA and United/Centel must make price reductions to benefit customers. Bell Atlantic - VA and United/Centel must eliminate their charges for Touch Tone service, and all subscriber lines shall be equipped to accommodate both Touch Tone and rotary dialing, thereby treating Touch Tone and rotary dialing the same in every respect, which includes eliminating the charge, if any, incurred by customers to switch from rotary dialing to Touch Tone.

Bell Atlantic - VA and United/Centel will each have a separate BLETS rate increase moratorium (though revenue-neutral changes will be allowed upon Commission approval), as discussed below. Bell Atlantic - VA's moratorium will extend until the year 2001 and United/Centel's will extend until the year 1998. This ability to begin indexing at different times is the most significant difference between the two price indexing plans. Each of

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the companies has different operating characteristics, demographics, and customer makeup, which leads us to conclude that it is acceptable for United/Centel to begin its indexing of BLETs rates three years before Bell Atlantic - VA.

For those services the Commission has classified as Discretionary, rate increases will be permitted for both Bell Atlantic - VA and United/Centel effective January 1, 1995, but such increases may not exceed certain limitations as described in each plan.

Revenue-neutral rate restructuring will be permitted for BLETs and Discretionary services only with prior Commission approval. In any such filing, the LEC must demonstrate that the public interest is protected and that BLETs prices will remain affordable.

For any revenue-neutral restructuring, as well as for any BLETs price increase described above, the notification provisions of Virginia Code §§ 56-237.1 shall apply, and if a protest or objection to a restructuring or BLETs price increase is filed by twenty or more customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the restructuring or price increase, under the criteria of Virginia Code § 56-235.5.

Recommendations were made in this case to extend the reach of the Virginia Universal Service Plan ("VUSP"), which allows certain low-income consumers (currently only Medicaid recipients) to obtain telephone service at reduced installation charges and at lower monthly rates than other consumers. We agree with these recommendations and hereby direct the LECs to expand the VUSP to include food stamp recipients, and we direct the LECs and the Staff to explore the feasibility of expanding VUSP eligibility to other low-income Virginians. This measure will further ensure that the affordability requirement found in Virginia Code § 56-235.5B is being met. In addition, to ensure that customers are aware of all available monthly local service option plans, including lower-priced options to premium flat rate service, we direct the LECs to work with the Staff to develop and implement the best method of disseminating this information. We are concerned that many customers may not be aware that lower-priced options are available.

The second criterion of § 56-235.5B, "reasonably assur[ing] the continuation of quality local exchange telephone service," must also be satisfied by all plans. We believe that such assurance will not be a problem, since all of the plans require the LECs to conform to the Commission's Rules Governing Service Standards adopted in Case No. PUC930009 on June 10, 1993, 1993 S.C.C. Ann. Rpt. 221. Although nothing in the record indicates that service quality should be expected to diminish under any of the proposed plans, the Commission will continue to monitor this important area to ensure that no alternative regulatory plan results in diminished service quality. While recognizing that regulatory flexibility is a fundamental

objective of incentive regulation, we cannot allow it to supersede the importance of good service.

The third statutory criterion can be met and assured by the various safeguards we are adopting in this case. That criterion requires that a plan "not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services." Based upon the record, we find that the safeguards contained in Paragraph 12 of both the Bell Atlantic - VA Plan and the United/Centel Plan will satisfy this criterion. As discussed below, these safeguards include unbundling, imputation, and attribution. Also, comprehensive incremental cost studies will assure that Competitive services receive no cost subsidy from noncompetitive services. We do not believe that any unreasonable prejudice or disadvantage to customers or competitors has occurred under the Experimental Plan or Modified Plan. Thus, the Modified Plan's safeguards, as altered herein, including unbundling and attribution (Paragraph 6), financial reporting (Paragraph 10), and cost allocations (Paragraph 15), are being carried forward to the GTE Plan and the Earnings Incentive Plan, and we find that they satisfy this criterion. As a final safeguard, Virginia Code § 56-235.5(D) will allow us to alter, amend, or revoke any plan in instances in which unreasonable prejudice or disadvantage is demonstrated.

The final requirement of § 56-235.5B that the plans be in the public interest is satisfied by reason of meeting the first three criteria and because they offer the LECs incentives for new investments, for offering new services, for efficiencies, and for cost cutting. Moreover, the plans benefit the public interest by providing the LECs the flexibility they need to respond to the increasingly competitive telecommunications market in a manner similar to that of their unencumbered competitors.

We are confident that the four criteria discussed herein will continue to be met. If any problems do arise, the Commission will issue notice and convene a hearing pursuant to subsection D of § 56-235.5 to determine if any alternative plan is failing to meet legal requirements or expectations. The LECs will be under a strict obligation to continue to satisfy all of the criteria required by both the statute and by their alternative plans or risk being required to operate under a more restrictive regulatory structure. The Staff is directed to monitor closely the LECs and may move to amend or revoke a LEC's plan if the Staff determines that such action is necessary. Similar precautions were taken in the 1980's, and still exist, regarding the treatment of certificated interLATA, interexchange carriers. In 1984, when we changed our regulatory approach regarding interexchange carriers, competition among them was in its infancy. We monitored the evolving marketplace and retained the ability to reregulate if AT&T's market power had begun suppressing competition. We are facing a similar situation today with the LECs, and as was true regarding the interexchange carriers, we believe that, over time, it will become evident that adopting alternative forms of regulation for the LECs

is the appropriate decision for us to make at this time.

GTE seeks to continue under the Modified Plan, with certain alterations. We agree with some of the recommended changes proposed by GTE and others, will alter the Modified Plan accordingly, and, as mentioned above, will henceforth refer to the altered Modified Plan as the Earnings Incentive Plan.

We agree with GTE that the authorized return on equity should be calculated annually by formula rather than by the table currently incorporated in the Modified Plan. A formula to accomplish this proposal was provided by the Staff in its brief, and we have incorporated similar language in the GTE and Earnings Incentive plans. However, we have added language to prevent the formula from producing a negative risk premium, because such a result is not consistent with sound financial principles. We also agree that the range for return on equity should be expanded, but only to 300 basis points, not 400 basis points as proposed by GTE.

In establishing the return on equity index in the Modified Plan, we used as a starting point a 2.5-4.5 percent risk premium range applicable to a yield on 30-year Treasuries of approximately 10 percent. To accomplish a 300 basis point range, we will widen the risk premium range to 2-5 percent and will adjust it annually to reflect current market conditions. We will continue to apply the concept of an inverse relationship between the Treasury yield and the risk premium. We will apply a 50 basis point change in the risk premium for each one percentage point change in the Treasury yield in the opposite direction. We will also continue to base the Treasury yield calculation on an average of the 30-year Treasury constant maturity bond yields for the months of September, October, and November. As in the Modified Plan, the allowed return-on-equity range will also be used to evaluate earnings if a company requests a rate increase while remaining in the GTE or Earnings Incentive plans.

The Staff proposed an adjustment to the allowed equity return range for companies with equity ratios outside a range of 50-60 percent. This adjustment would lower the allowed return for companies with equity ratios above this range, and vice versa, in recognition of the link between financial risk and the required return on equity. We will not adopt the Staff's adjustment at this time. However, if GTE's financial risk (or that of any LEC participating in the Earnings Incentive Plan) changes significantly, we will revisit an appropriate range for its allowed equity return.

For the GTE and Earnings Incentive plans, we also must resolve the issue of whether to change to a hypothetical capital structure, or to otherwise adjust the capitalization ratios, to reflect a lower level of common equity. We choose to continue using the LEC's 13-month average ratemaking capital structure. Although we recognize that the LECs are not completely independent of their parent companies with respect to capital structure decisions, we believe the return on equity we are adopting for the

Earnings Incentive and GTE plans is consistent with the risk displayed by LECs' actual capitalization ratios. As we noted in our decision in Case No. PUC920029, the telecommunications industry has deviated far from what was once a traditional monopoly, and our decision on the cost of capital appropriately reflects that change. However, as in our decision to reject Staff's proposed adjustment for financial risk, changes in the capital structure of any company participating in the GTE or Earnings Incentive plans may be revisited if the balance between the capital structure and the allowed return on equity becomes skewed in the future.

GTE's remaining proposals are not adopted. We have expanded its authorized return-on-equity range and see no reason to implement a sharing mechanism for earnings below or above that range. Also, GTE has requested the authority to seek rate increases to noncompetitive services without imputing competitive revenues, costs, and rate base "above the line." For the GTE Plan and the Earnings Incentive Plan, we will retain the existing imputation and other rate increase requirements of the Modified Plan. Nor will we alter the requirement to impute to noncompetitive services an amount equal to 25% of Yellow Pages' advertising income available for common equity.

As altered above, the GTE Plan and the Modified Plan (now the Earnings Incentive Plan) are currently identical. GTE may operate under its Plan commencing January 1, 1995, and the Earnings Incentive Plan will be available for the remaining LECs if they choose it prior to January 1, 1995, or pursuant to § 56-235.5C, or, upon Commission approval, if their own plan is revoked under Virginia Code § 56-235.5D. However, the two plans need not remain identical. The GTE Plan and the Earnings Incentive Plan are free to evolve in different directions, in accordance with § 56-235.5B.

Regardless of the specific company involved, or the particular alternative regulatory plan in effect, we will require ongoing financial, economic, and accounting monitoring. For the GTE and Earnings Incentive plans, the requirements will remain the same as those in the Modified Plan, except for the addition to Paragraph 10 requiring the filing of the FCC/SCC Form M, the FCC Automated Reporting Management Information System Report 43-02, the SEC Form 10-K, and the annual reports. For the price indexing plans (the Bell Atlantic - VA and United/Centel plans), the following must be filed with the Commission: (1) SEC Form 10-K for both the parent holding company and the LEC; (2) FCC/SCC Form M and the FCC Automated Reporting Management Information System Report 43-02 (to be filed only with the Commission's Division of Public Utility Accounting); (3) the annual reports to stockholders for both the parent holding company and, if available, the LEC; (4) a Virginia company, per books, rate-of-return statement that provides financial data on a total-Virginia, total-service basis, and on a Virginia-intrastate, total-service basis; (5) a 13-month average rate base statement; (6) a 13-month average

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capital structure statement; (7) on a proprietary basis, a quarterly schedule reporting units and revenue for Competitive services (to be filed only with the Division of Economics and Finance); and (8) an annual price list for Competitive services, excluding Yellow Pages (to be filed only with the Divisions of Communications and Economics and Finance). The rate-of-return, capital structure, and rate base statements must be filed quarterly for the first two years of the plans, and annually thereafter. Rate-of-return statements that include a cash working capital allowance as part of rate base must include a comprehensive lead-lag study to support it, including a balance sheet analysis.

Furthermore, all plans will include a requirement that the LEC will file, at the Staff's request, other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto. Any LEC that fails to provide, timely and accurately, required information will be subject to a Rule to Show Cause hearing.

Naturally, all companies will continue to be subject to Chapters 3, 4, and 5 of Virginia Code Title 56 as well.

IV.

SAFEGUARDS

In order to satisfy Virginia Code § 56-235.5H, to protect consumers and competitive markets, and to ensure that monopoly services do not subsidize competitive ones, we adopt the safeguards set out below.

One key safeguard for both customers and competitors that must be included in all plans adopted is the unbundling and tariffing of noncompetitive components of Competitive services. This concept is already incorporated in the Modified Plan, but it will be strengthened as suggested in the Staff post-hearing brief.

Prices of LECs' individual Competitive services must recover at least their incremental costs and, if noncompetitive services are a component of the Competitive service, the tariffed rates of the noncompetitive components must be imputed as part of the calculation of those incremental costs. LECs must maintain studies demonstrating that any Competitive service's pricing meets or exceeds imputed costs plus incremental costs. LECs must respond within 30 days to any complaints alleging that a LEC has violated the imputation requirement.

The incremental costs to be included in this test of Competitive services' prices must incorporate certain principles proposed in the testimony of the AT&T, MCI, and Staff witnesses. These principles specify that incremental costs must be the long-run additional costs incurred to provide an entire service(s). While these costs do not include allocated joint and common overheads, they

do include the costs of research and development, introductory activities, shared capacity, and other facilities and functions. Prior to January 1, 1995, Bell Atlantic - VA, United/Centel, and GTE must submit studies to the Staff that demonstrate that their Competitive services in the aggregate are priced at or above the incremental costs defined herein.

Competitive services need not be tariffed except when the service is competing with that of another provider required to file tariffs with this Commission for such service. Competitive services may be priced by the marketplace as long as the price charged for each service equals or exceeds an incremental cost floor, as discussed above.

The Commission's determination that a given service is Competitive will be applied on a statewide basis. Bell Atlantic - VA had requested authority to treat a service as Competitive in one area of the Commonwealth and noncompetitive in the remainder. This treatment would require a geographic distinction in our determination of Competitive services, and would have allowed, for example, pricing freedom to meet competition in metropolitan areas where competitors tend to emerge first. A better method for the companies to meet isolated competition for individual customers is already present in the Modified Plan: the use of individual-case-basis ("ICB") pricing. When a LEC faces an instance of a customer with a competitive alternative for a BLETS or Discretionary service, the LEC will continue to be allowed to offer an ICB contract in response to such competition. ICB pricing will be allowed subject to the following safeguards: (1) the LEC must demonstrate that a competitive alternative exists for the customer offered the ICB contract; (2) the LEC must demonstrate that the rate is above or equal to long-run incremental costs, as discussed below, including any imputed prices of noncompetitive components; and (3) the LEC must file a copy of the ICB contract, under proprietary protection, with the Commission's Division of Communications.

Regarding the timing for unbundling noncompetitive components, there will be two requirements: one relating to Competitive services offered by the LEC, and the other for unbundling requests that are not related to the LEC's Competitive service offerings. A LEC will be required to offer an unbundled, noncompetitive component(s) before it begins to offer the related Competitive service(s). For reasonable requests to unbundle noncompetitive components that are not related to any LEC Competitive service offering(s), the LEC will be required to unbundle within a reasonable time. Also, we will not adopt Bell Atlantic - VA's proposal that competitors be required to show that a component(s) for which unbundling is being sought is necessary, that it is available only from Bell Atlantic - VA, and that no economically viable alternative exists. We believe that Bell Atlantic - VA is adequately protected by the ability to recover its costs through the separate tariffing of any identified noncompetitive components. The determination of whether a component is

noncompetitive will be made using the same service category definitions discussed previously.

We will not adopt recommendations to require resale of LEC Competitive services because we do not believe that such a requirement is necessary to protect competition. However, as is true for the interexchange carriers, the LECs may offer their Competitive services for resale if they so choose.

We are amending in this case, effective for test years beginning January 1, 1995, the cost allocation principles and guidelines adopted in Case No. PUC890014 and have attached them hereto (see Attachment 1). These principles and guidelines will apply to the GTE Plan and the Earnings Incentive Plan. We do not believe that cost allocations are required for price indexing plans, such as the Bell Atlantic - VA and the United/Centel plans, because earnings measurements for specific groups of services are not required for such plans.

Before closing our discussion of regulatory safeguards applicable to alternative methods of telephone company regulation, we wish to address a matter that was brought to the forefront by events which began to unfold shortly after the hearings in this case ended. Those events were specifically related to Virginia's largest electric utility, Virginia Power, and its holding company, Dominion Resources, Inc., but the issues there have obvious implications for the telephone companies before us in this proceeding as well.

The Virginia Power matter is the subject of two currently pending proceedings, Case No. PUE940040 and Case No. PUE940051. The subjects of concern in those cases are clearly set forth in our orders and other documents in those files, and we will not discuss them at length here. As a result of that inquiry, the situation regarding Virginia utilities which are owned by non-utility holding companies is currently receiving considerable attention from the Commission and its Staff.

High as the level of concern is with regard to that electric utility, the telephone companies in this proceeding all share another significant attribute not present regarding Virginia Power. That is, while Virginia Power's parent is a domestic corporation, all of the utilities before us here are owned by holding companies incorporated and domiciled outside Virginia.

The Virginia Constitution, Article IX, § 5, provides:

No foreign corporation shall be authorized to carry on in this Commonwealth the business of, or to exercise any of the powers or functions of, a public service enterprise...

Suggestions have been made in the Virginia Power case that certain activities of Virginia Power's parent may have brought it within the ambit of Virginia Code § 56-232, which defines a "public utility" as:

...every corporation...that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat,...light, [or] power,...either directly or indirectly, to or for the public.

In addition, Virginia Code § 13.1-620 declares that no corporation has the power to conduct a public service business or to exercise any of the privileges of a public service company unless its Articles of Incorporation specify such a purpose.

Certainly, the present proceeding implicated few, if any, issues and legal provisions of the type mentioned above, and we consequently take no substantive action or position in this case related thereto. We do, however, highly commend such matters to the attention of the telephone companies here, and their parents. We will be monitoring carefully all information relevant to this subject, and we will make formal inquiry of such issues if appropriate. These concerns will clearly form part of the backdrop as we carry out our on-going responsibilities under Virginia Code § 56-235.5, especially subsections D (amendment or revocation of alternative regulatory methods previously approved), G (declassification of competitive services), and H (safeguards).

V.

CLASSIFICATION OF SERVICES

The classification of specific telecommunications services was also an issue in this case. For Bell Atlantic - VA, the Commission has determined that Bulk Special Access in Virginia will remain classified as a Discretionary service because competition is in its early stages for these services. Single Special Access will remain classified as Basic (now "BLETS") because competition is also just beginning. We find that when an appropriate market definition is used, the results show that Bell Atlantic - VA currently controls at least 94% of the Special Access market in its Virginia territory. Thus, it is too soon to reclassify these services because competition is not yet effectively regulating their prices. We will reconsider reclassification in the future as competition increases.

We will also not accept the Bell Atlantic - VA recommendations to reclassify the following services as Competitive: Bulk Private Line, Repeat Call, White Pages Bold Type, and Public Pay Telephone service. Competition in the Bulk Private Line market can come only from private carriers and customers themselves because certificated interexchange carriers are currently not allowed to provide intraLATA private line services in Virginia. This specialized, sporadic competition cannot be expected to control the prices of Bulk Private Line services.

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Bell Atlantic - VA argues that the redial button found on many telephones is competitive with Repeat Call; however, this button merely allows the customer to touch one button instead of seven or more. Thus, the redial button is not a substitute for a network service that determines whether the called number is available before completing the call.

There are no substitutes for White Pages Bold Type listings, so there are no competitors to regulate pricing. Thus, this service must remain Discretionary.

Public Pay Telephone communications are services provided from pay telephones and should not be confused with the establishment of pay telephone locations. The latter is a competitive activity, but the local and intraLATA calling from public pay telephones has no competition because of statutory and regulatory bans. Therefore, these services must remain in the BLETS category.

The Commission is reclassifying ISDN as BLETS because there currently are no substitutes available for any customer for which ISDN voice and data capabilities are a necessity. Until other local networks are available, this will remain a BLETS service.

Other services that will be reclassified as BLETS herein include: Touch Tone, which is universally available and used; Messaging Service Interface, which is required by messaging service providers and is not optional for them; and Operator Verification, which is a monopoly service.

The Bell Atlantic - VA services that will be reclassified herein as Competitive include: (1) Billing and Collection Recording, because an interexchange carrier may choose to record its own calls, which should place sufficient pressure on the LEC to control prices; (2) Call Restriction and Long-Distance Message Restriction, because many customer premises devices are substitutes; (3) Yellow Pages additional listings and bold type, because they are a part of Yellow Pages advertising and should be classified in the same manner; and (4) Public Telephone Location, because there are numerous public pay telephone providers in Virginia. We are making such reclassifications because we find, pursuant to Virginia Code § 56-235.5E and F, that competition for such services is or can be an effective regulator of the price of these services, and we find it in the public interest to detariff those services.

The following services will either be reclassified to or will remain classified as Discretionary: (1) Bulk Private Line, as mentioned above; (2) Bulk Special Access, as mentioned above; (3) FDDI/FNS, Frame Relay Service, and SMDS - these services are communications between points within a LATA, and there currently is an intraLATA competition ban; (4) Repeat Call, as mentioned above; and (5) White Pages Bold Type, as mentioned above.

United/Centel requested several reclassifications. We will reclassify Call Within, Billing and Collection Recording, and Emergency 911 service (automatic location

identification and selective routing) as Competitive, because we find that competition is or can be an effective regulator of the price of those services, and we find it in the public interest to detariff those services. All other United/Centel services classifications from the Modified Plan will remain in effect in the United/Centel Plan.

The following services are classified as Competitive for all LECs pursuant to § 56-235.5F. They were initially so classified at the beginning of the Experimental Plan, remained so classified on July 1, 1993, and we have received no evidence that would compel us to make any changes thereto: Yellow Pages advertising, Customer Premises Equipment, Inside Wiring services, CENTREX intercom and features, Billing and Collection (processing, rendering, and inquiry), Mobile services, Paging services, Speed Calling (also known as Speed Dialing), Apartment Door Answering, and Central Office LANs. We also find, pursuant to Virginia Code § 56-235.5E and F, that competition for these services is or can be an effective regulator of the price of those services and that it is in the public interest to detariff these services.

For GTE, telecommunications services will remain categorized as they were in the Modified Plan, except we find that Billing and Collection Recording and Originating Toll Restriction shall be classified as Competitive, because competition is or can be an effective regulator of the price of those services, and we find it in the public interest to detariff those services.

VI.

OTHER ISSUES

The Attorney General has suggested that depreciation should continue to be regulated fully even for LECs operating under price indexing plans. We disagree. The Attorney General's concerns are that LECs will be able to circumvent earnings standards by manipulating depreciation rates. However, under price indexing plans, there are no earnings standards, because earnings are not regulated under these plans. Thus, there is no compelling reason to continue the rigorous depreciation review and approval process for Bell Atlantic - VA and United/Centel. We will, however, monitor depreciation expenses and rate changes under those plans, and regulatory approval of depreciation will continue to be required under the GTE and the Earnings Incentive plans because earnings are regulated under these plans.

An issue of concern to the interexchange carriers, access pricing, was raised in this case. However, a pending case already addresses this topic. Upon the implementation of the plans adopted in this case, we will proceed to consider access pricing in Case No. PUC880042.

VII.

CONCLUSION

The plans we have adopted herein meet the statutory requirements of Virginia Code § 56-235.5 because we find that they: will protect the affordability of BLETS, will reasonably assure the continuation of quality telephone service, will not unreasonably prejudice or disadvantage customers or competitors, and will be in the public interest. Furthermore, we find that the safeguards included in the plans will protect against cross-subsidization of competitive services by monopoly services and will protect consumers and competitive markets. Finally, we find that competition or the potential for competition in the marketplace is, or can be, an effective regulator of the price of those services listed in the Competitive column of the attached lists of Market Classifications of Services, and that it is in the public interest to detariff these services. Accordingly,

IT IS THEREFORE ORDERED:

(1) That the Bell Atlantic - VA (Attachment 2), United/Centel (Attachment 3), and GTE (Attachment 4) plans as modified herein are hereby adopted and shall become effective January 1, 1995, should those companies elect to adopt such plans, and companies shall notify the Commission, in writing, of such election no later than December 1, 1994;

(2) That the Modified Plan is hereby amended and adopted as the Earnings Incentive Plan (Attachment 5), and shall be available to any LEC that would prefer this alternative or, upon Commission approval, to any LEC whose plan is altered or revoked pursuant to Virginia Code § 56-235.5D;

(3) That Touch Tone service and rates for those LECs opting for a price indexing plan will be altered as indicated herein;

(4) That we hereby direct the LECs to expand the Virginia Universal Service Plan to include food stamp recipients, and the LECs and the Staff are hereby directed to explore the feasibility of expanding VUSP eligibility to other low-income Virginians;

(5) That the LECs shall work with the Staff to develop and implement a method to disseminate information to consumers regarding lower-priced options for local service;

(6) That prior to January 1, 1995, the LECs must submit studies to the Staff that demonstrate that their Competitive services in the aggregate are priced at or above the incremental costs defined herein; and

(7) That there being nothing further to come before the Commission in this case, this proceeding is closed and the record developed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each of Virginia's local exchange telephone companies, as set out in Appendix A attached

hereto; Virginia's certificated interexchange carriers, as set out in Appendix B attached hereto; James C. Roberts, Esquire, Donald G. Owens, Esquire, and Charles H. Tenser, III, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., 3033 Chainbridge Road, Room 3-D, Oakton, Virginia 22185-0001; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Edward L. Petrini, Esquire, and Charles R. Foster, III, Esquire, Office of the Attorney General, Division of Consumer Counsel, 101 North 8th Street, Richmond, Virginia 23219; Craig D. Dingwall, Esquire, and Christopher D. Moore, Esquire, Sprint Communications Company, L.P., 1850 M Street, N.W., Suite 1110, Washington D.C. 20036; Eric M. Page, Esquire, Thorsen, Page & Marchant, 316 West Broad Street, Richmond, Virginia 23220; Robert C. Lopardo, Esquire, MCI Telecommunications Corporation of Virginia, 1133 19th Street, N.W., 11th Floor, Washington D.C. 20036; Louis R. Monacell, Esquire, Alexander F. Skirpan, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; William S. Bilenky, Esquire, and Stephen Isaacs, Esquire, 8133 Forest Hill Avenue, Suite 101, Richmond, Virginia 23235; Dwight W. Allen, Esquire, and James B. Wright, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587; Richard D. Gary, Esquire, and Charles H. Carrathers, III, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Warner F. Brundage, Jr., Esquire, 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Joe W. Foster, Esquire, P.O. Box 110, FLTC0007, Tampa, Florida 33601; Stephen C. Spencer, Regional Director-External Affairs, GTE Telephone Operations South Area, One James Center, 901 East Cary Street, Richmond, Virginia 23219; Cecil O. Simpson, Jr., Esquire and Robert A. Ganton, Esquire, Office of the Judge Advocate General, Department of the Army, 901 North Stuart Street, Room 400, Arlington, Virginia 22203-1837; the Commission's Office of General Counsel and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

ATTACHMENT 1

COST ALLOCATIONS

PRINCIPLES AND GUIDELINES

I. General Principles and Guidelines

The allocations shall be based upon a "fully distributed costs" methodology. That is, all costs incurred by telephone companies and recorded on their Virginia books of accounts must be distributed between competitive and regulated services.*

A. General Principles

The basic allocation principles are as follows:

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(1) Costs shall be directly assigned when feasible. Directly assignable costs are those incurred exclusively for providing a particular service(s).

(2) When direct assignment is not feasible, direct attribution shall be made when possible. Directly attributable costs are the costs of shared resources that can be allocated using direct measures of cost causation. Special studies shall be used to develop the appropriate direct measures of cost causation.

(3) Costs that cannot be directly assigned or attributed shall be indirectly attributed when possible. Indirectly attributable costs are the costs of shared resources which have no directly measurable link to the services' provision; therefore, they require indirect measures of cost causation and/or benefits for allocation purposes. Indirectly attributable costs shall be accumulated for allocation purposes in homogenous groupings having similar causal/beneficial characteristics.

(4) Costs of shared resources for which none of the above causal/beneficial relationships exist are unattributable. These costs shall be allocated by using the general allocator specified in the specific guidelines in Part II.A.(3).

B. General Guidelines

An analysis in appropriate detail shall be performed on each account and subaccount to begin the process of classifying the costs according to the aforementioned principles. Each account and subaccount shall be reviewed to determine the nature of the cost.

In the case of assets, the analysis shall consider, at a minimum:

- (1) the type of asset (e.g., outside plant cable, circuit equipment, computer hardware);
- (2) the use of the asset (e.g., switching, transmission, maintaining billing information);
- (3) the applicability and/or benefit of the asset to competitive services;
- (4) the cost-causing characteristics of the asset (e.g., volume sensitive, software-driven).

In the case of expenses, the analysis shall consider, at a minimum:

- (5) the nature of the function being performed or expense incurred (e.g., selling, maintaining outside plant, supplies);
- (6) the manner in which the function is being performed (e.g., dedicated work group, multiple work groups, as one function among many performed by a

work group);

(7) the purpose for which the cost was incurred; and

(8) the behavioral characteristics of the cost (e.g., the related costs are sensitive to the level of usage of the service).

II. Specific Guidelines

A. Account Related

The detailed procedures shall reflect the following specific guidelines. Each company may accomplish the objectives of these guidelines in the most convenient way. All special studies must be updated at least once per year. All allocations shall be done on a total company cost basis. The total company results shall be separated between the interstate and intrastate jurisdictions according to Part 36 of Title 47 of the Code of Federal Regulations, when required for reporting purposes. Companies may be required to submit certain special studies to the Staff prior to producing the Annual Informational Filing ("AIF").

- (1) Network Investment (Central Office Equipment and Outside Plant)

This investment, like all other costs, shall be directly assigned when possible. If direct assignment cannot be done, directly attributable network investment shall be allocated according to peak-relative-use forecasts, and indirectly attributable investment shall be allocated as appropriate according to these principles and guidelines.

Peak-relative-use forecasts are special studies which determine the highest annual relative use proportion expected to be achieved by competitive services during a future period equal to the normal capacity planning interval for the kind of investment under study. Forecasts shall be prepared on a calendar-year basis for the units upon which the investment allocation will be based; for example, loops shall be forecasted for subscriber outside plant investment allocations, Dial Equipment Minutes shall be forecasted for use-sensitive switching investment allocations, line terminations shall be forecasted for line-sensitive switching investment allocations, etc. These forecasts, like other special studies, shall be updated annually. However, the allocation proportion may be adjusted only under the conditions described below.

Actual relative use shall be continually measured to determine when future allocation adjustments are required. Such adjustments shall occur only (1) when an updated forecast indicates an increase in the competitive proportion, (2) when a calendar year's measured relative-use proportion for competitive services exceeds the corresponding forecasted peak-relative-use proportion, or (3) when necessitate

by a revision pursuant to Paragraph 15 of the Earnings Incentive Plan or any other alternative regulation plan that requires cost allocations. When any measured relative-use proportion for competitive services during a calendar year exceeds the forecasted proportion used for that year, a new forecast must be prepared to determine an increased peak-relative-use proportion for future allocations. To compensate for the past use of investment allocated to regulated services, the cost allocations for all affected past periods must be recalculated using the newly-determined proportion.

(2) Other Investments

These investments may be in supporting equipment for network investment, e.g., poles, conduit, buildings, etc.; or they may be personnel-supporting investment, e.g., vehicles, computers, furniture, etc.; or other kinds. Their allocation shall follow the costs they are supporting. For example, poles, conduit, and central office buildings shall follow the associated network investment, and motor vehicles for transportation of people shall follow the associated personnel costs.

(3) Operating Expenses

Each operating expense account shall be analyzed to determine how much of the expense is attributable to one or more of the following categories: (1) expenses necessary to support and maintain currently-active services, (2) expenses for planning and developing future services and technology, and (3) expenses necessary for the general management of the business. Examples of the first category are plant-specific expenses, service order expenses, product management expenses, etc. Examples of the second category are fundamental engineering planning, central staff research and development, etc. Examples of the third category are executive and legal expenses.

These expenses shall be directly assigned where it can be determined that they are caused by or benefit only regulated or competitive services. Allocations shall be the second choice.

The first category shall be allocated according to the related cost being supported (investment, in the case of plant-specific expenses), or the related output produced by the expenses (service orders, circuit designs, labor hours, analysis of services in the case of product management, etc.), with the output units appropriately weighted to reflect differing unit costs, where necessary. An exception to this guideline shall be applied to central office software expenses. Costs of initial software shall be allocated as above; updates shall be allocated according to an analysis of the benefits realized.

The second category, (research, planning, development, and introductory) shall be allocated according to

analyses of the purposes of the work. These allocations shall include specific identifications of projects performed by centralized staffs which have costs that are paid by or allocated to the local telephone companies. A permanent record of these allocations shall be established. The record at least shall show for each project and each year: (1) project identification, (2) service(s) benefited, (3) expenses incurred, (4) value and description of the competitive allocator used to allocate the expenses in the year incurred, (5) expenses allocated to competitive in the year incurred, and (6) revenues for each of the benefited services. When any of these service(s) are classified as competitive, the record, among other things, shall be used to recalculate the competitive cost and revenue allocations classified as competitive.

The third category shall be allocated according to a general allocator that is an equally-weighted average of the allocations of revenues, expenses, and investment.

(4) Other Expenses, Taxes, and Income Charges

These costs shall be allocated according to their cause. For example, property taxes shall be allocated according to the associated investment, interest expense according to the associated investment, etc.

B. Service Related

The detailed procedures shall incorporate techniques to ensure that the following guidelines are reflected in the allocations of Directly Attributable and Indirectly Attributable costs, regardless of the accounts in which they appear.

(1) Yellow Pages

Determining the costs of producing the White Pages portion of directories shall be the basic allocation objective, with the remaining directory-related expenses allocated to Yellow Pages.

Care shall be exercised to ensure that all service order expenses caused by Yellow Pages are captured. This includes the effort required to determine the proper classification of business subscribers, orders taken for Yellow Pages ads, and any other activity benefiting Yellow Pages.

Costs of other activities shall be carefully analyzed to identify any that are causally linked and/or provide benefits to the Yellow Pages operations.

(2) Virginia Jurisdictional Customer Premises Equipment and Simple Inside Wire

The direct labor expenses for these competitive services shall be determined as the amount remaining after a specific determination of the incidental

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expenditures for regulated services. In other words, direct labor shall be assumed to be competitive, with the regulated portion determined on an exception basis.

Labor expenses allocated to competitive services shall be properly loaded for associated benefits, payroll taxes, supervision, clerical support, vehicles, buildings, communications services, and anything else that supports or benefits these operations.

Other associated expenses, such as materials, billing, advertising, and so forth shall be allocated according to appropriate measures of cost causation or benefit.

(3) CENTREX (Intercom and Features)

Because switching equipment is shared by CENTREX and regulated services, the line-sensitive investment shall be allocated according to the peak-relative-use forecast of lines served; and the use-sensitive investment shall be allocated according to the peak-relative-use forecast of Dial Equipment Minutes produced by each service, appropriately weighted to reflect any additional memory and call-processing capacity required by CENTREX features. When it is not feasible to measure CENTREX Dial Equipment Minutes separately, they may be estimated based on the busy hour CCS of the CENTREX lines, with the assumption that total use is six times the busy-hour use (unless a more accurate estimate can be substantiated). These requirements require that switching equipment for CENTREX be allocated on a location-specific basis.

Outside plant investment required for CENTREX loops shall be allocated according to the peak-relative-use forecast of CENTREX intercommunicating loops to total loops. CENTREX intercommunicating loops may be determined as total CENTREX loops less the number of loops that would be required to supply the necessary trunks to carry the busy-hour CENTREX exchange network traffic. Where the traffic cannot be measured, it may be estimated. Adjustments for CENTREX loop length are not appropriate.

(4) Billing and Collection (Processing, Rendering, Inquiry, and Recording)

Costs of billing and collecting for LECs' own competitive services are administrative costs that shall be allocated in connection with studies involving those competitive services. Billing and Collection, as discussed herein, involves only the services rendered to persons other than the LEC itself.

The primary input to Billing and Collection allocations shall be studies that first divide these costs into service groups. Care must be exercised to ensure the inclusion of all costs that benefit this service, such as service-order-related costs. Total message toll, WATS,

and WATS-like costs shall then be allocated between competitive (interLATA) and regulated (intraLATA) based on the relative numbers of messages billed. Private line (Channel services) billing costs shall be allocated based on the relative numbers of bill pages and/or output billing entries containing charges for private line services.

Billing and Collection costs for products/services other than those covered by the preceding paragraph shall be allocated to competitive services.

(5) Mobile and Paging Services

The plant involved for these services shall be determined by specific analysis of property records. Other costs should be allocated as appropriate.

(6) Speed Calling

Use-sensitive switching investment is the only direct investment that shall be allocated to this service. This allocation shall be based on a determination of the average additional memory assigned and central-processor use required to service Speed Calling-equipped lines, compared to unequipped lines; then, the allocation to competitive services shall be based on the number of lines equipped for speed calling. CENTREX lines may be ignored because their feature costs are covered in the CENTREX allocations.

Other costs shall be allocated as appropriate.

(7) Apartment Door Answering

This service shall be covered by a specific analysis of the involved plant to determine investment. Other costs shall be allocated as appropriate.

(8) C.O. LANs

Central office equipment shall be allocated by a direct analysis of the involved plant. Outside plant investment in the associated loops is assumed to be assigned completely to competitive services in CENTREX-service-driven studies where the LAN customers are also CENTREX customers. Where the LAN customers are not also CENTREX customers, 1/2 of the loop investment shall be allocated to competitive services when the LAN is combined voice and data. Where LAN customers use data-only loops, all the associated loop investment shall be allocated to competitive services.

Other costs shall be allocated as appropriate.

(9) New or Reclassified Competitive Services

When a new or existing service(s) is classified as competitive, all of its costs and revenues shall be allocated to competitive services results for the year

in which this classification is made. Moreover, there shall be a determination of the net income effect of the service(s) from the beginning of its research, planning, and development up to, but not including, the year it is classified as competitive. This net income effect shall include all revenues, expenses, and taxes attributable to the service(s) since its inception. A positive net income effect shall be ignored. A negative net income effect shall be deducted from noncompetitive services' costs and assigned to competitive services' results in the year the competitive classification is made or amortized over a reasonable period.

III. Cost Allocation Manual (CAM) Content and Audit Requirements

The following procedures are necessary to demonstrate that each company is in compliance with the cost allocation requirements of any alternative regulation plans that regulate earnings. As used below, the term "cost pool" refers to a homogeneous group which can be directly assigned or allocated using the same measure. Cost pools should be determined in accordance with the basic allocation principles set forth in the General Principles section of Exhibit A.

