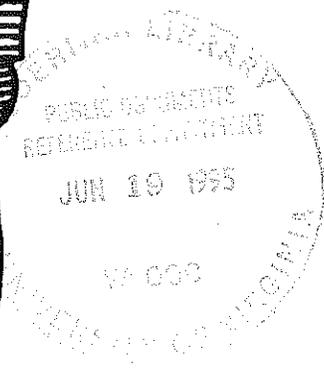
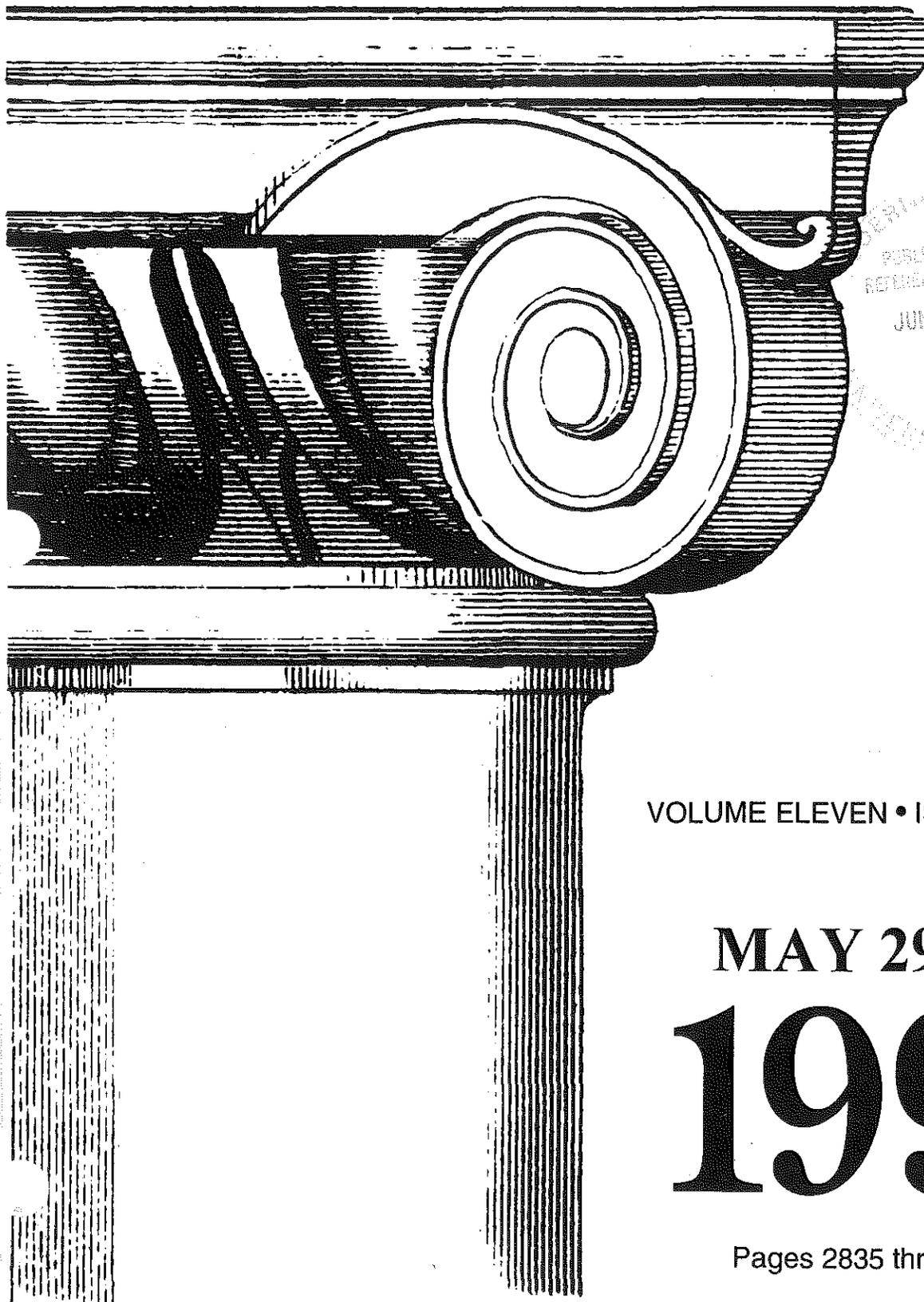


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THE VIRGINIA REGISTER

OF REGULATIONS

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MAY 29, 1995

1995

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THE VIRGINIA REGISTER INFORMATION PAGE

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, is 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 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 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-month duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

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

STATEMENT

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

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PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

BOARD OF PROFESSIONAL COUNSELORS

June 8, 1995 - 9 a.m. -- Public Hearing
Koger Center, 8004 Franklin Farms Drive, Lee Building, 1st Floor, Room 101, Richmond, Virginia.

July 28, 1995 -- Public 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 Professional Counselors intends to adopt regulations entitled: **VR 560-01-04, Regulations Governing the Certification of Rehabilitation Providers.** New regulations governing the certification of rehabilitation providers are proposed by the Board of Professional Counselors to provide for (i) fees to cover the application processing (\$100) and annual certification review (\$50); and (ii) standards of practice that establish guidelines for professional conduct, grounds for disciplinary action for misconduct, and reinstatement procedures following denial of certification or disciplinary action.

Statutory Authority: §§ 54.1-2400 and 54.1-3514 of the Code of Virginia.

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 TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

July 12, 1995 - 4:30 p.m. -- Public Hearing
Bluefield Rescue Squad, Bluefield, Virginia.

July 19, 1995 - 4 p.m. -- Public Hearing
Lake Taylor High School, Norfolk, Virginia.

July 31, 1995 -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled **VR 385-01-05, Hazardous Materials**

Transportation Rules and Regulations at Bridge-Tunnel Facilities, and adopt regulations entitled VR 385-01-05:1, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities. The purpose of the proposed amendment is to change the existing Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities from a regulation based on a listing of hazardous materials to a regulation based on hazard class. All hazardous material transportation restrictions are to be lifted from the two rural interstate 77 tunnels.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Contact: Perry Cogburn, Environmental Program Planner, Department of Transportation Maintenance Division, Emergency Operations Center, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 786-6824, toll-free 1-800-367-7623 or (804) 371-8498/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

June 19, 1995 - 4 p.m. -- Public Hearing
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia.

July 28, 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 Department for the Visually Handicapped intends to **repeal** regulations entitled **VR 670-01-1, Regulation Guidelines for Public Participation** and **adopt** regulations entitled: **VR 670-01-100, Public Participation Guidelines.** VR 670-01-1 is being repealed so that the department can adopt new public participation regulations that meet the requirements of the Administrative Process Act, as amended in 1993. VR 670-01-100 provides guidelines for involving the public in the development and promulgation of regulations of the Department for the Visually Handicapped. With it, the department will comply with the public participation requirements of the Administrative Process Act, as amended in 1993. These

Public Comment Periods - Proposed Regulations

guidelines do not apply to regulations that are exempt or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Contact: Glen R. Slonneger, Program Director, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

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

Title of Regulation: VR 400-02-0001. Rules and Regulations for Multi-Family Housing Developments.

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

Summary:

The proposed amendments to the authority's rules and regulations for multi-family housing developments will conform the regulations to House Bill 1744 approved by the General Assembly and signed by the Governor (Chapter 215 of the 1995 Acts of Assembly), by substituting the executive director for the Board of Commissioners in making the finding required by subsection B of § 36-55.39 of the Code of Virginia regarding the 60-day notice provisions to local authorities involving multi-family loans.

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

§ 1. Purpose and applicability.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent financing of multi-family housing developments (including any such developments to be owned and operated on a cooperative basis) intended for occupancy by persons and families of low and moderate income ("development" or "developments"). These rules and regulations shall be applicable to the making of such mortgage loans directly by the authority to mortgagors, the purchase of such mortgage loans, the participation by the authority in such mortgage loans with mortgage lenders and any other manner of financing of such mortgage loans under the Act. These rules and regulations shall not, however, apply to any developments which are subject to any other rules and regulations adopted by the authority. If any mortgage loan is to provide either the construction or permanent financing (but not both) of a development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. If any development is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision. Furthermore, if the mortgage loan on any development is to be insured by the federal government, the provisions of these rules and regulations

shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. Developments shall include housing intended to be owned and operated on a cooperative basis. The term "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriated by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the initial closing documents as described in § 6 of these rules and regulations.

These rules and regulations are intended to provide a general description of the authority's processing requirements and not intended to include all actions involved or required in the processing and administration of mortgage loans under the authority's multi-family housing programs. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time with respect to any particular development or developments or any multi-family housing program or programs.

§ 2. Income limits and general restrictions.

Under the authority's rules and regulations, to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined therein) greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November 15, 1991, seven times the annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the authority's rules and regulations authorize its board to establish from time to time by resolution and by rules and regulations lower income limits

Proposed Regulations

for initial occupancy; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. Income limits are established below in these rules and regulations in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above.

In the case of developments for which the authority has agreed to permit the mortgagor to establish and change rents without the prior approval of the authority (as described in, and subject to the provisions of, §§ 10 and 13 of these rules and regulations), at least 20% of the units in each such development shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed 80% of the area median gross income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed (i) in the case of units for which the board has approved the mortgage loan prior to November 15, 1991, 150% of such area median gross income as so determined or (ii) in the case of units for which the board has approved the mortgage loan on or after November 15, 1991, 115% of such area median gross income as so determined. The income limits applicable to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy shall be as set forth in (i) or (ii), as applicable, in the preceding sentence (or, in the case of units described in (i) in the preceding sentence, such lesser income limit equal to seven times the annual rent, including utilities except telephone, applicable to such dwelling units).

The board may establish, in the resolution authorizing any mortgage loan to finance a development under these rules and regulations, income limits lower than those provided herein or in the authority's rules and regulations for the occupants of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof hereunder and under the authority's rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act; (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such developments; (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto; and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

§ 3. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance development intended for occupancy by persons and families of low and moderate income. The term of the mortgage loan shall be equal to (i) if the mortgage loan is to finance the construction of the proposed development, the period determined by the executive director to be necessary to: (1) complete construction of the development, (2) achieve sufficient occupancy to support the development and (3) consummate the final closing of the mortgage loan; plus (ii) if the mortgage loan is to finance the ownership and operation of the proposed development, an amortization period set forth in the mortgage loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any federal insurance, assistance or subsidy.

Mortgage loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the mortgage loan commitment or such percentage of the housing development costs of the development as is established in such commitment, but in no event to exceed 95%; and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the minimum principal amount specified in the mortgage loan commitment or such percentage of the housing development costs of the development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the mortgage loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed, the economic feasibility and marketability of the proposed development at the rents necessary to pay the debt service on the mortgage loan and the operating expenses of the proposed development, and the income levels of the persons and families who would be able to afford to pay such rents.

The categories of cost which shall be allowable by the authority in the acquisition and construction of a development financed under these rules and regulations shall include the following: (i) construction costs, including equipment, labor and materials furnished by the mortgagor, contractor or subcontractors, general requirements for job supervision, an

allowance for office overhead of the contractor, building permit, bonds and letters of credit to assure completion, water, sewer and other utility fees, and a contractor's profit or a profit and risk allowance in lieu thereof; (ii) architectural and engineering fees; (iii) interest on the mortgage loan; (iv) real estate taxes, hazard insurance premiums and mortgage insurance premiums; (v) title and recording expenses; (vi) surveys; (vii) test borings; (viii) the authority's processing fees and financing fees; (ix) legal and accounting expenses; (x) in the case of a nonprofit housing sponsor, organization and sponsor expenses, consultant fees, and a reserve to make the development operational; (xi) off-site costs; (xii) the cost or fair market value of the land and any improvements thereon to be used in the development; (xiii) tenant relocation costs; (xiv) operating reserves to be funded from proceeds of the mortgage loan; and (xv) such other categories of costs which the executive director shall determine to be reasonable and necessary for the acquisition and construction of the development. The extent to which costs in any of such categories shall be allowable in respect of a specific development and includable in the housing development costs thereof as determined by the authority at final closing shall be governed by the terms of the authority's cost certification guide for mortgagors, contractors and certified public accountants (the "cost certification guide"). The executive director is authorized to prepare and from time to time revise the cost certification guide. Copies of such guide shall be available upon request. Upon completion of the acquisition and construction of the development, the total of the housing development costs shall be certified to the authority in accordance with these rules and regulations and the cost certification guide, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the mortgage loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and terms of the deed of trust note. The authority shall charge a processing fee and a financing fee in such amounts as the executive director determines to be reasonable. Such fees shall be payable at such times as required by the executive director.

§ 4. Application and acceptance for processing.

Application for a mortgage loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant ;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated construction and financing costs; and
5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.
2. Subject to further review and evaluation by the authority's staff under § 5 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.
3. Subject to further review and evaluation by the authority's staff under § 5 of these rules and regulations, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.
4. The applicant has the experience, ability and financial capacity necessary to carry out its responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.
5. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

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6. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 5 of these rules and regulations and that the proposed development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these rules and regulations and without unreasonable delay, interruptions or expense.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and shall present his recommendation to the board. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board that the application be approved and that the mortgage loan and issuance of the commitment therefor be authorized subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to the further review in § 5 of these rules and regulations and such terms and conditions as the board shall require in such resolution.

A resolution authorizing a mortgage loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with § 8 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with § 8 of these rules and regulations.

A mortgage loan shall not be authorized by the board unless the board by resolution shall make the applicable findings required by *subsection A of § 36-55.39 of the Code of Virginia*; ~~provided, however, that~~ . The board, *however*, may in its discretion authorize the mortgage loan without ~~making the executive director having previously made the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board~~ *executive director* prior to the financing of the mortgage loan.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed

development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

§ 5. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including, without limitation, any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current.

If not previously obtained, an appraisal of the land and any improvements to be retained and used as a part of the development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected or approved by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the application, the documents and information received or obtained pursuant to § 4 and this § 5. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;
2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;
3. A review of the management, marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;
4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor; and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units; the amenities and facilities to be provided to the proposed residents; and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall approve the issuance of a mortgage loan commitment to the applicant with respect to the proposed development only if he determines that all of the following criteria have been satisfied:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or economic feasibility.
2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.
3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any environmental or other defects which would have a materially adverse effect on such construction and operation.
4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.
5. The design of the proposed development will contribute to the marketability of the proposed development; make use of materials to reduce energy and maintenance costs; provide for a proper mix of units for the residents intended to be benefited by the authority's program; provide for units with adequate, well-designed space; include equipment and facilities customarily used or enjoyed in the area by the contemplated residents; and will otherwise provide a safe, habitable and pleasant living environment for such residents.
6. Based on the data and information received or obtained pursuant to this § 5, no material adverse change has occurred with respect to compliance with the criteria set forth in § 4 of these rules and regulations.

7. The applicant's estimates of housing development costs: (i) include all costs necessary for the development and construction of the proposed development; (ii) are reasonable in amount; (iii) are based upon valid data and information; and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Subject to review by the authority at final closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the authority's cost certification guide or under such other requirements as shall be agreed to by the authority.

9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

10. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

11. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include: (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space; and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such income received on similar developments.

12. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

13. The units will be occupied by persons and families intended to be served by the proposed development and qualified hereunder and under the Act, the authority's rules and regulations, and any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed

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development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other required reserves and escrows) within the usual and customary time for a development for its size, nature, location and type, and without any delay in the commencement of amortization; and (ii) will continue to be self-sufficient for the full term of the mortgage loan.

14. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with item 13 above.

15. The plans and specifications or other description of the work to be performed shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 5.

16. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

17. The management plan includes such management procedures and requirements as are necessary for the proper and successful operations, maintenance and management of the proposed development in accordance with these rules and regulations.

18. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken such that: (i) the dwelling units in the proposed development will be occupied in accordance with item 13 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development; (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin; and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures to be applied by the mortgagor in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

19. In the case of any development to be insured or otherwise assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

20. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the proposed development; and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

21. The prerequisites necessary for the members of the applicant's development team to acquire, own, construct or rehabilitate, operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval; (ii) proper zoning status; (iii) assurances of the availability of the requisite public utilities; (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development; (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia; (vi) building permits; and (vii) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed development).

22. The proposed development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

23. The proposed development will provide valid and sound security for the authority's mortgage loan and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion approve the issuance of a commitment, subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The term of the mortgage loan, the amortization period, the estimated housing development costs, the principal amount of the mortgage loan, the terms and conditions applicable to any equity contribution by the applicants, any assurances of successful completion and operational stability of the proposed development, and other terms and conditions of

such mortgage loan shall be set forth in the commitment issued on behalf of the authority. The commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed development, the marketing and occupancy of the proposed development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the mortgage loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed development. Such commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the proposed development and a schedule of the estimated housing development costs.

If the executive director determines not to issue a commitment, he shall so notify the applicant.

§ 6. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the initial closing of the mortgage loan shall be held. At this closing, the initial closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the processing and financing fees, will make any initial equity investment required by the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of mortgage loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents.

Prior to the initial closing of the mortgage loan, the executive director shall make the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia.

The actual interest rate on the mortgage loan shall be established by the executive director prior to or at the time of the execution of the deed of trust note at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 7. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of mortgage loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of mortgage loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 8. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion. Upon such final completion of the development, the mortgagor, general contractor, and any other parties required to do so by the initial closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the authority's cost certification guide or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents in order to attain final completion, make the final disbursement of mortgage loan proceeds, obtain any federal insurance, subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the initial closing documents:

1. The total development costs, the final mortgage loan amount, the balance of mortgage loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;
2. The date for commencement and termination of the monthly amortization payments of principal and interest, the amount of such monthly amortization payments, and the amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and
3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

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Unless otherwise agreed to by the authority, the mortgagor and contractor shall, within such period of time as is specified in the authority's cost certification guide, submit supplemental cost certifications, and the authority shall have the right to make such adjustments to the foregoing determinations as it shall deem appropriate as a result of its review of such supplemental cost certification.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the development as finally determined by the authority and the final principal amount of the mortgage loan as to such development. If the mortgage loan commitment and initial closing documents so provide and subject to such terms and conditions as shall be set forth therein, the equity shall be adjusted subsequent to final closing to an amount equal to the difference, as of the date of adjustment, between the fair market value of the development and the outstanding principal balance of the mortgage loan.

§ 9. Mortgage loan increases.

The authority may consider and, where appropriate, approve a mortgage loan increase if determined by the authority to be in its best interests in protecting its security for the mortgage loan. Any such mortgage loan increase shall require the approval of the board and shall be subject to such terms and conditions as the board or the executive director may require. Nothing contained in this § 9 shall impose any duty or obligation on the authority to increase any mortgage loan, as the decision as to whether to grant a mortgage loan increase shall be within the sole and absolute discretion of the authority.

§ 10. Operation, management and marketing.

The development shall be subject to a regulatory agreement entered into at initial closing between the authority and the mortgagor. Such regulatory agreement shall govern the rents, operating budget, occupancy, marketing, management, maintenance, operation, use and disposition of the development and the activities and operation of the mortgagor, as well as the amount of assets or income of the development which may be distributed to the mortgagor. The mortgagor shall execute such other documents with regard to the regulation of the development and the mortgagor as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

Except as otherwise agreed by the authority pursuant to § 13 hereof, only rents established or approved on behalf of the authority pursuant to the regulatory agreement may be charged for dwelling units in the development. Notwithstanding the foregoing, in the case of any developments financed subsequent to January 1, 1986, the authority may agree with the mortgagor that the rents may be established and changed by the mortgagor without the prior approval of the authority, subject to such restrictions in the regulatory agreement as the authority shall deem necessary to assure that the rents shall be affordable to persons and families intended to be served by the development and subject to compliance by the mortgagor with the provisions in § 2 of these rules and regulations.

The mortgagor shall lease the units in the development only to persons and families who are eligible for occupancy thereof as described in § 2 of these rules and regulations. The mortgagor shall comply with the provisions of the authority's rules and regulations regarding: (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the development; and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the development.

In selecting eligible residents, the mortgagor shall comply with the tenant selection plan approved by the authority pursuant to § 5 of these rules and regulations.

The management of the development shall also be subject to a management agreement entered into at initial closing between the mortgagor and its management agent, or where the mortgagor and the management agent are the same entity, between the authority and the mortgagor. Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The mortgagor and its management agent (if any) shall manage the development in accordance with the Act, these rules and regulations, the regulatory agreement, the management agreement, and the management plan approved by the authority.

The authority shall have the power to supervise the mortgagor and the development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the initial closing documents or other agreements relating to the mortgage loans. The authority shall have the right to inspect the development, conduct audits of all books and records of the development and to require such reports as the authority deems reasonable to assure compliance with this section.

§ 11. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 11 shall apply only to transfers of ownership to be made subject to the authority's deed of trust and regulatory agreement. Such provisions shall not be applicable to transfers of ownership of developments subject to FHA mortgage insurance, it being the policy of the authority to consent to any such transfer approved by FHA and permitted by the Act and applicable note or bond resolutions.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include: (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the mortgage loan or; (ii) any sale, transfer, assignment or

substitution of limited partnership interests which in any 12 month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean: (i) in the case of a transfer of a partnership interest, the owner of the development as proposed to be restructured by such transfer; and (ii) in the case of a transfer of the development, the entity which proposes to acquire the development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain, to the extent applicable or requested by the authority, (i) a detailed description of the terms of the transfer; (ii) all documentation to be executed in connection with the transfer; (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity); (iv) an analysis of the current physical and financial condition of the development, including a current audited financial report for the development; (v) information regarding the experience and ability of any proposed management agent; and (vi) any other information and documents relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the development in a manner satisfactory to the authority.
2. The development's physical and financial condition must be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:
 - a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
 - b. The addition of any improvements to the development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the development, will reduce the costs of operating or maintaining the development, will benefit the residents or otherwise improve the liveability of the development, or will improve the financial strength and stability of the development;
 - c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;
 - d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the development; and
 - e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the development on its behalf must have the experience and ability necessary to manage the development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

If the development is subsidized or otherwise assisted by the U.S. Department of Housing and Urban Development or any successor entity ("HUD"), the approval by HUD may be required. Any and all documentation required by HUD must be submitted by the proposed ownership entity in conjunction with its request.

C. The authority may charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee, if any, is to be paid at the closing.

D. The amount and terms of any secondary financing (i.e., any portion of the purchase price is to be paid after closing of the transfer of ownership) shall be subject to the review and approval of the authority. Secondary financing which would require a lien on the development may be prohibited by the authority's bond resolution and, if so prohibited, will not be permitted or approved. The authority will not provide a mortgage loan increase or other financing in connection with the transfer of ownership. The authority will also not approve a rent increase in order to provide funds for the repayment of any secondary financing. Cash flow (other than dividend distributions) shall not be used to repay the secondary financing. Any proposed secondary financing must not, in the determination of the authority, have any material adverse effect on the operation and management of the development, the security of the mortgage loan, the interests of the authority as lender, or the fulfillment of the authority's public purpose under the Act. The authority may impose such conditions and restrictions (including, without limitation, requirements as to sources of payment for the secondary financing and limitations on the remedies which may be exercised upon a nonpayment of the secondary financing) with respect to the secondary financing as it may deem necessary or appropriate to prevent the occurrence of any such adverse effect.

E. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the mortgage loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the development.

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At the closing of the transfer of the ownership from a nonprofit owner to a for-profit owner, the total development cost and the equity of a proposed for-profit owner shall be determined by the authority. The resolution of the board approving the transfer of ownership shall include a determination of the maximum annual rate, if any, at which distributions may be made by the proposed for-profit owner pursuant to these rules and regulations. The proposed for-profit owner shall execute and deliver such agreements and documents as the authority may require in order to incorporate the then existing policies, requirements and procedures relating to developments owned by for-profit owners. The role of the nonprofit owner in the ownership, operation and management of the development subsequent to the transfer of ownership shall be subject to the review and approval of the authority. The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

F. A request for transfer of ownership shall be reviewed by the executive director. If the executive director determines to recommend approval thereof, he shall present his analysis and recommendation to the board. The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the request and authorize the executive director to consent thereto, subject to such terms and conditions as the board shall require in such resolution.

Notwithstanding the foregoing, if any proposed transfer is determined by the executive director to be insubstantial in effect and to have no material detrimental effect on the operation and management of the development or the authority's interest therein as lender, such transfer may be approved by him without approval of the board.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the resolution of the board or by the executive director. The partnership agreement of the proposed ownership entity shall be subject to review by the authority and shall contain such terms and conditions as the authority may require.

The authority may require that the proposed ownership entity execute the then current forms of the authority's mortgage loan documents in substitution of the existing mortgage loan documents and/or to execute such amendments to the existing mortgage loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate

by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the development.

In the case of a development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the development and/or to protect the authority's interest as lender.

§ 12. Prepayments.

It shall be the policy of the authority that no prepayment of a mortgage loan shall be made without its prior written consent for such period of time set forth in the note evidencing the mortgage loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may prohibit the prepayment of mortgage loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following: (i) the proposed use of the development subsequent to prepayment; (ii) any actual or potential termination or reduction of any federal subsidy or other assistance; (iii) the current and future need and demand for low and moderate housing in the market area of the development; (iv) the financial and physical condition of the development; (v) the financial effect of prepayment on the authority and the notes or bonds issued to finance the development; and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 12 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies. The provisions of this § 12 shall be subject to modification pursuant to § 13 hereof.

§ 13. Modification of regulatory controls and mortgage loan.

If the executive director determines that (i) the mortgagor of any development is not receiving a sufficient financial return from the operation thereof as a result of a reduction in the amount of federal tax benefits available to the development (generally, at least 10 years, in the case of new construction, or five years, in the case of substantial rehabilitation, after the date of initial occupancy), (ii) the reserves of such development are and, after any action taken pursuant to this section, will continue to be adequate to assure its proper operation and maintenance and (iii) the rental and other income is and, after any action taken pursuant to this section, will continue to be sufficient to pay the debt service on the mortgage loan and the operating expenses of the development (including required payments to reserve accounts), then he may agree to one or more of the following modifications to the regulatory controls of the authority:

1. Rents may be thereafter established and changed by the mortgagor without the prior approval of the authority, subject to (i) such restrictions as he shall deem necessary to assure that the rents shall be affordable to persons and families to be served by the development, (ii) compliance by the mortgagor with the provisions in § 2 of these rules and regulations, and (iii) such limitations on rent increases to existing residents as he shall deem necessary to prevent undue financial hardship to such residents;
2. Subject to prior approval by the board, any limitation on annual dividend distributions may be increased or eliminated, as determined by him to be necessary to provide an adequate financial return to the mortgagor without adversely affecting the financial strength or proper operation and maintenance of the development; and
3. The mortgagor may be given the right to prepay the mortgage loan on the date 20 years after the date of substantial completion of the development as determined by the executive director (or such later date as shall be necessary to assure compliance with federal laws and regulations governing the tax exemption of the notes or bonds issued to finance the mortgage loan), provided that the mortgagor shall be required to pay a prepayment fee in an amount described in § 12 of these rules and regulations, and provided further that such right to prepay shall be granted only if the prepayment pursuant thereto would not, in the determination of the executive director, result in a reduction in the amount or term of any federal subsidy or assistance for the development. The executive director may require that the mortgagor grant to the authority (i) a right of first refusal upon a proposed sale of the development which would result in an exercise by the mortgagor of its right, as described above, to prepay the mortgage loan and (ii) an option to purchase the development upon an election by the mortgagor otherwise to exercise its right, as described above, to prepay the mortgage loan, which right of first refusal and option to purchase shall be effective for such period of time and shall be subject to

such terms and conditions as the executive director shall require.