A. CAM Content Requirements

The cost allocation manuals should permit a comprehensive understanding of all allocation procedures. At a minimum, the following should be included:

(1) The cost allocation manuals should be broken down according to the Uniform System of Accounts (USOA) Part 32. Each account should be segregated into (a) cost pools for Part 64 allocations and (b) cost pools for alternative regulatory plan (e.g., Earnings Incentive Plan Paragraph 15) allocations. Each of these procedures must be performed on a total-company basis.

(2) A clear description of the composition of each cost pool and the basis on which the cost pool will be allocated.

(3) A clear explanation of the development of special studies employed by the company to allocate costs. For example, include the techniques and the planning period used in peak-relative-use forecasts, the sampling techniques used in minutes-of-use studies, etc.

(4) A procedure which will enable the company to describe and justify any change in an allocation mechanism that results in a shift in the competitive or regulated allocation of a cost pool by 10% or more.

B. Audit Requirements

(1) Audit records will be retained for a three-year period.

(2) Each company will maintain fully-documented records to enable the Staff to verify the accuracy of each allocation procedure. The Company should maintain the records on a per-cost-pool and per-USOA-account basis.

(3) As a result of this Commission's tentative adoption of Part 64 allocation procedures, the Staff must have access to all documents and audit reports (both internal and external) related to Part 64 allocation procedures.

(4) Retain the description, justification, and financial documentation resulting from a change in an allocation mechanism that falls within the parameters of item III.A.(4).

(5) Each company shall file annually a Combined Summary and a Cost Pool Summary. These schedules should be revised as needed to reflect any revisions to the cost allocations and the associated AIF.

(6) If AIF reruns are necessary, each company should reflect only those changes agreed to by the Staff. If a company believes it is necessary to include additional revisions or if additional studies are proposed, these items should be identified separately and reflected on a separate rate-of-return statement.

*Competitive services are those determined to be Competitive in the Commission's Final Order in Case No. PUC930036 and any future additions. Regulated services are all others.

ATTACHMENT 2

BELL ATLANTIC - VIRGINIA PLAN FOR ALTERNATIVE REGULATION

1. Applicability of Plan.

A. Upon election of the Company, this Plan will apply to Bell Atlantic - Virginia, Inc., ("Bell Atlantic - VA") and will go into effect on January 1, 1995.

B. Nothing in this Plan shall be deemed to affect the ability or authority of any entity other than Bell Atlantic - VA to offer any telecommunications service.

2. Changes to Plan.

A. Any change to this Plan may occur only after an appropriate proceeding is initiated and held under the provisions of § 56-235.5D of the Code of Virginia.

B. Any such change approved by the Commission shall have prospective effect only.

3. Classification of Services.

A. Telecommunications services of Bell Atlantic - VA will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary

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Services, and Competitive Services, as defined below. Initially, Bell Atlantic - VA's existing services will be distributed among these three categories in accordance with Appendix A hereto.

B. Service classifications are defined as follows:

1. "Competitive Services" are, pursuant to § 56-235.5F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.

2. "Discretionary Services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than Bell Atlantic - VA, but which do not conform to the definition of Competitive services.

3. "Basic Local Exchange Telephone Services" ("BLETS") are telecommunications services which are not Competitive or Discretionary and which, due to their nature or legal/regulatory restraints, only Bell Atlantic - VA can provide, and other services the Commission determines to be BLETS.

4. Classification of New Services and Reclassification of Existing Services.

A. Thirty days prior to offering a new service or reclassifying an existing service, Bell Atlantic - VA shall notify, in writing, the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide a tariff and appropriate documentation to the Staff. The Commission may suspend the proposed effective date if it finds that the documentation supporting the classification is insufficient.

1. Simultaneous with such notification, the Company shall designate the service category into which the service is classified.

2. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted in accordance with § 56-235.5E of the Code of Virginia.

3. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering unless the Commission, for good cause shown, orders otherwise.

4. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed

classification is Competitive, the proceeding must be completed within 120 days. The Commission, however, for good cause shown, may extend these time periods.

B. Any interested party may petition for the classification or reclassification of a Bell Atlantic - VA service. Any such proceeding must be completed within 90 days unless the reclassification is either to or from the Competitive category, in which case it must be completed within 120 days, unless the Commission should extend these time periods for good cause shown. If the proposed category is Competitive, subparagraph (4)(A)(2) above applies.

5. Tariff Requirements.

Tariffs shall continue to be filed by Bell Atlantic - VA for all BLETS and Discretionary services and for any Competitive service that is also offered within Bell Atlantic - VA's service territory, pursuant to a Virginia intrastate tariff, by another company that is certificated by this Commission. The prices of Competitive services shall not be regulated by the Commission, except as provided for in Paragraph 12 (Competitive Safeguards), below.

6. Price Changes for BLETS.

Price changes for BLETS shall be governed by the following rules:

A. Price Decreases.

If Bell Atlantic - VA wishes to reduce the price for any BLETS service, it shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with § 56-40 of the Code of Virginia.

B. Price Increases.

1. No price increase (other than pursuant to Paragraph 8 herein) will be allowed before January 1, 2001, for BLETS services.

2. In and after the year 2001, price increases for BLETS services will be allowed pursuant to the notification provisions of § 56-237.1 and a showing by Bell Atlantic - VA that any individual price increase does not exceed in percentage terms one-half (1/2) the increase in the Gross Domestic Product Price Index (as defined in Paragraph 10) for the preceding year. After this initial price increase, any subsequent increase in prices for these services will be allowed pursuant to the notification provisions of § 56-237.1 and shall not exceed in percentage terms one-half (1/2) the increase in the Gross Domestic Product Price Index since the last time the price of the service was increased. If a protest or objection to a BLETS price increase is filed by twenty or more customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the increase, pursuant to § 56-235.5.

3. No service shall be subject to more than one price increase in any twelve-month period.

C. Rate Regrouping of Exchanges.

Nothing in this Plan shall be construed to prohibit rate regrouping of exchanges due to growth in access lines. This regrouping process will continue in order to avoid rate discrimination between similarly-sized exchanges.

7. Price Changes for Discretionary Services.

Changes to prices for Discretionary services shall be governed by the following rules:

A. Price Decreases.

If Bell Atlantic - VA wishes to reduce the price of any Discretionary service, it shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with the requirements of § 56-40 of the Code of Virginia.

B. Price Increases.

1. A price increase in a Discretionary service prior to January 1, 1997, will be allowed after 30 days notice to the Commission, 30 days notice (by individual and solitary bill inserts or imprints) to customers, and a showing by Bell Atlantic - VA that the initial price increase allowed under this section does not exceed in percentage terms the increase in the Gross Domestic Product Price Index, as defined in Paragraph 10 herein, for the preceding year. After this initial price increase, any subsequent increase prior to 1997 shall require 30 days notice to the Commission, 30 days notice (by individual and solitary bill inserts or imprints) to customers, shall not occur any sooner than twelve months since the last increase, and may not exceed in percentage terms the increase in the Gross Domestic Product Price Index since the last time the price was increased for the service. In no event may this increase exceed 10%.

2. In 1997 and thereafter, a price increase will be allowed after 30 days notice to the Commission, 30 days notice (by individual and solitary bill inserts or imprints) to customers, and a showing by Bell Atlantic - VA that the service whose price is being increased has not experienced a previous rate increase in the prior twelve months and that the increase does not exceed a percentage amount calculated by multiplying .0083 times the number of months (equates to 10% per twelve-month period) since January 1, 1997, or .0083 times the number of months since the most recent increase after January 1, 1997. In no event may this increase exceed 25%.

8. Revenue-Neutral Price Changes.

A. Nothing in this Plan shall be construed to prohibit Bell Atlantic - VA from proposing changes in the price of

any BLETS or Discretionary services that do not result in a net increase in operating revenues. The notification provisions of Code § 56-237.1 will be applied to such proposals, and if a protest or objection to the revenue-neutral restructuring is filed by twenty or more customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the restructuring, pursuant to § 56-235.5. The Commission shall approve such rate changes if it finds that they are in the public interest, or the Commission may refuse to approve the filing if it is not in the public interest or otherwise fails to comply with this Plan.

B. The Commission will require Bell Atlantic - VA to show within the first two years following the implementation of the price changes that the changes are, in fact, revenue neutral. If they are not, the Commission may require a prospective adjustment in the affected prices to ensure revenue neutrality.

9. Individual-Case-Basis Pricing.

Individual-Case-Basis (ICB) or custom-service-package contract pricing is allowed for BLETS and Discretionary services when Bell Atlantic - VA demonstrates that a competitive alternative exists for an individual customer, but where the service does not otherwise satisfy the requirements of Paragraph 3.B.1. The conditions of Paragraph 12 (Competitive Safeguards) must be met. A copy of any ICB or custom-service-package contract must be filed under proprietary protection with the Commission's Division of Communications with supporting data demonstrating that the rate is above the total incremental cost of the service.

10. Gross Domestic Product Price Index Standard.

The Gross Domestic Product Price Index used to determine limits on price increases shall be the final estimate of the Chain-Weighted Gross Domestic Product - Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

11. Financial Reporting.

To provide the Commission with financial information for it to assure that the financial viability of Bell Atlantic - VA has not been adversely affected in such a way as to jeopardize its ability to provide high quality service, Bell Atlantic - VA shall file annually, unless otherwise indicated below, with the Commission its stockholder annual report (if available) and SEC Form 10-K; Bell Atlantic's stockholders' annual report and SEC Form 10-K; FCC/SCC Form M and the FCC Automated Reporting Management Information System Report 43-02 to be filed only with the Division of Public Utility Accounting; a Virginia company, per books, rate-of-return statement that provides financial data on a total-Virginia, total-service basis, and on a Virginia-intrastate, total-service basis; a 13-month average capital structure statement; and a 13-month average rate

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base statement. The rate-of-return, capital structure, and rate base statements shall be filed quarterly for the first two years of the Plan, and annually thereafter. All of the above statements shall include the aggregate of all services, except for any service that is lawfully, preemptively deregulated by the FCC.

12. Competitive Safeguards.

The following safeguards relating to fairness of competition will be imposed on Bell Atlantic - VA:

A. There will be no increases in the prices for BLETs and Discretionary services other than as outlined in Paragraphs 6, 7, and 8 above.

B. Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs at the time the Commission determines a service to be Competitive. When these services and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used.

Regarding new services, unbundling of all non-competitive components must be accomplished before Bell Atlantic - VA can offer a Competitive service related to the noncompetitive component(s). If Bell Atlantic - VA does not plan to offer a related service before the party requesting unbundling plans to offer its related service, the unbundling must be accomplished within a reasonable time after any reasonable request is made for such unbundling, and with assurances that the Company can recover its related incremental costs.

If Bell Atlantic - VA offers a Competitive service using an unbundled noncompetitive component, it shall demonstrate that its price equals or exceeds the incremental costs of the competitive components of the service plus the tariffed rates of any noncompetitive components.

C. Revenues from Competitive services in the aggregate must cover their incremental costs. Bell Atlantic-VA shall file data annually to demonstrate this. Also, the price of an individual service must cover its incremental costs. Bell Atlantic - VA shall maintain total incremental cost studies for each Competitive service offered demonstrating that a service's price equals or exceeds its incremental costs. These studies shall be filed with the Division of Communications within 30 days of a complaint alleging that an individual service's revenues fail to cover its total incremental costs.

13. Service Quality.

Service quality results shall be filed by Bell Atlantic - VA on a quarterly basis, or as directed by the Staff.

A. These reports shall conform to service rules adopted

by the Commission by Final Order of June 10, 1993, in Case No. PUC930009. These reports may be expanded to include results not contained in the present service reports.

B. Bell Atlantic - VA will also file reports showing results related to services provided to interexchange carriers as follows:

On-time performance

Outage duration

Blocking below the tandem

C. The Staff will analyze service results and take immediate action to resolve any service quality problems.

14. Filing of Other Information.

A. Upon the request of the Staff, Bell Atlantic - VA will file such other information with respect to any services or practices of the Company as may be required of public service companies under current Virginia law, or any amendments thereto.

B. If Bell Atlantic - VA fails to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, it shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of the Company's performance under the Plan.

15. Monitoring of Competitive Services.

To assist the Commission in fulfilling the requirements of § 56-235.5G of the Code of Virginia to monitor the competitiveness of Competitive services, Bell Atlantic - VA must file, on a proprietary basis, a quarterly schedule reporting units and revenue for Competitive services (to be filed only with the Division of Economics and Finance). Also, Bell Atlantic - VA must file an annual price list for Competitive services, excluding Yellow Pages (to be filed only with the Divisions of Communications and Economics and Finance).

16. Access Charges.

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs, and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Attachment 2

APPENDIX A Call Forwarding - (All types)

BELL ATLANTIC - VA

MARKET CLASSIFICATIONS OF SERVICES

COMPETITIVE SERVICES

Apartment Door Answering

Billing & Collection (Processing, Rendering, Inquiry, Recording)

Business Market Hotline

C.O. LANS

Call Restriction

CENTREX Intercom & Features incl. CENTREX INTELLILINQ (R) - BRI

Home Intercom

Long Distance Message Restriction

Non-preemptively deregulated Customer Premises Equipment

Paging Services

Part 64 Services

Public Telephone Location

Simple Inside Wiring

Speed Calling

Uniform Call Distribution

Yellow Pages Advertising

DISCRETIONARY SERVICES

Anonymous Call Rejection

Appointment Request (sm)

B&C Security Functions

Break Rotary Hunt

"Bulk" Private Line

"Bulk" Special Access

C.O. Data Sets

Call Block

Call Trace

Call Waiting

Caller ID

Caller ID Deluxe

CENTREX Extend Service

Centrex/DID Intercept Service

Connect Request (sm)

Digital Data Service

FDDI/FNS

Frame Relay Service

High Capacity Digital Hand-off Service

IDENTA RING (R)

Intercom Extra

Line-side Answer Supervision (COCOT/PPT)

Make Busy Arrangements

Message Waiting Indicator

Non-list & Non-pub Numbers

Operator Call Completion Services

Optional Intercept Arrangements

Pay-Per-View

Preferred /Reserved Numbers

Priority Call

Remote Call Forwarding

Repeat Call

Return Call

Select Forward

Specialized Operator Service (verification with interrupt)

Switched Multi-Megabit Data Service

Switched Redirect Service

Telecommunications Service Priority

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Three-Way Calling	Maintenance Visit (Trouble Isolation)
Time-of-Day Service	Messaging Service Interface (incl. stutter dial tone)
Transfer Arrangements	MTS/WATS/800
ULTRA FORWARD (R)	Operator Service - Emergency & Troubles
Verification With Call Interrupt (IXC)	Operator Verification
Weather Forecast Service	Optional Calling Plans
White Pages Additional Listings & Bold Type	PBX Night, Sunday, Etc. Arrangements
BASIC LOCAL EXCHANGE TELEPHONE SERVICES (BLETS)	
Access to Switched Network (DTLs)	Public Data Network
Answering Bureau Services	Public Telephone Communications
Basic Service Charges	Selective Call Screening
Billing & Collection DNP	Semi-Public Telephone Service
CENTREX Exchange Access & Usage	Service Performance Guarantee
Dial Tone Line 800 Service	Shared Tenant Service
Direct Inward Dialing	"Single" Private Line & Special Access (Excluding Digital Data Service)
Directory Assistance	Specialized Operator Services (verification)
Emergency Number "911" Service	Split Supervisory Drops
Exchange Usage	Switched 56 Kilobit Service
Extended Area Calling	Switched Access
Four-Wire Service Terminating Arrangements	Touch Tone
FX/FZ/FCO Services	White Pages Listing
Home Business Service	(sm) = Service Mark
Hunting Arrangements	(R) = Registered Trademark
Identified Outward Dialing	
Intercept (Standard)	
ISDN - BRI	
ISDN - PRI	
IXC Coinless Telephone Service	
Line Status Verification (IXC)	
List Service	

ATTACHMENT 3

ALTERNATIVE REGULATORY PLAN FOR CENTRAL TELEPHONE COMPANY OF VA. AND UNITED TELEPHONE - SOUTHEAST, INC.

1. Applicability of Plan.

A. Upon election of the Companies, this Plan will apply to Central Telephone Company of Virginia and United Telephone-Southeast, Inc. ("the Companies") and will go into effect on January 1, 1995.

We refer to the Companies collectively; however, this does not preclude either Company from seeking singular treatment under the provisions of this Plan.

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B. Nothing in this Plan shall be deemed to affect the ability or authority of any entity other than the Companies to offer any telecommunications service.

2. Changes to Plan.

A. Any change to this Plan may occur only after an appropriate proceeding is initiated and held under the provisions of § 56-235.5D of the Code of Virginia.

B. Any such change approved by the Commission shall have prospective effect only.

3. Classification of Services.

A. Telecommunications services of the Companies will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary Services, and Competitive Services, as defined below. Initially, the Companies' existing services will be distributed among these three categories in accordance with Appendix A hereto.

B. Service classifications are defined as follows:

1. "Competitive Services" are, pursuant to § 56-235.5F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.

2. "Discretionary Services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than the Companies, but which do not conform to the definition of Competitive services.

3. "Basic Local Exchange Telephone Services" ("BLETS") are telecommunications services which are not Competitive or Discretionary and which, due to their nature or legal/regulatory restraints, only the Companies can provide, and other services the Commission determines to be BLETS.

4. Classification of New Services and Reclassification of Existing Services.

A. Thirty days prior to offering a new service or reclassifying an existing service, the Companies shall notify, in writing, the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide a tariff and appropriate documentation to the Staff. The Commission may suspend the proposed effective date if it finds that the documentation supporting the classification is insufficient.

1. Simultaneous with such notification, the Companies shall designate the service category into which the service is classified.

2. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted in accordance with § 56-235.5E of the Code of Virginia.

3. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering unless the Commission, for good cause shown, orders otherwise.

4. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days. The Commission, however, for good cause shown, may extend these time periods.

B. Any interested party may petition for the classification or reclassification of a Company service. Any such proceeding must be completed within 90 days unless the reclassification is either to or from the Competitive category, in which case it must be completed within 120 days, unless the Commission should extend these time periods for good cause shown. If the proposed category is Competitive, subparagraph (4)(A)(2) above applies.

5. Tariff Requirements.

Tariffs shall continue to be filed for all BLETS and Discretionary services and for any Competitive service that is also offered within the Companies' service territory, pursuant to a Virginia intrastate tariff, by another company that is certificated by this Commission. The prices of Competitive services shall not be regulated by the Commission, except as provided for in Paragraph 12 (Competitive Safeguards), below.

6. Price Changes for BLETS.

Price changes for BLETS shall be governed by the following rules:

A. Price Decreases.

If the Companies wish to reduce the price for any BLETS service, they shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with § 56-40 of the Code of Virginia.

B. Price Increases.

1. No price increase (other than pursuant to Paragraph 8 herein) will be allowed before January 1, 1998, for BLETS services.

2. Beginning in the year 1998, price increases for BLETS services will be allowed pursuant to the

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notification provisions of § 56-237.1 and a showing by the Companies that any individual price increase will not exceed in percentage terms one-half (+) the increase in the Gross Domestic Product Price Index (as described in Paragraph 10) for the preceding year. After this initial price increase, any subsequent increase in prices for these services will be allowed pursuant to the notification provisions of § 56-237.1 and shall not exceed in percentage terms one-half of the increase in the Gross Domestic Product Price Index since the last time the price of the service was increased. If a protest or objection to a price increase is filed by twenty or more customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the increase, pursuant to § 56-235.5.

3. No service shall be subject to more than one price increase in any twelve-month period.

C. Rate Regrouping of Exchanges.

Nothing in this Plan shall be construed to prohibit rate regrouping of exchanges due to growth in access lines. This regrouping process will continue in order to avoid rate discrimination between similarly-sized exchanges.

7. Price Changes for Discretionary Services.

Changes to prices for Discretionary services shall be governed by the following rules:

A. Price Decreases.

If the Companies wish to reduce the price of any Discretionary service, they shall file a revised tariff with the Commission. Such tariff shall take effect in accordance with the requirements of § 56-40 of the Code of Virginia.

B. Price Increases.

1. Price increases for Discretionary services will be allowed after 30 days notice to the Commission, 30 days notice (by individual and solitary bill inserts or imprints) to customers, and a showing by the Companies that no individual price increase for a Discretionary service will exceed the full increase in GDPPI, as defined in Paragraph 10 herein, for the preceding year. If the Companies do not obtain a rate increase during the prior twelve-month period, the increase may reflect a cumulative change in GDPPI since the last increase, but can be no more than two (2) times the change in GDPPI for the preceding year.

2. No service shall be subject to more than one price increase in any twelve-month period.

8. Revenue-Neutral Price Changes.

A. Nothing in this Plan shall be construed to prohibit

the Companies from proposing changes in the price of any BLETS or Discretionary services that do not result in a net increase in operating revenues. The notification provisions of Code § 56-237.1 will be applied to such proposals, and if a protest or objection to the revenue-neutral restructuring is filed by twenty or more customers, the Commission shall, upon reasonable notice, conduct a public hearing concerning the lawfulness of the restructuring, pursuant to § 56-235.5. The Commission shall approve such rate changes if it finds that they are in the public interest, or the Commission may refuse to approve the filing if it is not in the public interest or otherwise fails to comply with this Plan.

B. The Commission will require the Companies to show within the first two years following the implementation of the price changes that the changes are, in fact, revenue neutral. If they are not, the Commission may require a prospective adjustment in the affected prices to ensure revenue neutrality.

9. Individual-Case-Basis Pricing.

Individual-Case-Basis (ICB) or custom-service-package contract pricing is allowed for BLETS and Discretionary services when the Companies demonstrate that a competitive alternative exists for an individual customer, but where the service does not otherwise satisfy the requirements of Paragraph 3.B.1. The conditions of Paragraph 12 (Competitive Safeguards) must be met. A copy of any ICB or custom-service-package contract must be filed under proprietary protection with the Commission's Division of Communications with supporting data demonstrating that the rate is above total incremental cost of the service.

10. Gross Domestic Product Price Index Standard.

The Gross Domestic Product Price Index used to determine limits on price increases shall be the final estimate of the Chain-Weighted Gross Domestic Product - Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

11. Financial Reporting.

To provide the Commission with financial information for it to assure that the financial viability of the Companies has not been adversely affected in such a way as to jeopardize their ability to provide high quality service, the Companies shall file annually, unless otherwise indicated below, with the Commission their stockholder annual reports (if available) and SEC Form 10-K; the stockholders' annual reports and SEC Form 10-K of Sprint, Inc.; FCC/SCC Form M and the FCC Automated Reporting Management Information System Report 43-02 to be filed only with the Division of Public Utility Accounting; a Virginia company, per books, rate-of-return statement that provides financial data on a total-Virginia, total-service basis, and on a Virginia- intrastate, total-service basis; a

13-month average capital structure statement; and a 13-month average rate base statement. The rate-of-return, capital structure, and rate base statements shall be filed quarterly for the first two years of the Plan, and annually thereafter. All of the above statements shall include the aggregate of all services, except for any service that is lawfully, preemptively deregulated by the FCC.

12. Competitive Safeguards.

The following safeguards relating to fairness of competition will be imposed on the Companies:

A. There will be no increases in the prices for BLETS and Discretionary services other than as outlined in Paragraphs 6, 7, and 8 above.

B. Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs at the time the Commission determines a service to be Competitive. When these services and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used.

Regarding new services, unbundling of all non-competitive components must be accomplished before the Companies can offer a competitive service related to the noncompetitive component(s). If the Companies do not plan to offer a related service before the party requesting unbundling plans to offer its related service, the unbundling must be accomplished within a reasonable time after any reasonable request is made for such unbundling, and with assurances the Companies can recover their related incremental costs.

If the Companies offer a Competitive service using an unbundled noncompetitive component, they shall demonstrate that their price equals or exceeds the incremental costs of the competitive components of the service plus the tariffed rates of any noncompetitive components.

C. Revenues from Competitive services in the aggregate must cover their incremental costs. The Companies shall file data annually to demonstrate this. Also, the price of an individual service must cover its incremental costs. The Companies shall maintain total incremental cost studies for each Competitive service offered demonstrating that a service's price equals or exceeds its incremental costs. These studies shall be filed with the Division of Communications within 30 days of a complaint alleging that an individual service's revenues fail to cover its total incremental costs.

13. Service Quality.

Service quality results shall be filed by the Companies on a quarterly basis, or as directed by the Staff.

A. These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009. These reports may be expanded to include results not contained in the present service reports.

B. The Companies will also file reports showing results related to services provided to interexchange carriers as follows:

On-time performance

Outage duration

Blocking below the tandem

C. The Staff will analyze service results and take immediate action to resolve any service quality problems.

14. Filing of Other Information.

A. Upon the request of the Staff, the Companies will file such other information with respect to any services or practices as may be required of public service companies under current Virginia law, or any amendments thereto.

B. If the Companies fail to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, they shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each Company's performance under the Plan.

15. Monitoring of Competitive Services.

To assist the Commission in fulfilling the requirements of § 56-235.5G of the Code of Virginia to monitor the competitiveness of Competitive services, the Companies must file, on a proprietary basis, a quarterly schedule reporting units and revenue for Competitive services (to be filed only with the Division of Economics and Finance). Also, the Companies must file an annual price list for Competitive services, excluding Yellow Pages (to be filed only with the Divisions of Communications and Economics and Finance).

16. Access Charges

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs, and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Attachment 3

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APPENDIX A Detail Message Billing

UNITED/CENDEL

MARKET CLASSIFICATIONS OF SERVICES

COMPETITIVE SERVICES

Advanced Business Connection (sm)
ALI & Selective Routing (E-911)
Billing & Collection (Processing, Rendering, Inquiry, Recording)
Call Within
CENTREX (intercom & features)
C.O. LANS/Lan Link (sm)
Data Path
Non-preemptively deregulated Customer Premises Equipment
Paging Services
Part 64 Services
Simple Inside Wiring
Speed Calling
Toll Restriction (except 700/900)
Yellow Pages Advertising

DISCRETIONARY SERVICES

B&C Security Functions
"Bulk" Private Line/TransLink (sm)
"Bulk" Special Access
Call Block
Caller ID/Anonymous Call Rejection/Calling Number Delivery
Call Forwarding - (all kinds)
Call Trace
Call Waiting
Cancel Call Waiting
Customized Number Service

Distinctive Ringing/Signal Ring (R)
Exchange Usage
Enhanced Traffic Assessment
Express Touch Svcs.
Hotline
Message Waiting Indicator
Non-list & Non-pub Numbers
Operator Call Completion Services
Priority Call
Referral Service
Remote Call Forwarding
Repeat Call/Repeat Dialing Plus
Reserved Numbers
Return Call/Auto Call Return
Select Forward
Selective Call Acceptance
Selective Call Rejection
Special Billing Numbers
Telecommunications Service Priority
Three-Way Calling
Time-of-Day Service
Transfer Arrangements
United SwitchLink/SwitchLink Plus (sm)
Verification With Call Interrupt
Warm Line
Weather Forecast Service
White Pages Additional Listings & Bold Type
BASIC LOCAL EXCHANGE TELEPHONE SERVICES (BLETS)
ABC/CENTREX Exchange Access & Usage (NARs)

Access to Switched Network (DTLs) incl. Aux. Equipment
Answering Svc. Conn.
Basic Service Charges
Billing & Collection DNP
Concentrator - Identifier Equipment
Dial Tone Line 800 Service
Digital Data Service/DigiLink (sm)
Direct Inward Dialing
Directory Assistance
Emergency Number "911" Service /E911
Extended Area Calling
Four-Wire Service Terminating Arrangements
FX Service
Hunting Arrangements
Identified Outward Dialing
Incoming Number Screening
Intercept (Standard)
List Service
Maintenance Visit (Trouble Isolation)
Message Service Interface/Message Waiting
MTS/WATS/800
Number Screening
Operator Service - Emergency & Troubles
Operator Verification
Optional Calling Plans
PBX Night, Sunday, Etc. Arrangements
Private Line/Channels - "Single"
Public Telephone Communications
Semi-Public Telephone Service
Shared Tenant Service
Simplified Message Desk Interface

Special Access - "Single"

Switched Access

Touch Tone/Touch Call

White Pages Listing

(sm) = Service Mark

(R) = Registered Trade Mark

ATTACHMENT 4

GTE SOUTH ALTERNATIVE REGULATORY PLAN

1. Applicability of Plan.

Upon election of the Company, this Plan will apply to GTE South, Inc. ("GTE") on or after January 1, 1995.

2. Changes to Plan.

A. Should GTE desire to end its participation in this Plan, it may do so with leave of the Commission upon a showing of good cause. If granted permission to exit the Plan, it will thereafter be subject to traditional regulation pursuant to Chapter 10 of Title 56 of the Code of Virginia on a prospective basis or to another alternative form of regulation if approved pursuant to Virginia Code § 56-235.5. The Commission retains the right to terminate GTE's participation in the Plan on its own motion, or upon complaint, if it finds good cause to do so, such as a finding that a practice under the Plan is abusive or detrimental to the public interest.

B. While this Plan is in effect, any changes found to be necessary will be given prospective effect only.

3. Classification of Services.

A. Telecommunications services of GTE will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary Services, and Competitive Services, as defined below. Initially, GTE's existing services will be distributed among these three categories in accordance with Appendix A hereto.

B. Service classifications are defined as follows:

1. "Competitive Services" are, pursuant to § 56-235.5F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.

2. "Discretionary Services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than the LECs, but which do not

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conform to the definition of Competitive services.

3. "Basic Local Exchange Telephone Services" ("BLETS") are telecommunications services which are not Competitive or Discretionary and which, due to their nature or legal/regulatory restraints, only the LECs can provide, and other services the Commission determines to be BLETS.

C. Services listed on Appendix A as Discretionary or BLETS, together with all other existing services of GTE not identified on Appendix A as Competitive, will remain subject to current regulatory oversight, modified, however, by Paragraph 4, below.

D. The rate base, costs, and revenues from Competitive services will be transferred below the line for Annual Informational Filing ("AIF") purposes and will be not subject to price regulation. Yellow Pages advertising will continue to be treated as Competitive for all purposes of this Plan, but 25 percent of Yellow Pages' advertising income available for common equity will be attributed to noncompetitive services in the AIF process.

4. Individual-Case-Basis Pricing.

Individual-Case-Basis (ICB) or custom-service-package contract pricing is allowed for BLETS and Discretionary services when GTE demonstrates that a competitive alternative exists for an individual customer, but where the service does not otherwise satisfy the requirements of Paragraph 3.B.1. A copy of any ICB or custom-service-package contract must be filed under proprietary protection with the Commission's Division of Communications with supporting data demonstrating that the rate is above total incremental cost of the service. The conditions of Paragraph 6 must be met.

5. Tariff Requirements.

Tariffs shall continue to be filed for all BLETS and Discretionary services and for any Competitive service that is also offered pursuant to a Virginia intrastate tariff by another company that is certificated by this Commission.

6. Competitive Safeguards.

The following safeguards relating to fairness of competition will be imposed on GTE:

A. Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs at the time the Commission determines a service to be Competitive. When these services and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used.

Regarding new services, unbundling of all non-competitive components must be accomplished before

GTE can offer a Competitive service related to the noncompetitive component(s). If GTE does not plan to offer a related service before the party requesting unbundling plans to offer its related service, the unbundling must be accomplished within a reasonable time after any reasonable request is made for such unbundling, and with assurances that the Company can recover its related incremental costs.

If GTE offers a Competitive service using an unbundled noncompetitive component, it shall demonstrate that its price equals or exceeds the incremental costs of the competitive components of the service plus the tariffed rates of any noncompetitive components.

B. Revenues from Competitive services in the aggregate must cover their incremental costs. GTE shall file data annually to demonstrate this. Also, the price of an individual service must cover its incremental costs. GTE shall maintain total incremental cost studies for each Competitive service offered demonstrating that a service's price equals or exceeds its incremental costs. These studies shall be filed with the Division of Communications within 30 days of a complaint alleging that an individual service's revenues fail to cover its total incremental costs.

7. Unregulated Services.

Any service that is lawfully, preemptively deregulated by the Federal Communications Commission (FCC) will not be subject to regulation. This Commission retains full regulatory authority over any service that is not lawfully, preemptively deregulated, including Competitive services that are subject to the FCC's Part 64 rules.

8. Rate Regrouping of Exchanges.

Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly-sized exchanges.

9. Monitoring of Competitive Services.

A. For purposes of assuring that competition is an effective regulator of the price of Competitive services, the Staff shall monitor these services on a periodic basis, at a minimum, annually.

B. Solely for annual monitoring purposes, GTE shall file a Virginia company, per books, rate-of-return statement, under proprietary protection, for the aggregate of all of its services, except for any service that is lawfully, preemptively deregulated by the FCC, consistent with Paragraph 10 below. Annually, total-company, total-service results will be monitored in order to provide the Commission with a complete picture of GTE's operating results.

10. Financial Reporting.

Annually, GTE shall file a nonproprietary AIF based upon

the rate base, revenues, and expenses of all services, excluding those which are Competitive except Part 64 services that have not been lawfully, preemptively deregulated by the FCC. The AIF will be due 180 days after the end of the test period and shall include the FCC Automated Reporting Management Information System Report 43-02, the most recent SEC Form 10-K, and the most recent annual reports for both GTE South and GTE Corporation. Return on rate base and return on common equity will be calculated by using a 13-month average rate base and a 13-month average common equity amount. For AIF purposes, GTE should not include a cash allowance for working capital unless the company uses the results of a comprehensive lead-lag study. The AIF shall include a capital structure and a cost of capital statement (with supporting schedules), a rate-of-return statement, and a rate base statement, together with other information as required by the Staff or the Commission. The capital structure shall be determined in accordance with Paragraph 12 below on a per-books basis. The rate-of-return statement will also reflect per-books results, making adjustments for:

- a. Investment Tax Credits (ITC) capital expense and its associated tax savings;
- b. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;
- c. Removal of out-of-period amounts that are a direct result of the Plan.

11. Price Increases.

A. In the event GTE seeks an increase in the price of any BLETS service, or any BLETS service combined with price changes for Discretionary or other BLETS services, that results in an increase in overall regulated operating revenues, the Company must file a rate application conforming to the rules governing general rate case applications for telephone companies, Case No. PUE850022. The revenue limitation provisions of § 56-235.4 will apply.

1. The financial results in this filing will include rate base, expenses, and revenues from all services, excluding any service lawfully, preemptively deregulated by the FCC.

2. In the event a cash working capital allowance is sought, a comprehensive lead-lag study is required. This study should include a balance sheet analysis.

B. In the event GTE seeks a change in the price of BLETS and/or Discretionary services that does not result in an increase in overall regulated operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2.

C. In the event GTE seeks an increase in any Discretionary service that results in an increase in overall

operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies, including subparagraphs 1. and 2. above. In addition, the revenue limitation provisions of § 56-235.4 will apply.

12. Return on Equity.

The allowed return on equity will be determined annually for the upcoming calendar year based on an average (rounded to the nearest one hundredth) of the 30-Year Treasury bond yield, adjusted to constant maturity, for the months of September, October, and November, as reported in the Federal Reserve Statistical Release H.15 (519) (or by its successor, should it be changed), plus a risk premium range as determined by the formula below; however, the risk premium shall not be less than zero.

Bottom of range: $2.0 + [(10 - \text{Avg. T-Bond}) \times .5]$

Top of range: $5.0 + [(10 - \text{Avg. T-Bond}) \times .5]$

The overall cost of capital will be based upon GTE's 13-month average capital structure and cost of senior capital, together with the allowed return-on-equity range.

13. Interim Rates.

All rates, except those for Competitive services, are interim rates until the Commission declares that they are no longer subject to refund. If GTE is found to have earned in excess of the authorized range of return on BLETS and Discretionary services in the year preceding, an appropriate refund will be made with interest consistent with the top of the return-on-equity range. Under appropriate circumstances, and upon motion by the Company, the Commission will order that the interim rates for the previous year are no longer subject to refund. All actions in this paragraph will be taken only after notice and opportunity for hearing.

14. Service Quality.

Reports of service quality results shall be filed by GTE on a quarterly or monthly basis as directed by the Staff.

- a. These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: In the matter of Adopting Rules Governing Service Standards for Local Exchange Telephone Companies.

- b. These reports may be expanded to include results not contained in the present service reports.

- c. GTE will also file reports showing results related to services provided to interexchange carriers as follows:

State Corporation Commission

On-time performance

Outage duration

Blocking below the tandem

d. The Staff will analyze all such service results and take immediate action to resolve any service quality problems.

15. Cost Allocations.

The Commission's cost allocation principles and guidelines as amended in the final order in Case No. PUC930036 (Attachment 1 thereto), and the Orders of April 17, 1990; June 26, 1990; and June 19, 1991; in Case No. PUC890014, are incorporated herein by reference. Costs and revenues associated with Competitive services, except Part 64 services, must be determined by detailed allocation methods that conform to these principles and guidelines. These detailed allocation methods will be monitored and revised when necessary as an administrative function of the Staff of the Division of Communications. Part 64 services should have their costs and revenues determined by the FCC's Part 64 procedures as long as the results are accurate and reasonable.

16. Filing of Other Information.

A. Upon the request of the Staff, GTE will file such other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto.

B. If GTE fails to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, it shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of GTE's performance under the Plan.

17. Reclassification of Services.

A. Thirty days prior to offering a new service or reclassifying an existing service, GTE shall notify, in writing, the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide appropriate documentation to the Staff. The Commission may suspend the proposed effective date if it finds that the documentation supporting the classification is insufficient.