The foregoing modifications shall be made only to the extent permissible under and consistent with applicable federal laws and regulations and any agreements governing federal subsidy, assistance or mortgage insurance.

Upon a determination by the executive director as described in (i), (ii) and (iii) above in this section, the authority may also approve an increase in the principal amount of its mortgage loan or a restructuring of such mortgage loan (such as a modification of the mortgage loan by conversion thereof into an obligation guaranteed by a federal agency or instrumentality), subject to such terms and conditions as the authority may require, including (but not limited to) one or more of the following:

1. Compliance with the conditions and limitations in the Act and the authority's rules and regulations and with any applicable federal law and regulations and any agreements governing federal subsidy, assistance or mortgage insurance;
2. The ability of the authority to sell bonds to finance any mortgage loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only if any such mortgage loan increase is to be financed by the authority from proceeds of its bonds);
3. A determination by the authority that the rents shall remain affordable to persons and families of low and moderate income to be served by the development and that the mortgage loan increase or restructuring and any increase in debt service will have no material adverse effect on the financial security of its mortgage loan or proper operation and maintenance of the development;
4. If the development receives federal subsidy or assistance or is subject to federal mortgage insurance, assurances satisfactory to the authority that such mortgage loan increase or restructuring and any increase in debt service are permissible under applicable federal law and regulations and will not adversely affect the term or amount of any federal subsidy or assistance or the coverage of any mortgage insurance and that any federal subsidy or assistance may be applied to pay any increase in debt service;
5. Such terms and conditions as the authority shall require in order to protect the security of its mortgage loan; to reimburse the authority for costs and expenses that may result from such mortgage loan increase or restructuring; to comply with covenants and agreements with, and otherwise to protect the interests of, the holders of its bonds issued to finance the mortgage loan or any increase thereof; and to carry out its public purpose.

Upon a determination as described in (i), (ii) and (iii) above in this section, the executive director may also approve a release of moneys held in the reserve funds of the development in such amount as he shall determine to be in excess of the amount required to assure the proper operation and maintenance of the development.

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The executive director may require that all or a portion of the proceeds from any increase or restructuring of the mortgage loan or from any release of reserve funds be applied, in such manner and amount and on such terms and conditions as he shall deem necessary or appropriate, for improvements to the development or for providing additional housing for persons and families of low and moderate income.

The authorizations in this section for modifications of regulatory reserve funds shall be cumulative and shall not be exclusive of each other. Accordingly, the authority, in its discretion, may elect to exercise for any development one or more or all of such authorizations.

VA.R. Doc. No. R95-506, Filed May 10, 1995, 10:20 a.m.

Title of Regulation: VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

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

Summary:

The proposed amendments to the authority's rules and regulations for multi-family housing developments for mentally disabled persons will conform the regulations to House Bill 1744 approved by the General Assembly and signed by the Governor (Chapter 215 of the 1995 Acts of Assembly), by substituting the executive director for the Board of Commissioners in making the finding required by subsection B of § 36-55.39 of the Code of Virginia regarding the 60-day notice provisions to local authorities involving multi-family loans.

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

§ 1. Definitions.

"Closing" means the time of execution by the mortgagor of the documents evidencing the M/D loan, including the deed of trust note, deed of trust and other documents required by the authority. (In the case of a construction loan, "closing" means the initial closing of the M/D loan.)

"Construction" means construction of new structures and the rehabilitation, preservation or improvement of existing structures.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia.

"Final closing" means, for a construction loan, the time of final disbursement of the M/D loan proceeds after satisfaction by the mortgagor of all of the authority's requirements therefor.

"M/D development" means a multi-family housing development intended for occupancy by persons of low and moderate income who are mentally disabled.

"M/D loan" means a mortgage loan made by the authority to finance the development, construction, rehabilitation and/or the ownership and operation of an M/D development.

"Seed loan" means a mortgage loan made by the authority to finance preconstruction or other related costs approved by the authority and the financing of which by the authority is determined by the authority to be necessary to the mortgagor's ability to obtain an M/D loan for the construction of an M/D development.

§ 2. Purpose and applicability.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent financing of M/D developments. These rules and regulations shall be applicable to the making of such M/D loans directly by the authority to mortgagors, the purchase of such M/D loans, the participation by the authority in such M/D loans with mortgage lenders and any other manner of financing of such M/D loans under the Act. These rules and regulations shall not, however, apply to any M/D developments which are subject to any other rules and regulations adopted by the authority. If any M/D loan is to provide either the construction or permanent financing (but not both) of an M/D development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. In addition, notwithstanding the foregoing, the executive director may, in his discretion, determine that any M/D loan should be processed under the authority's Rules and Regulations for Multi-Family Housing Developments, whereupon the application for such M/D loan and any other information related thereto shall be transferred to the authority's multi-family division for processing under the aforementioned multi-family rules and regulations.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any M/D development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 7 of these rules and regulations.

These rules and regulations are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of M/D loans under the authority's multi-family housing programs for M/D developments. These rules and regulations are subject to

change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time with respect to any particular development or developments or any multi-family housing program or programs for M/D developments.

§ 3. Income limits and general restrictions.

The amounts payable, if any, by persons occupying M/D developments are deemed not to be rent. As a result, the authority's income limit set forth under its rules and regulations limiting a person's or family's adjusted family income to an amount not greater than seven times the total annual rent is inapplicable. In accordance with the authority's rules and regulations, the income limits for persons occupying such developments shall be as follows: All units of each M/D development, with the sole exception of those units occupied by an employee or agent of the mortgagor, shall be occupied or held available for occupancy by persons who are mentally disabled and who have adjusted family incomes (as defined in the authority's rules and regulations and as determined at the time of their initial occupancy of such units and at the time of reexamination and redetermination of such persons' adjusted family incomes and eligibility subsequent to their initial occupancy of such units) which do not exceed (i) in the case of units in a M/D development for which the board approved the mortgage loan prior to November 15, 1991, 150% of the applicable area median gross income as determined by the authority and (ii) in the case of units in a M/D development for which the board approved the mortgage loan on or after November 15, 1991, 115% of the applicable area median gross income as determined by the authority.

The board may establish, in the resolution authorizing any mortgage loan to finance an M/D development under these rules and regulations, income limits lower than those provided herein for the occupants of the units in such M/D development.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, the occupancy of the M/D development shall comply with such limitations, and the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the M/D development shall be computed, for the purpose of determining eligibility for occupancy thereof under these rules and regulations in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all M/D developments and the processing thereof under the terms hereof must comply with (i) the Act and the authority's rules and regulations, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such M/D developments, and (iii) the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the M/D developments. Copies of the authority's applicable note and bond resolutions, if any, are available upon request.

§ 4. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance M/D developments. The term of the mortgage loan shall be equal to (i) if the M/D loan is to finance the construction of the proposed M/D development, the period determined by the executive director to be necessary to: (1) complete construction of the M/D development, and (2) consummate the final closing of the M/D loan; plus (ii) if the M/D loan is to finance the ownership and operation of the proposed M/D development, an amortization period set forth in the M/D loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any assistance or subsidy.

M/D loans may be made to (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 95% of the fair market value of the property as determined by the authority) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 100% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is the Commonwealth of Virginia or any agency or instrumentality thereof, and which shall in no event exceed 95% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is not the Commonwealth of Virginia or an agency or instrumentality thereof) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the M/D loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the M/D loan and the fulfillment of its public purpose. Such factors may include the economic feasibility of the proposed M/D development in terms of its ability to pay the projected debt service on the M/D loan and the projected operating expenses of the proposed M/D development.

The categories of cost which shall be allowable by the authority in the acquisition and construction of an M/D development financed under these rules and regulations shall include all reasonable, ordinary and necessary costs and expenses (including, without limitations, those categories of costs set forth in the authority's rules and regulations for multi-family housing developments) which are incurred by the mortgagor in the acquisition and construction of the M/D development. Upon completion of the acquisition and construction of the M/D development, the total of housing development costs shall be certified to the authority in accordance with these rules and regulations, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive

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director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a processing fee and a financing fee in such amounts as the executive director determines to be reasonable. Such fees shall be payable at such times as required by the executive director.

§ 5. Application and acceptance for processing.

Application for an M/D loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to, a determination by DMHMRSAS on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed necessary by DMHMRSAS for the success of a housing development intended for occupancy by persons of low and moderate income who are mentally disabled, (ii) that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled, and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMRSAS for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMRSAS relied in making its determination must be included).

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed M/D development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed M/D development;
4. A preliminary review of the estimated operating expenses and income (including any estimated subsidy or assistance) and a preliminary evaluation of the adequacy of the estimated income to sustain the proposed M/D development based upon the assumed

occupancy rate and estimated construction and financing costs; and

5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based upon the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed M/D developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.
2. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.
3. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to sustain the operation of the proposed M/D development.
4. The applicant has the experience, ability and financial capacity necessary to carry out its responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.
5. The proposed M/D development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary housing for low and moderate income persons and families who cannot otherwise afford such housing in the market area of the proposed M/D development.
6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.
7. It appears that the proposed M/D development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these rules and regulations and that the proposed M/D development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these rules and regulations and without unreasonable delay, interruptions or expense.

The executive director's determinations with respect to the above criteria shall be based only on the documents and

information obtained by him at the time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and he shall present his recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that the M/D loan and issuance of the commitment therefor be authorized subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize issuance of a commitment therefor, subject to the further review in § 6 of these rules and regulations and such terms and conditions as the board shall require in such resolution.

A resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 9 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

An M/D loan shall not be authorized by the board unless the board by resolution shall make the applicable findings required by *subsection A of § 36-55.39* of the Code of Virginia; ~~provided, however, that~~ . The board, *however*, may in its discretion authorize the M/D loan without making the *executive director having previously made* the finding, if applicable, required by *subsection B of § 36-55.39* of the Code of Virginia, subject to the condition that such finding be made by the ~~board~~ *executive director* prior to the financing of the M/D loan. For the purposes of satisfying *subsection B* of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary and appropriate. If any proposed MD development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with regard thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

The executive director is authorized to make allocations of funds for M/D Loans to various types of housing sponsors and developments as he deems necessary or desirable to promote and accomplish the purposes set forth herein and in

the Act. Any such allocation of funds may be made based upon such conditions as the executive director may require, including without limitation, one or both of the following: (i) DMHMRSAS agrees, subject to terms and limitations acceptable to the authority, to provide funds for the developments in an amount sufficient to pay the operating costs thereof, including debt service with respect to the M/D Loan or loans applicable thereto; and (ii) the authority shall be able to finance the developments by the issuance of bonds in such amount and under such terms and conditions as the authority deems satisfactory.

§ 6. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed M/D development, including, without limitation, any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current.

If not previously obtained, an appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected or approved by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the application, the documents and information received or obtained pursuant to § 5 and this § 6. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D development;
2. A review of the tenant selection plan, including its effect on the economic feasibility of the proposed development and its efficacy in carrying out the programs and policies of the authority;
3. A final review of the ability, experience and financial capacity of the applicant;
4. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities, services and facilities to be provided to the proposed residents, and the management, maintenance and

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energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall approve the issuance of a mortgage loan commitment to the applicant with respect to the proposed development only if he determines that all of the following criteria have been satisfied:

1. The vicinity of the proposed M/D development is and will continue to be a residential area suitable for the proposed M/D development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed M/D development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, and recreational facilities) in the area of the proposed M/D development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. Based on the data and information received or obtained pursuant to this § 6, no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 of these rules and regulations.

4. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

5. Subject to review by the authority, in the case of construction loans at final closing or in the case of permanent loans at closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the authority's closing documents or under such other requirements as shall be agreed to by the authority.

6. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other non-housing facilities to be included in the proposed M/D development are incidental or related to the proposed M/D development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed M/D development.

7. The estimated income from the proposed M/D development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

8. The drawings and specifications or other description of the work to be performed shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents.

9. The tenant selection plan submitted by the applicant shall comply with these rules and regulations and shall be satisfactory to the authority.

10. The proposed M/D development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

11. The prerequisites necessary for the members of the applicant to acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

12. The proposed M/D development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

13. The proposed M/D development will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion, approve the issuance of a commitment, subject to the satisfaction of such criteria, in such manner and within such time period as he shall deem appropriate.

The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount

of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the commitment issued on behalf of the authority. The commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs.

If the executive director determines not to issue a commitment, he shall so notify the applicant.

§ 7. Closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "closing documents") required by the commitment within the time period specified. When the closing documents have been submitted and approved by the authority staff, the board has approved or ratified the commitment and has determined that the financing of the proposed M/D development meets all the applicable requirements of § 36-55.39 of the Code of Virginia, and all other requirements in the commitment have been satisfied, the closing of the M/D loan shall be held. At this closing, the closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the processing and financing fees, will make any equity investment required by the closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of M/D loan proceeds will be made by the authority, if appropriate under the commitment and the closing documents.

Prior to the closing of the M/D loan, the executive director shall make the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia.

The actual interest rate on the M/D loan shall be established by the executive director prior to or at the time of the execution of the deed of trust note at closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the M/D development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent

construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 8. Construction.

In the case of construction loans, the construction of the M/D development shall be performed in accordance with the closing documents. The authority shall have the right to inspect the M/D development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the closing documents and to ascertain the propriety and validity of M/D loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of M/D loan proceeds may only be made upon compliance with the terms and conditions of the closing documents with respect to any such disbursement; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 9. Completion of construction and final closing.

In the case of construction loans, the closing documents shall specify those requirements and conditions that shall be satisfied in order for the M/D development to be deemed to have attained final completion. Upon such final completion of the M/D development, the mortgagor, general contractor, and any other parties required to do so by the closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the closing documents or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the closing documents in order to attain final completion, make the final disbursement of M/D loan proceeds, obtain any subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the closing documents:

1. The total development costs, the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;
2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow

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accounts for taxes, insurance, replacement reserves, or other similar escrow items; and

3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing. The equity investment of the mortgagor shall be the difference between the total housing development costs of the M/D development as finally determined by the authority and the final principal amount of the M/D loan as to such M/D development.

§ 10. Seed money loans.

Notwithstanding anything herein to the contrary, the executive director may, in his discretion, approve an application on such forms as he may prescribe for a seed money loan and issue a commitment therefor subject to ratification by the board.

§ 11. M/D loan increases.

The authority may consider and, where appropriate, approve a M/D loan increase if determined by the authority to be in its best interests in protecting its security for the M/D loan. Any such M/D loan increase shall require the approval of the board and shall be subject to such terms and conditions as the board or the executive director may require. Nothing contained in this section shall impose any duty or obligation on the authority to increase any M/D loan, as the decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

§ 12. Operation and management.

The M/D development shall be subject to certain regulatory covenants in closing documents entered into at closing between the authority and the mortgagor. Such regulatory covenants shall govern the occupancy, maintenance, operation, use and disposition of the M/D development and the activities and operation of the mortgagor. The mortgagor shall execute such other documents with regard to the regulation of the M/D development as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit the fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

The mortgagor shall lease the units in the M/D development only to persons who are eligible for occupancy thereof as described in § 3 of these rules and regulations. The mortgagor shall comply with the provisions of the authority's rules and regulations regarding (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the M/D development and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the M/D development.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 5 of these rules and regulations.

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D

loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this section.

§ 13. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this section shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the M/D development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the M/D loan or, (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12-month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean (i) in the case of a transfer of a partnership interest, the owner of the M/D development as proposed to be restructured by such transfer, and (ii) in the case of a transfer of the M/D development, the entity which proposes to acquire the M/D development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain, to the extent applicable or requested by the authority, (i) a detailed description of the terms of the transfer, (ii) all documentation to be executed in connection with the transfer, (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity), (iv) an analysis of the current physical and financial condition of the M/D development, including a current audited financial report for the M/D development, (v) information regarding the experience and ability of any proposed management agent, and (vi) any other information and documents relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the M/D development in a manner satisfactory to the authority.
2. The M/D development's physical and financial condition shall be acceptable to the authority as of the date of transfer or such later date as the authority may

approve. In order to assure compliance with this criteria, the authority may require any of the following:

- a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
- b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the M/D development, will reduce the costs of operating or maintaining the M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;
- c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;
- d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and
- e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

C. The authority may charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee, if any, is to be paid at the closing.

D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the M/D loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs

and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

E. A request for transfer of ownership shall be reviewed by the executive director and may be approved by him subject to such terms and conditions as he may require.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the executive director.

The authority may require that the proposed ownership entity execute the then current forms of the authority's M/D loan documents in substitution of the existing M/D loan documents and/or to execute such amendments to the existing M/D loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the M/D development.

In the case of an M/D development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the M/D development and/or to protect the authority's interest as lender.

§ 14. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the M/D development subsequent to prepayment, (ii) any actual or potential termination or reduction of any subsidy or

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other assistance, (iii) the current and future need and demand for low and moderate housing for mentally disabled persons in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this section shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

VA.R. Doc. No. R95-507; Filed May 10, 1995, 10:20 a.m.

Title of Regulation: VR 400-02-0014. **Rules and Regulations for the Acquisition of Multi-Family Housing Developments.**

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

Summary:

The proposed amendments to the authority's rules and regulations for the acquisition by the authority of multi-family housing developments will conform the regulations to House Bill 1744 approved by the General Assembly and signed by the Governor (Chapter 215 of the 1995 Acts of Assembly), by substituting the executive director for the Board of Commissioners in making the finding required by subsection B of § 36-55.39 of the Code of Virginia regarding the 60-day notice provisions to local authorities involving multi-family loans.

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

§ 1. Purpose and applicability.

The following rules and regulations will be applicable to the acquisition, ownership and operation by the authority or by any entity formed by the authority, on its own behalf or in conjunction with other parties, of multi-family housing developments intended for occupancy by persons and families of low and moderate income ("development" or "developments"). The developments to be acquired pursuant

to these rules and regulations may be existing developments or may be developments to be constructed prior to acquisition. If the authority is to acquire an existing development, the provision of these rules and regulations relating to construction shall, to the extent determined by the executive director, not be applicable to such development. These rules and regulations shall also be applicable to the making of mortgage loans by the authority (i) to finance the construction of such developments prior to the acquisition thereof by the authority (such mortgage loans are referred to herein as construction loans) and (ii) to finance the acquisition and ownership of such developments by entities formed by the authority as described herein. If any development is to be subject to federal mortgage insurance or is otherwise to be assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision herein. Furthermore, if the development is to be subject to mortgage insurance by the federal government, the provisions of these rules and regulations shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. The term "construct" or "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

Developments may be acquired pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the applicant, any mortgagor, or any contractor or other members of the development team under the initial closing documents as described in § 6 of these rules and regulations.

These rules and regulations are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of proposals for the authority to acquire developments or to provide financing for such developments under the authority's multi-family housing acquisition program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

§ 2. Income limits and general restrictions.

In order to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined in the authority's rules and regulations) greater than (i) in the case of a multi-family dwelling unit for which the board has approved the acquisition prior to November 15, 1991, seven times the annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the foregoing shall not be applicable if no amounts are payable by or on behalf of such person or family or if amounts payable by such person or family are deemed by the board not to be rent or (ii) in the case of a multi-family dwelling unit for which the board has approved the acquisition on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish in these rules and regulations or by resolution for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the authority may, subsequent to November 15, 1991, determine to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. The income limits established below in these rules and regulations are in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above.

At least 20% of the units in each development shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 80% of the area median gross income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed (i) in the case of units for which the board has approved the acquisition prior to November 15, 1991, 150% of such area median gross income as so determined or (ii) in the case of units for which the authority has approved the acquisition on or after November 15, 1991, 115% of such area median gross income as so determined. The income limits applicable to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy shall be as set forth in (i) and (ii), as applicable, in the preceding sentence (or, in the case of units described in (i) in the preceding sentence, such lesser income limit, if applicable, equal to seven times the annual rent, including utilities except telephone, applicable to such dwelling units).

The board may establish, in the resolution authorizing the acquisition of any development under these rules and regulations, income limits lower than those provided herein for occupancy of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family

incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof under these rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued by the authority to finance such developments, (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

§ 3. Terms of acquisition and construction loan.

The purchase price for a development to be acquired by the authority pursuant hereto shall be determined by the authority in such manner and shall be based upon such factors (including the fair market value of the development based on an appraisal thereof as well as on the estimated costs of the construction of the development, if applicable) as it deems relevant to the security of its ownership interest in the development and the fulfillment of its public purpose. The terms and conditions of such acquisition shall be contained in the commitment described in § 5 hereof and in the contract, if any, to acquire the development described in § 6 hereof.

With respect to any development which the authority contracts to acquire, the authority may assign all of its right, title and interest under such contract to acquire such developments to an entity (a "successor entity") formed by the authority, on its own behalf or in conjunction with other parties, to serve as the housing sponsor for such development pursuant to § 36-55.33:2 of the Code of Virginia and may provide a mortgage loan to such entity to finance the acquisition and ownership of the development.

The authority may charge a processing fee to the applicant and a processing fee and financing fee to the successor entity (if any) in such amount as the executive director determines to be reasonable. Such fees shall be payable at initial closing or at such other times as required by the executive director.

In addition to the acquisition of developments, the authority may make or finance construction mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance the construction of such developments. The term of such a construction loan shall be equal to the period determined by the executive director to be necessary to complete construction of the development and to consummate the acquisition thereof by the authority. Such construction loans shall be made on such other terms and conditions as the authority shall prescribe in (i) the commitment described in §

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5 hereof and (ii) any other applicable initial closing documents, described in § 6 hereof. Such construction loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 100%. The maximum principal amount and percentage of estimated housing development costs specified or established in the commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and the fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed. In determining the estimated housing development costs, the categories of costs which shall be includable therein shall be those set forth in the authority's rules and regulations for multi-family housing developments to the extent deemed by the executive director to be applicable to the proposed development.

The interest rate on the construction loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a processing fee and a financing fee in such amounts as the executive director determines to be reasonable. Such fees shall be payable at initial closing or at such other times as required by the executive director.

§ 4. Application and acceptance for processing.

Application for consideration of each proposal for the authority to acquire a development and, if applicable, to finance the construction thereof shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia, if applicable, and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;

4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated purchase price and financing costs; and

5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

2. Subject to further review and evaluation by the authority's staff under § 5 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

3. Subject to further review and evaluation by the authority's staff under § 5 of these rules and regulations, the proposed rents appear to be at levels which will (i) be affordable by the persons and families intended to be assisted by the authority, (ii) permit the successful marketing of the units to such persons and families, and (iii) sustain the operation of the proposed development.

4. The applicant has the experience, ability and financial capacity necessary to carry out its responsibilities for the construction and, prior to acquisition thereof by the authority, the ownership, operation, marketing, maintenance and management of the proposed development.

5. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

6. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 5 of these rules and regulations and that the proposed development will otherwise continue to be processed through initial closing and will be completed and conveyed to the authority all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of

these rules and regulations and without unreasonable delay, interruptions or expense.

Applications shall be selected only to the extent that the authority has or expects to have funds available from the sale of its notes or bonds to finance the acquisition of and, if applicable, the construction loan for the proposed developments.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and shall present his recommendation to the board. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board further processing of the application, subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to the further review in § 5 of these rules and regulations and such terms and conditions as the board shall require in such resolution.

If the development is to be acquired by a successor entity formed by the authority as described in § 8 hereof, the resolution shall authorize (i) the assignment to such successor entity of the authority's interest in the contract to acquire the development and (ii), if applicable, the making of a permanent loan to such successor entity in an amount set forth therein to finance the acquisition cost of the development and such other costs relating to the acquisition and ownership of the development and to the financing thereof as the authority shall deem necessary or appropriate.

If the development is to be acquired by a successor entity which is a for-profit housing sponsor, the board may in its resolution prescribe, in accordance with the authority's rules and regulations for multi-family housing developments, the maximum annual rate at which distributions may be made.

Neither an acquisition by the authority of a development nor a construction or permanent loan for such development pursuant to these rules and regulations shall be authorized unless the board by resolution shall make the applicable findings required by §§ § 36-55.33:2 and *subsection A of § 36-55.39*, as applicable, of the Code of Virginia; provided, however, that the board may in its discretion authorize the acquisition or the ~~construction or permanent loan~~ in advance of the issuance of the commitment therefor in accordance herewith without making the finding, if applicable, required by ~~subsection A of § 36-55.33:2 and subsection B of § 36-55.39~~ of the Code of Virginia, subject to the condition that such finding be made by the board prior to the authority's acquisition *and permanent financing* of the development and, ~~if applicable, the financing of the construction or permanent loan for such development~~; *provided further, however, the board may in its discretion authorize a construction loan for*

the development without the executive director making the finding required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the executive director prior to the financing of the construction loan.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

§ 5. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including without limitation any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information complete, accurate and current.

If not previously obtained, an appraisal of the proposed development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected or approved by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development. If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the application, the documents and information received or obtained pursuant to § 4 and this § 5. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;
2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;
3. A review of the marketing and tenant selection plans, including their effect on the economic feasibility of the

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proposed development and their efficacy in carrying out the programs and policies of the authority;

4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall approve the issuance of a commitment of the authority to enter into a contract with the applicant for the acquisition of the development by the authority and, if applicable, to make a construction loan for the development be issued to the applicant only if he determines that all of the following criteria have been satisfied:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any environmental or other defects which would have a materially adverse effect on such construction and operation.

4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.

5. The design of the proposed development will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities

customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

6. Based on the data and information received or obtained pursuant to this § 5, no material adverse change has occurred with respect to compliance with the criteria set forth in § 4 of these rules and regulations.

7. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

9. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

10. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such income received on similar developments.

11. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the notes or bonds issued by the authority to acquire the development (plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development), the operating expenses, and replacement and other reserves required by the authority.

12. The units will be occupied by persons and families intended to be served by the proposed development and eligible under the Act, these rules and regulations, and under any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development (i) will attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, replacement and other reserves required by the authority, and debt service on the notes or bonds issued by the authority to acquire the development, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development) within the usual and customary time for a development of its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of such notes or bonds.

13. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with subdivision 12 above.

14. The plans and specifications or other description of work to be performed shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 5.

15. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

16. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken prior to acquisition of the development by the authority such that (i) the dwelling units in the proposed development will be occupied in accordance with subdivision 12 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development, (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures to be applied by the owner in order to select

those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

17. In the case of any development to be subject to mortgage insurance or otherwise to be assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

18. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the acquisition and, if applicable, the construction of the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

19. The prerequisites necessary for the members of the applicant's development team to construct and, prior to the acquisition thereof by the authority, to operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia, (vi) building permits, and (vii) fee simple ownership of the site, a sales contract or option giving the applicant the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the construction or the authority's ownership or operation of the proposed development).

20. The proposed development will comply with all applicable state and local laws, ordinances, regulations and requirements.