1. Simultaneous with such notification, GTE shall designate the service category into which the service is classified.

2. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted.

3. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service offering unless the Commission, for good cause shown, orders otherwise.

4. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days, unless the Commission extends these time periods for good cause shown.

B. Any interested party may petition for the classification or reclassification of a GTE service. Any such proceeding must be completed within 90 days unless the reclassification is either to or from the Competitive category, in which case it must be completed within 120 days, unless the Commission should extend these time periods for good cause shown. If the proposed category is Competitive, subparagraph 17 (A)(2) above applies.

18. Access Charges.

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs, and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Attachment 4

APPENDIX A

GTE SOUTH/VIRGINIA

MARKET CLASSIFICATIONS OF SERVICES

COMPETITIVE SERVICES

Billing & Collection (Processing, Rendering, Inquiry, Recording)

C.O. LANs

CENTRANET (R)

CENTREX (intercom and features)

Non-preemptively deregulated Customer Premises Equipment

Originating Toll Restriction

Part 64 Services

Public Telephone Location

Simple Inside Wiring

Speed Calling

Switched Data Service (intra-CENTREX)

Yellow Pages Advertising

DISCRETIONARY SERVICES

Automatic Busy Redial

Automatic Call Return

B&C Security Functions

"Bulk" Private Line

"Bulk" Special Access

C.O. Data Sets

Call Block

Call Forwarding - (all types)

Call Tracing

Call Waiting

Calling Number ID/Anonymous Call Rejection

Cancel Call Waiting

ControlLink (R) Digital Chan. Svc.

Customized Number

Customized Personal Intercept

Detail Message Billing

Enhanced Traffic Assessment

Make Busy Arrangements

Message Waiting Indicator

Multi-Media Data Service

Non-list & Non-pub Numbers

Operator Call Completion Services

Pay-Per-View

Priority Call

Referral Service

Reminder Service

Remote Call Forwarding

Smart Ring (R)

Special Billing Numbers

Special Call Acceptance

Switched Redirect Service

Telecommunications Service Priority

Three-Way Calling

Time & Temperature

Transfer Arrangements

Verification With Call Interrupt

Video Connect (sm)

VIP Alert

White Pages Additional Listings & Bold Type

BASIC LOCAL EXCHANGE TELEPHONE SERVICES (BLETS)

Access to Switched Network (DTLs)

Answering Bureau Services

Automatic Line Service

Basic Service Charges

Billing & Collection DNP

Centranet (R) Exchange Access & Usage

CENTREX Exchange Access & Usage

Dial Datalink (R)

Dial Tone Line 800 Service

Direct Inward Dialing

Directory Assistance

Enhanced Service Provider Svc.

Emergency Number "911" Service & E911

Exchange Usage

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Extended Area Calling
Four-Wire Service Terminating Arrangements
FX Service
Identified Outward Dialing
Intercept (Standard)
Inward Toll Restriction
ISDN - SL & BRI
ISDN - PRI
IXC Coinless Telephone Service
Line Status Verification
List Service
Local Packet Switching
Maintenance Visit (Trouble Isolation)
Message Service Interface
MetroLAN
MTS/WATS/800
Operator Service - Emergency & Troubles
Operator Verification
Optional Calling Plans
PBX Night, Sunday, Etc. Arrangements
Public Telephone Communications
Selective Call Screening
Semi-Public Telephone Service
Service Performance Guarantee
Shared Tenant Service
"Single" Private Line
"Single" Special Access
Switched 56 Kilobit Service
Switched Access
Touch Tone/Tone Dial/Touch Calling
White Pages Listing

(sm) = Service Mark

(R) = Registered Trade Mark

ATTACHMENT 5

EARNINGS INCENTIVE PLAN

1. Applicability of Plan.

This Plan is available to any local exchange company ("LEC" or "company") on or after January 1, 1995.

2. Changes to Plan.

A. Should a company desire to end its participation in this Plan, it may do so with leave of the Commission upon a showing of good cause. Any company granted permission to exit the Plan will thereafter be subject to traditional regulation pursuant to Chapter 10 of Title 56 of the Code of Virginia on a prospective basis or to another alternative form of regulation if approved pursuant to Virginia Code § 56-235.5. The Commission retains the right to terminate a company's participation in the Plan on its own motion, or upon complaint, if it finds good cause to do so, such as a finding that a practice under the Plan is abusive or detrimental to the public interest.

B. While this Plan is in effect, any changes found to be necessary will be given prospective effect only.

3. Classification of Services.

A. Telecommunications services of a company participating in this Plan will be classified into three categories called Basic Local Exchange Telephone Services ("BLETS"), Discretionary Services, and Competitive Services, as defined below. Initially, a Company's existing services will be distributed among these three categories in accordance with Appendix A hereto.

B. Service classifications are defined as follows:

1. "Competitive Services" are, pursuant to § 56-235.5F of the Code of Virginia, telecommunications services for which competition or the potential for competition in the marketplace is or can be an effective regulator of the price of those services as determined by the Commission.

2. "Discretionary Services" are telecommunications services which are optional, nonessential enhancements to BLETS, which may or may not be provided by suppliers other than the LECs, but which do not conform to the definition of Competitive services.

3. "Basic Local Exchange Telephone Services" ("BLETS") are telecommunications services which are not Competitive or Discretionary and which, due to their nature or legal/regulatory restraints, only the LECs can provide, and other services the Commission

determines to be BLETS.

C. Services listed on Appendix A as Discretionary or BLETS, together with all other existing services of a company not identified on Appendix A as Competitive, will remain subject to current regulatory oversight, modified, however, by Paragraph 4, below.

D. The rate base, costs, and revenues from Competitive services will be transferred below the line for Annual Informational Filing ("AIF") purposes and will be not subject to price regulation. Yellow Pages advertising will continue to be treated as Competitive for all purposes of this Plan, but 25 percent of Yellow Pages' advertising income available for common equity will be attributed to noncompetitive services in the AIF process.

4. Individual-Case-Basis Pricing.

Individual-Case-Basis (ICB) or custom-service-package contract pricing is allowed for BLETS and Discretionary services when a company demonstrates that a competitive alternative exists for an individual customer, but where the service does not otherwise satisfy the requirements of Paragraph 3.B.1. A copy of any ICB or custom-service-package contract must be filed under proprietary protection with the Commission's Division of Communications with supporting data demonstrating that the rate is above total incremental cost of the service. The conditions of Paragraph 6 must be met.

5. Tariff Requirements.

Tariffs shall continue to be filed for all BLETS and Discretionary services and for any Competitive service that is also offered pursuant to a Virginia intrastate tariff by another company that is certificated by this Commission.

6. Competitive Safeguards.

The following safeguards relating to fairness of competition will be imposed on the LEC:

A. Services and/or capabilities of a monopoly nature that are components of Competitive services must be offered on an unbundled basis in the tariffs at the time the Commission determines a service to be Competitive. When these services and/or capabilities are used by Competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used.

Regarding new services, unbundling of all non-competitive components must be accomplished before the LEC can offer a Competitive service related to the noncompetitive component(s). If the LEC does not plan to offer a related service before the party requesting unbundling plans to offer its related service, the unbundling must be accomplished within a reasonable time after any reasonable request is made for such unbundling, and with assurances that the Company can recover its

related incremental costs.

If the LEC offers a Competitive service using an unbundled noncompetitive component, it shall demonstrate that its price equals or exceeds the incremental costs of the competitive components of the service plus the tariffed rates of any noncompetitive components.

B. Revenues from Competitive services in the aggregate must cover their incremental costs. The LEC shall file data annually to demonstrate this. Also, the price of an individual service must cover its incremental costs. The LEC shall maintain total incremental cost studies for each Competitive service offered demonstrating that a service's price equals or exceeds its incremental costs. These studies shall be filed with the Division of Communications within 30 days of a complaint alleging that an individual service's revenues fail to cover its total incremental costs.

7. Unregulated Services.

Any service that is lawfully, preemptively deregulated by the Federal Communications Commission (FCC) will not be subject to regulation. This Commission retains full regulatory authority over any service that is not lawfully, preemptively deregulated, including Competitive services that are subject to the FCC's Part 64 rules.

8. Rate Regrouping of Exchanges.

Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly-sized exchanges.

9. Monitoring of Competitive Services.

A. For purposes of assuring that competition is an effective regulator of the price of Competitive services, the Staff shall monitor these services on a periodic basis, at a minimum, annually.

B. Solely for annual monitoring purposes, each company shall file a Virginia company, per books, rate-of-return statement, under proprietary protection, for the aggregate of all of its services, except for any service that is lawfully, preemptively deregulated by the FCC, consistent with Paragraph 10 below. Annually, total-company, total-service results will be monitored in order to provide the Commission with a complete picture of each company's operating results.

10. Financial Reporting.

Annually, each company shall file a nonproprietary AIF based upon the rate base, revenues, and expenses of all services, excluding those which are Competitive except Part 64 services that have not been lawfully, preemptively deregulated by the FCC. The AIF will be due 180 days after the end of the test period and shall include the FCC/SCC Form M, the FCC Automated Reporting Management Information System 43-02, the most recent

State Corporation Commission

SEC Form 10-K, and the most recent annual reports for both the parent holding company and, if available, the LEC. Return on rate base and return on common equity will be calculated by using a 13-month average rate base and a 13-month average common equity amount. For AIF purposes, a company should not include a cash allowance for working capital unless the company uses the results of a comprehensive lead-lag study. The AIF shall include a capital structure and a cost of capital statement (with supporting schedules), a rate-of-return statement, and a rate base statement, together with other information as required by the Staff or the Commission. The capital structure shall be determined in accordance with Paragraph 12 below on a per-books basis. The rate-of-return statement will also reflect per-books results, making adjustments for:

- a. Investment Tax Credits (ITC) capital expense and its associated tax savings;
- b. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;
- c. Removal of out-of-period amounts that are a direct result of the Plan.

11. Price Increases.

A. In the event a company seeks an increase in the price of any BLETS service, or any BLETS service combined with price changes for Discretionary or other BLETS services, that results in an increase in overall regulated operating revenues, the company must file a rate application conforming to the rules governing general rate case applications for telephone companies, Case No. PUE850022. The revenue limitation provisions of § 56-235.4 will apply.

1. The financial results in this filing will include rate base, expenses, and revenues from all services, excluding any service lawfully, preemptively deregulated by the FCC.

2. In the event a cash working capital allowance is sought, a comprehensive lead-lag study is required. This study should include a balance sheet analysis.

B. In the event a company seeks a change in the price of BLETS and/or Discretionary services that does not result in an increase in overall regulated operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2.

C. In the event a company seeks an increase in any Discretionary service that results in an increase in overall operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of Code §§ 56-237.1 and 56-237.2. Any hearing resulting from § 56-237.2 must conform to the rules governing general rate case applications for telephone companies,

including subparagraphs 1. and 2., above. In addition, the revenue limitation provisions of § 56-235.4 will apply.

12. Return on Equity.

The allowed return on equity will be determined annually for the upcoming calendar year based on an average (rounded to the nearest one hundredth) of the 30-Year Treasury bond yield, adjusted to constant maturity, for the months of September, October, and November, as reported in the Federal Reserve Statistical Release H.15 (519) (or by its successor, should it be changed), plus a risk premium range as determined by the formula below; however, the risk premium shall not be less than zero.

Bottom of range: $2.0 + [(10 - \text{Avg. T-Bond}) \times .5]$

Top of range: $5.0 + [(10 - \text{Avg. T-Bond}) \times .5]$

The overall cost of capital will be based upon the LEC's 13-month average capital structure and cost of senior capital, together with the allowed return-on-equity range.

13. Interim Rates.

All rates, except those for Competitive services, are interim rates until the Commission declares that they are no longer subject to refund. If a company is found to have earned in excess of the authorized range of return on BLETS and Discretionary services in the year preceding, an appropriate refund will be made with interest consistent with the top of the return-on-equity range. Under appropriate circumstances, and upon motion by the company, the Commission will order that the interim rates for the previous year are no longer subject to refund. All actions in this paragraph will be taken only after notice and opportunity for hearing.

14. Service Quality.

Reports of service quality results shall be filed by the local exchange companies on a quarterly or monthly basis as directed by the Staff.

- a. These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: In the matter of Adopting Rules Governing Service Standards for Local Exchange Telephone Companies.

- b. These reports may be expanded to include results not contained in the present service reports.

- c. Companies will also file reports showing results related to services provided to interexchange carriers as follows:

On-time performance

Outage duration

State Corporation Commission

Blocking below the tandem

d. The Staff will analyze all such service results and take immediate action to resolve any service quality problems.

15. Cost Allocations.

The Commission's cost allocation principles and guidelines as amended in the final order in Case No. PUC930036, and the Orders of April 17, 1990; June 26, 1990; and June 19, 1991; in Case No. PUC890014, are incorporated herein by reference. Costs and revenues associated with Competitive services, except Part 64 services, must be determined by detailed allocation methods that conform to these principles and guidelines. These detailed allocation methods will be monitored and revised when necessary as an administrative function of the Staff of the Division of Communications. Part 64 services should have their costs and revenues determined by the FCC's Part 64 procedures as long as the results are accurate and reasonable.

16. Filing of Other Information.

A. Upon the request of the Staff, a company will file such other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto.

B. Any company that fails to provide, timely and accurately, data required by the Plan, including answers to any Staff request for data or information necessary for the execution of this Plan, shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each company's performance under the Plan.

17. Reclassification of Services.

A. Thirty days prior to offering a new service or reclassifying an existing service, a company shall notify, in writing, the Staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide appropriate documentation to the Staff. The Commission may suspend the proposed effective date if it finds that the documentation supporting the classification is insufficient.

1. Simultaneous with such notification, the company shall designate the service category into which the service is classified.

2. If the proposed service category is Competitive, notice must be given to all affected parties, and a hearing must be conducted.

3. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category; however, the filing of such petition shall not

result in the postponement of any new service offering unless the Commission, for good cause shown, orders otherwise.

4. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days, unless the Commission extends these time periods for good cause shown.

B. Any interested party may petition for the classification or reclassification of a LEC service. Any such proceeding must be completed within 90 days unless the reclassification is either to or from the Competitive category, in which case it must be completed within 120 days, unless the Commission should extend these time periods for good cause shown. If the proposed category is Competitive, subparagraph 17 (A)(2) above applies.

18. Access Charges.

Interexchange Carriers' access charges are not included in the categories of services set out in this Plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012, In re: Investigation of the appropriate methodology to determine intrastate access service costs, and as implemented in Case No. PUC890042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A.

Attachment 5

APPENDIX A

EARNINGS INCENTIVE PLAN

MARKET CLASSIFICATIONS OF SERVICES

COMPETITIVE SERVICES

DISCRETIONARY SERVICES

BASIC LOCAL EXCHANGE TELEPHONE SERVICES (BLETS)

Services will be classified according to the definitions in the Plan for any LEC that participates in the Earnings Incentive Plan.

* * *

October 18, 1994

MOORE, Chairman, dissents:

I

State Corporation Commission

Introduction and Summary

An ever expanding communications network is making possible a global community united by almost instantaneous access to information and analysis. Now, and even more so in the future, the success of individuals, businesses, states and nations will rest, in substantial part, on telecommunications. Those with superior knowledge and infrastructure will be able to compete; those without adequate access will fall behind. This is true for Virginia citizens, Virginia businesses and the Commonwealth itself. How the Commission responds to the issues presented in this docket will have a profound effect on the future.

For decades rates and services of local exchange telephone companies ("LECs") were regulated by the Commission under rate base, rate of return regulation. The purpose of this regulation was to ensure that ratepayers not be subjected to monopoly pricing – inflated rates resulting from the availability of service from a single monopoly provider. Such regulation is designed to serve as a substitute for competition.¹

Competition in the telecommunication industry began developing in the interstate long distance market before the break up of the Bell System in 1984. Since that time, competition in certain areas has expanded. As in most states, in Virginia there is competition in the interLATA long distance market² and there is some competition in certain other areas involving local telecommunications.³ Local exchange telephone service is, however, still a monopoly granted and protected by the Commonwealth.⁴

In 1993 the General Assembly enacted § 56-235.5 of the Code of Virginia which allows the Commission to adopt alternative forms of regulation for local exchange telephone companies if we find the alternative regulatory plans meet certain specific standards or criteria. To be approved, a plan must protect the affordability of basic service, assure the continuation of quality local service and be in the public interest. In addition, the Commission must find that the plan will not unreasonably prejudice or disadvantage any class of telephone customers or other providers of competitive services. We must also adopt safeguards to protect consumers and competitive markets.

Given the critical importance of telecommunications to the Commonwealth and her citizens and the enactment of § 56-235.5 of the Code of Virginia, the public interest requires that the Commission's actions in the field of telecommunications be designed to do three things. First, we must protect the consumer until competition can provide that protection. Second, we must prevent the use of monopoly power to destroy, limit or inhibit the competition that can legally exist at the local level and we must prevent the use of such power to position an entrenched company unfairly for the time when competition does emerge. Finally, we must ensure to the extent possible that our telecommunications infrastructure is improved and that Virginians have available, at reasonable rates, the telecommunications technology and

innovations that will enable us to compete in a modern world.

The majority Order approves two price cap plans and what is termed the Earnings Incentive Plan. As explained in some detail in Sections II through IV, I must conclude that the majority Order violates the spirit and letter of § 56-235.5 of the Code of Virginia, fails to protect consumers and will allow the use of a state granted and protected monopoly to extract excessive profits from customers, will impede and limit the development of competition, innovations and infrastructure in Virginia, and does not require the LECs to deploy any new technology or facilities in Virginia.

First, these plans fail to protect consumers. The majority approves as the starting point for the price cap plans current LEC rates⁵ which have not been thoroughly examined for a decade. Given the fact that telecommunications is a declining cost industry, current rates could be well above the cost of providing service. Approving these rates now, without examination, will allow any excessive monopoly profits in current rates to be perpetuated without any chance of detection.⁶ The matter is exacerbated by provisions which allow these rates for monopoly local exchange services to be increased without regard to increases in costs.⁷ This refusal to examine the initial price cap rates and the price increase mechanisms violates the statute's requirements to protect customers and consumers.

Second, the failure to examine and set initial price cap rates based on cost will allow the LECs to use any excessive monopoly profits to cross subsidize competitive services, thus impeding competition and failing to provide the specific safeguard required by law to "assure that there is no cross subsidization of competitive services by monopoly services."⁸

Third, the plans also fail to provide for the infrastructure necessary to assure "the continuation of quality local exchange telephone service" as required by the statute.⁹ The plans grant to the LECs, at their request, great freedom in earnings and pricing, which they say will enable them to make the necessary investments in new technology. Unlike the plans of other states, however, there is no obligation on the part of the LECs to invest one dollar in Virginia. Thus, if funds for infrastructure become scarce, the LECs may be forced to invest in states where they have an obligation rather than Virginia where the greater need may be.

The failings of the plans approved by the majority are not of mere academic or theoretical concern. The harm will be real and could be substantial. First, the plans will require Virginia citizens and businesses to pay what may well be excessive rates. This is contrary to the law and poor policy.

In addition, these plans will not only hurt individual Virginia citizens, they are detrimental to Virginia business,

economic development, and the Commonwealth itself. Excessive telecommunications costs will, of course, be a hindrance to Virginia businesses as they compete in the global market. Of at least equal importance is the assured availability of technology and infrastructure. As stated above, the plans do not require the LECs to invest in infrastructure or technology in Virginia, nor do the plans provide appropriate incentives otherwise to ensure that Virginia will be on the cutting edge in telecommunications. If Virginia falls behind, catching up could be expensive in terms of lost opportunities and lost jobs.

Given the actions of the majority in approving the alternative plans and the essential role that competition must play in protecting the public interest, it is important that the General Assembly act as soon as possible to authorize and encourage competition at the local exchange level. Under the majority approved plans, the LECs will be treated as if competition exists, and yet the competitive pressures to reduce or hold down rates while improving infrastructure and service are not, and will not be, present. Indeed, the plans approved by the majority further entrench monopoly providers which will inhibit, rather than promote, competition. This places the public at risk. The General Assembly should authorize local exchange competition so that competition can protect the public, spur investment and innovation, and hold down rates. Further, care should be taken not only to allow competition, but to encourage and foster it as well.

II

The Price Cap Plans

The price cap plans should not have been allowed in the form approved by the majority, particularly given the lack of competition for the provision of local services. I find the approved plans not only contrary to the law and detrimental to the public interest, but also not well crafted or well structured. Further, the majority Order gives little reason for their approval and almost no rationale for many decisions that were made.¹⁰

The major deficiencies in the price cap plans are identified below, as well as a summary of why, in my view, the plans are contrary to the provisions of § 56-235.5 of the Code of Virginia.

A. The Price Cap Plans Are Premised on Competition for Local Exchange Service Which Does Not Exist.

There is one fundamental flaw underlying the price cap plans approved by the majority which may explain, in part, the excessive earnings and pricing freedoms allowed by the plans. The plans, in theory and practice, must be premised on active competition for local exchange service. Indeed, according to the majority, the plans are aimed at allowing the LECs to respond to competition. For example, at page 11 of the Order, the majority states:

[T]he plans benefit the public interest by providing the

LECs the flexibility they need to respond to the increasingly competitive telecommunications market in a manner similar to that of their unencumbered competitors.

The "unencumbered competitors" cannot and are not providing local exchange service because the law prohibits it. The LECs are allowed the "flexibility" to continue to extract monopoly profits from local exchange service¹¹ and yet, local exchange competition does not and, at present, cannot exist.

Competition for local exchange service is not legally permissible,¹² and Appendix A of the plans approved by the majority shows, beyond question, that local exchange service is still, in fact, a monopoly. In Appendix A, the majority lists the services that they deem to be competitive and those that are still monopoly services¹³ because either only the LEC can provide the service or there is not sufficient competition or potential competition for these services to regulate their groups of services were "Competitive".¹⁴ These services include such items as "Speed Calling" and "Apartment Door Answering." The majority found, however, that 88 of BA-Va.'s services or groups of services were monopoly services.¹⁵ These included those services that are critical to each of us in our daily lives, including, fundamentally, basic local telephone service. The majority's findings were, of course, similar for United/Centel.¹⁶ Thus, for example, when the majority analyzed the more than 100 services or groups of services offered by BA-Va., it could find only 16 which they viewed as competitive. Further, the record revealed that no competitive services or products have been introduced by the LEC participants in this case since 1991.¹⁷ Local exchange service simply is not competitive. The LECs are still monopolies, providing monopoly services.

At page 12 of the Order, the majority again refers to competition, this time comparing the present situation to the circumstances of interLATA competition in 1984:

In 1984, when we changed our regulatory approach regarding interexchange carriers, competition among them was in its infancy. We monitored the evolving market place and retained the ability to reregulate if AT&T's market power had begun suppressing competition. We are facing a similar situation today with the LECs, and as was true regarding the interexchange carriers, we believe that, over time, it will become evident that adopting alternative forms of regulation for the LECs is the appropriate decision for us to make at this time.

The facts could not be more different today than they were in 1984. In 1984 the General Assembly authorized competitive interexchange carriers, effective July 1, 1984, so that there could be competition in the intrastate interexchange market, where all competitors could reach the customer through the LEC. Today, local exchange competition is still illegal and, because of the facilities

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required to reach the customer, competition could be slow to develop even after it is allowed.

The plans adopted by the majority are based on a false premise, the existence of competition to provide basic local exchange service. The plans approved by the majority, with significant modifications, could be an appropriate regulatory response to a legal change which would allow and foster competition at the local exchange level. At present, however, the plans simply, unnecessarily, lock in what may be excessive profits and free up the LECs to increase these profits to the detriment of customers, competitors, potential competitors, and the public.

B. Establishment of Initial Rates

The price cap plans approved by the majority continue existing rates¹⁸ for BA-Va. and United/Centel without examination. This action violates the law, will hinder competition, is contrary to sound economic policy and, in my opinion, abrogates our responsibility.

Code § 56-235.5.H. requires the Commission to "adopt safeguards to protect consumers and competitive markets. At a minimum these safeguards must assure that there is no cross subsidization of competitive services by monopoly services." The rationale for requiring safeguards against cross subsidies was succinctly stated by several witnesses.¹⁹ Promoting competition requires efficient, cost-based, pricing policies for non-competitive services. The decision to enter a market will be driven not only by the barriers to entry, but also by existing prices. If the existing prices are set either too high or too low, distorted signals will be sent to potential entrants. These signals can lead to an inefficient industry structure with society paying for the inefficiencies.²⁰ Thus, in order to promote the development of competition, it is necessary to set prices for non-competitive services based on their costs of production.

Not only sound economic policy, but fundamental fairness and the statute require that initial monopoly rates in a price cap plan be set based on cost of service such that the rates afford the LEC the opportunity to earn a reasonable return.²¹ No one can, or did, disagree with this basic premise. For example, BA-Va.'s principal economic witness, Dr. Robert G. Harris, specifically agreed that the Commission should satisfy itself "as to rates, the profitability, and a reasonable rate of return."²²

The sole question which then remains is whether the Commission has determined that the current rates are proper or can do so without a full examination. The answer to that question is no. The Commission has not had a proceeding that would allow it to know whether the rates are too high or too low and it cannot make that determination without a full examination.

A brief review of the history of the little we do know of the LECs' costs and rates and the Commission's denial of various requests for examination of these matters reveals

why there can be no other answer to this question. First, for example, incredible as it may seem, BA-Va., one of the largest utilities in the Commonwealth, had its last rate case examination in 1983,²³ more than a decade ago. BA-Va.'s rates have not been scrutinized by this Commission in the context of a full rate proceeding since that time. By contrast, other large utilities in the Commonwealth have been subject to regular, continuing examination,²⁴ as the LECs should have been.²⁵ This failure to examine the rates is not because requests were not made; such requests were made but were turned down, sometimes with an indication that the review would come later.²⁶ The full examination never came and now, under the majority's plans, the rates will never be reviewed.

Not only has there been no full rate examination for more than a decade, much has changed that requires that examination. First, since the last full rate examination, the telecommunications industry has been a declining cost industry. Simply to say that rates did not rise or actually declined somewhat during this period is no assurance that ratepayers are not paying excessive rates. Local exchange service has been and remains a monopoly. If costs declined, rates should have been reduced²⁷ as they would have been in a competitive market. For example, no one is paying today, in nominal or real dollars, what a purchaser did for a computer in 1984. As the costs to produce computers declined, the competitive marketplace ensured that computer prices did too. Such should have also been the case for local exchange service, but it has been a monopoly; if costs actually declined, the rates should have been reduced by the Commission appropriately. However, under the majority's decision, we will never know whether Virginians were and are being overcharged, or, if so, by how much.

While we may not be able to correct what might have been overcharges of the past, we can at least try to avoid overcharges in the future. The information we have in this proceeding shows clearly that the examination which has not previously been made is now required. A review of BA-Va. data demonstrates this. Evidence received during the hearing showed that costs have changed dramatically for BA-Va. since its last rate case. For example, affiliate expenses as a percentage of total operations and maintenance expense has doubled since 1984. Further, the gross amount of these affiliate expenses runs to hundreds of millions of dollars.²⁸ These affiliate payments are made by BA-Va. to its parent Bell Atlantic and related affiliates. Notwithstanding the dramatic increase in expenses which the Commission is charged to scrutinize most closely,²⁹ these payments have not been thoroughly audited since divestiture.³⁰

Specifically and explicitly, Staff accounting witness Kim Trimble confirmed that, for more than a decade, there has been no comprehensive audit or review to determine whether the payments made by BA-Va. to its affiliates are reasonable;³¹ the Staff has not been directed to audit the figures in this manner.³² Such affiliate expenses have not been examined as they are for other utilities, such as gas

and electric companies.³³

The failure to examine the affiliate expenses is particularly alarming in view of the dramatic increase in such expenses since 1984 and our statutory duty with respect to such expenses.³⁴ The Supreme Court of Virginia explained that the examination of such expenses is fundamental to ratemaking and our duty:

A fundamental public policy underlies the stringent standard of proof enunciated in these statutes. The legislation makes clear that the General Assembly expects the Commission to scrutinize transactions between a utility and one of its affiliates. Such scrutiny is mandated because the contracting parties have a unity of interests and do not deal at arm's length. Thus, there exists the opportunity for double profit at the ratepayers' expense — a situation that does not exist when the parties to a transaction are independent of each other. The need for regulatory scrutiny of affiliate transactions has long been recognized. (Citations omitted; emphases supplied.)

Commonwealth Gas Services v. Reynolds Metals, 236 Va. 362 at 367, 374 S.E.2d 35 (1988).

Affiliate expenses have not been scrutinized as required by law. Such scrutiny should be part of an overall rate examination of all LECs to establish the initial rates for any alternative regulatory plan.

In addition, the majority Order at pages 26-27 states that upon implementation of the plans, "we will proceed to consider access pricing in Case No. PUC880042." In that proceeding, presumably, access charges will be set based on factors which at least include cost. If access charges decline as expected, under Paragraph 8 of the price cap plans the LECs may seek to increase Basic rates to make up any deficiency. Witness Robert Woltz made it abundantly clear that BA-Va. would consider doing just that.³⁵ Mr. Woltz also said that if intraLATA calling is made competitive and BA-Va. lowers rates to meet the competition, it could request an increase in Basic rates to offset the revenue loss.³⁶

The simple, fair answer to these issues is to have a full examination of rates before the initial price cap rates are set. This examination would not only be fair for the customers and competitors, but to the LECs as well. The Commission should consider not only cost decreases, but any revenue losses due to reductions in access charges, the elimination of Touch Tone charges mandated by the majority, and the impact of broadening access to the Virginia Universal Service Plan.

A comprehensive examination is required to determine appropriate initial prices for non-competitive services to comply with the statute, to foster competition and to protect ratepayers from monopoly pricing.

C. Price Increases for Discretionary Services

The price cap plans approved by the majority classify services as Basic, Discretionary, and Competitive. "Discretionary" services are said to be optional, nonessential enhancements to basic service. There may or may not be alternative suppliers of these services³⁷ other than BA-Va. and United/Centel, but by definition the prices charged by the LECs for their Discretionary services are not regulated by competition or potential competition. They are monopoly services. Under the approved price cap plans, prices for these monopoly services may be increased significantly faster than prices for Basic services. For example, BA-Va.'s plan permits Discretionary service prices to increase at the rate of inflation during 1995 and 1996, up to a maximum increase of 10%.³⁸ After January 1, 1997, BA-Va. may increase prices by up to 10% each year. If a price increase is deferred for a period, the increase may be up to .83% per month since the last increase, for a maximum increase of 25% at any one time.³⁹

Historically, the LECs have charged prices well above cost for Discretionary services, using the excess profits to reduce rates for basic services. Accordingly, LECs were given the opportunity to enhance earnings from "optional, nonessential" services in exchange for keeping Basic rates down. Permitting such pricing for Discretionary services in the price cap plans appears to be a leftover from earnings regulation that is not theoretically or practically consistent with price cap regulation.⁴⁰

Under price cap regulation, the Commission is less concerned with the level of overall earnings than with the prices charged for various services. Earnings from Discretionary services will no longer be used to hold down Basic rates, but to provide additional profit centers for the carriers. LECs should not be permitted to earn excessive monopoly profits from noncompetitive services. Since a majority of Discretionary services are monopoly services which do not face any competition, and the remaining services do not face sufficient competition or potential competition to regulate prices, it is incumbent on the Commission to protect the public interest by regulating the prices for Discretionary services until competition is sufficient to do so. The customers who rely on Discretionary services deserve protection from monopoly pricing. No party to this proceeding even vaguely suggested that the public interest should permit excessive monopoly profits. For example, BA-Va.'s Dr. Harris agreed that "a good regulation plan should limit the price of noncompetitive services directly."⁴¹ The plans approved by the majority nonetheless allow monopoly pricing for these services which, in my view, is clearly contrary to the public interest and to the standards of § 56-235.5 of the Code.

Under the price cap plans approved today, consumers face two choices. They can do without useful and innovative Discretionary services, or they can risk being gouged. Staff witness William Irby recounted having "seen BA-VA studies showing that the profit maximizing price for some of these services is well above the current price.

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That is, the additional revenues from a price increase for existing customers would more than offset the lost revenue from customers who drop the service because of the increase."⁴² Mr. Irby concluded that, when price increases were implemented, "the customer would either have to pay the inflated price or discontinue a service on which he or she had become dependent."⁴³ I do not believe the General Assembly intended this result in enacting Code § 56-235.5. To allow monopoly pricing of discretionary services unreasonably prejudices and disadvantages the class of customers who rely on these services. This violates § 56-235.5.B.(iii). Until sufficient competition develops to control effectively the prices charged for any monopoly service, even those which are only "Discretionary," consumers should be protected from monopoly pricing.

Code § 56-235.5.H requires the Commission to "adopt safeguards to protect consumers and competitive markets. At a minimum these safeguards must assure that there is no cross subsidization of competitive services by monopoly services." Adopting a plan which allows for "profit maximizing" price increases to monopoly discretionary services makes it far less likely that the intended goal of the General Assembly, i.e., the prohibition against anti-competitive cross subsidization, can be realized. A firm that may price its products that face little or no competition well above cost can afford to price its products that do face competition at or below cost, still make profits, and drive out potential competitors. A potential competitor with no monopoly "Discretionary" services must take its profits from its competitive offerings.

The price cap plan approved for United/Centel inexplicably imposes different pricing requirements for those companies, as compared to the BA-Va. plan. Under the United/Centel plan, prices for any discretionary service may be increased at the rate of inflation for the previous year. However, if no rate increase is obtained "during the prior 12 month period" the companies may raise rates by the cumulative increase in the Gross Domestic Product Price Index ("GDPPI"), up to a maximum of twice the previous year's rate of inflation.⁴⁴ The majority offers no explanation for the difference between the United/Centel and BA-Va. plans, and the record contains no evidence to suggest why these provisions should not be the same. This is particularly perplexing because the majority-approved United/Centel price change mechanism for discretionary services is significantly different from what the companies requested.

Under "traditional" rate base, rate of return regulation, the goal of regulation was to act as the surrogate of the competitive market, that is, regulators should fix rates which, but for its absence, competition would establish.⁴⁵ Under Code §56-235.5.F. and G. the Commission may de-regulate certain service offerings if the Commission finds that "competition or the potential for competition in the market place is or can be an effective regulator of price" of such services and may re-regulate any service

for which it finds "that competition no longer effectively regulates the price of that service." Under the majority-approved price cap plans, Discretionary services fall into neither category. Prices for these services will neither be well-regulated by the Commission nor "effectively regulated" by the competitive marketplace.

Finally, it also seems likely that the ability to raise prices more or less freely for Discretionary services may also inhibit innovation. As Mr. Irby observed, when a firm has the choice "between spending millions to develop and introduce new products that may or may not pay off several years in the future, versus immediately generating additional cost free revenue by merely filing an administrative tariff, it is clear which course of action it would follow."⁴⁶

In my view, at a minimum, protection of the public interest requires that Discretionary services be afforded no greater pricing freedom than Basic services. The LECs should not be permitted to extract excessive monopoly profits from noncompetitive services.

D. "Revenue Neutral" Price Restructurings

The price cap plans permit BA-Va. and United/Centel to propose changes in the price of any Basic or Discretionary service, so long as the net effect of such proposed changes is "revenue neutral."⁴⁷ Such proposed price changes would be subject to the "notification provisions of Code §56-237.1." If 20 or more complaints about the proposed restructuring are raised, the Commission will hold a hearing "concerning the lawfulness of the restructuring, pursuant to §56-235.5." The Commission may refuse to approve any proposed change which is not in the public interest or, presumably, which it finds not to be lawful. The Order does not indicate what issues will be considered "concerning the lawfulness of the restructuring." In my view, this mechanism for price changes is inconsistent with the concept of price (as opposed to earnings) regulation and is therefore unnecessary, and, as it invites the carriers to "game" the system, is not in the public interest. "Revenue neutral" price changes simply should not be permitted. A price cap should be a price cap.

The alternative regulatory plans adopted for BA-Va. and United/Centel both purport to be price cap plans, under which prices for basic telephone service may increase only insofar as permitted by the operation of the price change formula (the "cap") adopted with the plan. However, permitting "revenue neutral" price changes both vitiates the "moratorium" for basic rate changes described at page 8 of the majority Order and permits price changes apart from the operation of the formula, or cap. The potential for mischief abounds.

For example, suppose that on February 1, 1995, a LEC increases its prices for all Discretionary services by the rate of inflation during 1994, say 4%, and its revenues from its Discretionary services increase by 8% during 1995, due in part to the price increase and in part from

growth in subscribership. Under Paragraph 8 of its plan, the LEC could, toward the end of 1995, propose a "revenue neutral" price change, reducing its Discretionary rates and increasing Basic rates by a like amount. Should the Commission agree with the proposal, all the revenue growth attributable to the unstoppable formula increase to Discretionary rates would then be shifted to Basic rates, despite the existence of the rate moratorium for Basic services. In early 1996, the LEC may be able to raise rates again for those Discretionary services by the rate of inflation experienced in 1995,⁴⁸ an increase which, under the majority-approved plan, would occur without a hearing. While it may be true that a LEC would never attempt a ploy like this, the plans permit it to try. Further, the LEC can seek to change prices for any service virtually at any time under Paragraph 8 of the plans.

The "revenue neutral" price change described above might be comparatively easy for the Commission to "refuse to approve,"⁴⁹ but other possible price change requests might be harder to turn down. For example, there is a vast disparity in the rates for basic residential service and basic business service. A LEC can reduce or even eliminate this disparity by proposing a "revenue neutral" price change under Paragraph 8 and arguing that a reduction to business rates offset by an increase to residential rates is good for business and will allow the LEC to "respond" to competition in the future and therefore is "in the public interest." It might also argue that such a shift brings prices for both business and residential service closer to the actual costs to provide such service.