21. The proposed development will provide valid and sound security for the authority's notes or bonds and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion approve the issuance of a commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

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The purchase price for the development, the term and principal amount of any construction loan, the terms and conditions applicable to any equity contribution by the applicant for any construction loan, any assurances of successful completion of the development, and other terms and conditions of the acquisition and construction loan shall be set forth in the commitment. The commitment shall also include such terms and conditions as the authority considers appropriate with respect to the development and construction, if applicable, and the acquisition of the proposed development, the disbursement and repayment of the construction loan, if applicable, and other matters related to the development and construction, if applicable, and, prior to the acquisition thereof by the authority, the ownership, operation, marketing and occupancy (including any income limits or occupancy restrictions other than those set forth in these rules and regulations) of the proposed development. Such commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the development and a schedule of the estimated housing development costs.

If the executive director determines not to issue a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

§ 6. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the authority shall execute and deliver to the applicant a contract to acquire the development; provided, however, that in the case of the acquisition of any existing development, the applicant shall convey the development to the authority at the initial closing, and the authority shall pay the purchase price therefor to the applicant, all in accordance with the terms of the commitment. Also at the initial closing, the initial closing documents (including, in the case of an existing development, a housing management agreement between the authority and the management agent proposed by the authority or, in the case of a development to be constructed, an agreement between the authority and such agent to enter into a housing management agreement at final closing) shall be, where required, executed and recorded, and the applicant will pay to the authority the balance owed on the processing and financing fees, if any, will make any initial equity investment required by the commitment and the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. If the authority is to provide construction financing for the development, the closing of the construction loan shall also be held at this time and the initial disbursement of construction loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents. *Prior to the closing of such construction loan, the executive director shall make the finding, if applicable, required by subsection B of §*

36-55.39 of the Code of Virginia. The actual interest rate on the construction loan shall be established by the executive director at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of the deed of trust note.

If a successor entity as described in § 8 hereof is to acquire an existing development, the sale and conveyance of such development and the making of any permanent mortgage loan to such entity by the authority, all as set forth in § 8 hereof, shall be consummated at the initial closing. The successor entity shall pay to the authority at initial closing the balance owed of any processing and financing fees relating to such permanent loan.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction and, prior to acquisition by the authority, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit and latent construction defect escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 7. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of any construction loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. If the authority is providing construction financing, a disbursement of construction loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement by the authority shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 8. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion.

Prior to or concurrently with final closing, the applicant, the owner, the general contractor, the management agent and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents (including the contract to acquire the development) in order to attain final completion, obtain any

federal insurance, subsidy or assistance and otherwise consummate the acquisition and the final closing. The owner shall deliver to the authority a fully executed deed conveying to the authority fee simple title to the development in accordance with the contract and shall execute and deliver such other final closing documents as the authority may prescribe. The authority shall pay to the owner the purchase price specified in the contract to acquire the development. The management agreement shall be executed by the authority and the management agent at the final closing. If the authority had provided the construction loan, such loan shall be repaid in full at final closing.

Prior to or concurrently with final closing, the executive director shall, if authorized by the resolution, assign its interest in the contract to acquire the development to a successor entity formed by the authority, on its own behalf or in conjunction with other parties, pursuant to the Act. Any reference to the authority in these rules and regulations with respect to the conveyance to or the acquisition, ownership or operation by the authority of a development shall be deemed to refer also to any such successor entity of the authority. Such successor entity shall purchase the development at final closing and otherwise perform the obligations of the authority as purchaser under the contract. The applicant shall convey title to the development to such successor entity and shall perform all of its other obligations as seller under such contract. Furthermore, if authorized by the resolution, the authority shall at final closing provide to such successor entity a permanent mortgage loan secured by a first lien on the development to finance the acquisition and ownership thereof. The making of such permanent mortgage loan shall take place at final closing upon the execution, delivery and recordation of such documents as the executive director shall require. Such permanent loan shall bear such interest rate and shall be subject to such terms and conditions as the executive director shall prescribe pursuant to and in accordance with the commitment. For the purpose of determining any maximum annual dividend distributions by any such successor entity and the maximum principal amount of the permanent mortgage loan to such successor entity permissible under the Act, the total development costs shall be the cost of the acquisition as determined by the authority and such other costs relating to such acquisition, the financing of the permanent mortgage loan and the ownership and operation of the development as the authority shall determine to be reasonable and necessary. The equity investment of any such successor entity shall be the difference between such total development costs and the principal amount of the permanent mortgage loan.

At the final closing, the authority shall determine in accordance with the initial closing documents any funds due the authority, the applicant, the owner, general contractor, the architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

§ 9. Construction loan, permanent loan and purchase price increases.

The authority may consider and, where appropriate, approve an increase in the purchase price, an increase in the principal amount of the construction loan and/or an increase in the principal amount of the permanent loan, if determined

by the authority to be in its best interest in accomplishing the acquisition or in protecting its security. Nothing contained in this § 9 shall impose any duty or obligation on the authority to increase any purchase price or the principal amount of any construction loan or permanent loan, as the decision as to whether to grant a purchase price, construction loan or permanent loan increase shall be within the sole and absolute description of the authority.

§ 10. Operation, management and marketing.

The authority shall establish the rents to be charged for dwelling units in the development. Units in the development shall only be leased to persons and families who are eligible for occupancy thereof as described in § 2 of these rules and regulations. The authority (or any successor entity acquiring the development pursuant to § 8 hereof) shall examine and determine the income and eligibility of applicants for their initial occupancy of the dwelling units of the development and shall reexamine and redetermine the income and eligibility of all occupants of such dwelling units every three years following such initial occupancy or at more frequent intervals if required by the executive director. It shall be the responsibility of each applicant for occupancy of such a dwelling unit, and of each occupant thereof, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority (or any such successor entity) with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the authority (or any such successor entity) may terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit.

The authority (or any successor entity as described in § 8 hereof) shall develop a tenant selection plan for tenants eligible to occupy the development. Such tenant selection plan shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source, (iii) the proposed income levels of tenants; (iv) any

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arrangements contemplated by the authority or such successor entity for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development. In selecting eligible residents, the authority (or any such successor entity) shall comply with such occupancy criteria and priorities and with the tenant selection plan.

The management of the development shall also be subject to a management agreement by and between the management agent and the authority (or any successor entity). Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The term of the management agreement shall be as prescribed by the executive director, and upon the expiration of such term the authority may renew or extend such management agreement or may contract with a different management agent on such terms and conditions as the executive director shall require. The development shall be managed in accordance with the Act, these rules and regulations, and the management agreement.

If any successor entity formed pursuant to § 8 hereof is not within the exclusive control of the authority, the executive director may require that such entity and the development owned by and mortgage loan made to such entity be subject to such of the provisions of the authority's rules and regulations for multi-family housing developments as he shall require to protect its security for the mortgage loan, to protect its interest in such entity and to fulfill its public purpose under the Act.

VA.R. Doc. No. R95-508; Filed May 10, 1995, 10:20 a.m.

BOARD OF PROFESSIONAL COUNSELORS

Title of Regulation: VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.

Statutory Authority: §§ 54.1-2400 and 54.1-3514 of the Code of Virginia.

Public Hearing Date: June 8, 1995 - 1 p.m.

Written comments may be submitted until July 28, 1995.

(See Calendar of Events section for additional information)

Basis: Chapter 24 and Chapter 35 of Title 54.1 of the Code of Virginia provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of health regulatory boards including the power to establish qualifications for licensure and the responsibility to promulgate regulations.

Chapter 35 establishes the Board of Professional Counselors and authorizes that board to regulate licensure, collect fees, and set standards for practice. Article 2, § 54.1-3510 et seq., establishes the Advisory Board on Rehabilitation Providers and authorizes that body to recommend regulatory criteria and standards of professional conduct for voluntary certification of licensees of the Boards of Medicine, Nursing, Professional Counselors, Psychology, and Social Work and

for mandatory certification of providers that are not licensed by those boards. In addition § 54.1-3514 establishes payment of a fee as a criterion for certification of rehabilitation providers.

Purpose: The purpose of the regulation is to comply with statutory requirement that the board establish fees sufficient for application processing and certificate renewal, and to set appropriate standards of conduct to enable the board to take action for misconduct in violation of those standards in order to protect the public served by rehabilitation providers.

Substance: The key provisions of the regulation are summarized as follows:

1. Section 1.2 establishes fees for certification and certificate renewal.
2. Section 2.1 establishes the annual expiration date for certification.
3. Section 3.1 sets forth standards for professional conduct for certified rehabilitation providers.
4. Section 3.2 outlines those violations that constitute grounds for disciplinary action or denial of certification by the board.
5. Section 3.3 sets forth the procedure for reinstatement of a certificate that has been suspended or revoked by the board, and for reapplication by a person whose certification was denied by the board.

Issues:

Proposed Fees. At issue is the inability to collect fees from applicants for certification without regulation. In the first six months of providing certification, the Board of Professional Counselors has covered the administrative costs of certifying more than 2,000 individuals without collecting any fees. Section 54.1-2400 of the Code of Virginia provides statutory authority for establishment of fees for the administration and operation of the regulatory program. In addition, § 54.1-113 directs that fees be sufficient to cover expenses.

The Finance Office of the Department of Health Professions has prepared an analysis of projected expenditures for implementation of the regulatory program for certification of rehabilitation providers as follows:

	FY95	FY96	FY97	FY98
Data Processing	8,000	8,000	8,000	8,000
Admin & Finance	6,000	6,000	6,000	6,000
Human Resources	1,000	1,000	1,000	1,000
Enforcement	1,000	13,000	13,000	13,000
Admin Proceedings	1,000	3,500	4,000	4,000
Attorney General	1,000	2,000	1,500	1,500
Board of Health Professions	1,000	1,000	1,000	1,000
Personal Services	15,000	20,000	21,000	21,000
Contractual Services	19,000	23,000	25,000	25,000
Supplies	800	800	800	800
Continuous Charges	1,000	1,000	1,000	1,000
Equipment	5,000	500	500	500
TOTAL	59,800	78,800	82,800	82,800

There is a statutory mandate that costs to the agency be derived from fees paid by regulated entities.

Alternatives. Without regulations in effect, the board is required to certify currently practicing rehabilitation providers without an application fee. The only alternative to establishing fees is to continue to offer certification gratis, which would result in increased fees for Licensed Professional Counselors and Certified Substance Abuse Counselors (the other regulated entities under the Board of Professional Counselors) who would have to absorb all the costs resulting from the rehabilitation certification.

The board considered two alternative fee structures for certification prepared by the Department of Health Professions.

PROPOSAL 1			PROPOSAL 2		
Proposed Fee	Estimated # Certified	Annual Revenue	Proposed Fee	Estimated # Certified	Annual Revenue
\$100	100	\$10,000	\$75	100	\$7,500
\$40	1,500 ¹	\$60,000	\$50	1,500 ¹	\$75,000
TOTAL		\$70,000			\$82,500

¹ The estimated number of renewals is approximately half the projected number of individuals certified under the "grandfathering" provision. This is due to a change in § 54.1-3510 enacted by the 1995 General Assembly that restricts requirements for certification to individuals providing rehabilitation services under § 65.2-603.3. It is expected that many providers will elect not to pay the renewal fee as the legislative change makes certification optional for them.

Because neither proposal would meet the estimated expenditures for FY97 or FY98 (see Estimated Impact), and because no fee was established to cover the administrative costs for FY94 "grandfather" certification, the board opted to combine the two proposals, and set the application processing fee at \$100 and the renewal fee at \$50.

Advantages: Licensed Professional Counselors and Certified Substance Abuse Counselors will benefit if their fees do not increase to cover certification for rehabilitation providers. Assessing a fee will also ensure that only those individuals that need the certification to provide services will apply and renew, which will reduce administrative fees, and consequently lower the cost to the public.

Disadvantages: The public in general will not be affected by these fees. Only individuals applying for rehabilitation provider certification will have to pay for that certification.

Standards of Practice. There are two points at issue regarding "Standards of Practice":

1. State law requires the board to take action for misconduct for causes enumerated in law or regulation. Complaints have already been reported against newly certified rehabilitation providers and no standards exist for professional practice and accountability.
2. Standards of practice provide useful guidelines for professional behavior in provision of services. Without a clear outline of professional ethics, a practitioner may unintentionally behave in a way that is harmful to a client.

Alternatives. While developing Standards of Practice to recommend to the Board of Professional Counselors, the Advisory Board on Rehabilitation Providers looked at standards generic to other health professions regulation and

considered standards of ethics from the National Association for Rehabilitation Providers in the Private Sector and the Commission on Rehabilitation Certification. From this compilation of standards, the advisory board adopted the minimum generic standards that would govern issues of public safety, ethics, competency, practitioner self-referral, use of titles and advertising. The advisory board also included standards specific to the delivery of rehabilitation services that it considered essential to ensure the most appropriate treatment for the client, while minimizing confusion for the client and conflict among providers in this multidisciplinary profession.

The advisory board deliberated on several draft documents and considered public comment from a public hearing and ensuing correspondence. The draft submitted to the Board of Professional Counselors was substantially reduced from the original and was judged as the minimum standard that would protect the public health and safety, while encompassing the broad range of providers that practice under this certification.

Advantage: Standards of Practice protect the public by discouraging unethical behavior among providers, and preventing further misconduct from unscrupulous or unqualified providers.

Disadvantage: Since the public is not directly affected by the regulations, there is no disadvantage. There is also no disadvantage to the certified rehabilitation provider who intends to practice ethically and competently and will have a clear standard of conduct for his practice.

Estimated Impact:

A. Projected number of persons affected and their cost of compliance: It is estimated that 1,500 "grandfathered" individuals will renew their certifications at a cost of \$50 per renewal. It is expected that 100 new certifications will be issued annually at a cost of \$100 per applicant.

B. Costs to the agency for implementation: The following projected expenditure impact for the regulatory programs mandated by statute was prepared by the Department of Health Professions' Finance Office and is outlined in Issues, above.