Permitting "revenue neutral" price changes is not consistent with the concept of price regulation.⁵⁰ Under price regulation, earnings and revenues are supposed to be as irrelevant as the cost of providing service. The LECs claim that they need the ability to price flexibly to meet the threat of competition.⁵¹ The majority has found, however, that there is no effective competition for Basic and Discretionary services. Under price regulation, there is likewise no public interest need for the Commission to maintain a floor beneath LEC earnings or revenues through "revenue neutral" price changes. The LECs argue that they are willing to bear the risks of the market place.⁵² The LECs, not their customers, should bear the revenue risk of price changes permissible under the plans.

The ability to make "revenue neutral" price changes between Basic and Discretionary services may also inhibit the deployment of Competitive services, or at least the classification of new services as "Competitive." Since the price cap plans do not permit "revenue neutral" price changes between Competitive and either Basic or Discretionary services, there is no possibility for shifting revenues from Competitive to Basic services. The LEC therefore has an incentive to classify services as Discretionary rather than Competitive. It can raise the prices of Discretionary services by up to 10% per year,⁵³ then shift resulting revenue increases into Basic rates (with Commission approval) even during the moratorium

period if it later decides to reduce the rates for the new Discretionary services. If a new service is classified as Competitive, the LEC's ability to raise the service's price is constrained by the presence of competitive alternatives and it has no opportunity to shift revenues "lost" through price decreases to its Basic services.

When the LECs develop and introduce new services, the structure of the majority plans provide the LECs with more incentives to develop services which can be classified as Discretionary, rather than to seek out ways to compete with existing services provided by other non-LEC carriers. By definition, Discretionary services are those which only the LEC can provide or for which competition provides ineffective price regulation and for which it may charge monopoly prices. What is the incentive for the LEC to seek out markets where effective competitors exist?

One final note about Paragraph 8 of each price cap plan: it neither limits the timing nor the frequency of LEC requests for "revenue neutral" price changes. The majority has not supported the concept of a comprehensive rate examination, in which prices for all services could be examined and set in relation to their costs. The majority has, however, said that the Commission would address the access charge issue which, according to BA-Va., may lead to a request for a revenue neutral rate restructuring request. Other Paragraph 8 requests may also follow. It is not hard to imagine our Staff simultaneously reviewing multiple requests from each LEC for "revenue neutral" price changes, in which some review of cost of service data is inevitable. If for no other reason than administrative efficiency, the Commission should conduct a comprehensive rate review and deal, proactively, with many of the potential "revenue neutral" issues.

E. Moratorium periods

According to the majority, the most significant difference between the BA-Va. price cap plan and the United/Centel plan is the ability to begin indexing prices for Basic services at different times.⁵⁴ The Order also recites that "the existing affordability of BLETS can be protected in the future by . . . a temporary moratorium on rate increases as specified by the plans[.]"⁵⁵ What the majority does not explain is why the existing affordability of United/Centel's rates should be protected for three fewer years than the rates of BA-Va. Under the United/Centel plan, those companies can begin raising Basic rates in 1998, but BA-Va. cannot begin raising Basic rates under its plan until 2001. There is nothing in the United/Centel plan which might offset the three year difference in protection of affordability of rates for basic telephone service. There is no explanation in the majority Order as to how it is in the public interest to approve two otherwise similar plans, one of which provides significantly inferior protection to consumers.

The majority cites differences in the "operating characteristics, demographics, and customer makeup" of the companies to justify the different indexing dates. This

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indicates some belief or suspicion on the part of the majority that United/Centel and BA-Va. have different costs of providing service or expect different rates of increase in such costs. The record does not support such a finding. There well may be such differences between United/Centel and BA-Va.;⁵⁶ however, the record contains no evidence of the cost of providing service in the past or projections for the future. Further, the majority has rejected the call for a comprehensive rate review in which any differences in the costs of providing service could be fully explored. Finally, both United/Centel and BA-Va. proposed to increase rates for Basic service by the same factor – one half of the change in the GDPPI – indicating the belief of those companies that there would be no substantial difference in the rate of future cost increases. The majority can point to no reason for “freezing” BA-Va.’s Basic rates for twice the period of United/Centel’s rates other than that is what the companies requested.

In my opinion, it is not in the public interest to provide less protection to the customers of United/Centel than to those of Bell Atlantic.

F. The Price Change Mechanism

The price cap plans adopted by the majority each contain a price change mechanism that permits prices for Basic services to be increased, following the end of the moratorium periods, by one half of the previous year’s percentage change in the rate of inflation.⁵⁷ Prices can be decreased only if the LEC “wishes to reduce” prices.⁵⁸ The majority’s plans thus allow rate increases for Basic services, regardless of whether the LEC’s costs go up or down and regardless of the level of return the LEC is earning. Each year the LEC, unless it “wishes to reduce prices,” may raise prices for Basic services.⁵⁹ Because all Basic and many Discretionary services now and for the immediate future face no effective competition, the price change mechanism should reflect both cost and productivity changes and provide incentives to the LECs to increase efficiency. The majority plans do not do this.

Most price cap plans permit prices to be increased periodically by the rate of change in some independent price index – often, as here, the GDPPI – but require that part of the change in the index be offset by what is known as the productivity factor, sometimes known as the “X” factor.⁶⁰ Reducing the permissible price change by application of a productivity factor creates an incentive for the LEC to innovate, cut its costs and raise its productivity in order to increase its earnings. Failure to so act means that the LEC’s costs increase faster than its prices are permitted to increase under the “cap”, thereby reducing the LEC’s earnings. The productivity factor also helps to assure that the LEC’s ratepayers share in the benefits of the additional efficiencies price cap regulation should be designed to encourage.⁶¹ When the productivity factor exceeds the percentage change in the price index, for example, ratepayers see a decline in rates, in both real and nominal terms.⁶²

The BA-Va. and United/Centel price cap plans provide no explicit productivity factor, but use half the rate of inflation as a proxy for productivity. As can readily be seen, under these plans the productivity factor can never wholly offset the price index. Therefore, regardless of whether the LECs are aggressive or indifferent toward improving their productivity, ratepayers face the prospect of perpetual rate increases.

The evidence advanced in support of using one half the inflation rate as a proxy for productivity does not support its use here. BA-Va. witness Harris cited a study suggesting that, over a 57-year period (1935-92), the rate of change in telephone prices was about one half the rate of change in inflation, as measured by the Consumer Price Index.⁶³ Other parties asserted that the BA-Va. proposal was deficient by pointing to productivity factors approved in other jurisdictions. For example, in New Jersey the productivity factor is 2.0%, and the Bell Atlantic subsidiary there is required to share earnings above 13.7% return on equity. The California commission imposed a 4.5% productivity offset in its initial price cap plan. One company operating there, GTE, negotiated a recent settlement in which it agreed to productivity offsets of 5.0% in 1994, 4.8% in 1995 and 4.6% in 1996.⁶⁴ In Pennsylvania, the Bell Atlantic subsidiary proposed a price cap plan having a Productivity Offset of 2.25% and has agreed to the Pennsylvania Commission’s increase of that factor to 2.93%. Under the Pennsylvania plan, whenever the productivity factor exceeds the annual rate of inflation, the LEC is required to reduce rates.⁶⁵ Even the British price cap plan, which BA-Va. witness Harris studied for 10 years⁶⁶ and cited to demonstrate “the superiority of price caps over traditional rate of return regulation,”⁶⁷ incorporated an original productivity factor (the “X” factor) of 3.0%, but increased the factor over the years to 7.5%.⁶⁸

Productivity studies conducted by various witnesses further suggested the deficiency of the proposed (now approved) price change mechanism. AT&T witness Lundberg suggested that a more accurate and effective price change mechanism would permit price increases at inflation minus 4.5%.⁶⁹ Based on his review of extensive data, including Bell Atlantic internal studies, Attorney General witness Dr. Marvin Kahn recommended a productivity factor of at least 5.0%.⁷⁰

In my view there is insufficient basis in the record to implement a price change mechanism that would permit perpetual price increases. The productivity factor approved by the majority, one half of the inflation rate, is not supported by the record, does not provide sufficient incentive to the LEC to innovate and improve its efficiency of operation, and completely fails to capture for customers the effects of any improvement that does occur. In short, the price change mechanism approved by the majority does not serve the public interest.

As indicated earlier, I would require as a condition of adopting alternative price cap regulation that the LEC

undergo a comprehensive rate examination. During this proceeding, each LEC should produce studies of its expected Total Factor Productivity.⁷¹ The price change mechanism, or formula, could then be determined upon a better record than is before us presently. During these proposed proceedings, the LECs desiring alternative regulation could present the Commission with their plans for infrastructure investment and development in order for the Commission to be fully informed in its determination of the appropriate productivity factor to incorporate into the price cap formula.

G. Prevention of Cross-subsidies

Code § 56-235.5.H requires the implementation of consumer safeguards at the time of adoption of any alternative regulatory plan sufficient to ensure against the subsidization of competitive services by monopoly services. Further, the Commission may not adopt any alternative regulatory methodology, under Code § 56-235.5.B. or C., unless it finds that the plan "will not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services." In my view, the price cap plans adopted by the majority do not provide sufficient competitive protections to meet these requirements of the Code.

The competitive safeguards adopted by the majority include the unbundling and tariffing of noncompetitive components of Competitive services and requiring that rates for LEC's Competitive services cover their incremental costs (including the imputation of the tariffed rate of any noncompetitive component).⁷² These safeguards may ensure that the LECs will not be able to purchase non-competitive components from themselves at rates below what they charge their competitors for these components. These safeguards do not, however, prevent subsidization of competitive services by monopoly services.

The price of a noncompetitive component of a Competitive service may be sufficiently above the actual cost of producing the component that the tariffed price generates an excessive monopoly profit. Since the majority does not agree to undertake a comprehensive rate examination in which the price of each component could be set in relation to its cost, requiring both the LEC and its competitors to pay the same price for noncompetitive components merely locks in any existing subsidy. The requirement that "revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used"⁷³ accomplishes nothing under price cap regulation, since prices are set without regard to the level of earnings they produce. This is not only unfair to all who must pay the rates, but is contrary to the theoretical and practical premises of this "safeguard." The safeguard only works if the unbundled tariffed rate for the non-competitive component is related to cost.

Suppose a LEC and a competitor both offer a particular competitive service which contains one Discretionary service as a component (supplied to both by the LEC), the

price of which is \$1/unit, and one competitive component which each competitor supplies for itself, which costs both the competitor and the LEC \$1/unit to produce. The cost of the service to the LEC's competitor is \$2/unit. If the Discretionary component actually costs the LEC only 25¢/unit to produce despite its tariffed price of \$1/unit,⁷⁴ then the cost of the service to the LEC is only \$1.25/unit. The LEC can sell its service at \$2/unit, cover its costs, and still earn a 37.5% profit. If the LEC's competitor can sell its service at \$2/unit, it will earn nothing.

The safeguards are also deficient in that they do not require the LEC to prove that the price it will charge for a Competitive service actually covers costs unless a competitor files a complaint. Suppose in the example set out above the LEC sells its Competitive service not for \$2/unit, but for \$1.95/unit. This rate covers the imputed tariff price of \$1/unit (and incidentally makes a profit of 35.9%), even though it does not cover the incremental cost of the competitive component. The majority Order states, at page 17, that the "LECs must maintain studies demonstrating that any Competitive service's pricing meets or exceeds imputed costs plus incremental costs. LECs must respond within 30 days to any complaints alleging that a LEC has violated the imputation requirement." (Emphasis supplied.) The LEC is not required to file its cost studies until there is a complaint. Accordingly, the studies will not be examined unless and until there is a complaint. Will a competitor file a complaint over a price difference of 5¢/unit in such an instance? If not, then the LEC can price Competitive services in violation of the "incremental cost floor," as discussed at pages 17-18 of the majority Order, and the Commission will never know. Further, if the LEC can sell a service for \$1.95 and a competitor cannot sell below \$2.00, how long will there be a competitor? Cost studies demonstrating that the imputed and incremental costs will be covered should be filed at the time the service is offered.

Further, I am not convinced that the cost studies that the majority would require the LECs to maintain (and to file in the case of a complaint) are sufficient to show all the costs incurred in the development and provision of the competitive service. The majority characterizes the incremental costs to be included in the studies as "the long-run additional costs incurred to provide an entire service(s)." Yet, "these costs do not include allocated joint and common overheads[.]"⁷⁵ I do not know how competitors would be able administratively to shift recovery of their "joint and common overheads" onto another service, as apparently the LECs will be able to do. In the example given above, the LEC has its 37.5% profit margin to cover these costs; the competitor has nothing. This will neither promote nor protect competition.

One last competitive safeguard that the majority rejects, but which I would impose, is requiring LEC Competitive services to be freely resold. Permitting resale helps to prevent price discrimination in the provision of Competitive services. The LEC will not be able consistently to sell a Competitive service to Customer "A" at a high

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price, while selling the same service to Customer "B" at a low price, if Customer "B" is free to resell some of the low-price service he receives to Customer "A."⁷⁶

Finally, because we do not know the relationship between current prices and current costs, the unbundling and imputation safeguards adopted by the majority will not meet the test set for us by the General Assembly in Code § 56-235.5.H to assure against cross-subsidization. Only a comprehensive rate review can hope to accomplish this goal.

H. Open-ended Termination – The One Way Street

The majority Order, at page 6, finds that "Upon Commission approval, the Earnings Incentive Plan will be available as an alternative for any LEC at any time, as will, of course, traditional rate of return regulation[.]" Although the majority gives no guidance as to what will be required to obtain the approval, the Commission may be able to prevent BA-Va. and United/Centel from freely reaping the rewards of price cap regulation so long as it is in the LEC's interest to do so, but then returning to rate of return regulation, in either its "traditional" or its "enhanced" form⁷⁷ whenever returns begin to decline below just and reasonable levels.⁷⁸ Granting to the LECs the ability to move from price cap to earnings regulation according to the impact on the bottom line would be an abuse of alternative regulation and contrary to the public interest.

BA-Va. witness Harris contended that:

an essential feature of a good regulatory plan is that it recognize the increasing riskiness of investment decisions; protect customers from the risk of investments that turn out to be uneconomic or unsuccessful; and provide shareholders new incentives to attract sufficient investment in the public switched telephone network. To meet those objectives, the plan must offer a symmetric risk-reward incentive structure, i.e., one that shifts losses of poor investment decisions and the rewards of good investment decisions to shareholders.⁷⁹

In order to provide the "symmetric risk-reward incentive structure" that is acknowledged to be an essential feature of a good regulatory plan, I would require each LEC that chooses to implement one of the alternative regulatory plans to agree to stay with it for a fixed period of years (perhaps five), whether times are good or bad. Then, the Commission would review the LEC's performance under the plan in order to re-affirm whether the plan continued to meet the standards of Code § 56-235.5 and remained in the public interest.

I would also consider requiring the corporate parent of each LEC that chooses an alternative regulatory plan to itself agree to provide adequate funding, as necessary, to its LEC subsidiary to ensure that the Code's standards can continue to be met during the duration of the plan.⁸⁰ While

operating under an alternative regulatory plan, a participating LEC would be permitted to implement price changes only by operation of the price change mechanism contained in the plan. Any additional funding necessary to maintain the affordability of rates or continue the quality of service would have to be supplied by the LEC or its corporate parent.⁸¹

Following the initial review⁸² of the LEC's experience under the alternative plan, if the Commission found the alternative plan continued to be in the public interest, the LEC could apply for either continuation of the original plan, or any of the alternatives previously approved by the Commission, including rate of return regulation, for a similar or different duration. If the Commission concluded that the original alternative regulatory plan was no longer in the public interest, the Commission would determine the appropriate regulation for the LEC. I would not grant the right to change regulatory plans easily nor create the situation that might require the Commission to terminate an alternative plan to the benefit of the LEC and the detriment of the ratepayers. To do so provides the LEC's shareholders with a ready escape from the consequences of the LEC's investment decisions, and shifts this risk back to ratepayers. The public interest requires that if the LEC is to be permitted to reap the rewards of successful decision-making, it must likewise bear the risk of unsuccessful decision-making.

I. Infrastructure Investment Not Assured

As set forth in some detail above, the price cap plans approved by the majority do not serve the public interest because they do not protect captive ratepayers from the threat, if not the certainty, of monopoly pricing and because they do not provide sufficient protection to potential competitors of the LECs. I believe that these plans will not hasten, but rather will impede, the development of such competition. The plans give the LECs too much pricing flexibility and remove what few regulatory restraints the Commission has imposed since divestiture. As such, these plans are contrary to the public interest.

There is yet another, perhaps even more glaring, deficiency in the price cap plans approved by the majority. The LECs stated that the freedom and flexibility permitted by the alternative plans were necessary for them to invest in Virginia and ensure a modern infrastructure. However, while the plans grant nearly complete freedom to the LECs to increase their earnings, they do not assure that the LECs will invest even a single dollar of those earnings in the development of the advanced infrastructure in Virginia.

Compare the majority's plan to the one approved by the Pennsylvania Public Utilities Commission for Bell Atlantic - Pennsylvania ("BA-Pa"), BA-Va.'s sister company. The Pennsylvania PUC devotes nearly one-third of its 198 page order⁸³ to a discussion of BA-Pa's Network Modernization Plan. Pursuant to legislation passed in Pennsylvania, any

local exchange carrier which sought to be regulated by an alternative form of regulation was required to "commit to universal broadband availability and shall commit to converting 100% of its interoffice and distribution telecommunications network to broadband capability[.]"⁸⁴ This broadband network⁸⁵ must be deployed equitably in rural, urban and suburban areas, and "shall be in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks, and health care facilities[.]"⁸⁶ The BA-Pa plan requires this investment.

BA-Pa did not have to seek alternative regulation in Pennsylvania. It chose to do so even though its choice required it to commit to this massive infrastructure deployment. It was willing to agree to do this in exchange for the kind of pricing freedom that the majority Order has given BA-Va. and United/Centel here, without the concomitant investment responsibility.

Another Bell Atlantic subsidiary, New Jersey Bell ("NJ Bell"), agreed to speed up the deployment of advanced infrastructure in that state by \$1.5 billion during this decade in exchange for a more limited form of pricing freedom. NJ Bell's prices will be regulated with a price cap mechanism but it must still share all earnings above 13.7% return on equity on a 50-50 basis with its customers.⁸⁷ This alternative form of regulation is known in that state as rate of return/rate cap regulation.⁸⁸

There should be no "payment" for the right to participate in an alternative regulatory plan. A plan should, however, be beneficial to the LEC, its customers and the Commonwealth. In this case, according to the LECs, the plans were needed so that new technology and infrastructure could be deployed throughout Virginia. The majority has removed all rate of return limits on BA-Va. and United/Centel. The majority has done more than its part. However, the LECs are not required to invest in new technology or infrastructure in Virginia. If investments are made, will they be enough? We do not know. Will new infrastructure be deployed equitably in rural, urban and suburban areas? Will the new facilities be close enough to our public schools and health facilities? We do not know. The Pennsylvania plan addressed these issues. The majority plans do not. If Virginia is fortunate enough to have the necessary infrastructure deployed, it will be because the parent corporations of Virginia's LECs choose to do so, not because they are obligated to. Moreover, those decisions will be made far from Virginia and with many non-Virginia pressures at work. If the plans of the telecommunications giants do not work as well as the planners hope, funds for investment may be short. In that case, I am concerned that the investments will be made first where they must be rather than where they should be. In that case, Pennsylvania and New Jersey may receive the investment and Virginia will be left with good intentions.

In their failure to assure additional investment toward the deployment of advanced telecommunications

infrastructure, the majority plans do not serve the public interest. We must remember that Bell Atlantic is obligated to make such investments in nearby states with which Virginia competes for economic opportunities, jobs and other investments.

J. The Price Cap Plans do not Comply with Code § 56-235.5

Code § 56-235.5.B. sets forth four standards that must be met by any alternative regulatory plan considered by the Commission before that plan may be approved. Reduced to the essentials, the four standards any plan must meet include: (i) protection of the affordability of BLETS; (ii) assurance of the continuation of quality local exchange telephone service; (iii) absence of unreasonable prejudice or disadvantage to any class of customers or competitors; and, (iv) being in the public interest.

Sections II A. through I, supra, have demonstrated my belief that the price cap plans approved by the majority do not meet the standards set out in § 56-235.5.B (iii) and (iv) or the requirements of § 56-235.5.H. Because the plans fail to protect and promote competition and because the plans permit, and in fact invite, the extraction of excess monopoly profits from ratepayers, the plans cannot be said to be in the public interest. This section will focus on the remaining two standards whose application has been made mandated by the General Assembly. I have not found evidence in this record that supports the majority's finding that the plans will preserve the affordability of basic service, and I do not believe the majority has correctly interpreted what is required to assure the "continuation of quality local exchange telephone service." See Va. Code § 56-235.5.B (i) and (ii).

1. Affordability

Beginning at page 6 of its Order the majority sets out its "opinion" that "the evidence establishes that at current rate levels, those services which are classified as BLETS . . . are affordable." In support of this opinion, the Order recites that rates were last set for the LECs in rate cases in 1983, 1984 and 1985 and "have only decreased" since that time. In further support, the majority points to the 94% level of service penetration. Because tariffed rates have not increased since the mid-80s and because so many people have access to service, the majority concludes that "rate cases are not necessary to determine affordability."⁸⁹ As stated at length above, I believe a comprehensive rate examination is needed. A thorough examination of the affordability of service should also be undertaken.

Simply to say that rates have not increased since the last time rate cases were held is an insufficient answer. First, when rates were set during those cases, the issue of affordability of service played little or no part in our consideration of just and reasonable rate levels. Second, the statute requires the Commission to consider the "affordability of basic local exchange service," which is made up of more than just the tariffed rate charged by

the local exchange company. Since 1984, for example, the federal Subscriber Line Charge ("SLC") has been added to bills for local service. The SLC was initially set at \$1 per month in 1985, but has now grown to \$3.50 per month. The LECs retain these revenues. BA-Va.'s rates for local service run from roughly \$7 to \$13.50 per month depending on the size of the exchange. Therefore, the addition of the SLC has raised what customers must pay to receive local exchange service by approximately 25 to 50%. Customers cannot receive local service without paying the SLC in addition to the tariffed rates of the LECs. A thorough study of the affordability of local exchange service involves more than just a review of the tariffs. No such study has been made.

In his prefiled testimony, Staff witness Irby referred to a survey that had been conducted by Virginia Tech, which revealed that one reason which prevented even higher telephone service penetration levels was the amount of "up-front" charges assessed by the LECs for installation and service deposits.⁹⁰ Mr. Irby also acknowledged that rates for local service vary from company to company and from location to location by a factor of double or more.⁹¹ However, no study of the effect of either the "up-front" requirements or the variance in local rates on affordability was presented.⁹²

The evidence regarding penetration levels should also be subjected to further scrutiny. While a 94% penetration rate sounds excellent, there is more to this story. Closer examination of the evidence reveals that in 30 Virginia counties and 8 Virginia cities, the penetration rate is below 90%. There is a wide variance in penetration levels. In prosperous Fairfax County, 99.3% of occupied housing units have a phone, while in less-developed Sussex County only 81.2% do.⁹³

Also telling, perhaps, is that penetration levels have not risen appreciably statewide since 1984, despite the fact that "rates have only decreased" since then.⁹⁴ In 1984, the penetration rate stood at 93%; nine years later, following an Experimental Plan which, according to the majority, "reduced rates, promoted rate stability, helped the local exchange companies (LECs) adapt to emerging competition and encouraged the LECs to invest in Virginia telecommunications infrastructure,"⁹⁵ the penetration level has increased only to 94.3%.⁹⁶

This 94.3% penetration figure is said to indicate that telephone service is affordable; I tend to think it indicates rather that telephone service is, like other utility service, indispensable. I would venture to guess that the "penetration" of electric service surpasses that for telephone service, but this fact has not been taken as any indication that electric rates are therefore affordable and should never be examined in a rate proceeding.

What is needed is a study of affordability. While I applaud the majority's requirement to expand the Virginia Universal Service Plan to include food stamp recipients, affordability does not stop there. An examination of

installation and deposit requirements and an elasticity study to determine the impact of charges and fees (including deposit and installation requirements) on the penetration rate should be made.

2. Continuation of Quality Service

As indicated above, I believe the majority has misinterpreted the intent of the General Assembly when it required that any alternative regulatory plan must "reasonably [assure] the continuation of quality local exchange telephone service."⁹⁷ According to the majority, meeting this criterion will not be a problem "since all of the plans require the LECs to conform to the Commission's Rules Governing Service Standards adopted in Case No. PUC930009 on June 10, 1993, 1993 S.C.C. Ann. Rpt. 221."⁹⁸ I do not believe these Rules were what the General Assembly had in mind when it charged us to assure the "continuation of quality local exchange telephone service."

In Section II. I., *supra*, I criticize the price cap plans for their failure to assure that adequate investment in telecommunications infrastructure and services would be made in the Commonwealth. In the future, "quality local exchange telephone service" will mean something different and better than what is presently available.⁹⁹ I believe the General Assembly wanted the Commission to approve only those alternative regulatory plans that assured that the evolving telecommunications requirements of present and future generations of Virginia citizens and business would be met. As detailed in Section II. I., these plans do not accomplish this goal. Instead, the majority Order only requires the LECs to file reports on such service standards as the number of trouble reports received, number of complaints to the Commission and "the percent of all calls to the business office which are answered live within 20 seconds."¹⁰⁰ The majority has limited the LEC's responsibility under this requirement to maintenance of the status quo with regard to service quality, rather than assuring the "continuation of quality local exchange telephone service." Even the best maintained 1994 telephone system may not be providing "quality local exchange telephone service" as that term will be understood in 2004 or 2014. Any alternative regulatory plan properly permissible under § 56-235.5 must provide for the investment reasonably necessary to meet evolving definitions of quality local exchange telephone service.

III

Earnings Incentive Plan

I will not dwell long on the majority's other alternative regulatory plan, the GTE Plan.¹⁰¹ It suffers from many of the same deficiencies as the price cap plans.¹⁰² First and foremost, there is no requirement that companies operating under this plan submit to full rate examination. The Commission will have not much greater knowledge of the current costs of service, revenues and earnings of GTE than it does of BA-Va. and United/Centel, although still

purporting to regulate GTE's earnings. The Commission is in no position to adjudge either the reasonableness or the affordability of GTE's current rates, as required by Code § 56-235.5.B (i). To the good, however, price changes under the GTE Plan that result in increases to its operating revenues will be permitted only in the context of what appears to be a true rate case.¹⁰³

It appears that such rate reviews as will be conducted under the GTE Plan, other than those in which GTE proposes to raise rates, will be no more rigorous than the ones conducted under the Experimental Plan.¹⁰⁴ That is, only booked figures will be reviewed and other parties will be prohibited from offering ratemaking-type adjustments to the booked cost of service.¹⁰⁵ There will be no audit of affiliates expense, for example. In short, the GTE Plan gives the false appearance of being rate base, rate of return regulation.

The GTE Plan appears to impose the same "Competitive Safeguards"¹⁰⁶ as do the price cap plans; therefore, the GTE Plan provides no more protection for competitors than the price cap plans and is, accordingly, no more compliant with the requirements of Code § 56-235.5.B (iii) than those price cap plans. Because it will not conduct a rate examination of GTE, the Commission can not determine whether, as described above in Section II. G., GTE's monopoly services provide a cross subsidy to its competitive services in violation of Code § 56-235.5.H.

Finally, I must observe that there is something perplexing in the theory underpinning the GTE and Earnings Incentive Plans. Under these plans, in exchange for keeping rates for basic and discretionary services unchanged, a company is allowed to retain nearly all earnings it generates from its so-called competitive services.¹⁰⁷ It is only when it seeks to increase rates for basic or discretionary services that GTE must account for all competitive earnings.¹⁰⁸ Therefore, the "incentive" to hold down basic rates and avoid a rate case in the Earnings Incentive and GTE Plans is the competitive earnings. Implicit in this arrangement must be that these "competitive earnings" are particularly desirable or lucrative. If the services providing these earnings are, however, truly competitive, then their prices should be driven to cost and the "competitive earnings" would provide little, if any, incentive. The incentive, however, is significant because the "earnings" are from such services as Yellow Pages and Inside Wire Maintenance, which are classified as competitive, but which provide unregulated monopoly profits.¹⁰⁹ Thus, the GTE and Earnings Incentive Plans rely on the improper classification of several services. If the "competitive" services ever really do become competitive, this incentive will be gone.

In short, the GTE and Earnings Incentive Plans are not truly based on rate of return regulation, will not protect consumers, and do not provide adequate competitive safeguards. As such, I find the plans fail to comply with the law and are contrary to the public interest.

IV

Competitive Services

In its Final Order in Case No. PUC920029,¹¹⁰ in which it considered the Experimental Plan, the Commission wrote:

Services classified as Actually Competitive as of July 1, 1993, will remain classified as Competitive under the modified Plan pursuant to Va. Code § 56-235.5(F) while Case No. PUC930036, which will afford an opportunity for considering potential reclassification of those services, is underway. . . .

We do not now determine whether Yellow Pages is a competitive service. Thus, it presently remains classified as it was on the effective date of the new statute, as the LECs contend it should be. . . .

As our Staff's report relates (pp. C-7 to C-8), at the inception of the Plan, there was a major competitor attempting to enter the market in Yellow Pages. It sought to produce a volume of Yellow Pages type advertising, as an alternative to the telephone company book, in two of the three major metropolitan areas of the state. The Plan assumed that this form of Yellow Pages competition would develop. It has not, on any effective basis, leaving only smaller, less than complete substitutes. [Cite omitted.]

* * *

[I]t is apparent that the unique form of the Yellow Pages publication produced by the telephone companies is made possible by a ready availability of information from the regulated side of the business. This relationship insulates a part of the revenues from Yellow Pages advertising from effective inroads by other media. Because this protection is closely related to the regulated activities of the company, we have concluded that regulated customers should receive some of the benefits derived by the telephone companies from Yellow Pages operations.

In that case, the Commission required, for regulatory purposes, that 25% of the income available for common equity from Yellow Pages be imputed to the noncompetitive side of LEC operations, a ratemaking treatment the Commission deemed proper under Code § 56-235.5.E.

Nearly every party to the present proceeding suggested some change in the treatment of Yellow Pages that was mandated by the Final Order in Case No. PUC920029. Generally speaking, the LECs urged that none of the revenues from Yellow Pages be attributed to non-competitive services, while the remaining parties wanted all revenues so attributed.¹¹¹ Both BA-Va. and the American Association of Retired Persons sponsored

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witnesses, Dr. Robert Willig and Dr. William Shepherd, respectively, solely for the purpose of addressing whether Yellow Pages is competitive.¹¹² Other parties' witnesses addressed the Yellow Page issue extensively as well.¹¹³

Nonetheless, the majority concludes, at page 25 of the Order, that it "received no evidence that would compel us to make any changes" in its treatment of Yellow Pages and another service whose "competitiveness" is subject to question - Inside Wire Maintenance. The Commission also stated that "competition for those services is or can be an effective regulator of the price of those services and that it is in the public interest to detariff those services."¹¹⁴ This finding by the majority is wrong.

By any test, neither Yellow Pages nor Inside Wire Maintenance is competitive. Several parties referred to the U.S. District Court's opinion in the divestiture case, in which the Court found:¹¹⁵

All parties concede that the Yellow Pages currently earn supra-competitive profits . . . Yellow Pages provide a significant subsidy to local telephone rates. This subsidy would most likely continue if the Operating Companies were permitted to publish the Yellow Pages. The loss of this subsidy would have important consequences for the rates of local telephone service. For example, the State of California claims that a two dollar increase in the rates for monthly service would be necessary to offset the loss of revenues from directory advertising. Other states assert that increases of a similar magnitude would be required . . . This result is clearly contrary to the goal of providing affordable telephone service to all Americans.

The LECs continue to earn "supra-competitive profits" from Yellow Pages, as they also do from their Inside Wire Maintenance programs. During the period 1990-92, BA-Va. and United earned returns on equity from Yellow Page operations that can only be described as astounding.¹¹⁶ Further, the pre-tax profits as a percentage of gross revenues were equally extraordinary.¹¹⁷ As the Commission found in Case No. PUC920029, there is no effective competing directory, but only "smaller, less than complete substitutes," despite the presence of such extravagant profit possibilities. While the indicated return on equity for Inside Wire Maintenance is less than those for Yellow Pages, it is still extraordinarily high.¹¹⁸

The majority appears to have invoked the "grandfathering" provision of Code § 56-235.5.F.¹¹⁹ in deeming Yellow Pages and Inside Wire Maintenance to be competitive, despite the quantity of evidence that was produced during the hearing.¹²⁰ There is no convincing evidence before the Commission, that "competition effectively regulates the price" of Yellow Page advertising. As the Attorney General pointed out, on brief, even BA-Va.'s witness, Dr. Willig, "offered no empirical evidence that Yellow Page prices are responsive to any alleged competition."¹²¹ Nor does it appear that there is, or even

can be, effective competitors to the LECs' Inside Wire Maintenance programs because the programs are not repair services as such, but essentially repair insurance programs.¹²² The monthly costs of billing for such service alone would constitute a substantial barrier to competitive entry.¹²³

The majority finds that certain other services should not be classified as competitive because "specialized, sporadic competition cannot be expected to control the prices" (Bulk Private Line) or that "it is too soon to reclassify these services because competition is not yet effectively regulating their prices" (Bulk Special Access and Single Special Access).¹²⁴ For other services, the majority finds that "there are no substitutes" (White Page Bold Type listings, ISDN) or "there is no substitute" (Repeat Call) or a service should be classified as Basic because it "is universally available and used" (Touch Tone). These descriptions apply with equal force to Yellow Pages and Inside Wire Maintenance. The Commission has already found¹²⁵ that there is no effective competitive directory, only smaller, less complete substitutes. Such "specialized, sporadic" directory competition "cannot be expected to control the price" of Yellow Page advertising. In fact, there is no evidence even vaguely suggesting that "competition effectively regulates the prices" of Yellow Page advertising. The phone companies' own advertising proclaims that "there is no substitute" for the "Official Yellow Pages," which are, undoubtedly, "universally available and used." As it is structured, "there is no substitute" for Inside Wire Maintenance either.

It is clear from this record that competition does not effectively regulate the price of either service. Therefore, it is improper to declare either the service competitive in order to allow the LECs to retain most all of the enormous profits generated by Yellow Pages and Inside Wire Maintenance for the benefit of their shareholders. I would require that 100% of the revenues and expenses of Yellow Pages and Inside Wire Maintenance be included in the noncompetitive services in the comprehensive rate review that I have advocated earlier. Having once set all rates based on cost, after properly accounting for all revenues and expenses, including those from Yellow Pages and Inside Wire Maintenance, I would allow implementation of price cap plans, modified as suggested below.

V.

Conclusion

The LECs have argued that they need the freedoms granted by the plans approved by the majority to meet the challenges of competition and to provide the necessary infrastructure for Virginia. Undoubtedly, increasing competition will provide substantial challenges to the LECs in the future. But in fact and in law, the LECs do not now face competition for local exchange service. And the approved plans do not assure the necessary infrastructure for the Commonwealth.

Competition at the local exchange level is what will ultimately hold down rates, provide choices, and ensure the advanced technology and infrastructure Virginia needs. What is so troubling and disturbing about the majority Order is that it is so anticompetitive. The Order does nothing to promote competition and much to entrench the existing monopolies. At a time when we should be encouraging, fostering and hastening competition, the majority Order does the opposite.

Given the present lack of competition for local exchange services and the fact that competition is needed and coming in the future, the Commission was presented with the question of what to do between the present and the time when competition becomes the effective regulator. We are required to decide what the appropriate regulatory vehicle is to take the LECs through the transition from the monopoly state that they now enjoy to the competitive state the future will bring. In my view, the evidence produced in this proceeding does not compel a finding that price cap regulation, though strongly advocated by the LECs according to their interests, is in any way appreciably superior to effective rate of return regulation as that transition vehicle. Certainly, as set forth in detail earlier, the plans proposed by the LECs and approved by the majority do not suffice. They will neither protect consumers nor promote competition and innovation and are not in the public interest. They do not comply with the requirements of Code § 56-235.5 and should not be approved.

That is not to say that a price cap alternative regulatory plan could not be so designed to meet the essential tests of Code § 56-235.5 and lawfully assist the LECs, their potential competitors and the public in the transition to the competitive market. As stated earlier, a properly structured plan must include, *inter alia*, a comprehensive initial rate examination to align prices and costs, necessary both to protect against the extraction of monopoly profits and to promote and foster competition; a meaningful productivity offset that would offer proper incentives to the LEC to innovate and improve efficiency; a price index that provides a realistic limit on prices for all noncompetitive services, including Discretionary services, rather than inviting monopoly pricing of those services; elimination of "revenue neutral" price restructurings; reasonable assurance of necessary infrastructure investment; a specific duration for the plan with a Commission review and approval required for continuation; a mechanism to set initial prices for new Discretionary services; and, implementation of additional competitive safeguards.

Taking away regulatory restraints in the absence of effective competition will harm the public. In my opinion, the Virginia General Assembly should act now to protect the public interest. Full local exchange competition should be allowed, fostered and hastened.

Until competition at the local level is allowed and becomes a reality, I cannot agree with my colleagues that

the alternative regulatory plans allowed in this proceeding should be approved. Accordingly, I must dissent.

¹ James C. Bonbright, *Principles of Public Utility Rates* 17 (2d ed. 1988).

² Va. Code § 56-265.4:4 B empowers the Commission to grant certificates of public convenience and necessity to competing telephone companies for interexchange service. See, *Applications of SouthernTel of Virginia, Inc., et al.*, For certificates of public convenience and necessity to provide inter-LATA, inter-exchange telecommunications service and to have rates established on competitive factors; Case Nos. PUC840020, PUC840022, PUC840024, PUC840025 and PUC840027, 84 S.C.C. Ann. Rpt. 333, 62 PUR 4th 245 (August 22, 1984). Although competition was authorized in 1984 and equal access is now available to almost all customers, after a decade of intense effort by the new entrants, AT&T carries well over 50% of the intrastate interLATA interexchange calls. "The InterLATA Market in Virginia," Quarterly Release, Division of Economics and Finance, State Corporation Commission (10/7/94).

³ These may include such services as speed calling, CENTREX Intercom & Features, and call restriction. While the LECs tried to suggest in this case that there is actual competition for local exchange service in the form of Competitive Access Providers ("CAPs") and wireless service including cellular and Personal Communications Services, this simply is not correct. For example, Bell Atlantic-Virginia, Inc. ("BA-Va.") argued that because of CAPs, Special Access should be termed competitive. The majority correctly found, at page 22 of their Order, that BA-Va. "controls at least 94% of the Special Access market in its Virginia territory" and that the service could not be reclassified as competitive. Clearly there is not yet competition in the access market. As for wireless facilities, there was no showing that wireless usage is competing with the local exchange provider. Customers are not replacing the phones in their homes with bag phones or making all of their calls from their cars. Indeed, the LECs benefit from the increased usage of wireless facilities. In addition, of course, affiliates of the LECs are often in the wireless business.

⁴ Va. Code § 56-265.4:4 A provides that the holder of a certificate of public convenience and necessity for local exchange telephone service in a specific territory shall be the only provider of such service, unless the Commission finds the service of the certificate holder to be inadequate. Even if the Commission makes such a finding, the certificate holder must be given a reasonable time and opportunity to remedy the inadequacy before a certificate of convenience and necessity may be granted to a second party proposing to operate in that territory. Although the LECs discussed the threat of competition from cable television companies and interexchange companies they had to acknowledge that there were legal barriers to this competition. See, e.g., Post Hearing Brief on Behalf of Bell Atlantic-Virginia, Inc., June 10, 1994, at 10 et seq. and Trial Brief on Behalf of GTE South Incorporated and Contel of Virginia, Inc., June 10, 1994 at 3.

⁵ Charges for Touch Tone service will be eliminated.

⁶ For a more complete discussion of issues related to the establishment of initial rates, including the requirement of a complete examination of current rates, see "Establishment of Initial Rates," Section II, B., *infra*.

⁷ For an examination of primary issues related to increases under the price cap plans see "Price Increases for Discretionary Services," "Revenue Neutral Price Restructuring," "Moratorium Periods," and "The Price Change Mechanism" in Section II, C., D., E., and F., *infra*.

⁸ For a discussion of certain issues related to prevention of cross subsidies, see "Prevention of Cross-Subsidies" at Section II, G, *infra*.

⁹ For a discussion of issues related to the continuation of quality local exchange telephone service, see "Infrastructure Investment not Assured," and "Continuation of Quality Service" in Section II, subsections I. and J.2., *infra*. See also, Code § 56-235.5.B.(iii).

¹⁰ It appears that certain provisions in one plan are different from another with the only probable explanation being simply that the companies requested different regulation. Sometimes this was beneficial to one company as opposed to another and, other times, it was not. The differences were not supported by the record or any rationale by the majority and will lead to unanswered questions in the future. For example, under the BA-Va. Plan for Alternative Regulation ("BA-Va. Plan"), rates for

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Basic services are to be frozen until the year 2001 while under the Alternative Regulation Plan for Central Telephone Company of Virginia ("Centel") and United Telephone-Southeast, Inc. ("United") ("United/Centel Plan") the moratorium extends until 1998. BA-Va. Plan at paragraph 6; United/Centel Plan at paragraph 6. As shown in Section II. E., *infra*, there is no rationale for this difference. One must wonder if BA-Va.'s moratorium would have been permitted by the majority to end in 1998 if only the company had asked. When Basic rates begin to increase three years earlier for United/Centel than for BA-Va., there will be no answer to the question: "Why?"

¹¹ See "Establishment of Initial Rates," Section II.B., *infra*.

¹² See note 4, *supra*.

¹³ Such monopoly services on Attachment A are referred to as "Discretionary" or "Basic Local Exchange Telephone Services" ("BLETS").

¹⁴ See BA-Va. Plan, Appendix A. The "competitive" list includes BA-Va.'s Inside Wire Maintenance plans and "Yellow Pages Advertising" which are clearly not competitive. See Section IV, *infra*.

¹⁵ BA-Va. Plan, Appendix A.

¹⁶ United/Centel Plan, Appendix A.

¹⁷ Ex. MHK-30, at 21.

¹⁸ Charges for Touch Tone service will be eliminated.

¹⁹ Ex. DLK-52R, at 4-5; Ex. MHK-31R, at 11-12; and Ex. DJW-56R, at 21-28.

²⁰ If the monopoly price is above costs, new firms will be encouraged to enter the market even though their costs are above those of the monopoly. This, of course, can raise overall industry costs and entice competitors who cannot survive in the long run. On the other hand, if prices are set below cost, potential entrants will be discouraged from entering the market even though their costs are below those of the incumbent monopoly. Again, society loses because the new, lower cost, firm cannot enter the market.

²¹ For example, § 56-235.5.B. (iii) requires that we find that the plans will not unreasonably prejudice or disadvantage any class of telephone customers or other providers of competitive services and § 56-235.5.H. requires us to adopt safeguards to protect consumers and competitive markets which "at a minimum . . . assure that there is no cross subsidization of competitive services by monopoly services." The only way consumers and competitors can be protected from the extraction of monopoly profits and thus unreasonable prejudice or disadvantage is for the Commission to determine that the initial rates are just and reasonable. The only way that competitive markets can be protected is for prices for monopoly services to be based on costs. If prices for monopoly services are above cost of service levels, there must be excessive monopoly profits. If there are such monopoly profits, there can be "cross subsidization of competitive services by monopoly services" in violation of § 56-235.5.H.

²² Tr. 390.

²³ Application of Chesapeake and Potomac Telephone Company of Virginia, Case No. PUC830029, 1983 S.C.C. Ann. Rpt. 307 (December 22, 1983). BA-Va. was formerly known as "C&P Telephone."

²⁴ For example, costs of another of the Commonwealth's largest utilities, Virginia Electric and Power Company, have been under almost constant review since 1984. Virginia Power's costs and rates have been subject to examination in rate cases in 1984 (a case that did not conclude until 1986), 1987-88, 1988, 1989-90, 1990-91, 1991-92, and 1992-94.

²⁵ That the LECs did not request rate relief does not decrease the need for an examination of rates and costs. This fact may well have indicated that the LECs' costs were falling rapidly and their earned rates of return were spiraling upward. Commission Staff review of financial statements does not satisfy the need for a full examination. The routine reviews by Staff are based on "booked" figures without full examination. It is these booked figures which contain, for example, the affiliate expenses.

²⁶ Dr. Harris of BA-Va. did not appear to be aware of the requests for a

full examination of the LEC's costs and rates. As such, he suggested that those who were requesting the examination now might be mere obstructionists. He wondered aloud why these complaints and requests had not been made earlier. (Tr. 390-91). In fact, the requests were made earlier. For example, in 1986 the Department of Defense and all other executive agencies of the United States sought to have an investigation of C&P's (now BA-Va.'s) rates. The request was denied with the statement that rates would be reviewed as part of a review of the company's Annual Informational Filing. Commonwealth of Virginia, *ex rel.* Department of Defense, General Services Administration, and all other Federal Executive Agencies of the United States *v.* Chesapeake and Potomac Telephone Company of Virginia, Case No. PUC860018, 1986 S.C.C. Ann. Rpt. 239. No full examination was made and no hearing held.

In March 1989, the Attorney General of Virginia also petitioned the Commission. The Attorney General alleged that the rates of the LECs were unjust and unreasonable. The Commission dismissed the petition, saying in part:

The Commission will evaluate the telephone companies' 1989 earnings when the companies submit annual informational filings in 1990 under Paragraph 16 of the Plan. By that time, the Commission also expects to have completed its cost allocations process pursuant to Case No. PUC890014. After costs have been properly allocated between actually competitive services and the remaining regulated services and the filing of AIFs for the test year 1989 it may be proper to revisit whether the 12 to 14% return on equity is appropriate for the companies' earnings from regulated services. In the meantime, ratepayers will be protected from the possibility of excessive earnings by the interim nature of the rates and the obligation to refund any excessive earnings. . . .

Commonwealth of Virginia, *ex rel.* The Division of Consumer Counsel, Office of the Attorney General *v.* The Chesapeake and Potomac Telephone Company of Virginia, Central Telephone Company of Virginia, Centel of Virginia, Inc., GTE South, and United Inter-Mountain Telephone Company, Case No. PUC890011, 1989 S.C.C. Ann. Rpt. 215, at 216.

When rates were reviewed under the Experimental Plan, booked figures were used, ratemaking type inquiry from Protestants was prohibited and it was made clear that the proceeding was not a rate case where there would be a full examination of the rates. In its Order Scheduling Hearing in Case No. PUC900045, in which C&P (now, BA-Va) moved to have its 1989 rates made permanent, the Commission wrote:

In the circumstances, we are constrained by the terms of the Plan. Its terms govern this case, and a number of issues raised by the parties opposing C&P's motion are outside the terms of the Plan. Accordingly, we will exclude, as appropriate, some issues from this case, for the reasons discussed below. . . .

Paragraph 18 of the Plan states: "During the trial period, the Company's approved return on equity will be set at a range of 12% to 14% on equity." This language leaves no room for an interpretation that the range can be changed in this case.

Other ratemaking issues have been raised by the comments. . . . The limited filing requirements under the Plan reveal the limited nature of this case. It is not a rate case, but a proceeding to evaluate C&P's financial results under the terms of the Plan. . . . Accordingly, the provisions of Paragraph 16 should be interpreted to limit our inquiry here to exclude ratemaking issues like those raised by VCCC.

Application of the Chesapeake & Potomac Telephone Company of Virginia, Case No. PUC900045 (July 2, 1993) at 2-3. (Emphasis supplied.)

²⁷ According to information compiled by the Federal Communications Commission, between 1989, when basic local exchange rates became subject to regulation under the Experimental Plan, and 1992, other state regulatory commission orders in telephone rate cases resulted in net revenue decreases in excess of \$1.8 billion. Ex. MHK-30, attached Exhibit(MHK-12). Such evidence strongly suggests that costs have declined during this period when our basic local exchange rates have not been decreased.

²⁸ Exs. KDT-3F and G show the precise figures. BA-Va. claimed that these exhibits were "proprietary" and should not be released. Although it would appear that the simple aggregate of all affiliate expenses would not be "proprietary," I will refrain from stating them based on the proprietary claim.

²⁹ See, Va. Code § 56-76, et seq.

³⁰ Tr. 1992-94; 2000-01.

³¹ Tr. 1992-94.

³² Tr. 2000-2001.

³³ Tr. 1992-94.

³⁴ See, Va. Code § 56-76, et seq.

³⁵ Tr. 879-80. Paragraph 16 of the Plans may be intended to prevent this, but it is less than clear. If changes in access charges are to be exempt from the Revenue Neutral provision, the plans should say so.

³⁶ Id., at 880.

³⁷ Staff witness Larry J. Cody appended a list of these discretionary services to his testimony. During the hearing, he testified that 33 of the 58 listed services could only be provided by the local exchange carrier. (Tr. 497-501)

³⁸ BA-Va. Plan, paragraph 7.B.1. The 10% limit applies only to the second increase between 1995 and 1997.

³⁹ BA-Va. Plan, paragraph 7.B.2.

⁴⁰ The price cap plans are replete with such items, such as "revenue neutral" price restructurings. See, Section II.D, *infra*.

⁴¹ Ex. RGH-8SR, at 7.

⁴² Ex. WI-1, at 21.

⁴³ Id., at 24.

⁴⁴ United/Centel Plan, paragraph 7.B.1.

⁴⁵ James C. Bonbright, *Principles of Public Utility Rates* 17 (2d ed. 1988).

⁴⁶ Ex. WI-1, at 22.

⁴⁷ BA-Va. Plan, paragraph 8; United/Centel Plan, paragraph 8.

⁴⁸ While paragraph 8.B. of each plan requires the LEC "to show within the first two years following the implementation of the price changes that the changes are, in fact, revenue neutral[.]" nothing in this paragraph limits price changes otherwise permissible under paragraph 7.B.1. of the plans. Even if such changes do, in fact, render a price change "non-neutral," the Commission's response is limited to "a prospective adjustment" which the Commission "may" impose. Finally, no interpretation of the plans would prohibit Discretionary rates from increasing at the end of the two year period referred to in paragraph 8.B. Thus, after two years, the LEC would be free to raise the Discretionary rates it lowered to obtain the "revenue neutral" rate increase in Basic rates. These Discretionary rates could, in BA-Va.'s case, be increased up to 10% without a hearing. (Perhaps as much as 19.92% [0.83% X 24 months.]

⁴⁹ There is, however, nothing to suggest that such a proposed change would be "unlawful."

⁵⁰ Nor is, by the same token, permitting rate changes due to "rate regrouping due to growth in access lines," permitted by paragraph 6. C. of each of the price cap plans.

⁵¹ Ex. RGH-6, at 26.

⁵² For example, Mr. Woltz of BA-Va. said at page 864 of the transcript:

The investments needed to build the network required to meet the public's Information Age expectations are large and risky. The Bell Atlantic-Virginia plan places that risk on the investors and not on the ratepayer through price guarantees.

However, the revenue-neutral provision of paragraph 8 of the plans allows for a shift of this risk back to the ratepayers by circumventing the "price guarantees" of which Mr. Woltz spoke.

⁵³ After January 1, 1997, according to the BA-Va. Plan, paragraph 7.B.1.

⁵⁴ Order, at 8. In my view, the differing treatment of Discretionary services is also a major difference.

⁵⁵ Id., at 7.

⁵⁶ Just as there may be differences in "operating characteristics, demographics, and customer makeup" between United and Centel.

⁵⁷ Paragraph 6.B.2. of each of the price cap plans. Paragraph 6.B.2. of each plan provides for notice and, if there are sufficient complaints, a hearing as to the "lawfulness of the increase." The majority Order provides no indication of what may be considered in the hearing as to the "lawfulness of the increase." Further, given the majority's view of "affordability" (see Section II.J.1., *infra*) and the fact that it has determined that the index itself protects affordability, these hearings may amount to little more than mathematical exercises.

⁵⁸ Paragraph 6.A. of each of the price cap plans.

⁵⁹ If there are sufficient protests or objections to the proposed increase, as noted above, there must be a hearing.

⁶⁰ Tr. 360-361, BA-Va. witness Harris, specifically referring to the British price cap plan.

⁶¹ Ex. DWL-50R, at 10.

⁶² Tr. 369.

⁶³ Ex. RGH-8SR, at 2. BA-Va. cited this study primarily to demonstrate that under its proposal, customer rates would decline in real terms over time, preserving the affordability of basic service. It is indisputable that rates could increase in nominal terms.

⁶⁴ Ex. DWL-50R, at 11.

⁶⁵ Re: Bell Atlantic of Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation under Chapter 30, Docket No. P-06930715, Opinion and Order (June 23, 1994).

⁶⁶ Tr. 368.

⁶⁷ Ex. RGH-8SR, at 5.

⁶⁸ Tr. 379.

⁶⁹ Ex. DWL-50R, at 9-10.

⁷⁰ Ex. MHK-31R, at 30-45.

⁷¹ I deem it very significant that Bell Atlantic has the capability of conducting such studies, and in fact did conduct such a study for its Pennsylvania subsidiary (Tr. 848), but did not do so here.

⁷² Paragraph 12 of each of the price cap plans; paragraph 6 of the GTE South Alternative Regulatory Plan ("GTE Plan") and Earnings Incentive Plan.

⁷³ Paragraph 12.B. of each of the price cap plans; paragraph 6 of the GTE and Earnings Incentive Plan.

⁷⁴ The plans are silent as to how a new Discretionary service is to be priced. Although there are no rules as to how Discretionary services are priced, as explained in Section II.C., *supra*, the LECs have been allowed to charge rates well above cost for these services in the past. Presumably

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under the majority rationale, this practice may continue. Accordingly, the \$1 rate may be low whether the Discretionary service which is a component of the competitive service is new or not.

⁵⁵ Order, at 17-18.

⁵⁶ Ex. DWL-49, at 8-9.

⁵⁷ The "Earnings Incentive Plan" approved by the majority.

⁵⁸ To move to another plan, notice, a separate hearing, and specific findings enumerated in § 56-235.5.B. should be required and this should have been spelled out in the plans.

⁵⁹ Ex. RGH-6, at 29.

⁶⁰ As written, if the LECs discover that, in order to make investments necessary to keep service adequate, their rates of return will drop below just and reasonable levels, the LECs might refuse to make those investments. The majority at page 11 of the Order makes clear that if one of the criteria is not met, the first line of defense will be a more restrictive regulatory plan such as rate of return regulation. In fact, without a guarantee or the commitment of the parent, this may be the only practical solution. See also, Code §§ 56-265.4.4 and 56-265.6. When termination of a plan occurs, however, the LEC may be entitled seek and receive rate relief under rate of return regulation to give it an opportunity to earn a fair rate of return.

⁶¹ The majority Order contains, at pages 20-22, a lengthy and inscrutable exhortation to the corporate parents of the LECs not to behave in certain unspecified ways or to take certain unspecified actions, because the Commission "will be monitoring carefully all information relevant to this subject, and we will make formal inquiry of such issues if appropriate." Order, at 22. Now is the time to act to ensure that "such issues" do not arise. Ensuring that funding will be adequate (through, perhaps, the guarantees of the parent) and a comprehensive, going-in rate review are required now to ensure that corporate parents are not permitted to extract monopoly profits and that competition is properly promoted and not impeded. Until words become action, all the "careful monitoring" in the world is empty gesture.

⁶² Which I anticipate could be adversarial, rather than just "careful monitoring."

⁶³ Re: Bell Atlantic of Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation under Chapter 30, Docket No. P-00930715, Opinion and Order (June 23, 1994).

⁶⁴ 66 Pa. C.S. § 3003 (b).

⁶⁵ "Broadband" is a communications channel which has a bandwidth of at least 1.544 megabytes per second. It is capable of supporting voice, data and video communication. A megabyte is one million bits of information.

⁶⁶ 66 Pa. C.S. § 3003 (b) (2) and (3).

⁶⁷ See, "The State of Telecommunications in New Jersey - Response to the Telecommunications Act of 1992" published by the New Jersey Board of Regulatory Commissioners (January 1994). This report to the Governor and Legislature of New Jersey was the Board's official response to the requirements of New Jersey's Telecommunications Act of 1992 (N.J.S.A. 48:2-21.16 et seq.). NJ Bell calls its investment program "Opportunity New Jersey." NJ Bell agreed to increase its infrastructure investment from \$4.2 to \$5.7 billion between 1992 and 1999. See report at 12.

⁶⁸ *Id.*, at 16.

⁶⁹ Order, at 7.

⁷⁰ Ex. WI-1, at 11.

⁷¹ Tr. 244-245.

⁷² Tr. 266, 245.

⁷³ Ex. WI-1B.

⁷⁴ Order, at 7. As shown above, however, customers' bills for local service do not appear to have declined since 1984.

⁷⁵ Order, at 3. Those nine years have not seen a rate case for BA-Va., of course.

⁷⁶ Ex. WI-1B.

⁷⁷ Code § 56.235.5.B.(ii).

⁷⁸ Order, at 10.

⁷⁹ In Pennsylvania and New Jersey, at least, it will include universally deployed broadband capability.

⁸⁰ Rules Governing Service Standards for Local Exchange Telephone Companies, promulgated in Commonwealth of Virginia, *ex rel.* State Corporation Commission, *Ex Parte*: In the matter of adopting rules governing service standards for local exchange telephone companies, Case No. PUC930009, 1993, S.C.C. Ann. Rpt. 221 (June 10, 1993).

⁸¹ According to the majority, it is identical to the Earnings Incentive Plan.

⁸² Curiously, however, in contrast to the price cap plans, the Commission here "retains" the specific authority to terminate the GTE and Earnings Incentive Plans "on its own motion, or upon complaint, if it finds good cause to do so[.]" GTE Plan and Earnings Incentive Plans, paragraph 2.A. No similar provision appears in the price cap plans. Under § 56-235.5.D., the Commission has the authority to "alter, amend or revoke any alternative form of regulation . . ."

⁸³ GTE Plan, paragraph 11.

⁸⁴ The Experimental Plan provided that the rates of return for the LECs regulated thereunder would be set within the fixed range of 12 to 14%. The GTE Plan provides a fixed formula by which the rate of return will vary according to changes in the 30-year Treasury Bond rate. In its Final Order adopting the Experimental Plan, the Commission said, "Any person aggrieved by the regulated rates of the companies may petition for relief as contemplated by § 56-235 of the Code." Commonwealth of Virginia, *At the relation of the State Corporation Commission, Ex Parte*: In the matter of promulgating an experimental plan for the optional regulation of telephone companies, Case No. PUC880035, 1988 S.C.C. Ann. Rpt. 249, 250 (December 15, 1988). The Attorney General petitioned for relief in Case No. PUC890011, asserting that the rate of return set by the Experimental Plan for the LECs was too high. The Commission dismissed this petition, stating that after costs had been properly allocated "it may be proper to revisit whether the 12 to 14% return on equity is appropriate[.]" (Cited in Footnote 26, *supra.*) When the costs had subsequently been allocated and the issue of the proper return on equity was again before it, the Commission abruptly reversed field, stating that the language of the Experimental Plan "leaves no room for an interpretation that the range can be changed in this case." (Cited in Footnote 26, *supra.*) I hope the GTE Plan cannot be read similarly to prevent a review of the fairness of rates of return produced by the fixed formula in the GTE Plan.

⁸⁵ See, the discussion of Case No. PUC900045 set out in footnote 26, *supra.*

⁸⁶ GTE Plan, paragraph 6.

⁸⁷ Under the GTE Plan Yellow Pages advertising and the Inside Wire Maintenance program continue to be treated as competitive and GTE retains 75% of its Yellow Pages earnings. See also, Section IV, *infra*.

⁸⁸ GTE Plan, paragraph 11.A.1.

⁸⁹ See, Section IV, *infra*.

⁹⁰ Commonwealth of Virginia, *At the relation of the State Corporation Commission, Ex Parte*: In the matter of evaluating the Experimental Plan for Alternative Regulation in Virginia Telephone Companies, Case No. PUC920029, 1993 S.C.C. Ann. Rpt. 212, at 214 (Dec. 17, 1993).

⁹¹ See, for example, Brief of AT&T Communications of Virginia, Inc., at 50-51 (hereinafter "AT&T Brief").

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¹¹² Ex. RDW-11R and Ex. WGS-44, -45R, and -46SR.

¹¹³ See, for example, Ex. MNC-47 pp. 12-29. Dr. Cooper estimated that BA-Va.'s market share of usage, as he defined it, to be in the 90-95% range.

¹¹⁴ Order, at 25-26.

¹¹⁵ U.S. v. American Telephone & Telegraph Co., 552 F. Supp. 131, 193-94. (D.D.C. 1982). AT&T contended, on brief, that the presence of this subsidy from Yellow Pages to local service was the only reason the Bell Operating Companies were given the right, in the divestiture, to publish the Yellow Pages and that the Commission's treatment of Yellow Pages in the Experimental and Modified Plan transferred this benefit, intended for LEC ratepayers, to LEC shareholders. AT&T Brief, at 50.

¹¹⁶ Ex. KDT-3B (revised) and Ex. KDT-3C. Without deciding their validity, I will respect the companies' claim that the returns are proprietary and thus not release them.

¹¹⁷ It can be argued that return on equity might not be an appropriate measure of earnings for Yellow Pages, but the pre-tax profits as a percentage of gross revenues confirms that the profit is extraordinary.

¹¹⁸ Ex. LJC-2C1(P). Without deciding its validity, I will respect the claim that the return is proprietary and thus not disclose the return.

¹¹⁹ "Notwithstanding any other provisions of this subsection, all services classified as actually competitive services under the provisions of the Experimental Plan adopted by the Commission in Case No. PUC880035 in its final order of December 15, 1988, and remaining so classified as of the effective date of this section, shall be considered to be competitive services."

¹²⁰ Order, at 25.

¹²¹ Brief of the Division of Consumer Counsel, Office of the Attorney General, at 45. (Emphases in original.)

¹²² Tr. 545.

¹²³ Tr. 555.

¹²⁴ Order, at 23.

¹²⁵ See, Commonwealth of Virginia at the relation of the State Corporation Commission, Ex Parte: In the matter of evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies, Case No. PUE920029, 1993 S.C.C. Ann. Rpt. 212 (Dec. 17, 1993).

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AT RICHMOND, OCTOBER 14, 1994

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE940030

Ex Parte, In re: Consideration
of standards for integrated
resource planning and investments
in conservation and demand
management for natural gas
utilities

FINAL ORDER

I. PROCEDURAL HISTORY

On October 24, 1992, Congress enacted the Energy Policy Act of 1992 ("EPACT" or "the Act"), P.L. 102-486, 106 Stat. 2776 et seq. (1992). Section 115 of that Act amended the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 15 U.S.C. § 3202, to add provisions requiring state regulatory commissions to consider standards governing integrated resource planning ("IRP") and investments in conservation and demand management for natural gas utilities. Specifically, the Act requires state commissions to consider whether:

. . . [e]ach gas utility shall employ [an integrated resource plan] (sic), in order to provide adequate and reliable service to its gas customers at the lowest system cost. All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority. Subsection (c) shall not apply to this paragraph to the extent that it could be construed to require the State regulatory authority to extend the record of a State proceeding in submitting reports to the Federal Government.

15 U.S.C. § 3203(b)(3).

With respect to conservation and demand management ("DSM") for natural gas utilities, EPACT provides that

. . . [t]he rates charged by any State regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. This objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes.

15 U.S.C. § 3203(b)(4). Further, if a state adopts either of these standards, it must

(1) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, and

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(2) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

15 U.S.C. § 3203(d)(1),(2).

Section 115 defines "integrated resource planning" for gas utilities to mean

... planning by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand-side management measures and the supply of gas by a gas utility to minimize life-cycle costs of adequate and reliable utility services to gas consumers. Integrated resource planning shall take into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk and shall treat demand and supply to gas consumers on a consistent and integrated basis.

15 U.S.C. § 3202(9). "Demand-side management" as used in § 115 includes "energy conservation, energy efficiency, and load management techniques." 15 U.S.C. § 3202(10).

EPACT does not require the Commission to implement its standards, but if we do not implement them, we must nonetheless hold a hearing and state why we are rejecting the standards. Further, the Act requires us to complete our consideration of these standards not later than two years after the date of EPACT's enactment, i.e., by October 24, 1994. 15 U.S.C. § 3203(a).

EPACT provides separate integrated resource planning and investments in conservation and demand management standards for electric and gas utilities. See P.L. 102-486, 106 Stat. 2795, 2910, 16 U.S.C. § 2621(d). The standards for electric utilities, set out in § 111 of the Act, while similar in some respects to the standards for natural gas utilities, differ by allowing consideration of a broader scope of resource options for electric utilities. In addition, § 111 requires a regulatory body to complete its consideration of the relevant standards for electric utilities within three years of the Act's enactment, rather than two years, as required by § 115 for gas utilities. 16 U.S.C. § 2622(b)(2). The discrete statutory standards and time frames for consideration lead us to conclude that Congress intended the consideration of IRP and conservation and demand management standards for gas and electric utilities to proceed separately rather than as a single proceeding.

This interpretation of the Act is consistent with the legislative history for § 115. The Joint Explanatory Statement of the Committee of Conference accompanying House Conference Report No. 102-1018 for EPACT demonstrates that the conferees intended that IRP as addressed in § 115 be considered only for local distribution companies serving ultimate consumers of natural gas. The Statement further notes that IRP for natural gas utilities should examine and compare

demand-side options with the general option of additional gas supplies. It expressly excludes an examination of the sources, conditions, or other characteristics of upstream gas supply as part of IRP for gas utilities.¹

In its April 27, 1994 Order, the Commission directed its Division of Economics and Finance to give notice to the public of the captioned proceeding and set the matter for hearing for September 7, 1994. The same Order established a procedural schedule for interested parties, intervenors, and the Commission Staff, inviting them to address by testimony or comment, the standards, the issues identified in the Order, as well as issues of concern to the parties regarding the standards for natural gas utilities.

In response to the Commission's April 27 Order, Northern Virginia Electric Cooperative ("NOVEC"), the City of Richmond ("the City"), and Southwestern Virginia Gas Company ("Southwestern") each filed Comments. In its Comments, NOVEC noted its interest in the proceeding insofar as the adoption of standards affected gas utilities generally and impacted the service provided by NOVEC, an electric cooperative. Southwestern's filed comments supported the position taken by Roanoke Gas Company ("Roanoke") in Roanoke's prefiled testimony.

The City urged the Commission to adopt IRP and conservation and demand management standards which (i) prevent destructive competition between gas and electric utilities; (ii) encourage fuel substitution practices that reduce the cost of service for both gas and electric ratepayers; (iii) develop a comprehensive energy plan integrating gas and electric IRP; (iv) consider the cost of complying with existing state and federal environmental statutes and regulations; (v) encourage local distribution companies to conduct joint surveys and studies regarding the technical information necessary to evaluate demand-side alternatives at a reasonable cost; (vi) encourage a pilot DSM bidding program; and (vii) discourage policies that would reduce regional supply alternatives.

On the appointed day, the matter came for hearing before the Commission. Counsel appearing were Kristen Brown, Esquire, and John Epps, Esquire, for Commonwealth Gas Services, Inc. ("Commonwealth"); Donald Fickenscher, Esquire, for Virginia Natural Gas, Inc. ("VNG"); Donald R. Hayes, Esquire, for Washington Gas Light Company ("WGL"); James H. Jeffries, Esquire, and Charles H. Carrathers, III, Esquire, for United Cities Gas Company ("United"); Richard D. Gary, Esquire, for Virginia Electric and Power Company ("Virginia Power"); John D. Sharer, Esquire, for the Virginia Industrial Gas Users' Association ("VIGUA"); Edward L. Flippen, Esquire, for NOVEC; and Sherry H. Bridewell, Esquire, for the Commission's Staff. No intervenors appeared.

At the request of the participants, direct and rebuttal testimony were presented together. Witnesses for the Staff, Commonwealth, and WGL took the stand and were subject

to cross-examination. By agreement of counsel, the testimonies of Jeffrey L. Huston on behalf of VNG, Richard K. Wrench for United, Robert W. Glenn, Jr. for Roanoke, Mary C. Doswell for Virginia Power, and Dr. Alan Rosenberg and Robert Cooper for VIGUA were received into the record without cross-examination. At the conclusion of the proceeding, the matter was taken under advisement.

II. SUMMARY OF THE PARTICIPANTS' POSITIONS AT THE HEARING

Connie Davies presented testimony on behalf of Commonwealth. She testified that the Commission should adopt the EPACT's provisions for gas IRP with modifications, advocating a comprehensive approach to IRP which considers the optimal fuel selection among energy suppliers. Ms. Davies testified that Commonwealth was committed to the development of demand-side management proposals and noted the importance of complete and timely recovery of DSM program cost-recovery as an essential component of IRP activities. Ms. Davies observed that demand-side management programs can influence the fuel use decisions of gas utility customers. She stated that to the extent electric utilities have the opportunity to implement DSM programs and gas utilities are not permitted to offer similar programs, gas utilities were placed at a competitive disadvantage. Witness Davies testified that she did not envision the expansion of IRP and DSM as having a negative impact on small businesses.

Commonwealth also presented testimony that supported the use of an automatic adjustment clause for recovery of lost revenues. Commonwealth witness Stalnaker testified that deferring costs associated with DSM programs without allowing recovery of associated carrying costs or rate base treatment for such costs exposed Commonwealth to underrecovery of program costs and created a regulatory disincentive to implementation of conservation and demand programs.

While Commonwealth witness Davies appeared to support a collaborative IRP process, Commonwealth witness Connell's rebuttal testimony stressed the need to incorporate an ability to make changes within an IRP approved by the Commission. He also recommended a five year planning horizon for IRP but acknowledged that the life cycle of many DSM programs extended beyond five years. He failed to explain how the need to change IRP proposals and the utility's need to keep information confidential could be accommodated within a collaborative process.

VNG presented the direct and rebuttal testimonies of Jeffrey L. Huston which were received into the record without cross-examination. Mr. Huston recommended that: (i) the Commission not adopt IRP for gas utilities as envisioned in EPACT; (ii) the Commission permit gas companies in Virginia the flexibility to pursue market responsive demand-side management ("DSM") programs

which were in the public interest; and (iii) after gaining further experience with gas conservation and load management ("CLM") programs, the Commission reconsider the issue of gas IRP.

In his rebuttal testimony, Mr. Huston recommended that some gas utility forecast information should be treated as confidential. Witness Huston urged the Commission to recognize that cost recovery standards are potential policy tools that could influence a gas utility's decisions regarding conservation and demand management. VNG acknowledged that little evidence existed to suggest that stronger cost recovery measures are merited at present. VNG attributed this, in part, to the recent adoption of formal cost-benefit tests to evaluate such programs and the relative lack of experience that the natural gas industry has in applying these methods of evaluation.

WGL presented the direct testimony of Sandra K. Holland and the rebuttal testimony of Paul H. Raab. In her testimony, Ms. Holland recommended that the Commission reject the IRP standard set forth in EPACT unless the standard was broadened to include all cost-effective CLM strategies. Ms. Holland asserted that it was important to subject electric and gas utilities to similar standards when considering CLM programs since such programs could be used to induce customers to use one type of fuel over another. She supported adoption of EPACT's conservation and demand management standard in order to remove disincentives to gas utilities to sell less natural gas. Ms. Holland further proposed that mandatory demand-side bidding processes be adopted in order to ensure that small businesses were not adversely impacted by the adoption of the IRP standard.

In his rebuttal presented on behalf of WGL, witness Raab testified that the increasingly competitive environment confronting local distribution companies ("LDCs") required a broad definition of IRP. In his view, IRP defined narrowly as conservation or load management was incompatible with a competitive environment for gas utilities. Witness Raab also characterized lost revenue adjustments and decoupling mechanisms as inappropriate options to encourage conservation and load management investments in a competitive environment. He supported all-source bidding as an appropriate strategy to encourage cost effective CLM programs and to address the conflict between electric and gas utilities in an increasingly competitive environment. He asserted that revisions to gas utility purchased gas adjustment ("PGA") mechanisms and capacity release proposals found in VIGUA's testimony were beyond the scope of this investigation. He testified that giving LDC industrial customers a right of first refusal on the release of capacity may not maximize the value obtained for that capacity or benefit firm ratepayers.

United presented the direct and rebuttal testimonies of Richard K. Wrench. While witness Wrench supported IRP, Wrench urged the Commission to refrain from adopting specific rules that would require LDCs to adopt IRP plans or DSM programs that do not appropriately consider the

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uniqueness of each LDC and its market. He urged the Commission to allow fuel substitution and load shifting programs to be a part of a utility's IRP analysis. Mr. Wrench recommended that the Commission allow flexibility for a utility to cancel or change an IRP or DSM program that does not achieve expected results. He encouraged the Commission to develop guidelines providing a level playing field for gas and electric utilities in order to prevent the IRP process from impeding normal competition between these industries.

In his rebuttal testimony, Mr. Wrench asserted that gas planning was too uncertain to use forecasted data extending beyond five years. He testified that the supply-side of IRP should begin within a five year forecast of current needs, unaffected by any demand-side planning programs. Witness Wrench also noted that a degree of confidentiality was necessary for such plans and that the issue of confidentiality should be addressed on a case-by-case basis.

The testimony of witness Robert W. Glenn, Jr. was received into the record on behalf of Roanoke without cross-examination. Through Mr. Glenn's testimony, Roanoke urged the Commission not to adopt the IRP standard set out in § 115 without modification. It asserted that the standard be modified to include fuel switching and load growth programs. It questioned the cost effectiveness of formal IRP and DSM procedures. Roanoke was concerned about the additional costs formal IRP programs could add to the operating costs of small gas utilities. It requested that if the Commission adopted a mandatory IRP procedure for all gas utilities, that such a procedure provide for the complete and timely recovery of costs associated with IRP and DSM. It urged the Commission not to give electric companies an unfair market advantage over their gas utility competitors.

Mary Doswell's prefiled direct and rebuttal testimony on behalf of Virginia Power was received into the record without cross-examination. Through Ms. Doswell's testimony, Virginia Power asserted that a formal IRP process was unnecessary. It urged the continued practice of requiring annual resource plans to be filed with the Commission Staff for review. It stated that CLM programs should continue to be subject to Commission approval as contemplated by the Promotional Allowance Rules adopted in Case No. PUE900070. Virginia Power asserted that there would be little incremental benefit to utility ratepayers from a formal IRP process. It argued that a formal process could hinder the natural competitive processes currently driving IRP. Virginia Power urged the Commission to eliminate any financial disincentives which could be associated with the selection of demand-side resource options over supply-side options.