Costs for FY95 have been incurred without fees in order to implement the statutory mandate that the board certify rehabilitation providers who were in practice on January 1, 1994.

The additional costs for implementation of these regulations which set forth requirements for renewal, standards of conduct, and disciplinary proceedings are estimated as follows:

Data Processing	\$6,500
Admin & Finance	5,000
Enforcement	13,000
Admin Proceedings	3,500
Attorney General	1,000
Personnel Services	10,000

All costs to the agency are required to be derived from fees paid by certified rehabilitation providers.

Proposed Regulations

C. Cost to local governments: There will be no impact of these regulations on local government.

Summary:

New regulations governing the certification of rehabilitation providers are proposed by the Board of Professional Counselors to provide for (i) fees to cover the application processing (\$100) and annual certification renewal (\$50); and (ii) standards of practice that establish guidelines for professional conduct, grounds for disciplinary action for misconduct, and reinstatement procedures following denial of certification or disciplinary action.

VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.

**PART I.
GENERAL PROVISIONS.**

§ 1.1. Definitions.

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

"Board" means the Board of Professional Counselors as established by Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia.

§ 1.2. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Application processing	\$100
Certification renewal	\$50

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

**PART II.
RENEWAL AND REINSTATEMENT.**

§ 2.1. Annual renewal of certificate.

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

1. To renew certification, the certified rehabilitation provider shall submit a renewal application form and fee as prescribed in § 1.2.

2. Failure to receive a renewal notice and application form shall not excuse the certified rehabilitation provider from the renewal requirement.

**PART III.
STANDARDS OF PRACTICE; DISCIPLINARY ACTIONS;
REINSTATEMENT.**

§ 3.1. Standards of practice.

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

B. Each person certified by the board shall:

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

2. Provide services only within the competency areas for which one is qualified by training or experience.

3. Not provide services under a false or assumed name, or impersonate another practitioner of a like, similar or different name.

4. Not represent oneself as "board certified" without specifying the complete name of the specialty board.

5. Be aware of the areas of competence of related professions and make full use of professional, technical and administrative resources to secure for rehabilitation clients the most appropriate services.

6. Not commit any act which is a felony under the laws of this Commonwealth, other states, the District of Columbia or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude.

7. Stay abreast of new developments, concepts and practices which are important to providing appropriate services.

8. State a rationale in the form of an identified objective or purpose for the provision of services to be rendered to the rehabilitation client.

9. Not engage in offering services to a rehabilitation client who is receiving services from another rehabilitation provider without attempting to inform such other providers in order to avoid confusion and conflict for the rehabilitation client.

10. Represent accurately one's competence, education, training and experience.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Not engage in improper direct solicitation of rehabilitation clients and announce services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and which avoids fraud and misrepresentation through sensationalism, exaggeration or superficiality.

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

14. Report to the board known or suspected violations of the laws and regulations governing the practice of rehabilitation providers.

15. Report to the board any unethical or incompetent practices by other rehabilitation providers that jeopardize public safety or cause a risk of harm to rehabilitation clients.

16. Provide rehabilitation clients with accurate information of what to expect in the way of tests, evaluations, billing, rehabilitation plans and schedules before rendering services.

17. Provide services and submission of reports in a timely fashion and ensure that services and reports respond to the purpose of the referral and include recommendations, if appropriate. All reports shall reflect an objective, independent opinion based on factual determinations within the provider's area of expertise and discipline. The reports of services and findings shall be distributed to appropriate parties and shall comply with all applicable legal regulations.

18. Specify, for the referral source and the rehabilitation client, at the time of initial referral, what services are to be provided and what practices are to be conducted. This shall include the identification, as well as the clarification, of services that are available by that member.

19. When considering personal or confidential information, the provider must assure that the rehabilitation client is aware, from the outset, if the delivery of service is being observed by a third party. Professional files, reports and records shall be maintained under conditions of security and provisions will be made for their destruction when appropriate.

20. Never engage in nonprofessional relationships with rehabilitation clients, that compromise the rehabilitation client's well-being, impair the rehabilitation providers objectivity and judgment or increase the risk of rehabilitation client exploitation.

21. Never engage in sexual intimacy with rehabilitation clients or former rehabilitation clients, as such intimacy is unethical and prohibited.

§ 3.2. Grounds for revocation, suspension, probation, reprimand, censure, denial of renewal of certificate; petition for rehearing.

Action by the board to revoke, suspend, decline to issue a certificate, place such a certificate on probation or censure, reprimand or fine a certified rehabilitation provider may be taken in accord with the following:

1. Violation of the standards of practice in § 3.1 of these regulations.
2. Procuring of certification by fraud or misrepresentation.
3. Violation of or aid to another in violating any provision of Title 54.1 of the Code of Virginia.
4. The denial, revocation, suspension or restriction of a license or certificate to practice in another state, or a United States possession or territory or the surrender of any such license or certificate while an active administrative investigation is pending.

§ 3.3. Reinstatement following disciplinary action.

In order to be eligible for reinstatement, any person whose certificate has been suspended, revoked or denied by the board under the provisions of § 3.2 shall, at the conclusion of the term of suspension or two years subsequent to denial or revocation of certification, (i) submit a new application to the board, (ii) pay the appropriate reinstatement fee, and (iii) submit any other credentials as prescribed by the board. After a hearing, the board may, at its discretion grant the reinstatement if the provider demonstrates that he is able to resume providing services in a manner which does not endanger the public.

Proposed Regulations

COMMONWEALTH OF VIRGINIA

Board of Professional Counselors

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9575

APPLICATION FOR CERTIFICATION AS A REHABILITATION PROVIDER¹

SECTION I - PERSONAL

APPLICANT - Please provide the information requested below and on the next two pages. (Print or type). Use full name, not initials.		
Name - Last	First	Middle
Residence Address	Area Code and Telephone Number	
City	State	Zip Code
Business Address	Area Code and Telephone Number	
City	State	Zip Code
Birthdate	Social Security # (optional)	

PLEASE CIRCLE THE ADDRESS YOU PREFER FOR MAILINGS (RESIDENCE OR BUSINESS)

SECTION II - PROFESSIONAL CREDENTIALS (To be used for informational purposes only)

A. Education

1. () HS/GED 2. () Associate 3. () BS/BA 4. () MS/MAMEd 5. () PhD/EdD/MD 6. () Other _____

B. Professional Licenses

1. () RN 4. () MD 6. () LCSW 8. () DPM 10. () LCP
2. () LPN 5. () LSW 7. () OD 9. () DC 11. () OTHER _____
3. () LPC

C. Certifications/Registrations

1. () CCM 3. () CRC 5. () CRC-SAC 7. () CSAC 9. () CWAS
2. () CIRS 4. () RRSW 6. () CRRN 8. () CVE 10. () OTHER _____

¹ As defined in the Virginia Code § 54.1-3510, a *rehabilitation provider* is a person who, functioning within the scope of his practice, performs, coordinates, manages or arranges for rehabilitation services.

Rehabilitation services means and includes 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.

SECTION III - WORK EXPERIENCE (To be used for informational purposes only)

A. Present Employment Setting

- | | | |
|---|---|--|
| 1. <input type="checkbox"/> Business or Industry | 13. <input type="checkbox"/> Independent Rehabilitation /Insurance
Affiliate | 25. <input type="checkbox"/> Public School System |
| 2. <input type="checkbox"/> College or University | 14. <input type="checkbox"/> Insurance Company | 26. <input type="checkbox"/> Re-insurance |
| 3. <input type="checkbox"/> Community Residential Program | 15. <input type="checkbox"/> Liability Insurer | 27. <input type="checkbox"/> Rehabilitation Facility Program |
| 4. <input type="checkbox"/> Employee Assistance Program | 16. <input type="checkbox"/> Life/Disability Insurer | 28. <input type="checkbox"/> Residential Therapy Community |
| 5. <input type="checkbox"/> Halfway House | 17. <input type="checkbox"/> Managed Care Company | 29. <input type="checkbox"/> Social Welfare Agency |
| 6. <input type="checkbox"/> Health Insurance Company | 18. <input type="checkbox"/> Methadone Program | 30. <input type="checkbox"/> State/Federal Agency |
| 7. <input type="checkbox"/> HMO, PPO EPO | 19. <input type="checkbox"/> Mental Health Center | 31. <input type="checkbox"/> State Rehabilitation Agency Facility |
| 8. <input type="checkbox"/> Home Care Agency | 20. <input type="checkbox"/> Mental Hospital | 32. <input type="checkbox"/> State Fund |
| 9. <input type="checkbox"/> Hospital or Medical Center | 21. <input type="checkbox"/> Mental Retardation Center | 33. <input type="checkbox"/> State/Federal Rehabilitation Agency
Field Office |
| 10. <input type="checkbox"/> In-Patient Substance Abuse
Program | 22. <input type="checkbox"/> Outpatient Substance Abuse
Program | 34. <input type="checkbox"/> Third Party Administrator |
| 11. <input type="checkbox"/> Independent Case Management
Company | 23. <input type="checkbox"/> Penal Institution | 35. <input type="checkbox"/> Veterans Administration Agency |
| 12. <input type="checkbox"/> Independent Living Center | 24. <input type="checkbox"/> Private Practice | 36. <input type="checkbox"/> Workers' Compensation Insurer |
| | | 37. <input type="checkbox"/> Other _____ |

B. Present Job Title

- | | | |
|--|---|---|
| 1. <input type="checkbox"/> Administrator (Manager) | 11. <input type="checkbox"/> Occupational Therapist | 21. <input type="checkbox"/> Substance Abuse Prevention
Specialist |
| 2. <input type="checkbox"/> Admissions Liaison | 12. <input type="checkbox"/> Physical Therapist | 22. <input type="checkbox"/> Substance Abuse Counselor |
| 3. <input type="checkbox"/> Bill Auditor | 13. <input type="checkbox"/> Professional Counselor | 23. <input type="checkbox"/> Substance Abuse Specialist |
| 4. <input type="checkbox"/> Case Manager | 14. <input type="checkbox"/> Psychologist | 24. <input type="checkbox"/> Supervisor (Rehabilitation
Personnel) |
| 5. <input type="checkbox"/> Discharge Planner | 15. <input type="checkbox"/> Registered Nurse | 25. <input type="checkbox"/> Utilization Reviewer |
| 6. <input type="checkbox"/> Drug Program Administrator | 16. <input type="checkbox"/> Rehabilitation Educator | 26. <input type="checkbox"/> Vocational Evaluator |
| 7. <input type="checkbox"/> Insurance Benefits Manager | 17. <input type="checkbox"/> Rehabilitation Nurse | 27. <input type="checkbox"/> Vocational Rehabilitation Counselor |
| 8. <input type="checkbox"/> Job Development | 18. <input type="checkbox"/> Rehabilitation Counselor | 28. <input type="checkbox"/> Work Adjustment Specialist |
| 9. <input type="checkbox"/> Job Placement | 19. <input type="checkbox"/> Respiratory Therapist | 29. <input type="checkbox"/> Other _____ |
| 10. <input type="checkbox"/> Medical Doctor | 20. <input type="checkbox"/> Social Worker | |

C. Services Provided (Check only those services that you provide, not those provided by your entire agency or company)

- | | | |
|--|---|--|
| 1. <input type="checkbox"/> assessment | 22. <input type="checkbox"/> intake assessment | 43. <input type="checkbox"/> referral and advocacy services |
| 2. <input type="checkbox"/> AT liaison services | 23. <input type="checkbox"/> interpreter services | 44. <input type="checkbox"/> rehabilitation service planning,
coordination and delivery |
| 3. <input type="checkbox"/> career counseling | 24. <input type="checkbox"/> interviewing and interpersonal helping
skills | 45. <input type="checkbox"/> rehabilitation engineering |
| 4. <input type="checkbox"/> case management | 25. <input type="checkbox"/> job analysis | 46. <input type="checkbox"/> retraining |
| 5. <input type="checkbox"/> coordination of services | 26. <input type="checkbox"/> job seeking skills training | 47. <input type="checkbox"/> services to family members |
| 6. <input type="checkbox"/> dental examination | 27. <input type="checkbox"/> job coach training and service | 48. <input type="checkbox"/> situational assessment |
| 7. <input type="checkbox"/> developing and monitoring medical
services and care | 28. <input type="checkbox"/> job development | 49. <input type="checkbox"/> social skills training |
| 8. <input type="checkbox"/> documentation | 29. <input type="checkbox"/> job placement | 50. <input type="checkbox"/> study skills training |
| 9. <input type="checkbox"/> education of client, family
members and community resources | 30. <input type="checkbox"/> medical and surgical examination | 51. <input type="checkbox"/> substance abuse assessment |
| 10. <input type="checkbox"/> education | 31. <input type="checkbox"/> mobility training | 52. <input type="checkbox"/> substance abuse counseling |
| 11. <input type="checkbox"/> educational progress and
achievement evaluations | 32. <input type="checkbox"/> monitoring adequacy of services | 53. <input type="checkbox"/> substance abuse prevention |
| 12. <input type="checkbox"/> evaluation | 33. <input type="checkbox"/> nursing and attendant care | 54. <input type="checkbox"/> supervised work experience |
| 13. <input type="checkbox"/> extended employment services | 34. <input type="checkbox"/> occupational therapy | 55. <input type="checkbox"/> supported employment services |
| 14. <input type="checkbox"/> family assessment | 35. <input type="checkbox"/> off-site work adjustment | 56. <input type="checkbox"/> surgical services |
| 15. <input type="checkbox"/> group counseling | 36. <input type="checkbox"/> on-the-job training | 57. <input type="checkbox"/> training |
| 16. <input type="checkbox"/> guidance | 37. <input type="checkbox"/> physical therapy | 58. <input type="checkbox"/> using provisions of disability
legislation |
| 17. <input type="checkbox"/> hearing and speech services | 38. <input type="checkbox"/> planning | 59. <input type="checkbox"/> vehicle modifications |
| 18. <input type="checkbox"/> home modification | 39. <input type="checkbox"/> post-employment services | 60. <input type="checkbox"/> vocational evaluation |
| 19. <input type="checkbox"/> home health care | 40. <input type="checkbox"/> psychiatric evaluation | 61. <input type="checkbox"/> vocational services |
| 20. <input type="checkbox"/> housekeeping | 41. <input type="checkbox"/> psychological testing | 62. <input type="checkbox"/> work adjustment training |
| 21. <input type="checkbox"/> independent living skills instruction | 42. <input type="checkbox"/> psychological evaluations | |