Through its rebuttal testimony, among other things, Virginia Power noted that: (i) any standards or requirements which emerge from the investigation should apply equally to gas and electric companies; (ii) under "least-cost" planning, supply-side and demand-side options

should be evaluated on an equal basis, including regulatory treatment of cost-recovery; (iii) the policies and procedures currently in place allow effective competition among Virginia's gas and electric utilities; and (iv) the policies and procedures now in place with the filing modifications proposed by Staff are sufficient to achieve IRP objectives.

The direct and rebuttal testimony of Dr. Alan Rosenberg, together with the direct testimony of Robert Cooper, were received into the record on behalf of VIGUA without cross-examination. VIGUA urged the Commission to reject a formal IRP process and maintained that the objectives of IRP – the lowest reasonable rates consistent with reliable service and efficient use of resources – could be achieved effectively within the current regulatory framework. It cited the administrative costs associated with a formal IRP process, utility expectations that approval of its IRP guaranteed recovery of costs associated with programs approved as part of the IRP, and the tendency for special interest groups to view the IRP process as a vehicle through which they may achieve their preconceived agendas as reasons why the Commission should reject a formal IRP process.

VIGUA recommended that the Commission direct gas utilities to achieve reliable service at the lowest reasonable cost through the use of a modified PGA which would allow an LDC to retain a portion of the savings achieved by lowering the cost of gas until its subsequent rate case. VIGUA proposed that the balance of gas purchase savings be passed through to its sales customers. As another step to minimize gas costs, VIGUA recommended the use of cost-based, unbundled transportation rates and capacity release programs. With respect to capacity release, VIGUA asked the Commission to require LDCs to negotiate with their end-users for capacity packages sized in a fashion that does not preclude end-users from using such capacity.

Staff presented the testimony of three witnesses – Robert L. Lacy, Cody D. Walker, and Richard W. Taylor. Witnesses Lacy and Walker recommended that the Commission reject the § 115 IRP standard as administratively burdensome and costly. Staff suggested that the Commission's existing procedures through its five-year forecast review, with modifications, and its conservation and load management procedures adopted in Case No. PUE900070 were sufficient to address planning needs for gas utilities. Staff witness Lacy testified that adoption of the § 115 IRP and the investments in conservation and demand management standards would represent a departure from recently developed policies.

Witness Lacy also recommended that several changes be incorporated into the five year forecast data request. He suggested that the long term plans submitted by gas utilities should provide fundamental information concerning demand-side management plans. He proposed the use of a longer planning horizon, i.e., ten years, for gas utilities with significant demand-side management activities.

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Further, witness Lacy stated that much of the data in the forecasts filed by gas utilities could be made available for public review.

Staff witness Walker also urged rejection of the § 115 standards as vague, narrow, and costly to administer. He noted that the Commission's current policies provide sufficient flexibility for evaluation of CLM programs. He testified that the objectives of the § 115 standards could be addressed through incentive programs and improved pricing. He observed that continued movement towards cost-based rates and further rate unbundling would provide additional information to ratepayers, enabling them to make informed end-use decisions.

Witness Walker commented that improperly structured IRP policies could conflict with competitive forces and may result in the subsidization of appliances or equipment that would not otherwise be competitive in an open market. He observed that many commentators advocating fuel substitution as a part of IRP appeared to be attempting to provide natural gas utilities with a competitive marketing advantage over electric utilities.

Witness Walker addressed VIGUA's proposals to implement revisions to the PGA and to develop capacity release procedures for LDCs. He characterized these proposals as beyond the scope of the present investigation. Mr. Walker acknowledged that it may be appropriate to explore these issues in future proceedings.

Mr. Walker also explained the Staff's review of gas utility acquisition practices. He stated that Staff reviewed gas utility capacity release programs through informal data requests in the context of PGA filings and in rate cases. He testified that upon request of an industrial customer, Staff would make data filed in response to these informal data requests available to requesting customers. Mr. Walker also stated that Staff would consider expanding the five-year forecast data to include information concerning LDCs' capacity release programs. He cautioned that because capacity release programs were relatively new, it was inappropriate to develop formalized filing requirements for such programs.

Staff witness Taylor testified about the accounting treatment to be accorded DSM programs. He concluded that it was unnecessary to adopt the standards set out in § 115 because existing ratemaking and accounting policies provide sufficient opportunity for gas utilities to recover their costs and investments in CLM programs. The Staff opposed cost recovery for such programs through an automatic adjustment mechanism because, in Staff's view, automatic recovery of such costs would remove them from the rigorous review to which they would be subjected in a rate proceeding. All Staff witnesses acknowledged that the traditional rate setting process provided little incentive for gas utilities to promote programs that conserved natural gas. They recommended that rate recovery for CLM programs be treated on a case-by-case basis. Witness Taylor concluded that the accounting conventions available

for supply-side costs under Commission policies should also be available for demand-side costs.

III. DISCUSSION

In recent years, both the framework for federal regulation of the natural gas industry and the industry itself have undergone a radical transformation. Prior to the enactment of the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. §§ 3301-3442 (West Supp. 1990), the interstate distribution of natural gas was regulated under a "just and reasonable" standard established by the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717-717w (1988), under which the Federal Power Commission ("FPC") prescribed "just and reasonable" rates for pipelines and producers selling natural gas for resale in interstate commerce. See 15 U.S.C. § 717c. During the late 1960s and the early 1970s, the wellhead prices for interstate natural gas were low, while the prices for gas in intrastate markets were unrestrained and rose to meet demand. The federal price restraints at the wellhead encouraged the consumption of gas in intrastate markets and, at the same time, discouraged producers from dedicating reserves to the pipelines serving the interstate markets. Gas shortages resulted.²

In reaction to the shortages of natural gas in the interstate market, Congress enacted the NGPA, establishing a framework for the partial decontrol of natural gas at the wellhead. The NGPA also included provisions to restrain demand for natural gas. Under the law's incremental pricing scheme, P.L. No. 95-621, §§ 221-08, 92 Stat. 3371-81 (Repealed 1987), pipelines and LDCs were required to charge higher prices for natural gas to industrial gas users.³ Further, the Power Plant and Industrial Fuel Use Act of 1978 ("FUA"), P.L. No. 95-620, 92 Stat. 3289 (codified in scattered sections of 15, 42, 45, and 49 U.S.C.), prohibited burning natural gas in industrial facilities and electric power plants.

At the same time, other forces worked to control the demand for natural gas. The economic recession of the early 1980s shrunk natural gas markets, and consumers reacted to higher natural gas prices by reducing consumption and switching to less expensive fuels. Thus, the interstate natural gas market was transformed from one in which there was a perceived shortage of supply to one in which there was an actual excess of deliverability.

Since 1987, Congress has repealed the incremental pricing provisions of the NGPA, amended FUA to eliminate virtually all restrictions on the use of natural gas in electric power plants and other major fuel burning installations, and decontrolled all of the remaining NGPA regulated gas. Further, enactment of the Clean Air Act Amendments of 1990, P.L. No. 101-549, 104 Stat. 2399 (1990), has created a role for natural gas as a cost-effective option for compliance with the market based acid rain program. This program is designed to reduce sulfur dioxide emissions through an allowance and emissions trading program.

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EPACT itself contains provisions intended to stimulate natural gas production and usage and to promote the development of new markets for natural gas usage. See for example, provisions dealing with alternative minimum tax preferences for depletion and intangible drilling cost of independent oil and gas producers and royalty owners, 106 Stat. at 3023-24; and § 2013 of the Act, 106 Stat. at 3059, which directs the Secretary of Energy to conduct a five year program to increase the recoverable natural gas resource base.

The Federal Energy Regulatory Commission ("FERC"), the successor to FPC, has also responded to the changes in the natural gas market. In 1984, for example, it created an opportunity for LDCs to take advantage of competitive wellhead markets with the issuance of Order No. 380, which invalidated fixed cost minimum bills and minimum take obligations in pipeline tariffs.⁴ In 1985, it issued Order No. 436 which further redefined the role of interstate pipelines.⁵ Order No. 436 in effect required pipelines to become open access, non-discriminatory transporters of natural gas. Pipelines were encouraged to permit their firm sales customers to convert their entitlement of firm sales service to volumetrically equivalent entitlement of firm transportation service over five years. Order No. 436, and its successor, Order No. 500, 52 Fed. Reg. 30,334, effectively began to phase out the aggregator/merchant role of interstate pipelines.

FERC's Order No. 636 further altered the structure of services provided by interstate natural gas pipelines.⁶ This restructuring rule expressly sought to promote greater competition among natural gas suppliers by requiring pipelines to provide equal quality transportation service to customers regardless of whether natural gas was purchased from the pipeline or from another supplier.⁷ It further limited the role of interstate pipelines to that of transporters and providers of storage rather than the role of merchants.

It is against this federal legislative and administrative framework that we are called upon to consider adoption of EPACT standards. Adoption of these standards would require a formal procedure to consider integrated resource plans for each regulated Virginia natural gas utility. By definition, these standards do not expressly include load building programs, but instead encourage energy conservation, energy efficiency, and load management initiatives for LDCs.

In our opinion, integrated resource planning may serve the public good by minimizing unnecessary or excessive energy use, considering the applicability of all fuel resources, and determining the best fuel resource for end use at the lowest possible cost. However, as this record demonstrates, a mandatory, formal approval process provides few benefits to either natural gas utilities, natural gas customers, or regulators. As many gas utility participants noted, use of a formal, generic IRP process requires a commitment of time and resources. Further, once adopted, a plan may become outdated, while

circumstances and market conditions continue to change. The need to accommodate changing circumstances by incorporating flexibility in an IRP inhibits the value of the plan approval process, creating problems for those participating in the process. As demonstrated by the testimony received in this record, gas utilities appear to want the safe haven that approval of an IRP provides and the flexibility to change the approved plan whenever they believe necessary. Many of the Virginia LDCs participating in this proceeding are already engaged in some form of IRP and will continue such planning regardless of whether we adopt a formal IRP process. Tr. at 85-86.

No gas utility submitting comments or testimony was able to identify a substantive benefit arising from the adoption of an IRP standard requiring the mandatory submission and formal approval of integrated resource plans. For example, Commonwealth witness Davies admitted that there was nothing Commonwealth could achieve via a formal IRP process that it could not now accomplish under current Commission policies. Tr. at 118-120.

The only benefit cited by gas utility participants arising from a formal IRP process was the likelihood of enhanced recovery of costs for programs approved as part of an overall IRP. Tr. at 119. Even this potential benefit is illusory, as Commonwealth witness Davies conceded, since nothing in our current CLM policies prohibits an LDC from seeking approval of the rate treatment it believes appropriate for such programs. Tr. at 118-120, 122.

Currently, we employ a less formal procedure to scrutinize gas supply and planning practices for Virginia LDCs. This informal review employs a five-year forecast, with an annual Staff review of gas purchasing practices for large LDCs, and biennial review of such practices for smaller gas utilities. Complementing this analysis is a quarterly review by Staff of a Virginia LDC's gas purchasing decisions through review of the utility's PGA data. These procedures were adopted in Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, in the matter of establishing an investigation of gas purchasing, procurement practices, and gas cost recovery for Virginia gas utilities, Case No. PUE880031, 1988 S.C.C. Ann. Rept. 333, 336-337. Any discrepancy in purchasing, planning and acquisition of gas supply may be the subject of a rule to show cause or may be explored further in a gas utility's rate case.

The information collection vehicle for the gas supply forecast is a data request, wherein Staff develops information forecasted over five years. Admittedly, gas forecasting is an uncertain process. However, the advent of capacity release and the implementation of pilot conservation and load management programs by Virginia gas utilities may render it appropriate to broaden the informational context in which we evaluate LDC purchasing decisions. To this end and in exercise of our plenary authority under Virginia Code §§ 56-36, -235.1, and -249 to obtain information about utility operating efficiency

and use of resources, we will direct our Staff to gather additional data about demand-side management programs, capacity release programs, and other natural gas utility plans and practices which affect the supply, acquisition, and delivery of natural gas to Virginia end-users. Because DSM programs may extend beyond five years in length, we hereby authorize Staff to request additional forecast and other data from Virginia LDCs with DSM and capacity release programs. In this way, we will develop a more comprehensive picture of the factors affecting Virginia LDC planning.

We will address the issue of accessibility to plan data filed by Virginia LDCs on a case-by-case basis. We encourage Staff to make nonproprietary data available to LDC customers upon request. LDCs should file their data with Staff in both a redacted and nonredacted form to accommodate requests by LDCs' customers for review of this information.

Our policies regarding conservation and load management programs were established in our March 27, 1992 Final Order and June 28, 1993 Order entered in Commonwealth of Virginia, at the relation of the State Corporation Commission, Ex Parte: In re, Investigation of Conservation and Load Management Programs, Case No. PUE900070. As we noted in the March 27 Order, we are encouraged about the role conservation can play in Virginia. However, we noted in that Order that a cautious approach was necessary to avoid promoting uneconomic programs or those that are primarily designed to promote growth of load or market share without serving the overall public interest.⁸ We therefore promulgated rules establishing the conditions under which gas and electric utilities operating in Virginia could recover reasonable costs associated with promotional allowances to customers.⁹ We require utility applicants proposing a promotional allowance program to demonstrate that their program is reasonably calculated to promote the maximum effective conservation and use of energy and capital resources in providing energy services. Promotional allowance programs must be cost justified using appropriate cost/benefit methods. Utilities proposing a promotional allowance program that would have a significant effect on the sales level of an alternative energy supplier must consider the effect of the program on the supplier, and demonstrate that the program serves the overall public interest.¹⁰

The June 28, 1993 Order Issuing Rules on Cost/Benefit Measures entered in the same docket adopted a multi-perspective approach to evaluate conservation and load management proposals. This Order directed that an applicant seeking approval of a DSM program should analyze the program using, at a minimum, the Participants Test, the Utility Cost Test, the Ratepayer Impact Test, and the Total Resource Cost Test to evaluate such programs.¹¹

Further, in our June 28, 1993 Order, we permitted gas and electric utilities to file packages of programs, but advised that utilities should assure themselves that the programs collectively benefited their resource plans. We

directed that a cost/benefit analysis for each individual program be available, even if the application filed with the Commission sought approval of a package of programs. Further, we required utilities to file reports available to the public with the Staff, which identified all experimental programs at least 30 days prior to the program's implementation, together with periodic updates on the results of the experiment. Comprehensive reports on the status of all experimental or pilot programs were to be filed at least semi-annually with our Division of Economics and Finance. Id., 1993 S.C.C. Ann. Rept. at 245.

The record before us demonstrates that Virginia gas utilities have limited experience in developing conservation and demand-side management programs in Virginia. Virtually all of the gas utilities filing comments and testimony in the proceeding noted that DSM programs influence the fuel choices made by end-users. They opined that the definition of DSM programs should include load building initiatives and allow gas utilities to retain or increase their markets. See Ex. CBD-4 at 7-11. Ex. SKH-12 at 5-6. Ex. PHR-13(R) at 7. Tr. at 94, 127, 130-131. However, little testimony was offered on how specific conservation programs could be designed to reduce gas usage by existing gas customers. For example, Commonwealth witness Davies identified peak clipping as an appropriate DSM objective, Ex. CBD-4 at 9, but during cross-examination, admitted that Commonwealth has not sought approval for any peak clipping CLM programs in Virginia. Tr. at 122-123.

Witnesses Stalnaker, Huston and Holland each testified that there were financial and operational disincentives which discouraged LDCs from developing and implementing programs that reduced natural gas usage. They requested that the Commission consider regulatory incentives to motivate LDCs to develop such programs. Ex. RGS-9(R) at 3; Ex. JLH-11(R) at 4; and Ex. SKH-12 at 27-28.

As we noted in our March 27, 1992 Final Order in the CLM investigation, conservation will play an important role in the development and use of fuel resources in Virginia. However, conservation at any cost is inappropriate. We decline in this case to adopt an approach which encourages Virginia LDCs to implement programs which are primarily designed to promote load growth or market share without serving the overall public interest. As acknowledged by our Staff and several participants in this proceeding, our current CLM policy offers the opportunity and the flexibility for natural gas utilities to develop CLM programs. Our policy specifies minimum tests against which all applicants' CLM proposals may be evaluated. Under this policy, neither gas nor electric CLM programs are treated differently. Thus, neither gas nor electric competitors are offered a competitive advantage.

Moreover, as our June 27, 1994 Final Order entered in Application of Appalachian Power Company, For a general increase in rates, Case No. PUE920081, states, a distinction can and should be made between utility "conservation"

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and "load management" programs. Under the latter, a utility's sales may be shifted to its off-peak period, preserving some level of utility profit, while reducing the utility's operating expenses. In contrast, with conservation, a utility may actually lose sales and, thus, profits. June 27, 1994 Final Order, Case No. PUE920081 at 13.

We recognize that there may be financial disincentives associated with LDC development and implementation of programs that reduce gas usage. We acknowledge that increased natural gas consumption may be beneficial in many respects. In fact certain federal policies encourage natural gas usage. Increased natural gas usage may facilitate compliance with the Clean Air Act Amendments of 1990 through fuel switching at coal or oil fired generating units and through the use of natural gas powered vehicles. Increased throughput for LDCs and pipelines may also serve to lower natural gas rates if increased throughput does not require additional facilities or result in higher purchased gas demand costs.

However, it is difficult to distinguish between programs which are designed to conserve gas usage and those which are promotional in effect. For example, incentives for higher efficiency gas furnaces may in some instances promote fuel switching rather than decreased natural gas consumption. Therefore, ratemaking incentives designed solely to promote energy conservation may fail to encourage other programs that are in the public interest or that have the unintended consequences of increasing natural gas usage through gains in natural gas market share. Given the difficulty of identifying "pure" conservation programs and the probability of overlooking beneficial programs, we conclude that it is not appropriate to develop ratemaking incentives strictly for the purpose of promoting conservation. Therefore, we encourage LDCs seeking permanent implementation of conservation and load management programs demonstrated to be in the public interest to develop recommendations regarding ratemaking incentives appropriate to each of their circumstances. Such an approach will encourage innovation and provide for flexible regulatory policies that are appropriate for each Virginia LDC's size, load profile and resources.

IV. CONCLUSION

In sum, adoption of a formal IRP process as envisioned by § 115 of EPACT does not appear to promote and indeed may be detrimental to the public interest. This standard does not appear to offer sufficient flexibility, and may increase regulatory costs to the participants in the IRP approval process, without substantive countervailing benefits. We encourage Virginia natural gas utilities to continue to develop and employ comprehensive planning strategies. Virginia LDCs should use existing CLM procedures to seek approval for CLM programs which they can demonstrate to be in the public interest. As part of Virginia LDCs' planning strategies, we expect LDCs to maintain continuing dialogues with their customers in an effort to better ascertain these customers' energy needs

and to respond to those needs. Staff should continue to work with and develop data with respect to LDC planning processes and LDC customer needs to monitor more comprehensively these utilities' planning processes and service performance.

While we do not adopt the investments in conservation and demand management standard set out at § 115 of the Act, we remain sensitive to the need for development of conservation and load management programs that are in the public interest. Because we have not adopted § 115's integrated resource planning or conservation and demand management standards, we find it unnecessary to address the impact of implementation of such standards on small businesses.

Further, the Commission remains committed to the goal of promoting cost-effective conservation programs. We believe conservation programs can promote the public interest in Virginia and can contribute to the realization of a proper balance of demand-side and supply-side resources. Conservation programs are particularly attractive because of the environmental benefits they offer. The environmental benefits of conservation programs, while often difficult to measure, are nevertheless, very real. We encourage utilities to develop conservation programs that are not only economically sound but also contribute to the protection of the environment that we all must share. We also encourage utilities to focus on energy efficiency when developing their long-term strategic plans. Energy efficiency is one of the more important factors considered by consumers in making choices between electric, gas, and oil appliances and equipment. Electric and gas utilities should compete for customers by providing accurate information about the efficiencies and features of various types of HVAC equipment. A healthy competition can be facilitated by integrated resource planning techniques. However, integrated resource planning should not be used as a tool simply to market increased use of gas or electricity or indiscriminately gain market share at the expense of a competitor.

Accordingly, for the reasons set out herein, it is ordered that the standards set out at § 115 of EPACT be rejected; and that this matter be dismissed. The papers filed herein shall be placed in the Commission's files for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: David B. Kearney, Assistant City Attorney, Office of the City Attorney, 900 East Broad Street, Suite 300, Richmond, Virginia 23219; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Ralph J. Pruitt, Vice President-Finance and Treasurer, Southwestern Virginia Gas Company, 208 Lester Street, Martinsville, Virginia 24112; Kristen J. Brown, Esquire, Commonwealth Gas Services, Inc., P.O. Box 117, Columbus, Ohio 43216-0117; Donald Fickenscher, Esquire, Virginia Natural Gas, Inc., 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502; Donald R. Hayes, Senior Attorney, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C.

20080; Jerry W. Amos, Esquire, and James H. Jeffries, Esquire, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., P.O. Box 2600, Greensboro, North Carolina 27420; Charles H. Carrathers, III, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; John B. Williamson, III, Vice President-Rates and Finance, Roanoke Gas Company, P.O. Box 13007, Roanoke, Virginia 24030; Wilbur L. Hazlegrove, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 14125, Roanoke, Virginia 24038-4125; Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; John D. Sharer, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; Larry Durbin, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; Mr. R. E. Painter, Manager, Commonwealth Public Service Company, P.O. Box 589, Bluefield, West Virginia 24701; Kenneth G. Behrens, General Manager, Shenandoah Gas Company, P.O. Box 2400, Winchester, Virginia 22601; Allen McClain, President, Southwestern Virginia Gas Company, P.O. Drawer 5391, Martinsville, Virginia 24115; Michael L. Edwards, President, Virginia Gas Distribution Company, 120 South Court Street, Abingdon, Virginia 24210; and the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

¹H.R. REP. No. 1018, 102d Cong., 2nd Sess. (1992) reprinted in U.S.C.C.A.N. 2472, 2474-75.

²Donald F. Santa, Jr. and Patricia J. Beneke, "Federal Natural Gas Policy and the Energy Policy Act of 1992", 14 Energy Law Journal 1, 4-7 (1993).

³Id., 14 Energy Law Journal at 5 (1993).

⁴See Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, Order No. 380, 49 Fed. Reg. 22,778 (1984), *aff'd*, Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985).

⁵See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 Fed. Reg. 42,408 (1985) vacated and remanded, *Assoc'd. Gas Distrib. v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, 52 Fed. Reg. 30,334 (1987).

⁶Order No. 636, III FERC Stat. and Regs., 30,939 at 30,389 (1992).

⁷Order No. 636, III FERC Stat. and Regs., 30,939 at 30,389, 30,391 (1992).

⁸March 27, 1992 Final Order, 1992 S.C.C. Ann. Rept. at 263.

⁹Id., 1992 S.C.C. Ann. Rept. at 265.

¹⁰Id., 1992 S.C.C. Ann. Rept. at 265, Slip. Op., Attachment A, § IVA(5).

¹¹Commonwealth of Virginia, *ex rel.* State Corporation Commission, *Ex Parte*: In re: Investigation of Conservation and Load Management Programs, Case No. PUE900070, 1993 S.C.C. Ann. Rept. 242, 244-245.

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SJR 72: Joint Subcommittee Studying the Commonwealth's Current Laws and Policies Related to Acute and Cancer Pain

August 29, 1994, Richmond

Among surgery innovators of the late 19th and early 20th century, combinations of local, regional, and general anesthetics were considered appropriate for management of acute postoperative pain. Some of these early investigators used preoperative medication in combination with regional and general anesthetics to provide a "balanced anesthesia" approach to postoperative pain. However, the 20th century brought the development of a standard or conventional approach to alleviation of pain, which concentrated on fixed schedule, recognized dosage, intramuscular injections of opiates. Because opiates have frequent unpleasant side effects and, when given on a fixed schedule, do not provide consistent pain relief, anesthesiologists and others have been motivated to examine this conventional treatment for postoperative pain.

Established to examine the policy and laws relating to pain management, the SJR 72 joint subcommittee reviewed the study objectives and proposed study plan and received a staff briefing on the issues. The joint subcommittee's directives include examination of the current acute and cancer pain management efforts in the Commonwealth; the effectiveness of acute and cancer pain management provided by the Commonwealth's medical schools, health care providers, and acute and cancer pain management clinics; Virginia's current law and public policy related to acute and cancer

pain management; current training, including continuing education, in acute pain management; the special pain management needs of infants, children, and adolescents; and the impact of inadequate pain management on resource utilization and costs.

Current Practices

Medical advances have made the use of continuous infusion of various medications in smaller doses at frequent intervals safer and more effective. According to recent investigations, postoperative improvements in analgesia can significantly reduce morbidity (infections, relapses, etc.) and can, thereby, reduce the costs of surgery and postoperative care. For these reasons, the currently recommended management of acute pain focuses on analgesic combinations of opioids and nonsteroidal

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anti-inflammatory drugs (NSAIDS) on (i) a scheduled regimen with additional or supplemental doses for breakthrough pain, (ii) continuous dosing, or (iii) patient-controlled analgesia (PCA). The use of oral NSAIDS may allow for lower opioid doses and fewer side effects; however, it must be noted that NSAIDS have side effects (for example, gastric disturbances and bleeding).

Pain Management Issues

The purpose of pain management related to surgery is to reduce postoperative stress, such as hemorrhage, lung complications, cardiac complications, water retention, salt retention, hypertension, skeletal muscle tension, and nausea. The patient's comfort is the goal of acute pain management, through the use of the best relief which can safely be provided under the circumstances. Some of the identified issues in accomplishing this goal are:

Attitudes towards pain. Many practitioners become desensitized to patients' complaints about pain. Some health care providers expect stoical acceptance; others view the pain as inevitable under some circumstances, such as following surgery; still others view those who complain about pain as whiners and fail to recognize the differences among patients and patient conditions. The first fact that must be recognized is that pain levels vary widely from one person to the next and from one time to the next in the same individual. Further, treatment of adults is quite different than treatment of children, who metabolize substances quicker than adults and have developing systems (i.e., immune, endocrine, etc.).

Effects on health care costs. Aggressive pain management can reduce health care costs by reducing side effects, morbidity, and the duration of treatment in the hospital. However, effective pain management can mean the use of nonpharmacological techniques and preoperative doses of analgesics through infusion, which may or may not be covered by health plans.

Patient understanding/knowledge. Patients should be informed about what kind of pain to expect from surgery or illness. And patients need to be educated on how to use analgesics, whether administered orally or through infusion or injection. All patients need to know the possible side effects and interactions of the medications. They also need to know how to achieve the optimum pain relief from the smallest doses of the drugs—in other words, how and when to self-administer the medications. Patients may also need to trust their perceptions.

Lack of knowledge of or anxiety about current pain management strategies among health care providers. Health care providers may not be receiving adequate training in acute pain management, particularly those providers (including primary care physicians) who commonly relate to surgery and postpartum patients and minor or major emergent conditions.

Regulatory/malpractice concerns. Some physicians may

be loath to provide adequate pain management for patients with acute pain because of defensive practice habits (avoidance of possible malpractice suits) or because of fear of regulatory agencies at the state and federal levels.

Pain assessment. There are various instruments for pain assessment, such as the Simple Descriptive Pain Intensity Scale, the Numeric Pain Intensity Scale, and the Visual Analog Scale (considered by some experts as the best clinical instrument). None of these instruments can take the place of personal sensation, however, and some experts believe that self-reporting is the most important tool for assessing pain.

Nonpharmacological methods of acute pain management. The various methods of nonpharmacological pain management may be helpful, in combination with medications, in managing acute pain. These methods include such procedures as hypnosis, biofeedback, relaxation, and massage. These useful pain management tools may not be reimbursable by third party payers.

Fear of Addiction. Many physicians may have concerns about patients becoming addicted to pain medications (opioids) and concerns about the patient who is (or may be) already addicted.

Two statutes of particular relevance to this study are §§ 54.1-3307.1 and 54.1-3408.1. The first was enacted to provide physicians with a procedure for registering to obtain, dispense, and administer diacetylmorphine (heroin) for the purpose of relieving the pain of terminally ill cancer patients. Although printed as state law, because its second enactment clause called for it to become "effective upon notification of the Board of Pharmacy by the Governor that the Congress of the United States has approved appropriate legislation," this statute is not in effect. Federal law does not allow for state registration to dispense heroin.

The second section authorizes an attending physician to prescribe a "dosage in excess of the recommended dosage of a pain relieving agent if he certifies the medical necessity for such excess dosage in the patient's medical record." Although this statute is in effect, it appears to have made little change in prescribing habits and may, indeed, have had a chilling effect on pain management. What does medical necessity mean?

MCV Visit

Upon completion of the formal meeting, the joint subcommittee visited two Medical College of Virginia patients being treated for acute pain as well as the Pain Management Clinic. Various devices for measuring pain and relieving pain were demonstrated or explained, including patient controlled analgesia (PCA) and transcutaneous electrical nerve stimulation (TENS).



The Honorable Jane H. Woods, *Chairman*
Legislative Services contact: Norma E. Szakal

Virginia Coal and Energy Commission

August 30 and 31, 1994, Blacksburg

The Virginia Coal and Energy Commission convened two meetings in conjunction with the 25th Annual Institute on Mining Health, Safety and Research, sponsored by Virginia Tech's Department of Mining and Minerals Engineering. At its first meeting, the head of the Mining Department provided an overview of the department's history and its contribution to Virginia's coal industry's development. The commission also received a comprehensive report on the current state of Virginia's coal industry. Prepared and presented by the Virginia Center for Coal and Energy Research at Virginia Tech, the report furnished further evidence of declining domestic and international coal sales. Ironically, while sales decline, mine productivity in Virginia (per-miner) is at an all-time high. However, industry-wide reductions in hours worked per-miner dropped miners' total real wages earned in 1993 to a level of less than one-half total wages earned in 1984.

At its second meeting, the commission received a report on clean coal technology research underway at Virginia Tech's Center for Coal and Minerals Processing, voted to officially express to the Virginia congressional delegation its concern about the proposed vessel tonnage tax's impact on the coal industry; and learned that Governor Allen is giving favorable consideration to the commission's request for an administration-sponsored coal symposium.

State of the Coal Industry

Coal mined from Virginia's Appalachian seams is of the highest quality and is ideal for steel production because of its coking characteristics. But the cost of extracting and transporting it from Virginia's deep mines is relatively high. Consequently, staggering metallurgical coal price declines over the past decade (a slide of over \$20 per-ton since 1984), resulting from lower-cost overseas competition, advances in steelmaking technology, and a slump in worldwide coal demand, have recently culminated in significant production cutbacks and mine work force reductions. The economic impact on coalfield communities has been severe.

At the commission's June meeting in Abingdon, Pittston Coal Company officials testified that within the past nine months, the company has shut down five mines and reduced operations at several coal processing facilities. Nearly 500 Pittston employees lost their jobs; Dickenson, Tazewell, and Wise Counties lost the benefit of the \$18.5 million in wages associated with these jobs. A Pittston official testified at the Blacksburg meeting that since June Pittston has been forced to lay off an additional 45 employees at its largest underground coal mines.

The director of the Virginia Center for Coal and Energy Research confirmed the price declines in the metallurgical (met coal) market but noted that contract prices for steam coal (coal used in electricity generation) had recently moved slightly higher. Utilities are replenishing coal stocks depleted by high levels of electricity usage during the past winter and the recent summer months. Steam coal purchases, an encouraging aspect of the Virginia coal market, rose three percent in 1992, another eight percent in 1993, and were up by 11 percent in the first quarter of 1994. Since 1992, the electrical generation market has purchased the highest percentage of Virginia's coal production; these recent steam coal purchase statistics suggest this trend will continue.

The demand for Virginia's low-sulphur coal should grow in the steam coal market as the 1990 Clean Air Act Amendments are phased in, and utilities must choose between purchasing expensive equipment to scrub the emissions of lower-cost, high-sulphur coal, or purchasing higher-cost, low-sulphur coal requiring little or no expensive scrubbing. The demand for steam coal in the international market is also projected to rise during the next decade and beyond, while demand for met coal is expected to level off and then decline slightly during the same period.

Commission members were encouraged by the long-term projections for the steam coal market but expressed concern about the impact of international met coal prices on the coalfields' economic base. The commission was advised that the Virginia Coal Association (a trade association of Virginia mine operators) is conducting a comprehensive survey of its members to obtain more precise information about coal sales and production figures. It is hoped that this information will provide mine operators a better perspective on the industry. This information may also help the commission determine whether the General Assembly can play a role in stabilizing this key sector of the Commonwealth's economy.

Clean Coal Technology Projects

The Virginia Center for Coal and Minerals Processing (CCMP) at Virginia Tech is playing a vital role in the research, development, and commercialization of technology designed to substantially reduce emissions associated with burning coal for electrical power production. Its current staff of 34, including Virginia Tech faculty members, researchers, technical staff, and graduate students, is developing and commercializing methods of removing minerals in coal causing the release of sulphur dioxide, or SO₂. CCMP's work is directly related to the federal Department of Energy's Clean Coal Technology program (CCT), associated with the federal Clean Air Act. The 1990 amendments to the Clean Air Act mandated increased reductions in SO₂ and other emissions by coal-fired electrical power plants.

According to its director, CCMP's work is one component of the \$7 billion federal CCT program. Approximately one-third of the funding is federal, with the balance coming from industry. Since the program began in 1986, approximately 45 major

demonstration projects have been funded. The CCT projects have focused on (i) low-emission boiler systems (ii) high-efficiency power systems (iii) advanced coal-preparation techniques, and (iv) a systems approach combining all three.

CCMP has played an important role in developing coal preparation technologies designed to reduce emissions by removing minerals associated with SO₂ emissions prior to combustion. A highly successful technology developed by CCMP employs micro-bubbles in a water column to separate finely-ground coal from pyrite, a mineral that releases sulphur when burned. A working prototype of the micro-bubble column, marketed as a "Microcel," was demonstrated to the commission at CCMP's Plantation Road testing facility. The Microcel has been patented, with the assistance of the Center for Innovative Technology, and successfully commercialized, with installations completed in regional coal processing facilities and several installations pending in the U.S. and overseas.

Among CCMP's most recently completed coal preparation research was a \$1.4 million DOE-funded project aimed at developing a cost-efficient means of dewatering, or removing moisture from finely ground coal. Fine coal is more easily cleaned (as demonstrated in micro-bubble technology); however, moisture content increases in that process, resulting in less-efficient burning characteristics. Mechanical dewatering is inefficient and thermal drying too costly. CCMP has filed a patent application for a thermodynamically favorable dewatering process that could revolutionize the coal industry. CCMP intends to continue developing the dewatering technology subject to obtaining sufficient funding.

Commission Action

The commission was again alerted to the proposed increase in the vessel tonnage tax now pending in Congress. The measure would reportedly raise the cost of a ton of coal by approximately 15 cents—a significant amount in the thin-margined coal export market. The tax's purpose is to subsidize the conversion of the nation's shipyards from the production of military vessels to commercial vessels. The commission, cognizant of the Commonwealth's own shipyards, found the goals laudable as a general matter.

However, commission members noted that such a significant tax on the Commonwealth's coal exports and other bulk-shipped export commodities could have the ironic effect of harming not only shippers of such commodities, but the shipping industry itself (i.e., if fewer commodities are exported, fewer ships are needed to transport them). Consequently, the commission voted to correspond with the Virginia congressional delegation, urging its members to support the export of Virginia's coal by opposing any version of the vessel tonnage tax measure that would further tax Virginia coal and put it at a competitive disadvantage in the overseas market.

Finally, commission members were reminded that Chairman Nolen had corresponded with Governor Allen, requesting

that he act favorably on the commission's request to convene a special coal symposium to address the numerous problems confronting Virginia's coal industry. Commission members learned that the Governor is favorably disposed to the concept and will continue discussions with the commission.



The Honorable Frank W. Nolen, *Chairman*
Legislative Services contact: Arlen K. Bolstad

HJR 139: Joint Subcommittee to Study the Effects of Deinstitutionalization

October 4, 1994, Richmond

HJR 139 authorized an examination of the effects that deinstitutionalization has on clients, families, community services boards and other providers, and the Commonwealth as a whole. The legislation called for a committee of legislators and citizen members who represent various interests in the provision of mental health services.

Background

Historians have documented the increasing acceptance of community mental health treatment, beginning about the time of World War II, for a variety of reasons:

1. Public acceptance of the treatability of mental illness was greatly enhanced by experiments during the war with front-line treatment of a variety of mental disabilities.
2. Psychotropic drugs made their debut, improving treatment of a variety of mental disabilities.
3. The civil rights movement began the campaign for adequate and least restrictive treatment.
4. The cost of institutional care began to rise sharply, making community care attractive.

Unfortunately, the lack of adequate funding has been a consistent impediment in the treatment of chronically mentally ill clients on both the state and national level.

Deinstitutionalization in Virginia

Virginia's major deinstitutionalization effort began in 1968 with the passage by the General Assembly of Chapter 10 of Title 37.1 of the *Code*, which initiated local establishment and control of mental health and mental retardation services

by community services boards (CSBs). This legislation provided the means for implementing the recommendations of the Hirst Commission, which advocated an improved system of mental health care provided through a coordinated system focusing on the patient rather than the institution. Continued problems with implementation led to the creation, in 1977, of the Bagley Commission, which noted in its findings that the removal of persons from institutions had exceeded the capacity of local programs to absorb them.

Additional studies have made similar observations and recommendations for strengthening the community-based system, but, while numbers of institutionalized patients and lengths of hospital stay have decreased, the services provided in the community have not been able to meet their needs. For clients with homes and supportive families, aftercare is relatively inexpensive; for those without, community care, with all its components, can be more expensive than institutional care. However, the end result can be, in many cases, a functioning, contributing citizen whose quality of life is inherently better than if he were institutionalized.

Virginia Law

The concept of least restrictive care is inherent in Virginia statute. Commitment criteria, especially for involuntary commitment, are stringent. They require that a person be in need of mental health treatment, that he present a danger to himself or others, that he be incapable of caring for himself, and that he receive care in the least restrictive environment. Numerous Supreme Court decisions have upheld this principle over the years. Therefore, while confinement in an institution will most likely always be a part of the continuum of care available for treatment of mental illness, offering treatment in the least intrusive manner is a requirement.

The *Code of Virginia*, in § 37.1-194, requires that all community services boards (i) provide a core of services in their plan, (ii) include mandated emergency services, and (iii) may include inpatient, outpatient and day-support, residential, prevention and early intervention, and other appropriate services. While a great variety of services exist across the Commonwealth, their availability is not consistent. New issues, such as transportation and living services, have been identified in previous studies but remain problems, especially in the rural areas of the Commonwealth. Current services are being stretched to the limit and will continue to be in light of yet more budget cuts and the decline in federal money.

Recent Trends

The Department for Mental Health, Mental Retardation and Substance Abuse Services noted certain trends.

- Although the average daily census significantly decreased and admissions declined in recent years, the department projects an increase of 2.7 percent in total admissions to all

facilities by the year 2000 and a decrease of 12.6 percent in the average daily census.

- In 1993, the average length of stay in state mental health facilities was half of what it was in 1975. The median stay in 1994 is 23 days.

- The department projects a decrease of 32.5 percent in the total number of training beds from FY 1996 to FY 2010.

- Even with the decrease in average daily census, the funding, including state and federal but not including CSB fees and local funds, has gone from \$91.2/8.8 million (facilities/CSB) in 1975 to \$68.7/31.3 million in 1994.

- Since 1990, budget reductions of over \$32 million resulted in the closure of 265 beds, with the expectation that community residential services be used instead.

- Item 409A of the 1994-96 Appropriations Act identified certain beds at several institutions in the state that should be reviewed for possible elimination. The language passed by the General Assembly postponed the closure of these beds in the first year, with the exception of Central Virginia Training Center, where funds were provided to assist the CSBs with these patients. A plan has been completed to identify the adequacy of community supports for these closed beds. Additionally, the budget required that any savings from these bed closures go directly to the CSBs for community support. The House Appropriations Committee is currently evaluating this bed reduction plan and will make recommendations for its implementation. The department has concluded that concentration on the population of individuals with a dual diagnosis of mental retardation/mental illness, who qualify for the federal Medicaid Home and Community-Based Waiver Program, would maximize federal resources and provide money, on a 50/50 state/federal basis, to provide community services. Other patients, who do not qualify under this definition, may have to be transferred to other state institutions. It was emphasized that many institutions may face a change in focus or direction.

- The department continues to emphasize the development of community services, with any "downsizing" of facilities accompanied by a build-up in community services.

Issues

The joint subcommittee heard from a variety of organizations and interests during its first meeting, ranging from community services boards, consumer groups, local government, and law enforcement to retail merchants and others, all of whom have a distinct interest in the outcome of this study. A number of issues were raised:

- How to continue to provide family and community support that may help avoid or reduce the length of institutionalized stay;

- How to avoid or reduce the impact of the high concentration of persons with severe mental illnesses who move to cities because of the greater availability of necessary services, such as housing and transportation, or because they are near institutions;
- Conversely, how to deal with persons who need treatment who are isolated from comprehensive services;
- How to streamline the funding to follow the client and guarantee that necessary services will be available to that person;
- How to guarantee that persons who need treatment receive it in a fashion that is fair and does not infringe upon civil rights;
- How to guarantee that current prescription plans, required for each client prior to release, adequately provide appropriate services and guarantee that the funds will follow to pay for those services;
- What services are available in each area of the state;
- What should be the level of academic achievement for case managers and what should be expected of the relationship between manager and client;
- As community care can, in certain cases, be more expensive than institutional care, what the state can do to more adequately fund community services besides diverting the savings from the downsizing of institutions;
- How to address placements of persons in inappropriate housing or circumstances that do not connect the client with appropriate services;
- How to keep clients in their own communities and near to their families and at the same time provide them with appropriate services;
- How to streamline the provision of services across agencies;
- How to determine the connection between criminal behavior and mental illness; and
- How to cope with the impact on local government, especially in housing, when clients are released from mental health institutions and placed in their community.

It is with these questions, and others that will certainly arise, that the joint subcommittee must deal in the coming months. A second meeting, a work session, is planned for November.



The Honorable Anne G. Rhodes, *Chairman*
Legislative Services contact: Gayle Nowell Vergara

Subcommittee Studying SB 190: Coastal Zone Management

October 6, 1994, Front Royal

Senate Bill 190 (1994) prohibits state agencies from establishing a coastal zone management program west of Interstate 95. The House Committee on Chesapeake and Its Tributaries carried the bill over for study in the interim by the standing Subcommittee #1.

The federal Coastal Zone Management Act (CZMA), enacted in 1972, established a voluntary program through which participating states would be eligible for federal grants. Virginia submitted a program in 1985, and it was approved by the National Oceanic and Atmospheric Administration (NOAA) in 1986. The Virginia Coastal Resources Management Program consists of a package of laws and policies in areas of fisheries management, tidal wetlands management, point and nonpoint source pollution control, shoreline sanitation, dunes management, and subaqueous land management. These are administered by a variety of state and local agencies, including the Departments of Environmental Quality, Conservation and Recreation, Health, and Forestry, the Virginia Marine Resources Commission, local wetlands boards, soil and water conservation districts, and local governments.

From the approval of the Coastal Resources Management Program in 1986 through 1994, Virginia has received \$17.5 million from the federal government. Almost \$7 million of this money has been distributed to local governments and planning districts on a competitive basis, with the balance going to state agencies. In 1994, Virginia received \$2,658,000 from the federal government. The \$17.5 million in federal money has been matched with \$16.4 million from the state and localities over this period, for a total of \$33.9 million.

The coastal zone designated by the Commonwealth in the program submitted to NOAA in 1985 coincided with the area defined as Tidewater Virginia in the tidal wetlands statute. The westernmost counties in this area include Fairfax, Prince William, Stafford, Spotsylvania, Hanover, Henrico, Chesterfield, Prince George, Surry, Isle of Wight, and Suffolk. Only jurisdictions within the coastal zone are eligible for the federal CZMA funds.

Section 6217

In response to nonpoint source pollution of coastal waters, Congress in 1990 enacted the Coastal Zone Act Reauthorization Amendments (CZARA). Two features of CZARA has caused considerable controversy. First is the requirement that state programs have enforceable measures in order to qualify for federal approval. The second concerns § 6217, which creates

the Coastal Nonpoint Source Pollution Control Program. Section 6217 is jointly implemented by NOAA and the EPA.

Under § 6217, coastal states have until July 1995 to submit coastal nonpoint programs. If approved, implementation of management measures would begin in January 1996, with full implementation by January 1999. Much of the concern about § 6217 arises from NOAA's and EPA's voluminous "(g) Guidance Management Measures" for agriculture. Among the five grazing management measures listed for consideration by coastal states is the exclusion of livestock. Representatives from NOAA and EPA advised the subcommittee that the management measure calls for the implementation of one of the five options listed, but does not specify appropriate practices. For program approval, Virginia need only describe the process that will be used to select practices and need not list specific practices that will be used in all cases.

The aspect of § 6217 addressed by SB 190 is subsection (b)(7), which requires a Coastal Nonpoint Pollution Control Program to include a proposal to modify the boundaries of the state's coastal zone as the coastal management agency of the state determines is necessary. The federal government has reviewed the inland coastal zone boundaries of coastal states and evaluated whether they extend inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the state. NOAA and EPA have forwarded recommended modifications to Virginia's coastal zone to the Department of Environmental Quality. In its letter, NOAA noted that Virginia may choose not to alter its coastal zone boundary and instead may choose to manage areas outside the coastal zone that are within a § 6217 management area. Virginia also has the option of submitting data showing that a smaller area than that proposed by NOAA will adequately address nonpoint source pollution of coastal waters.

SB 190

Senate Bill 190 seeks to address the expansion of the coastal zone to areas west of Interstate 95, which roughly corresponds to the fall lines for the rivers that flow into the Chesapeake. NOAA and EPA have found that Virginia's coastal zone boundary is not adequate to ensure implementation of management measures to restore and protect coastal waters and has recommended that Virginia adopt a § 6217 management area that corresponds to the coastal watershed boundaries for watersheds draining into its coastal waters. The additional coastal watershed areas would include all areas of the York River watershed not now in the coastal zone, and a portion of the James/Appomattox watershed west of the current zone.

NOAA and EPA have also stated that Virginia should address two areas above the coastal watershed boundary during program development and analyze whether the § 6217 management area should include them. The two "look beyond" areas include the areas of the Potomac/Shenandoah Rivers and the Rappahannock River watersheds. These areas, if included

in Virginia's program, would extend the § 6217 management area to the West Virginia border.

The Department of Conservation and Recreation (DCR), which is Virginia's designated lead agency for nonpoint source pollution programs, submitted a threshold review report in May 1994. A threshold review meeting is scheduled for December. The report states that no decision has been reached on how to respond to NOAA's boundary recommendation. The director of DEQ's Division of Enforcement, Policy, and Public Affairs stated that his agency is not interested in expanding the boundaries of the coastal zone beyond the limits set in the Chesapeake Bay Preservation Act at the current time.

Members were reminded that the Coastal Zone Management Act is voluntary, and the Commonwealth may decline to participate. If it does not submit and implement an adequate § 6217 program, however, Virginia will lose portions of the funds it receives under § 306 of the Coastal Zone Act and § 319 of the Clean Water Act. The loss of funds starts at 10 percent in 1996 and climbs to 30 percent in 1999 and years thereafter. Because the reductions in funds under the Clean Water Act are based on the previous year's grant, the reductions are compounded. The director of the Division of Soil and Water Conservation at DCR noted that the loss of federal funds would adversely effect his agency's staffing levels. It was estimated that Virginia's share of federal funds would drop to around \$300,000 by 2001 if the state does not participate in the § 6217 program.

The implementation of § 6217 is also the subject of a study underway by JLARC pursuant to SJR 43. JLARC staff informed the subcommittee that preliminary findings will be available in December or January. Assessing the cost impacts of the management measures under § 6217 will involve ranges based on different sets of assumptions, and a level of uncertainty will be attached to the cost impact figures.

Public Hearing

Twenty-five people spoke at a public hearing held in the evening. Speakers were almost evenly divided between proponents and opponents of the legislation. Proponents opposed any increases in regulations that may be imposed on agricultural activities as part of the "enforceable measures" requirement of the CZARA. They expressed particular apprehension about the costs of a requirement that streams be fenced to keep out cattle. As an alternative, they urged greater funding of voluntary cost share programs. The opposition to SB 190 focused on the detrimental effects of the loss of existing federal funds that would follow a failure to submit a program complying with § 6217 of CZARA. Drawing a line along the I-95 corridor to delineate Virginia's coastal impact area was criticized as being arbitrary.



The Honorable W. Tayloe Murphy, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 9: Clean Fuels Study Subcommittee

October 6, 1994, Richmond

EPA and Virginia's Implementation Plan

Representatives of the Environmental Protection Agency (EPA) discussed with the subcommittee the status of negotiations over Virginia's Clean Air Act state implementation plan, focusing on Northern Virginia's motor vehicle emissions inspection plan. They were optimistic about resolving remaining issues and developing a program to (i) meet a performance standard that complies with the Clean Air Act, (ii) eliminate the "gaps" between a Virginia plan and the EPA model, and (iii) promote consumer compliance.

Remote Sensing Devices

From EPA's viewpoint, a good correlation is lacking between tests using remote sensing devices and tests directly measuring emissions from vehicle tailpipes. It was also noted that remote sensing equipment can only be used under strictly controlled conditions and that, currently, the equipment only detects one pollutant.

Clean Fuels Program

The EPA representatives assured the subcommittee that every effort would be made to take Virginia's clean fuels program into account in drafting a state clean air implementation plan. They also stated that they are in general agreement with Virginia in seeking a means to provide for both test-and-repair and test-only emissions inspection facilities in Northern Virginia.

Reformulated Gasoline

A marketing analyst for Mobil Oil Corporation provided the subcommittee with information on reformulated gasoline. "Federal" reformulated gasoline is re-engineered fuel that reduces automobile emissions by approximately 15 percent. This fuel has been successfully tested in current vehicles and requires no conversion package or new automobile technology. Federal reformulated gasoline must be in wholesale terminals by December 1, 1994, and available through retailers by January 1, 1995. Although the Commonwealth as a whole is not required to use federal reformulated gasoline, use of this fuel will be required in Northern Virginia and certain other air quality nonattainment areas.

Electric Vehicles

The general manager of the Greater Richmond Transit Company (GRTC) spoke of his company's decision to add

electric buses to its fleet. Through a cooperative effort with Virginia Power, GRTC has decided to purchase twelve 31-foot electric buses. GRTC is currently expecting to award a contract in November, with delivery of the buses approximately one year later.

Next Meeting

The subcommittee will next meet in House Room D at 1:30 p.m. on November 9. Agenda items will include an update from the Secretary of Natural Resources on the status of Virginia's clean air strategy and a review of the Virginia Department of Transportation's report on the Alternative Fuel Revolving Fund Study.

Staff was also directed to invite the Department of Forestry to make a presentation on its use of nonpetroleum lubricants.



The Honorable Arthur R. Geisen, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold

SJR 12: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes

October 5, 1994, Richmond

Convening its first meeting of the 1994 interim, the joint subcommittee heard testimony from citizens, business representatives, and local government officials concerning the desirability of state regulation of bingo and raffles, as well as other related issues.

Local Permitting

Vegas Time Associates, an equipment and services company, provides "Las Vegas Nights" for three types of customers: commercial, nonprofit, and private parties. The company organizes approximately 250 events annually in Virginia, Maryland, and the District of Columbia. The biggest problem Vegas Time Associates has encountered in Virginia is in the permitting process because of conflicting statutory interpretations from one locality to the next. The joint subcommittee was urged to develop one set of bingo and raffle regulations that could be applied uniformly.

A representative of the Hanover Society for the Deaf spoke to the joint subcommittee about the permitting process with local officials. He opined that local officials have too much authority and urged the joint subcommittee to strengthen the

due process requirements in the permitting statutes. Others also spoke of the permitting problem in Hanover County, suggesting that small organizations may be experiencing discrimination in the issuance or denial of permits because state law gives the final authority in the permitting process to the locality, which is subject to political influences and varying interpretations.

Small Organizations

The audit director for Chesterfield County discussed some enforcement aspects of Virginia's current bingo and raffle statutes. Because the law does not differentiate between organizations based on gross revenues, smaller grossing organizations must meet the same extensive reporting requirements that much higher grossing organizations meet. The reporting requirements are particularly burdensome to these smaller grossing organizations (e.g., a \$500 Girl Scout sponsored raffle). Additionally, there are always instances where a bingo or raffle event is held for which no permit is obtained. The joint subcommittee was urged to examine two additional issues:

- Revise current statute to exempt from the permit and financial filing process nonprofits that expect or actually gross less than \$10,000 annually to allow resources to be concentrated on larger gambling operations; and
- Change the fiscal reporting year to a calendar basis to clear up reporting deadline confusion for small organizations.

The audit manager of Fairfax County also commented on enforcement concerns. Concurring with the comments from Chesterfield County, he suggested that the joint subcommittee establish a standard threshold exemption amount under which no permit to conduct bingo games or raffles would be required. Additionally, the joint subcommittee was urged to raise the current *audit* exemption threshold from \$2,000 to \$10,000.

Other Issues

Other recommendations made at the meeting included:

- Strengthening the statutory requirements to prevent professional ventures;
- Providing more uniformity among the jurisdictions in the issuance of permits;
- Relaxing the reporting requirements for small operations;
- Providing an exemption for service clubs that conduct internal raffles;
- Allowing more flexibility on how proceeds of games are utilized; and

- Striking a balance between the needs of the state and the organizations as they relate to bingo facility owners and their relationship with not-for-profit organizations.

Staff Review

Staff presented a review of (i) the joint subcommittee's 1993 work, (ii) 1993 carryover legislation related to bingo games and raffles (HBs 590, 758 and 884), and (iii) state control of bingo issues. In an effort to make current law more "user-friendly," staff presented the joint subcommittee with a proposed redraft, which contains no substantive changes but reorganizes current law and makes housekeeping changes.

State Regulation

In the area of state control of bingo games and raffles, the joint subcommittee heard that other states that regulate bingo at the state government level shared three principal characteristics: (i) charitable gaming regulated at the state level requires full funding for administration and enforcement; (ii) owners of commercial bingo halls are removed from all operation and management of bingo; and (iii) comprehensive licensing programs are in place, providing for the licensure of bingo supply manufacturers, distributors, and professional employees, as well as the charity itself.

In discussing the desirability of state regulation of bingo, the joint subcommittee reviewed the following policy issues:

- What is the compelling state interest?
- Would state regulation be more effective?
- What is the appropriate scope of state regulation—licensure extended to manufacturers, distributors, bingo employees and charities?
- What administrative costs are involved in state regulation?
- Who is responsible for enforcement (e.g., the controlling agency, the State Police)?

Next Meeting

The next meeting of the joint subcommittee is scheduled for November 15, 1994 in Richmond. In preparation for this meeting, Chairman Colgan asked that all comments on the proposed redraft of the bingo and raffle law and any requests for legislation by subcommittee members be forwarded to staff counsel, Maria J.K. Everett, at the Division of Legislative Services by Tuesday, November 1, 1994.



The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Maria J.K. Everett

SJR 223 (1993): Standing Joint Subcommittee on Block Grants

August 15, 1994, Richmond

Continuing a tradition developed over 10 years ago, the joint subcommittee held its annual hearing in late summer to facilitate the timely submission of the federal FY 95 application of the Community Services Block Grant (CSBG). The joint subcommittee has served as Virginia's compliance mechanism for the federal requirement for legislative public hearings on certain block grants.

1995 Application

Following the chairman's opening remarks, the acting commissioner of social services described the current application. In fiscal year 1995, 90 percent of the block grant funds will be distributed to local community action agencies focusing on reducing the social and economic causes of poverty. Of the remaining 10 percent, statewide programs, such as the Virginia Water Project, Project Discovery, and the Virginia Community Action Re-Entry System, will receive five percent, and five percent will be allocated for grant administration. The CSBG distribution formula will divide the 90 percent funds as follows:

- 50 percent will be allocated by using the Department of Social Services (DSS) funding formula, with this half disseminated according to the level of poverty (75 percent), the number of jurisdictions served (20 percent), and the size of the service areas (five percent).

- 50 percent will be distributed to local agencies receiving less than the current local agency maximum if that agency would receive lower funding if all funds were distributed according to the DSS formula.

Following a needs assessment, priority assignment, and planning, each agency must apply for the CSBG funds and must provide documentation of service area needs, quantifiable goals and objectives, a program budget, and other items. Contracts are executed with the agencies prior to release of any funds. At least biennially, DSS monitors each funded agency through review of legal documents and agency information, program accomplishments, internal monitoring and evaluation procedures, and compliance with relevant federal and state law and DSS requirements.

Public Hearing

During the public hearing, testimony was received concerning the assistance of various community action agencies from individuals with families who had been homeless and unemployed; elderly rural people in need of transportation, training,

and employment; people who had benefited from weatherization projects; individuals representing neighborhoods with decaying building problems; and several young people and parents who were planning for or entering college as a result of involvement in Project Discovery. Several presenters stated that they had sought help from a number of agencies before finding the community action agency, which helped them through the depression and desperation of being homeless and jobless with a family. These individuals noted the importance of the guidance and training they had received along with the monetary help and quoted the often-heard motto of community action agencies—"A hand up, not a hand out."

After the public hearing, the joint subcommittee unanimously approved a motion to endorse the current block grant application.



The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Norma E. Szakal

HJR 100: Joint Subcommittee Studying the Commonwealth's Adoption Laws

September 16, 1994, Richmond

Birth Parent Perspective

The subcommittee's second meeting opened with testimony from a birth mother who spoke of the anguish she suffered by placing her baby for adoption. She was 15 years old when she placed her son for adoption through an agency placement some years ago. She stressed that the placement of a child for adoption has lifelong consequences and is probably the most difficult decision any one could ever make.

Regarding the subcommittee's consideration of the appropriate consent period, she observed that it is crucial:

- that the decision of the birth parents be informed,
- that they receive counseling that includes information on the long-term effects of their decision,
- that the decision not be made before the baby is born,
- that the immediate post-partum period is an inappropriate time for making this important decision, and

■ that protections are available to ensure that there is no coercion.

Virginia's current time-frame, a minimum of 25 days, should not be reduced. Rather, the birth mother advocates a six-week consent period. She also advocates placing the child in foster care until the end of the consent period to protect the child when the birth parents are unable to care for the child. The current practice places the child with the adoptive parents until consent is considered final. She related that her own experiences involved with contacting her adult son, as well as the experiences of other birth mothers she has spoken with, have been positive.

Uniform Adoption Act

The National Conference of Commissioners on Uniform State Laws (NCCUSL), recently adopted the Uniform Adoption Act (UAA), which will be presented to the American Bar Association in January for approval and then submitted to the states for their adoption. Staff reviewed the UAA's provisions on preferred placements, relinquishment, how to consent to adoption, exceptions to consent, requirements for valid consent and relinquishment and the revocation of consent or relinquishment, the effect of revocation, procedures for notice of adoption, the confidentiality of records, release of identifying information, and permitted and prohibited activities.

The UAA provides that (i) consent can only be executed after birth and is unilaterally revocable in writing within 192 hours of birth, (ii) it must be in the birth parents' native language, (iii) it must include specific instructions for revocation, (iv) it must state the effect of execution, and (v) it must be signed or confirmed before a witness (court, agency, uninvolved lawyer, etc.). The witness is required to ascertain that the parent received information before execution regarding its meaning/consequences, along with information regarding the availability of counseling, procedures for release of information about the parents that will affect the physical or psychological well-being of the minor, procedures for consensual release of identifying information, and in the case of minor parents, that they had access to counseling and the advice of an uninvolved lawyer. Adoption records are retained permanently and sealed for 99 years after birth. A statewide registry receives, files, and retains documents requesting and/or authorizing, or not authorizing, the release of identifying information. Identifying information can be released only if there is mutual consent from the birth parent and the adoptee, adoptive parent, or descendent to exchange information.

Putative Father Registries

Staff reported to the subcommittee that 14 states have putative father registries, the purpose of which is to provide states with a method to ensure the finalization of an adoption while providing unwed fathers who are not legal fathers a way in which they can statutorily establish their interest in the child

and receive notice of any adoption hearing concerning the child. In *Lehr v. Robertson*, 463 U.S. 248 (1983), the United States Supreme Court held putative father registries to be constitutional. The Court found New York's putative father registry to be a legitimate balance between the putative father's desire to accept responsibility for developing a relationship with his child and the state's desire to ensure finality in adoption proceedings. The burden to register is on the putative father. Lack of knowledge of the pregnancy, or of the registry, is not considered a defense to not filing. The registries are usually housed in the state social services or health agencies. Once the father has registered, the mother is notified and given the opportunity to refute the identity of the father with a court-ordered paternity test. Confidentiality of registry provisions vary by state. Fees are often not imposed on the putative fathers for fear they might discourage filing.

American Academy of Adoption Attorneys

A representative of the American Academy of Adoption Attorneys suggested several changes to Virginia's adoption laws, including the idea that the 15-day period of revocation after a court-supervised consent is unnecessary, because: (i) a 10-day waiting period prior to the court-supervised consent is presently mandatory and should remain in effect to provide adequate time for a clear, voluntary, and informed consent by the birth parent(s); (ii) the court supervision and statutory mandates of §63.1-220.3 fully protect the birth parent(s)' rights; (iii) elimination of the revocation period helps to bring closure to the consent issue for all parties after the court-supervised consent; and (iv) the 10-day period exceeds the eight-day period recommended by the Uniform Adoption Act.

Also recommended was a repeal of the requirement that out-of-state birth mothers appear in a Virginia juvenile court (a requirement other states do not have). Instead, parallel court procedures in the location of the birth mother should be required in a court of competent jurisdiction. Further suggestions included requiring a timely appearance in court, a best interest hearing for the child, a strict statute of limitations concerning the ability to attack an adoption proceeding, and imposing criminal sanctions on anyone who knowingly commits fraud in the adoption procedure. Other issues discussed briefly were docket preference, procedural revisions, and "clean up" revisions.

Future Meetings

The subcommittee has scheduled additional meetings for October 21 and December 2.



The Honorable Linda T. Puller, *Chairman*
Legislative Services contact: Jessica F. Bolecek

HJR 353: A.L. Philpott Southside Economic Development Commission

September 19, 1994, Richmond

The September meeting of the commission focused on the disposition of the commission's \$675,000 legislative appropriation for economic development projects in Southside Virginia.

Opportunity Virginia

The director of special projects described the coordination of the Governor's Regional Economic Development Advisory Councils and regional development entities. "Opportunity Virginia," a development initiative established earlier this year by executive order, combines a comprehensive, statewide strategic plan for economic development with regional economic development advisory councils. The advisory councils are directed "to foster regional cooperation for economic development marketing and visioning." The 18 regional councils are also to serve as host committees, at the Governor's request, when major investment prospects are identified, and to provide "grassroots" input for the statewide planning process. A steering committee comprised primarily of the chairs of each of the regional councils will oversee the development of the

statewide plan. Included in the plan will be regional development overviews for each region.

Because uneven—and, in some cases, duplicative—service coverage previously existing throughout the Commonwealth, the Governor's Regional Councils will provide a more consistent pattern of regional development. The Regional Council boundaries were drawn to endorse the efforts of existing entities; the boundaries also create regional organizations where none existed. The Southside region is primarily addressed by Regional Councils 10 and 11.

Local Officials

The commission then heard testimony from several regional council chairpersons and local economic development directors. All offered options for enhancing economic development in Southside through creative use of the commission's \$675,000 appropriation.

Next Meeting

The commission agreed to meet again in late October to pursue the development of recommendations for the disposition of the appropriation.



The Honorable Whittington W. Clement, *Chairman*
Legislative Services contact: Kathleen G. Harris

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.



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(804) 786-3591



The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in The Virginia Register of Regulations on July 11, 1994 (10:21 V.A.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in The Virginia Register of Regulations. This section of The Virginia Register has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATIONS

The Department of Professional and Occupational Regulation, pursuant to Executive Order 15(94), is proposing to undertake a comprehensive review of regulations of the department and its various regulatory boards. As a part of this process, public input and comments are being solicited as noted below. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are written clearly so that they may be used and implemented by all those who interact with a regulatory process.

Board for Auctioneers

VR 150-01-1:1. Public Participation Guidelines.

VR 150-01-2:1. Rules and Regulations of the Virginia Auctioneers Board.

Public comments may be submitted from November 14, 1994, to January 16, 1995. A public hearing is being held on January 13, 1995, at 2:30 p.m., at the Hospitality House, 415 Richmond Road, Williamsburg, VA 23185.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8514.

Board for Barbers

VR 170-01-00:1. Public Participation Guidelines.

VR 170-01-1:1. Board for Barbers Regulations.

Public comments may be submitted from November 14, 1994, to January 14, 1995. A public hearing is being held on December 5, 1994, at 9 a.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, VA 23230.

Contact: Karen W. O'Neal, Assistant Director, Department

of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-0500.

Board for Branch Pilots

VR 535-01-01. Branch Pilot Regulations.

Public comments may be submitted from November 14, 1994, to December 14, 1994. A public hearing is being held on December 13, 1994, at 10 a.m., at the Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8595.

Board for Hearing Aid Specialists

VR 375-01-01:1. Public Participation Guidelines.

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

Public comments may be submitted from November 14, 1994, to January 14, 1995. A public hearing is being held on January 9, 1995, at 8:30 a.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, VA 23230.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-0500.

Department of Professional and Occupational Regulation

VR 190-01-1:1. Regulations Governing Employment Agencies.

VR 190-00-02. Public Participation Guidelines.

Public comments may be submitted from November 14, 1994, to January 16, 1995. A public hearing is being held on November 30, 1994, at 11 a.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, VA 23230.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

* * *

VR 190-03-1. Polygraph Examiners Regulations.

VR 190-00-03. Public Participation Guidelines.

Public comments may be submitted from November 14,

Schedules for Comprehensive Review of Regulations

1994, to January 16, 1995. A public hearing is being held on November 29, 1994, at 11 a.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, VA 23230.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

Real Estate Board

VR 585-01-2. Condominium Regulations.

Public comments may be submitted from November 14, 1994, to January 19, 1995. A public hearing is being held on January 19, 1995, at 4 p.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Conference Room 2, Richmond, VA 23230.

Contact: Emily O. Wingfield, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8510.

Board for Professional Soil Scientists

VR 627-02-1. Professional Soil Scientists Regulations.

Public comments may be submitted from November 14, 1994, to January 15, 1995. A public hearing is being held on December 1, 1994, at 10 a.m., at the Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4-A, Richmond, VA 23230.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785.

DEPARTMENT OF STATE POLICE

VR 545-00-01. Public Participation Policy.

VR 545-01-01. Motor Carrier Safety Regulations.

VR 545-01-02. Standards and Specifications for the Slow Moving Vehicle Emblem.

VR 545-01-03. Standards and Specifications for the Stickers or Decals Used by Counties, Cities and Towns in Lieu of License Plates.

VR 545-01-04. Standards and Specifications for Motorcycle Windshields and Safety Glasses or Goggles for Motorcycle Operators.

VR 545-01-06. Standards and Specifications for Protective Helmets for Motorcycle Operators and Passengers.

VR 545-01-08. Regulations for Pawnbrokers.

VR 545-01-10. Standards and Specifications for Saddle Mount Coupling for Drive-Away Service.

VR 545-01-11. Multiple Handgun Purchases and Lost/Stolen Handgun Replacement Procedures.

VR 545-01-12. Criminal Firearms Clearinghouse.

Public comments may be submitted through January 15, 1995.

Contact: David Skaret, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, Telephone (804) 674-2269.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF HEALTH PROFESSIONS

Notice to All Providers of Rehabilitation Services in the Commonwealth of Virginia

The 1994 General Assembly enacted legislation (§ 54.1-3513 of the Code of Virginia) which requires the Board of Professional Counselors to certify rehabilitation providers.

As defined in this legislation, a rehabilitation provider is a person who, functioning within the scope of his practice, performs, coordinates, manages or arranges for rehabilitation services. Rehabilitation services include evaluation, assessment, training services, services to family members, interpreter services, rehabilitation teaching, coordination of telecommunications, placement in suitable employment, post-employment services and other related services provided to a person with a disability for the purpose of restoring the person's productive capacity. In addition, § 65.2-603 of the Code of Virginia states that providers of vocational rehabilitation services which include vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education and retraining must be certified to provide services in accordance with the Worker's Compensation mandate.

No person, other than a person licensed by the Boards of Medicine, Nursing, Optometry, Professional Counselors, Psychology or Social Work, shall hold himself out as a provider of rehabilitation services unless he holds a valid certificate.

Upon receipt of a completed application before June 30, 1995, the Board of Professional Counselors will issue certification to any person who was actively engaged in providing rehabilitation services on January 1, 1994. If you are eligible for this certification, contact the Rehabilitation Provider Certification Program, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717, telephone (804) 662-9575 to request an application form.

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 FAX two copies and 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

ERRATA

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Title of Regulation: VR 674-01-02. Board for Waste Management Facility Operators Licensing Regulations.

Publication: 11:1 VA.R. 88-104 October 3, 1994.

Correction to Final Regulation:

Page 88, § 1.1, definition of "Closure," line 3, change "Virginia Department of Waste Management" to "Virginia Department of Environmental Quality"

Page 89, § 1.1, definition of "Solid Waste," line 3, change "Virginia Department of Waste Management" to "Virginia Department of Environmental Quality"

Page 89, § 1.1, definition of "Storage," line 1, after
"housing" insert "a solid waste"

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

November 22, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

An open meeting to conduct informal fact-finding conferences in regard to the Board for Accountancy v. John Bernard Shanes, Jr., at 9 a.m., and the Board for Accountancy v. Bradley E. Crowder at 10 a.m. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made for any appropriate accommodation. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance.

Contact: Carol A. Mitchell, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8524.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

† **November 16, 1994 - 10 a.m. – Open Meeting**
Charcoal Steakhouse, 5225 Williamson Road, N.W.,

Roanoke, Virginia. ♿

A meeting to conduct routine board business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact Nancy Israel at least five days before the meeting date so that suitable arrangements can be made.

Contact: Nancy L. Israel, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1002, Richmond, VA 23219, telephone (804) 371-6157.

Virginia Marine Products Board

† **December 6, 1994 - 5:30 a.m. – Open Meeting**
Sewell's Ordinary Restaurant, Route 17, Gloucester, Virginia. ♿

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 551 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

STATE AIR POLLUTION CONTROL BOARD

† **December 2, 1994 - 9 a.m. – Open Meeting**
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.
♿ (Interpreter for the deaf provided upon request)

A regularly scheduled board meeting. This meeting is being held pursuant to § 10.1-1304 of the Code of Virginia.

Contact: Cindy M. Berndt, Manager, Regulatory Services, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378 or (804) 762-4021/TDD ☎

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

† **December 7, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 4, Richmond,
Virginia. ☎

A meeting to (i) approve minutes dated September 29, 1994; (ii) review enforcement files; (iii) review applications; (iv) review correspondence; and (v) conduct any board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Architects

NOTE: CHANGE IN MEETING DATE

† **December 2, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to (i) approve minutes dated September 1, 1994; (ii) review enforcement files; (iii) review applications; (iv) review correspondence; and (v) conduct any board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Landscape Architects

† **December 1, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to (i) approve minutes dated September 15, 1994; (ii) review enforcement files; (iii) review applications; (iv) review correspondence; and (v) conduct any board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† **December 6, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to (i) approve minutes dated September 28, 1994; (ii) review enforcement files; (iii) review applications; (iv) review correspondence; and (v) conduct any board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

† **December 1, 1994 - 1 p.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to (i) approve minutes dated September 8 and October 20, 1994; (ii) review enforcement files; (iii) review applications; (iv) review correspondence; and (v) conduct any board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

ASAP POLICY BOARD - VALLEY

† **November 14, 1994 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fishersville, Virginia.
☎

A regular meeting of the local policy board which conducts business pertaining to the following: (i) court referrals; (ii) financial report; (iii) director's report; and (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, ASAP Policy Board, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or Waynesboro (703) 943-4405.

AUCTIONEERS BOARD

November 23, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct an informal fact-finding conference in regard to the Auctioneers Board v. Robert Wendell Williamson. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration.

Calendar of Events

Contact: Carol A. Mitchell, Assistant Director, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

November 17, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

A regular board meeting.

Contact: Meredyth Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

November 17, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations:

VR 155-01-3, Public Participation Guidelines
VR 155-01-2, General Regulations

This regulation will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Meredyth Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD FOR BARBERS

December 5, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. Ⓢ

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your

request.

Contact: Karen W. O'Neal, Assistant Director, Board for Barbers, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD FOR BRANCH PILOTS

December 13, 1994 - 9 a.m. – Public Hearing
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. Ⓢ

A meeting to conduct general board business, and a public hearing on review of regulations in response to Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **November 18, 1994 - 10 a.m. – Open Meeting**
Jackson Center, 501 North Second Street, First Floor Conference Room, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

The Review Board will hear administrative appeals concerning building and fire codes and other regulations of the department. The board will also issue interpretations and formalize recommendations to the Board of Housing and Community Development concerning future changes to the regulations. Public comment will be received at 10 a.m.