Proposed Regulations

D. Client Base (Check all that apply)

- | | | |
|--|--|---|
| 1. <input type="checkbox"/> Amputation | 15. <input type="checkbox"/> Gerontology | 30. <input type="checkbox"/> Neuromuscular Disorders |
| 2. <input type="checkbox"/> Back/Neck Injuries | 16. <input type="checkbox"/> Head Injuries | 31. <input type="checkbox"/> Obstetrical Conditions |
| 3. <input type="checkbox"/> Brain Injuries | 17. <input type="checkbox"/> Hearing Impaired | 32. <input type="checkbox"/> Orthopedic Disorders |
| 4. <input type="checkbox"/> Burns | 18. <input type="checkbox"/> Hemiplegia | 33. <input type="checkbox"/> Physical Disabilities |
| 5. <input type="checkbox"/> Cancer | 19. <input type="checkbox"/> HIV/AIDS | 34. <input type="checkbox"/> Poliomyelitis |
| 6. <input type="checkbox"/> Cardiac Conditions | 20. <input type="checkbox"/> Immune Disorders | 35. <input type="checkbox"/> Psychiatric Illness |
| 7. <input type="checkbox"/> Cerebral Palsy | 21. <input type="checkbox"/> Learning Disabilities | 36. <input type="checkbox"/> Renal Failure |
| 8. <input type="checkbox"/> Chemical Abuse | 22. <input type="checkbox"/> Mental Illness | 37. <input type="checkbox"/> Respiratory or Pulmonary Dysfunction |
| 9. <input type="checkbox"/> Chemical Dependencies | 23. <input type="checkbox"/> Mental Retardation | 38. <input type="checkbox"/> Respiratory Conditions |
| 10. <input type="checkbox"/> Cystic Fibrosis | 24. <input type="checkbox"/> Multiple Sclerosis | 39. <input type="checkbox"/> Sensory Impairments |
| 11. <input type="checkbox"/> Developmental Disabilities | 25. <input type="checkbox"/> Muscular Dystrophy | 40. <input type="checkbox"/> Spinal Cord Injuries/Conditions |
| 12. <input type="checkbox"/> Emotionally Disabled | 26. <input type="checkbox"/> Musculoskeletal Disorders | 41. <input type="checkbox"/> Transplants |
| 13. <input type="checkbox"/> General Medical/Surgical Conditions | 27. <input type="checkbox"/> Neonates | 42. <input type="checkbox"/> Visually Impaired |
| 14. <input type="checkbox"/> General Rehabilitation | 28. <input type="checkbox"/> Neoplastic Disease | |
| | 29. <input type="checkbox"/> Neurological Disorders | |

SECTION IV - ORGANIZATIONAL AFFILIATIONS (Check all that apply)

- | | | | | |
|------------------------------------|-----------------------------------|-------------------------------------|------------------------------------|--|
| 1. <input type="checkbox"/> ADARA | 6. <input type="checkbox"/> CMSA | 11. <input type="checkbox"/> NANWRW | 16. <input type="checkbox"/> NRCA | 21. <input type="checkbox"/> VCA |
| 2. <input type="checkbox"/> ARCA | 7. <input type="checkbox"/> CSAVR | 12. <input type="checkbox"/> NARPPS | 17. <input type="checkbox"/> RING | 22. <input type="checkbox"/> VEWAA |
| 3. <input type="checkbox"/> ARN | 8. <input type="checkbox"/> ICMA | 13. <input type="checkbox"/> NASPPR | 18. <input type="checkbox"/> VAHI | 23. <input type="checkbox"/> VRA |
| 4. <input type="checkbox"/> CARP | 9. <input type="checkbox"/> IRSG | 14. <input type="checkbox"/> NCRE | 19. <input type="checkbox"/> VAOHN | 24. <input type="checkbox"/> VRCA |
| 5. <input type="checkbox"/> CARPPS | 10. <input type="checkbox"/> JPD | 15. <input type="checkbox"/> NRA | 20. <input type="checkbox"/> VARN | 25. <input type="checkbox"/> OTHER _____ |

SECTION V - GENERAL (A response to each of the following questions is required)

1. Have you ever been convicted of, pled guilty to or pled *nolo contendere* to the violation of a federal or state statute, or other regulation or ordinance or entered into any plea bargain relating to a felony? Yes No
2. Have you been censured, warned, requested to withdraw, or had your employment terminated from any facility, agency or practice? Yes No
3. Have you had a professional license, certificate or registration to practice revoked, suspended or restricted in any way in any state, the District of Columbia, the United States possession or territory, or a foreign jurisdiction? Yes No

SECTION VI - AFFIDAVIT OF APPLICANT (Required)

(To be completed before a notary public)

I, _____ being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents. I declare under penalty of perjury that the information that I have provided on this application is true and correct. In addition, I declare that I was actively engaged in providing rehabilitation services as of January 1, 1994.

Signature of Applicant

State of _____ County/City of _____

Subscribed to and sworn to before me this _____ day of _____, 19____

My commission expires _____

Notary Public

12/1/94

VA.R. Doc. No. R95-500; Filed May 10, 1995, 10 a.m.

Virginia Register of Regulations

**DEPARTMENT OF TRANSPORTATION
(COMMONWEALTH TRANSPORTATION BOARD)**

Title of Regulation: VR 385-01-05. **Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities (REPEALING).**

VA.R. Doc. No. R95-463; Filed April 26, 1995, 4:26 p.m.

Title of Regulation: VR 385-01-05:1. **Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.**

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Public Hearing Dates: July 12, 1995 - 4:30 p.m. (Bluefield)
July 19, 1995 - 4 p.m. (Norfolk)

Written comments may be submitted until July 31, 1995.
(See Calendar of Events section for additional information)

Basis: The following laws of the Commonwealth of Virginia form the basis of the establishment and enforcement of these rules and regulations. Section 33.1-12(3) of the Code of Virginia gives the Commonwealth Transportation Board the authority to make rules and regulations not in conflict with rules of this state for the protection of traffic using the State Highway System and to add to, amend, or repeal these traffic regulations. Section 33.1-49 of the Code of Virginia enables the Commonwealth Transportation Board to regulate the use of the Interstate System.

Chesapeake Bay Bridge-Tunnel District:

Under the provisions of Chapter 693 of the Acts of Virginia of 1954, the Chesapeake Bay Ferry District became a political subdivision of the Commonwealth of Virginia, and under the provisions of this chapter, the Chesapeake Bay Ferry Commission was created as the governing body of the district.

Chapter 462 of the Acts of Virginia of 1956 amended the Chesapeake Bay Ferry Revenue Board Act in the following ways: by enlarging the boundaries of the district, by increasing the membership of the commission, and by redefining the incidental powers of the commission.

Chapter 714 of the Acts of Virginia of 1956 conferred additional powers on the Chesapeake Bay Ferry Commission: authorizing the bridge and tunnel project, the financial resources to construct and maintain the facility, and the collection of tolls in connection with; and describing the powers and duties of the commission in connection with facility operations.

Chapter 228 of the Acts of Virginia of 1962 amended the Chesapeake Bay Ferry Revenue Board Act by adding a section relating to the police powers of the commission, the jurisdiction and trial of certain cases, and the disposition of fines collected therefrom.

By virtue of Chapter 714 of the Acts of Virginia of 1956, and by Chapter 24 of the Acts of Virginia of 1959 Extra Session, it was provided that the Chesapeake Bay Ferry District should thereafter be known as the Chesapeake Bay Bridge and Tunnel District, and that thereafter the Chesapeake Bay Ferry

Commission should be known as the Chesapeake Bay Bridge and Tunnel Commission. This commission was authorized to establish, construct, maintain, repair and operate the bridge-tunnel project within the district.

Purpose: The Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities establish the policies and procedures for transporting hazardous materials through the five urban and water-proximate tunnels and the two rural and distanced-from-water tunnels.

FACILITIES AFFECTED

- Big Walker Mountain Tunnel - Rural
- Chesapeake Bay Bridge-Tunnel - Urban
- East River Mountain Tunnel - Rural
- Elizabeth River Tunnel - Downtown - Urban
- Elizabeth River Tunnel - Midtown - Urban
- Hampton Roads Bridge-Tunnel - Urban
- Monitor-Merrimac Bridge-Tunnel - Urban

Substance: There are several major changes from the old regulation to the proposed regulation. The first major change involves the removal of any hazardous material restrictions from the two rural, distanced-from-water body tunnels located on Interstate 77 (Big Walker Tunnel and East River Tunnel). The second major change involves making the regulation more understandable to the public and the regulated community. This is accomplished by regulating based on hazard class rather than regulating based on a hazardous material table which lists all the individual commodities and the amounts allowed through. By using a regulation based on hazard class, the regulation will always be in conformity with the federal regulation, 49 CFR 172.101.

Transportation of hazardous materials through the five urban, water-proximate tunnels are to be grouped into three categories. The first category, Prohibited, means that the commodity is not allowed passage in any amounts. The second category, No Restrictions, means that any amount, as long as it is in compliance with the federal hazardous material regulation, is allowed passage through the tunnels. The last category, Restricted, means that the commodities are limited to non-bulk packages as defined in 49 CFR 171.8.

Issues: There are three major issues dealing with the existing Hazardous Material Transportation Rules and Regulations at Bridge-Tunnel Facilities which the proposed changes should satisfy. The three issues are: the complexity of existing regulation, updating the existing regulation to keep it current with federal regulations, and whether VDOT has the authority to regulate the transportation of hazardous material through the two rural tunnels on Interstate 77.

The existing regulation has proven difficult for both the regulated community and the tunnel personnel to understand. It consists of a table of hazardous materials with the total gross weight of the hazardous material allowed on the vehicle along with the maximum size container the hazardous material can be stored in. There are also notes that refer the user of the manual back to different areas of the text for further clarification. There are approximately 1,850 different

Proposed Regulations

chemicals listed in the regulation, and each one has its own gross weight limit and container size limit. The total gross weight limit for vehicles is listed in pounds, however, container sizes vary from ounces, to quarts, to gallons, to containers based on weight. To further confuse the issue, some commodities have notes that further restrict what was listed in the table. Based on conversations with tunnel personnel and the regulated community, this regulation has proven to be too complicated to follow.

Another problem area with the existing regulation is keeping it current with federal regulations. There are approximately 1,850 chemicals listed in the VDOT regulation, whereas there are 2,300 chemicals listed in 49 CFR 172.101. To add hazardous materials to the existing list whenever the federal list is updated requires amending the manual to incorporate the change and supplying all the users of the manual with an updated list. This becomes cumbersome and expensive and, by comparing the present federal list with the state list, is not always done.

The final issue is whether or not VDOT has the authority to restrict the transportation of hazardous materials through the two rural tunnels. Section 178.810 of 49 CFR provides for states setting up regulations for "urban tunnels." The Transportation Research Council examined whether the regulation could be preempted by the federal regulation. The report stated that the current regulation could certainly be preempted for the non-urban tunnels, and that it may be preempted for the urban tunnels because it classifies hazardous materials differently than does the federal regulation.

The amendments to the regulation resolve all the above listed problems. The regulation moves from a listing of the hazardous materials to one based on hazard class. There are nine hazard classes established by U.S. DOT. Each commodity, when added to the hazardous material table, is put into a class based on the major hazard it exhibits. Since there are only nine hazard classes, and each new commodity that is added is in a hazard class, there will be no need to update the regulation because the hazard classes do not change. Also, because there is no need to list every hazardous material, the regulation is reduced from 150 pages with attachments to less than five pages in length. Finally the complexity issue is eased, as there are only three classifications, and only one of these (Restrictions) is broken down further by bulk versus non-bulk shipments. The three classifications are Prohibited (not allowed through the tunnel), No Restrictions, and Restrictions (bulk containers versus non-bulk containers).

The last issue about urban and rural tunnels is dealt with by removing all restrictions on hazardous material transportation through the two rural tunnels along I-77.

There are many advantages inherent in the revised regulation. It will be much shorter and easier to understand, which will make comprehension and enforcement easier for both facility personnel and affected truckers. The new format will not need revising as often as the old one did. Restrictions will be removed from truck travel passing through the two tunnel facilities on I-77, which will make this route more attractive, thereby minimizing the likelihood that truckers may use other, less suitable routes. There are no

disadvantages to the Commonwealth or the regulated community in implementing these revisions.

Theoretically, all traffic using the bridge-tunnel facilities will be affected by these revisions. However, the primary impact will be on all trucking firms, businesses, and other parties who transport hazardous materials through the bridge-tunnel facilities. Due to deregulation, the exact number of these primary parties cannot be determined. The agency does not foresee any significant cost of compliance for the public with the regulation's promulgation.

Estimated Impact: The cost of printing the new regulation is the major financial cost associated with the tunnel rules as they relate to the Tidewater tunnels. The cost of printing 5,000 copies of the regulation is estimated to be \$5,000, assuming a cost of \$1.00 per copy (two or three pages). Since the rules dealing with the rural tunnels are to be removed, there will be a one-time cost of removing the existing hazardous material signage. There are roughly 30 ground signs and 13 overhead signs to be dealt with. The estimated cost for removal of the signs is \$6,500. Another cost that will result from removing the hazardous material restrictions from the rural tunnel is the hiring, training, and equipping of certified hazardous material responders for incidents that may occur in the tunnels. This cost will be dependent upon what agreements can be made with local response groups such as fire departments and industry response groups.