Contact: Norman R. Crumpton, Board Secretary, Department of Housing and Community Development, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

November 17, 1994 - 2 p.m. – Open Meeting
December 14, 1994 - 2 p.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

November 17, 1994 - 10 a.m. – Open Meeting

December 15, 1994 - 10 a.m. – Open Meeting

Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Regulation Review Committee

† **November 15, 1994 - 10 a.m. – Open Meeting**

Department of Social Services, 730 East Broad Street, Conference Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet with its Development Industry Stakeholder Committee as part of a review of regulations pursuant to Executive Order 15(94). This review is being conducted to determine whether the board's regulations are (i) essential to protect public health, safety and welfare; (ii) unnecessarily burdensome or intrusive to citizens of the Commonwealth; and (iii) clear and understandable to the regulated community. Persons interested in observing should call the Chesapeake Bay Local Assistance Department at 1-800-243-7229, to verify the meeting date, time and location. Only those invited to be members of the committee may participate in the discussion. However, written comments will be accepted from anyone attending the meeting.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

† **November 16, 1994 - 10 a.m. – Open Meeting**

Department of Social Services, 730 East Broad Street, Conference Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet with its Agriculture/Forestry Stakeholder Committee as part of a review of regulations pursuant to Executive Order 15(94). This review is being conducted to determine whether the

board's regulations are (i) essential to protect public health, safety and welfare; (ii) unnecessarily burdensome or intrusive to citizens of the Commonwealth; and (iii) clear and understandable to the regulated community. Persons interested in observing should call the Chesapeake Bay Local Assistance Department at 1-800-243-7229, to verify the meeting date, time and location. Only those invited to be members of the committee may participate in the discussion. However, written comments will be accepted from anyone attending the meeting.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

† **November 17, 1994 - 10 a.m. – Open Meeting**

Department of Social Services, 730 East Broad Street, Conference Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet with its Environmental/Watermen/Civic Stakeholder Committee as part of a review of regulations pursuant to Executive Order 15(94). This review is being conducted to determine whether the board's regulations are (i) essential to protect public health, safety and welfare; (ii) unnecessarily burdensome or intrusive to citizens of the Commonwealth; and (iii) clear and understandable to the regulated community. Persons interested in observing should call the Chesapeake Bay Local Assistance Department at 1-800-243-7229, to verify the meeting date, time and location. Only those invited to be members of the committee may participate in the discussion. However, written comments will be accepted from anyone attending the meeting.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

† **November 18, 1994 - 10 a.m. – Open Meeting**

Department of Social Services, 730 East Broad Street, Conference Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet with its Government Stakeholder Committee as part of a review of regulations pursuant to Executive Order 15(94). This review is being conducted to determine whether the board's regulations are (i) essential to protect public health, safety and welfare; (ii) unnecessarily burdensome or intrusive to citizens of the Commonwealth; and (iii) clear and understandable to the regulated community. Persons interested in observing should call the Chesapeake Bay Local Assistance Department at 1-800-243-7229, to verify the meeting date, time and location. Only those invited to

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be members of the committee may participate in the discussion. However, written comments will be accepted from anyone attending the meeting.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

November 23, 1994 - 10 a.m. – Open Meeting

December 28, 1994 - 10 a.m. – Open Meeting

Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **December 7, 1994 - 10 a.m.** – Open Meeting

Town of Cape Charles Council Chambers, Corner of Mason and Plum, Cape Charles, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Coordinating Committee

November 18, 1994 - 8:30 a.m. – Open Meeting

Theater Row Building, 730 East Broad Street, Office of Coordinator, Interdepartmental Regulation, Richmond, Virginia. ☒

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, Department of Social Services, 730 East Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE BOARD FOR COMMUNITY COLLEGES

† **November 16, 1994 - 2:30 p.m.** – Open Meeting

Omni Newport News Hotel, 1000 Omni Boulevard, Newport News, Virginia.

State board committee meetings.

Contact: Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

† **November 17, 1994 - 9 a.m.** – Open Meeting

Omni Newport News Hotel, 1000 Omni Boulevard, Newport News, Virginia.

A regularly scheduled meeting.

Contact: Joy S. Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

COMPENSATION BOARD

November 30, 1994 - 1 p.m. – Open Meeting

December 22, 1994 - Noon – Open Meeting

Ninth Street Office Building, 202 North 9th Street, Room 913/913A, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

November 15, 1994 - 10 a.m. – Open Meeting

Department of Conservation and Recreation, Zincke Building, 203 Governor Street, 2nd Floor, Conference Room #200, Richmond, Virginia. ☒

A meeting of the ad hoc committee formed pursuant to Executive Order 15(94) to perform regulatory reform review on VR 215-02-00, Stormwater Management Regulations.

Contact: J. Michael Flagg, Manager, Bureau of Urban Programs, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3959

† **December 19, 1994 - 7 p.m.** – Open Meeting

Henrico County Government Center, Administration Building, Board Room, 4301 East Parham Road, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting on VR 217-02-00, Nutrient Management Training and Certification Regulation (refer to the Notices of Intended Regulatory Action section, page 412, for more detailed information). The meeting is

being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. H.R. Perkinson. Persons needing interpreter services for the deaf must notify Mr. Perkinson no later than December 8, 1994.

Contact: H.R. Perkinson, Manager, Nutrient Management Program, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2064 or (804) 786-2121/TDD ☎

Board of Conservation and Recreation

† **December 19, 1994 - 8 p.m.** – Public Hearing
Henrico County Government Center, 4301 East Parham Road, Administration Building, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting on VR 215-02-00, Stormwater Management Regulations (refer to the Notices of Intended Regulatory Action section, page 411, for more detailed information). The hearing is being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact David S. Nunnally. Persons needing interpreter services for the deaf must notify Mr. Nunnally no later than December 5, 1994.

Contact: David S. Nunnally, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or (804) 786-2121/TDD ☎

Falls of the James Scenic River Advisory Board

November 17, 1994 - Noon – Open Meeting
Richmond City Hall, Recreation and Parks Conference Room, 4th Floor, 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 8, 1994 - 10 a.m.** – Open Meeting
† **December 9, 1994 - 10 a.m.** – Open Meeting
† **December 12, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A formal hearing regarding the Board for Contractors v. Tomac Corporation. File No. 93-01269.

Contact: Earlyne Perkins, Legal Assistant, Board for

Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0946.

Recovery Fund Committee

December 7, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 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. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Christine Martine at (804) 367-8561. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561 or (804) 367-9753/TDD ☎

BOARD OF CORRECTIONS

November 16, 1994 - 10 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Administration Committee

November 16, 1994 - 8:30 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administration matters which may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Committee on Certification Process Review

November 16, 1994 - Noon – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss and review the board's certification process.

Contact: Vivian Toler, Secretary to the Board, Department

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of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Correctional Services Committee

NOTE: CHANGE IN MEETING TIME

November 15, 1994 - 9:30 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss correctional services matters which may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Liaison Committee

November 17, 1994 - 9:30 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss criminal justice matters.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr. Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

December 3, 1994 – 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 Cosmetology intends to **repeal** regulations entitled: **VR 235-01-02, Board for Cosmetology Regulations, and VR 235-01-03, Nail Technician Regulations, and adopt** regulations entitled: **VR 235-01-02:1, Board for Cosmetology Regulations.** The purpose of this regulatory action is to repeal the existing Board for Cosmetology Regulations (VR 235-01-02) and Nail Technician Regulations (VR 235-01-03) and combine them into one set of new regulations (VR 235-01-02:1). The proposed regulations will achieve consistency with existing barber regulations and statutes as well as current board policies. Further, the proposed regulations will amend the Board for Cosmetology's license renewal procedures.

Statutory Authority: §§ 54.1-201 and 54.1-1202 B of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

† **December 5, 1994 - 9 a.m.** – Open Meeting

† **December 12, 1994 - 9 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct examination cut-score study. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

BOARD OF DENTISTRY

† **November 18, 1994 - 9 a.m.** – Open Meeting

† **December 9, 1994 - 9 a.m.** – Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

Informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

† **December 1, 1994 - 8:30 a.m.** – Open Meeting

† **December 2, 1994 - 8:30 a.m.** – Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

Formal hearings will be held on December 1. A meeting to conduct board business and committee meetings for legislative/regulatory, advertising, examination, continuing education, executive, and budget committees will be held on December 2. This is a public meeting. A 20-minute public comment period will be held at 8:40 a.m. on December 2, 1994; however, no other public comment will be taken. If the formal hearings are continued then regular board business will be conducted on December 1, 1994.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

November 17, 1994 - 8:30 a.m. – Open Meeting

General Assembly Building, 910 Capitol Square, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed

on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2924 or toll-free 1-800-292-3820.

STATE BOARD OF ELECTIONS

† **November 28, 1994 - 10 a.m.** – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to canvass the November 8, 1994, general election for the U.S. Senate, U.S. House and the three proposed constitutional amendments.

Contact: Diane Anderson, Executive Secretary Senior, State Board of Elections, 200 N. Ninth St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, toll-free 1-800-552-9745 or toll-free 1-800-260-3466/TDD ☎

LOCAL EMERGENCY PLANNING COMMISSION - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

† **December 13, 1994 - 3 p.m.** – Open Meeting
Montgomery County Courthouse, Main and Franklin Streets, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia.

A meeting to develop a disaster simulation drill for field responders in Spring 1995, and also the appointment of new LEPC members.

Contact: Vincent D. Stover, New River Valley Planning District Commission, P.O. Box 3726, Radford, VA 24143, telephone (703) 639-9313 or FAX (703) 831-6093.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Work Group on Detection/Quantitation Levels

† **January 18, 1995 - 1:30 p.m.** – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, Glen Allen, Virginia.

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for February 15, March 15, April 5, April 19, May 3, May 17, June 7, and June 21, 1995. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date.

Contact: Alan J. Anthony, Chairman, Work Group on Detection/Quantitation Levels, Department of Environmental Quality, 629 E. Main St., 2nd Floor, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4120.

Technical Advisory Committee on Financial Assurance Regulations for Solid Waste Management Facilities

† **November 21, 1994 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 629 East Main Street, 4th Floor Conference Room, Richmond, Virginia.

A meeting to assist the department in formulation of the draft of the Financial Assurance Regulations.

Contact: Wladimir Gulevich, Ph.D., P.E., Director, Office of Regulation Planning and Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218 or (804) 762-4021/TDD ☎

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

† **November 14, 1994 - 11 a.m.** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

A meeting to consider proposed gifts, purchases, and loans of works of art for recommendation to the full Board of Trustees. Public comment will not be received.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

† **November 17, 1994 - 11 a.m.** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A meeting to conduct budget review. Public comment will not be received.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

† **November 17, 1994 - Noon** – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

A bi-monthly meeting of the Board of Trustees to review the budget, discuss art acquisitions, and receive

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board and staff reports. Public comment will not be received.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF FORESTRY

† **December 4, 1994 - 4 p.m.** – Open Meeting

† **December 5, 1994 - 8 a.m.** – Open Meeting

Department of Forestry Headquarters, Fontaine Research Park, 908 Natural Resources Drive, Charlottesville, Virginia. ☎

A workshop to study issues, and an open meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-1375, extension 3346 or (804) 977-6555/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **January 10, 1995 - 9:30 a.m.** – Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **January 13, 1995** – 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 Funeral Directors and Embalmers intends to amend regulations entitled: **VR 320-01-3. Preneed Funeral Planning Regulations.** The proposed amendments are designed to amend regulations in compliance with changes to federal law, clarify disclosure requirements for funeral homes to make to consumers and correct editorial errors and comply with Registrar's format.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

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† **January 10, 1995 - 9:30 a.m.** – Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **January 13, 1995** – 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 Funeral

Directors and Embalmers intends to amend regulations entitled: **VR 320-01-04. Regulations of the Resident Trainee Program for Funeral Service.** The purpose of the proposed amendments is to address maximum limit on apprenticeship, supervision of trainee who has completed program, requirements for final reporting, failure to report, editorial changes, supervision for active trainees, and reporting requirements for active trainees.

Statutory Authority: §§ 54.1-2400, 54.1-2803 and 54.1-2817 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

BOARD FOR GEOLOGY

December 1, 1994 - 10 a.m. – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☎

A regular meeting.

Contact: David A. Vest, Board Administrator, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8307 or (804) 367-9753/TDD ☎

GEORGE MASON UNIVERSITY

Board of Visitors

† **November 16, 1994 - 4 p.m.** – Open Meeting

George Mason University, Mason Hall, Board Room D23, Fairfax, Virginia. ☎

A regular meeting to hear reports of the standing committees of the board, and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals and organizations who request it. The Student Affairs Committee will meet at 6:30 p.m. on November 15, 1994. Standing committees will meet during the day on November 16 beginning at 9 a.m.

Contact: Ann Wingblade, Administrative Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8704.

DEPARTMENT OF HEALTH (STATE BOARD OF)

NOTE: CHANGE IN LOCATION

December 1, 1994 - Noon – Open Meeting

Richmond Airport Hilton Hotel, 5501 Eubanks Road, Sandston, Virginia. ☎ (Interpreter for the deaf provided

upon request)

A worksession of the board. An informal dinner will follow at 6:30 p.m.

Contact: Rosanne Kolesar, Office of the Commissioner, Department of Health, P.O. Box 2448, Suite 214, Richmond, VA 23218, telephone (804) 786-3564.

NOTE: CHANGE IN LOCATION

December 2, 1994 - 9 a.m. - Open Meeting
Richmond Airport Hilton Hotel, 5501 Eubanks Road, Sandston, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

A business meeting and adjournment.

Contact: Rosanne Kolesar, Office of the Commissioner, Department of Health, P.O. Box 2448, Suite 214, Richmond, VA 23218, telephone (804) 786-3564.

Biosolids Permit Fee Regulation Advisory Committee

† **December 14, 1994 - 2 p.m. - Open Meeting**
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. Ⓢ

A meeting to discuss the public participation issues related to the proposed regulation for fees for permits involving land application, marketing, or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Biosolids Use Committee (formerly LASS)

† **December 14, 1994 - 10 a.m. - Open Meeting**
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. Ⓢ

A meeting to discuss issues related to the Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing, or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Commissioner's Waterworks Advisory Committee

† **November 17, 1994 - 10 a.m. - Open Meeting**
Sydnor Hydrodynamics, Inc., 2111 Magnolia Street, Richmond, Virginia.

A meeting to conduct general business. The committee meets the third Thursday of odd months at various

locations around the state. The schedule is as follows: January 19, 1995, and March 16, 1995. Locations will be announced.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

BOARD OF HEALTH PROFESSIONS

† **November 15, 1994 - 9 a.m. - Open Meeting**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

A regulatory research committee meeting. Brief public comment will be accepted at the beginning of the meeting.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9966 or (804) 662-7197/TDD ☎

† **November 15, 1994 - 10:30 a.m. - Open Meeting**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

An ad hoc committee meeting on levels of regulation. Brief public comment will be accepted at the beginning of the meeting.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9966 or (804) 662-7197/TDD ☎

† **November 15, 1994 - 1 p.m. - Open Meeting**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

An administration and budget committee meeting. Brief public comment will be accepted at the beginning of the meeting.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9966 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

November 22, 1994 - 9:30 a.m. - Open Meeting
December 20, 1994 - 9:30 a.m. - Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. Ⓢ

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A monthly meeting.

Contact: Kim Bolden Walker, Public Relations Coordinator, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

COMMISSION ON THE FUTURE OF HIGHER EDUCATION IN VIRGINIA

November 22, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

The commission was created by SJR 139 (1994) and was charged with considering issues of importance to higher education in Virginia. For more information contact the council.

Contact: Anne M. Pratt, Associate Director, Commission on the Future of Higher Education, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2639.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

December 13, 1994 - 9:30 a.m. – Open Meeting
Virginia Commonwealth University, Richmond, Virginia.

A general business meeting. For more information, contact the council.

Contact: Anne M. Pratt, Associate Director, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632.

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December 4, 1994 – 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 Council of Higher Education for Virginia intends to amend regulations entitled: **VR 380-01-00. Public Participation Guidelines**. The proposed amendments correct some unclear language and put the regulations in compliance with the Administrative Process Act and Chapter 898 of the 1993 Acts of Assembly.

Statutory Authority: §§ 9-6.14:7:1 and 23-9.6:1 of the Code of Virginia.

Contact: Fran Bradford, Regulatory Coordinator, State Council of Higher Education for Virginia, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2613.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 6, 1994 - 9 a.m. – Open Meeting
January 3, 1995 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

November 15, 1994 - 11 a.m. – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority, Rules and Regulations for Multi-Family Housing Developments, Rules and Regulations for the Acquisition of Multi-Family Housing Developments and Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons; and (v) 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.

STATEWIDE INDEPENDENT LIVING COUNCIL

December 14, 1994 - 10 a.m. – Open Meeting
December 15, 1994 - 9 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

In place of a regular quarterly meeting, the council will be in orientation training on the Rehabilitation Act and responsibilities of the Statewide Independent Living Council.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD

COUNCIL ON INFORMATION MANAGEMENT

November 18, 1994 - 1 p.m. - Open Meeting
Washington Building, 1100 Bank Street, Suite 901,
Richmond, Virginia.

A regularly scheduled meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD

HJR NO. 76 INTERNET STUDY COMMITTEE

November 17, 1994 - 10 a.m. - Open Meeting
Department of Information Technology, Richmond Plaza
Building, 110 South 7th Street, 3rd Floor, Richmond,
Virginia.

A meeting to study whether the Commonwealth needs to establish protocols and guidelines regarding in-state access to the myriad files and components available through the Internet.

Contact: Marty Gillespie, Director of Security, Department of Information Technology, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 344-5705.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

† December 19, 1994 - 10 a.m. - Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond,
Virginia. (Interpreter for the deaf provided upon
request)

The tentative agenda items for consideration by the board include:

1. Retention of DOT markings, placards, and labels; Final Rules 1910.1201; 1915.100; 1917.29; 1918.100; 1926.61.
2. Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, 1915.11 - 1915.16, 1915.7.
3. Safety Standard for Fall Protection in the Construction Industry; Final Rules, 1926.500-1926.503.

4. Occupational Exposure to Asbestos; Final Rules, 1910.1001; 1926.1101; 1915.1001.

5. Hazardous Waste Operations and Emergency Response, 1910.120 and 1926.65.

6. Logging Operations; Final Rule, 1910.266, 1928.21 and 1910.269.

7. Approval of Regulatory Review of Boiler and Pressure Vessels (VR 425-01-75)

8. Approval of Regulatory Review of Boiler and Pressure Vessels Certification (VR 425-01-64).

9. Approval of Regulatory Review of Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees (VR 425-01-74).

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384, FAX (804) 786-8418 or (804) 786-2376/TDD

LIBRARY BOARD

November 14, 1994 - 10:30 a.m. - Open Meeting
Library of Virginia, 11th Street at Capitol Square, 3rd
Floor, Supreme Court Room, Richmond, Virginia.

A meeting to discuss administrative matters of the Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Automation and Networking Committee

November 14, 1994 - 8:45 a.m. - Open Meeting
Library of Virginia, 11th Street at Capitol Square, 3rd
Floor Conference Room, Richmond, Virginia.

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to State Librarian, Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

General Library Committee

November 14, 1994 - 8 a.m. - Open Meeting
Library of Virginia, 11th Street at Capitol Square, Office of
the Director, General Library Division, Richmond, Virginia.

A meeting to discuss general library matters.

Contact: Jean H. Taylor, Secretary to State Librarian,

Calendar of Events

Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Legislative and Finance Committee

November 14, 1994 - 9:30 a.m. – Open Meeting
Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia. ☒

A meeting to discuss legislative and financial matters.

Contact: Jean H. Taylor, Secretary to State Librarian, Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

November 14, 1994 - 8:30 a.m. – Open Meeting
Library of Virginia, Library Development and Networking Division, 11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to Public Library Development and the Library Board.

Contact: Jean H. Taylor, Secretary to the State Librarian, Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Publications and Cultural Affairs Committee

November 14, 1994 - 9:30 a.m. – Open Meeting
Library of Virginia, 11th Street at Capitol Square, Office of the Director of Publications and Cultural Affairs, Richmond, Virginia. ☒

A meeting to discuss matters related to publications and cultural affairs.

Contact: Jean H. Taylor, Secretary to State Librarian, Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

November 16, 1994 - 11 a.m. – Open Meeting
December 21, 1994 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting; subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the 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 1879, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

November 30, 1994 - 3 p.m. – Open Meeting
Hillsville, Virginia (location to be determined)

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission's office.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

December 12, 1994 - 9 a.m. – Open Meeting
December 13, 1994 - 9 a.m. – Open Meeting
December 14, 1994 - 9 a.m. – Open Meeting
Ashland-Hanover County area; site to be determined.

Oral presentations regarding the petition by the Town of Ashland seeking a Commission on Local Government order establishing the rights of the town to annex territory in Hanover County by ordinance pursuant to § 15.1-1058.4 of the Code of Virginia. Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission office.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

December 12, 1994 - 7:30 p.m. – Public Hearing
Ashland-Hanover County area; site to be determined.

Public hearing regarding a petition by the Town of Ashland seeking a Commission on Local Government order establishing the rights of the town to annex territory in Hanover County by ordinance pursuant to § 15.1-1058.4 of the Code of Virginia. Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission office.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508.

STATE LOTTERY BOARD

† **November 21, 1994 - 11 a.m. – Open Meeting**
Fairfax Regional Office, 8550 Arlington Boulevard, Suite 102, Fairfax, Virginia. ☒ (Interpreter for deaf provided upon request)

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 public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

VIRGINIA MANUFACTURED HOUSING BOARD

† **November 16, 1994 - 9 a.m.** – Open Meeting
Department of Housing and Community Development, Jackson Center, 501 North 2nd Street, Richmond, Virginia. § (Interpreter for the deaf provided upon request)

A regular monthly meeting.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

MARINE RESOURCES COMMISSION

† **November 22, 1994 - 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 noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

† **November 15, 1994 - 10 a.m.** – Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. §

A meeting to discuss medical assistance services and to take action on issues pertinent to the board.

Contact: Patricia A. Sykes, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958.

BOARD OF MEDICINE

Credentials Committee

† **December 10, 1994 - 8:15 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia. §

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Executive Committee

† **December 9, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1 and 2, Richmond, Virginia. § (Interpreter for the deaf provided upon request)

The committee will meet in open and closed session to review cases of files requiring administrative action, adopt amendments for approval of promulgation of regulations as presented, and act upon certain issues as presented. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Respiratory Therapy

November 16, 1994 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. § (Interpreter for the deaf provided upon request)

The board will meet to elect officers, review current regulations and to discuss any other issues which may come before the board. The chairperson will entertain public comments during the first 15 minutes of the meeting.

Calendar of Events

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† **November 18, 1994 - 9 a.m.** – Open Meeting
Eastern State Hospital, 4601 Ironbound Road, Williamsburg, Virginia. ☎

† **December 16, 1994 - 9 a.m.** – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 109 Governor St., 13th Floor, Richmond, Virginia. ☎

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **December 5, 1994 - 1 p.m.** – Open Meeting
Central Virginia Training Center, Lynchburg, Virginia. ☎

A regular monthly meeting. Agenda to be published on Monday, November 28, 1994. Agenda can be obtained by calling Jane Helfrich.

Sunday - Informal session - 4 p.m. and 7 p.m.

Monday - Informal session - 8:30 a.m.
Regular session 1 p.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ADVISORY COUNCIL

December 8, 1994 - 9 a.m. – Open Meeting
Shoney's Inn, 7007 West Broad Street, Conference Room 110, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly council meeting. Time is provided for public comment at the start of the meeting.

Contact: Kenneth Shores, PAIMI Coordinator, Department for Rights of Virginians with Disabilities, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042 or toll-free 1-800-552-3962/TDD ☎ and Voice

JOINT COMMITTEE ON PRESCRIPTIVE AUTHORITY FOR NURSE PRACTITIONERS

December 5, 1994 - 1 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 465-12-01 and VR 495-03-01. Prescriptive Authority for Nurse Practitioners

These regulations will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Corinne Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909.

BOARD OF NURSING

November 14, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Two special conference committees will conduct informal conferences in the morning. A panel of the board will conduct formal hearings in the afternoon. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

November 15, 1994 - 9 a.m. – Open Meeting
November 16, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ☎

(Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. The board will consider a draft of amendments to the Regulations Governing the Licensure of Nurse Practitioners on November 15, 1994. Public comment will be received during an open forum beginning at 11 a.m. on Tuesday, November 15.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

November 15, 1994 - 1:30 p.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter services for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 495-04-01. Public Participation Guidelines

This regulation will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Corinne Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

November 17, 1994 - 8:30 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A panel of the Board of Nursing will conduct formal hearings. If the agenda for the panel is not filled with formal hearings, two special conference committees will conduct informal conferences as time permits. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

November 29, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎

A regular board meeting.

Contact: Meredyth Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

November 29, 1994 - 9:30 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 500-01-2.1. General Regulations
VR 500-01-3. Public Participation Guidelines

These regulations will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Meredyth Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

November 21, 1994 - 8 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general board meeting. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

November 21, 1994 - 8 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Calendar of Events

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 510-01-2. Public Participation Guidelines

This regulation will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Elizabeth Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910.

November 21, 1994 - 3 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Informal conference meetings. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

† **November 15, 1994 - 10 a.m. – Open Meeting**
Holiday Inn-Crown Plaza, 601 East Main Street, Parlor 803, Lynchburg, Virginia.

† **November 30, 1994 - 10 a.m. – Open Meeting**
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia.

Informal conferences.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

VIRGINIA POLYGRAPH EXAMINERS ADVISORY BOARD

November 29, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting for discussing regulations, Executive Order 15(94), the examination and other routine business matters. A public comment period will be scheduled

during the meeting. No public comment will be accepted after that period. However, the meeting is open to the public. Any person who needs any accommodations in order to participate in the meeting should contact Nancy Taylor Feldman at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Nancy Taylor Feldman, Assistant Director, Virginia Polygraph Examiners Advisory Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

VIRGINIA POLLUTION PREVENTION ADVISORY COMMITTEE

November 15, 1994 - 2 p.m. – Open Meeting
Department of Environmental Quality, 629 East Main Street, 1st Floor, Richmond, Virginia. ☒

The committee will hold its quarterly meeting. The Advisory Committee has been established to assist the Department of Environmental Quality in its implementation of voluntary pollution prevention technical assistance throughout the Commonwealth.

Contact: Sharon K. Baxter, Pollution Prevention Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4344 or (804) 762-4021/TDD ☎

BOARD OF PROFESSIONAL COUNSELORS

† **December 2, 1994 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A meeting to consider committee reports, conduct regulatory review, act on correspondence and any other matters under the jurisdiction of the board to include a public hearing to receive comments on the following regulations at 9:30 a.m.: VR 560-01-01, Public Participation Guidelines, and VR 560-01-03, Substance Abuse Counselor Certification. A half-hour public comment period will begin at 9 a.m.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

December 2, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 560-01-01. Public Participation Guidelines
VR 560-01-03. Substance Abuse Counselor Certification

These regulations will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

NOTE: CHANGE IN PUBLIC HEARING DATE
November 30, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

December 19, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to amend regulations entitled: **VR 190-01-1:1. Regulations Governing Employment Agencies.** The purpose of the proposed amendments is to establish the requirements for licensure of employment agencies, employment agency controlling persons and employment agency counselors, including a fee adjustment.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-1302.1 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

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NOTE: CHANGE IN PUBLIC HEARING DATE
November 29, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 4A, Richmond, Virginia.

December 19, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to

amend regulations entitled: **VR 190-03-1. Regulations Governing Polygraph Examiners.** The amendments clarify the qualifications for licensure and licensure by reciprocity, establish a waiver of internship requirement, provide information regarding examination, simplify procedures for renewal and reinstatement of licenses, and establish criteria for approval of polygraph schools. The most substantive change is the increase in fees for polygraph licenses, intern registrations, examination, and renewal and reinstatement fees as needed in accordance with § 54.1-113 of the Code of Virginia. All other amendments are for clarity, simplicity, and readability.

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

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

Board for Professional and Occupational Regulation

November 21, 1994 - 2 p.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

A regular quarterly meeting. Agenda items include discussion of locksmith study and recommendations to the General Assembly and Governor, and discussion of regulation review.

Contact: Joyce K. Brown, Secretary to the Board, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2717 or (804) 367-9753/TDD

BOARD OF PSYCHOLOGY

December 6, 1994 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 565-01-1:1. Public Participation Guidelines .

Each regulation will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Calendar of Events

Contact: Evelyn Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913.

REAL ESTATE APPRAISER BOARD

† **November 29, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct a Cut Score Study for the state Real Estate Appraiser examination.

Contact: George O. Bridewell, Examination Administrator, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

Complaints Committee

November 16, 1994 - 10 a.m. – Open Meeting
December 6, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to review complaints prior to the board meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

† **November 15, 1994 - 9 a.m.** – Open Meeting
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia.

The board is conducting informal fact-finding conferences pursuant to the Administrative Process Act in order for the Real Estate Board to make case decisions.

Contact: Stacie Camden, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2393.

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December 5, 1994 – Written comments may be submitted

until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **VR 585-01-1. Real Estate Board Regulations.** The proposed amendments differentiate between sales and leasing practices, eliminate rental location agent regulations, allow use of professional names, clarify other existing regulations, and adjust fees.

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

STATE REHABILITATION ADVISORY COUNCIL

November 14, 1994 - 10 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A regular quarterly meeting.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD ☎ and Voice or (804) 662-9040/TDD ☎

BOARD OF REHABILITATIVE SERVICES

December 1, 1994 - 10 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly business meeting.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice ☎ or (804) 662-9040/TDD ☎

VIRGINIA RESOURCES AUTHORITY

December 13, 1994 - 9:30 a.m. – Open Meeting
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of November 8, 1994; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will

be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

BOARD OF SOCIAL WORK

† **November 18, 1994 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. Ⓢ

Informal and formal hearings to be followed by a brief business meeting regarding proposed regulations. No public comment will be received.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9914.

COMMONWEALTH TRANSPORTATION BOARD

November 16, 1994 - 2 p.m. – Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

November 17, 1994 - 10 a.m. – Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

November 16, 1994 - 9 a.m. – Open Meeting
December 21, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. Ⓢ

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

BOARD ON VETERANS' AFFAIRS

† **November 16, 1994 - 1 p.m.** – Open Meeting
DAV Post Home, 2381 Roanoke Boulevard, Salem, Virginia. Ⓢ

A meeting to include discussion of the state veterans cemetery and other items of interest to Virginia's veterans. The public is invited to speak on items of interest to the veteran community; however, presentations should be limited to 15 minutes. Speakers are requested to register with the aide present at the meeting and should leave a copy of their remarks for the record. Service organizations should select one person to speak on behalf of the entire organization in order to give ample time to accommodate all who may wish to speak.

Contact: Beth Tonn, Secretary for the Board, Board of Veterans' Affairs, P.O. Box 809, Roanoke, VA 24004, telephone (703) 857-7104.

BOARD OF VETERINARY MEDICINE

December 7, 1994 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. Ⓢ (Interpreter for the deaf provided upon request)

Pursuant to Executive Order 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following regulations.

VR 645-01-0:1. Public Participation Guidelines

This regulation will be reviewed to ensure (i) that it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) that it is mandated or authorized by law; (iii) that it offers the least burdensome alternative and most reasonable solution; and (iv) that it is clearly written and easily understandable. Written comment may be sent to the board before December 15, 1994.

Contact: Elizabeth Carter, Executive Director, Board of

Calendar of Events

Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915.

VIRGINIA RACING COMMISSION

† **December 14, 1994 - 9:30 a.m.** – Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. ☒

A regular commission meeting and review of regulations.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

BOARD FOR THE VISUALLY HANDICAPPED

† **November 17, 1994 - 2 p.m.** – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A quarterly meeting to review policy and procedures of the Virginia Department for the Visually Handicapped. The board reviews and comments on the department's budget.

Contact: Mary Schellenger, Administrative Assistant, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145 or toll-free 1-800-662-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

† **December 16, 1994 - 10 a.m.** – Public Hearing
James Madison Building, 109 Governor Street, Main Floor, Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drug products to the formulary that became effective on May 1, 1994. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on December 16, 1994, will be made a part of the hearing record.

Contact: James K. Thomson, Bureau of Pharmacy, Department of Health, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **December 8, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A regular meeting.

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☒

LEGISLATIVE

VIRGINIA CODE COMMISSION

November 16, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Speaker's Conference Room, Richmond, Virginia.

A regular meeting of the commission.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

Title 15.1 Recodification Task Force

† **November 17, 1994 - 10 a.m.** – Open Meeting
† **December 15, 1994 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

A meeting to suggest changes to Title 15.1.

Contact: Michelle Browning, Executive Secretary, Division of Legislative Services, General Assembly Bldg., 910 Capitol Square, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING STATE AND FEDERAL LAW ON PRIVACY, CONFIDENTIALITY AND MANDATORY DISCLOSURE OF INFORMATION HELD OR USED BY GOVERNMENTAL AGENCIES

November 15, 1994 - 2 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of hearing recommendations. HJR 66.

Contact: Ginny Edwards, Staff Attorney, Division of

Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON YOUTH

† **December 12, 1994 - 1 p.m.** – Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia.

The commission will receive the legislative recommendations of the task forces for studies SJR 130 and HJR 260, hold a public hearing on youth-related issues, and review Commission on Youth members' other youth-related legislation.

Contact: Joyce Huey, Commission on Youth, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 14

- † ASAP Policy Board, Valley
- † Museum of Fine Arts, Virginia
 - Collections Committee
- Library Board
 - Automation and Networking Committee
 - General Library Committee
 - Legislative and Finance Committee
 - Public Library Development Committee
 - Publications and Cultural Affairs Committee
- Nursing, Board of
- Rehabilitation Advisory Council, State

November 15

- † Chesapeake Bay Local Assistance Board
 - Regulation Review Committee
- Conservation and Recreation, Board of
- Corrections, Board of
 - Correctional Services Committee
- † Health Profession, Board of
- Housing Development Authority, Virginia
- † Medical Assistance, Board of
- Nursing, Board of
- † Pharmacy, Board of
- Pollution Prevention Advisory Committee, Virginia
- Privacy, Confidentiality and Mandatory Disclosure of Information Held or Used by Governmental Agencies, Joint Subcommittee Studying State and Federal Law on
- † Real Estate Board

November 16

- † Agriculture and Consumer Services, Department of

- Virginia State Apple Board
- † Chesapeake Bay Local Assistance Board
 - Regulation Review Committee
- † Community Colleges, State Board for
- Corrections, Board of
 - Administration Committee
 - Committee on Certification Process Review
- † George Mason University
 - Board of Visitors
- Local Debt, State Council on
- † Manufactured Housing Board, Virginia
- Medicine, Board of
 - Advisory Board on Respiratory Therapy
- Nursing, Board of
- Real Estate Appraiser Board
 - Complaints Committee
- Transportation Board, Commonwealth
- Treasury Board
- † Veterans' Affairs Board, Virginia

November 17

- Audiology and Speech-Language Pathology, Board of
- Chesapeake Bay Local Assistance Board
 - Central Area Review Committee
 - Northern Area Review Committee
 - Regulation Review Committee
- † Code Commission, Virginia
 - Title 15.1 Recodification Task Force
- † Community Colleges, State Board for
- Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
- Corrections, Board of
 - Liaison Committee
- Education, Board of
- Internet Study Committee, HJR No. 76
- † Museum of Fine Arts, Virginia
 - Board of Trustees
- † Health, Department of
 - Commissioner's Waterworks Advisory Committee
- Nursing, Board of
- Transportation Board, Commonwealth
- † Visually Handicapped, Board for the

November 18

- † Building Code Technical Review Board, State
- † Chesapeake Bay Local Assistance Board
 - Regulation Review Committee
- Children's Residential Facilities, Coordinating Committee for Interdepartmental Regulation of
- † Dentistry, Board of
- Information Management, Council on
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee
- † Social Work, Board of

November 21

- † Environmental Quality, Department of
 - Technical Advisory Committee on Financial Assurance Regulations for Solid Waste Management Facilities

Calendar of Events

- † Lottery Department, State
Optometry, Board of
Professional and Occupational Regulation, Board of
- November 22**
Accountancy, Board for
Health Services Cost Review Council, Virginia
Higher Education, Commission on the Future of
† Marine Resources Commission
- November 23**
Auctioneers Board
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
- November 28**
† Elections, State Board of
- November 29**
Nursing Home Administrators, Board of
Polygraph Examiners Advisory Board, Virginia
† Real Estate Appraiser Board
- November 30**
Compensation Board
Local Government, Commission on
† Pharmacy, Board of
- December 1**
† Dentistry, Board of
Geology, Board for
Health, State Board of
† Landscape Architects, Board for
† Professional Engineers, Board for
Rehabilitative Services, Board of
- December 2**
† Air Pollution Control Board, State
† Architects, Board for
† Dentistry, Board of
Health, State Board of
Professional Counselors, Board of
- December 4**
† Forestry, Board of
- December 5**
Barbers, Board for
† Cosmetology, Board for
† Forestry, Board of
† Mental Health, Mental Retardation and Substance
Abuse Services, State Board of
Prescriptive Authority for Nurse Practitioners, Joint
Committee on
- December 6**
† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
Hopewell Industrial Safety Council
† Land Surveyors, Board for
Psychology, Board of
- Real Estate Appraiser Board
- Complaints Committee
- December 7**
† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Professional and Occupational Regulation, Department
of
- Recovery Fund Committee
Veterinary Medicine, Board of
- December 8**
† Contractors, Board for
Protection and Advocacy for Individuals with Mental
Illness Advisory Council
† Waste Management Facility Operators, Board for
- December 9**
† Contractors, Board for
† Dentistry, Board of
† Medicine, Board of
- Executive Committee
- December 10**
† Medicine, Board of
- Credentials Committee
- December 12**
† Contractors, Board for
† Cosmetology, Board for
Local Government, Commission on
† Youth, Commission on
- December 13**
† Emergency Planning Commission, Local - County of
Montgomery/Town of Blacksburg
Higher Education for Virginia, State Council of
Local Government, Commission on
Resources Authority, Virginia
- December 14**
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Health, Department of
- Biosolids Permit Fee Regulation Advisory
Committee
- Biosolids Use Committee
Statewide Independent Living Council
Local Government, Commission on
† Virginia Racing Commission
- December 15**
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Code Commission, Virginia
- Title 15.1 Recodification Task Force
- December 16**
† Mental Health, Mental Retardation and Substance

Calendar of Events

Abuse Services, Department of
- State Human Rights Committee

† Funeral Directors and Embalmers, Board of

December 19

† Conservation and Recreation, Department of
† Labor and Industry, Department of
- Safety and Health Codes Board

December 20

Health Services Cost Review Council, Virginia

December 21

Local Debt, State Council on
Treasury Board

December 22

Compensation Board

December 28

Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

January 3, 1995

Hopewell Industrial Safety Council

January 18

† Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels

PUBLIC HEARINGS

November 29

† Professional and Occupational Regulation, Board for

November 30

† Professional and Occupational Regulation, Board for

December 12

Local Government, Commission on

December 13

Branch Pilots, Board for

December 16

† Voluntary Formulary Board, Virginia

December 19

† Conservation and Recreation, Department of
- Board of Conservation and Recreation

January 10, 1995

Calendar of Events