The impact on the regulated community will be minimal. The removal of restrictions on the rural tunnels should make it easier for hazardous material loads to travel along I-77. For the tunnels in the Tidewater area, the regulations should be easier to understand. There will be some instances where commodities that were previously allowed passage through these tunnels may have more restrictions on them now. However, more commodities will be allowed passage in higher amounts than were previously allowed.

Summary:

The proposed regulation concerning the transportation of hazardous materials through the Commonwealth of Virginia's seven tunnels makes some major changes in the amount and types of commodities that are allowed passage. The current regulation, "Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities," has been in place since 1988 and is being repealed. Although there have been several minor revisions to the regulation, no attempts to keep the regulation current to the changes in 49 CFR 172.101 have been made.

Additionally, the current regulations have proven difficult for the regulated community as well as the regulators to understand. The proposed regulation will be more universally understandable as the new regulation will be based on the hazard class. Furthermore, current restrictions on hazardous materials flow through the two mountain tunnels in Southwest Virginia are removed in the proposed regulation.

VR 385-01-05. Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.

§ 1. Applicability and purpose.

This regulation applies to all bridge-tunnel facilities in the Commonwealth of Virginia, and establishes the rules by which all interstate, intrastate, and public and private transporters of hazardous materials are governed while traveling through these facilities.

§ 2. List of bridge-tunnel facilities in the Commonwealth.

The following table lists the seven bridge-tunnel facilities in the Commonwealth. The Virginia Department of Transportation owns and operates the first six facilities listed. The Chesapeake Bay Bridge-Tunnel is a facility owned and operated by the Chesapeake Bay Bridge-Tunnel District, a political subdivision of the Commonwealth.

Name of Facility	Telephone Number	Route
Big Walker Mountain Tunnel	703-228-5571	Interstate 77
East River Mountain Tunnel	703-928-1994	Interstate 77
Elizabeth River Tunnel-Downtown	804-494-2424	Interstate 264
Elizabeth River Tunnel-Midtown	804-683-8123	Route 58
Hampton Roads Bridge-Tunnel	804-727-4832	Interstate 64
Monitor-Merrimac Memorial Bridge-Tunnel	804-247-2123	Interstate 664
Chesapeake Bay Bridge-Tunnel	804-331-2960	Route 13

For purposes of this regulation, the facilities listed above are classified into two groups: rural and essentially distanced from bodies of water, and urban and essentially proximate to bodies of water.

§ 3. Restrictions on hazardous material transportation across rural and distanced-from-water facilities.

The two rural and distanced-from-water tunnel facilities are: the Big Walker Mountain Tunnel and the East River Mountain Tunnel. For these two tunnels, and these two only, no restrictions apply on the transport of hazardous materials, so long as transporters and shippers are in compliance with 49 CFR Parts 100 through 180, and any present and future state regulations which may become in force to implement the federal regulations. In addition, the Commonwealth Transportation Commissioner may, at any time, impose emergency or temporary restrictions on the transport of hazardous materials through these facilities, so long as sufficient advanced signage is positioned to allow for a reasonable detour.

Questions on this section of the regulation should be directed to the VDOT Emergency Operations Center at the following telephone number: (804) 371-0891. Copies of the regulation will be provided free of charge. For copies, please write to:

Virginia Department of Transportation
ATTN: Emergency Operations Center
1221 East Broad Street
Richmond, Virginia 23219

§ 4. Restrictions on hazardous material transportation across urban and water-proximate facilities.

Hazardous materials are regulated in the five urban and water-proximate tunnels (Elizabeth River (Midtown and Downtown), Hampton Roads, Monitor-Merrimac, and Chesapeake Bay) based exclusively on the "hazard class" of the material being conveyed. The following tables list those categories of materials grouped under the designations "Prohibited," "No Restrictions," or "Restricted."

PROHIBITED

Materials defined in the following classes are not allowed passage through the five urban, water-proximate tunnels.

CATEGORY	PLACARD NAME	PLACARD REFERENCE
1.1	Explosives 1.1	49 CFR § 172.522
1.2	Explosives 1.2	49 CFR § 172.522
1.3	Explosives 1.3	49 CFR § 172.522
2.3	Poison Gas	49 CFR § 172.540
4.3	Dangerous When Wet	49 CFR § 172.548
6.1 (PG I, inhalation hazard only)	Poison	49 CFR § 172.554

NO RESTRICTIONS

Materials in the following hazard classes are not restricted in the five urban, water-proximate tunnels.

CATEGORY	PLACARD NAME	PLACARD REFERENCE
1.4	Explosives 1.4	49 CFR § 172.523
1.5	Explosives 1.5	49 CFR § 172.524
1.6	Explosives 1.6	49 CFR § 172.525
2.2	Non-Flammable Gas	49 CFR § 172.528
Combustible liquid	Combustible	49 CFR § 172.544
4.1	Flammable Solid	49 CFR § 172.546

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4.2	Spontaneously Combustible	49 CFR § 172.547
6.1 (PG I or II, other than PG I inhalation hazard)	Poison	49 CFR § 172.554
6.1 (PG III)	Keep Away From Food	49 CFR § 172.553
6.2	(None)	
7 Radioactive	Radioactive	49 CFR § 172.556
9	Class 9	49 CFR § 172.560
ORM-D	(None)	

RESTRICTED

Materials in the following hazard classes are allowed access to the five urban, water-proximate tunnels in "Non-bulk" (maximum capacity of 119 gallons/450 liters or less as a receptacle for liquids, a water capacity of 1000 pounds/454 kilograms or less as a receptacle for gases, and a maximum net mass of 882 pounds/400 kilograms or less and a maximum capacity of 119 gallons/450 liters or less as a receptacle for solids) quantities per container only.

CATEGORY	PLACARD NAME	PLACARD REFERENCE
2.1	Flammable Gas	49 CFR § 172.532
3	Flammable	49 CFR § 172.542
5.1	Oxidizer	49 CFR § 172.550
5.2	Organic Peroxide	49 CFR § 172.552
8	Corrosive	49 CFR § 172.558

VA.R. Doc. No. R95-462; Filed April 26, 1995, 4:04 p.m.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Title of Regulation: VR 670-01-1. Regulation Guidelines for Public Participation (REPEALING).

VA.R. Doc. No. R95-473; Filed May 3, 1995, 2:29 p.m.

Title of Regulation: VR 670-01-100. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Public Hearing Date: June 19, 1995 - 4 p.m.

Written comments may be submitted through July 28, 1995.

(See Calendar of Events section

for additional information)

Basis: The Virginia Department for the Visually Handicapped has authority under § 63.1-85 of the Code of Virginia to promulgate regulations pursuant to the provisions of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

Purpose: The purpose of the proposed regulation is to adopt Public Participation Guidelines which meet the requirements of the Administrative Process Act and guarantee the opportunity for public involvement in the regulatory process. The department is not currently in compliance with all such requirements.

Substance: The proposed regulations incorporate additional requirements in the following areas: petitions for regulatory change and petitions for public hearings, ad hoc advisory committees, and periodic review of regulations.

Issues: The advantage for both the public and the Commonwealth in adopting the proposed regulations is to guarantee the opportunity for public involvement in the department's process for establishing and revising regulations that affect individuals who are blind or visually impaired. The agency is not aware of any disadvantages to adopting the proposed regulations.

Estimated Impact: The projected number of persons affected by the proposed regulation is 5,406 annually; i.e., the average number of blind or visually impaired individuals who are served annually by the department's service programs which are subject to issuance of regulations pursuant to the APA. The projected cost for implementation of and compliance with the proposed regulations is approximately \$3,000 annually. No localities will be particularly affected by the proposed regulation.

Summary:

The Public Participation Guidelines (VR 670-01-100) replace in entirety the Regulation Guidelines for Public Participation (VR 670-01-1) first promulgated on October 25, 1984. The new guidelines identify the specific actions to be taken by staff of the Department for the Visually Handicapped to ensure participation by interested persons in the process of developing regulations. The guidelines also address how the public may initiate consideration of regulation or review. This action is necessary for the department to be in compliance with requirements for public participation in the regulatory process as per the 1993 amendments to the Administrative Process Act.

VR 670-01-100. Public Participation Guidelines.

PART I. STATEMENT OF PURPOSE.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Department for the Visually Handicapped. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The commissioner shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the commissioner. The commissioner may add to the list any person or entity he believes will serve the purpose of enhancing participation in the regulatory process.

C. The commissioner may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The commissioner shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing lists.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action;
2. A Notice of Comment Period;
3. A copy of any final regulation adopted by the department; and
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the commissioner to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The commissioner shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the commissioner from receiving information from the public and proceeding on his own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The notice shall indicate whether the commissioner intends to hold a public hearing on the proposed regulation after it is published. If the department does not intend to hold a public hearing, it shall state the reason in the notice.

C. The notice shall state that a public hearing will be scheduled, if, during the 30-day comment period, the commissioner receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period shall indicate that copies of the proposed regulation are available from the department and may be requested in writing from the contact person specified in the notice.

B. The notice shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

The commissioner shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation, unless, at a noticed meeting, the commissioner determines that a hearing is not required.

§ 3.4. Triennial review of regulations.

A. At least once each three years, the commissioner shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar for inclusion in the Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The commissioner may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the department.

B. The commissioner may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the commissioner determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

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§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the commissioner may be dissolved by the commissioner when:

- 1. There is no response to the Notice of Intended Regulatory Action; or*
- 2. The commissioner determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

- 1. If the commissioner determines that the specific regulatory need continues to exist beyond that time, he shall set a specific term for the committee of not more than six additional months.*
- 2. At the end of that extended term, the commissioner shall evaluate the continued need and may continue the committee for additional six-month terms.*

VA.R. Doc. No. R95-474; Filed May 3, 1995, 2:30 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 regulation.

THE COLLEGE OF WILLIAM AND MARY

REGISTRAR'S NOTICE: The College of William and Mary is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: VR 187-01-02. **Motor Vehicle Parking and Traffic Rules and Regulations.**

Statutory Authority: § 23-9.2:3 of the Code of Virginia.

Effective Date: May 1, 1995.

Summary:

These regulations govern the parking and regulation of motor vehicles on the campus of the College of William and Mary. They provide for the registration of motor vehicles, control of traffic regulations, and the enforcement of the above.

The amendments increase several decal fees by \$1.00 or \$2.00 on an annual basis. The college has changed the enforcement of the parking meters at Hunt Circle, and the faculty/staff designation of the PBK and Morton Hall lots.

Agency Contact: Copies of the regulation may be obtained from the College of William and Mary, Department of Parking Services, 204 South Boundary Street, Williamsburg, VA 23185, telephone (804) 221-4764 or (804) 221-2435.

VR 187-01-02. Motor Vehicle Parking and Traffic Rules and Regulations.

PART I. GENERAL PROVISIONS.

§ 1.1. Decals.

§-1.1. A. Decals shall be permanently affixed to the left rear bumper or on the outside of the left rear windshield. No parking decal may be taped inside the vehicle.

§-1.2. B. The Parking Services office will recognize an official grace period in August of each school year for "No Decal" violations. For the Fall 1993 session, the grace period extends through August 31, 1993. During the grace period, only "No Decal" violations will be waived. Parking enforcement officers will continue to cite all other violations during the grace period. Student vehicles that are parked in faculty/staff spaces during the grace period will receive a citation for Reserved Space.

§-1.3. C. The costs of decals vary to accommodate various categories of students and are adjusted at different times of the year. The following rates apply:

Category	Aug [93 95]	Jan [94 96]	Apr [94 96]
Faculty/Staff/Student	\$50.00 \$52.00	\$30.00 \$31.00	\$20.00 \$21.00
Non-College Affiliated	\$50.00 \$52.00	\$30.00 \$31.00	\$20.00 \$21.00
Hourly/Part-time Employee	\$25.00 \$26.00	\$25.00 \$26.00	\$20.00 \$21.00
Evening Student	\$25.00 \$26.00	\$25.00 \$26.00	\$20.00 \$21.00
William & Mary Hall Lot Only	\$20.00 \$21.00	\$20.00 \$21.00	\$20.00 \$21.00
Motorcycle	\$25.00 \$26.00	\$25.00 \$26.00	\$20.00 \$21.00
Additional Decal	\$ 5.00	\$ 5.00	\$ 5.00

§ 1.2. Temporary permits.

§-1.4. A. Temporary permits are available for periods not to exceed two weeks and cost \$1.00 per week. After the two-week period has expired, a permanent decal must be purchased.

§-1.5. B. Temporary permits, at no charge and with a two-hour limit, are available for loading and unloading (two-hour limit), temporary handicaps, temporary plates and car repairs.

§-1.6. § 1.3. Enforcement of parking meters.

In general, campus parking meters are enforced 7 a.m. to 5 p.m., Monday through Saturday. However, meters at Hunt Hall are enforced from 7:30 a.m. to 5 p.m., Monday through Saturday, and those at Swem Library are enforced seven days a week, 24 hours a day. Multiple citations may be issued at meters.

§ 1.4. Payment of fines.

§-1.7. A. Tickets paid within 10 working days of the date of the ticket will be reduced by \$5.00.

§-1.8. B. Payment for fines for wheellocked vehicles may be paid by check or credit card.

§-1.9. C. Visitors to the college, who receive a No Decal violation, are not required to pay their first three No Decal violations. However, after three such violations, subsequent violations shall be paid.

§-1.10. § 1.5. Faculty/staff lots.

A. Evening students may park in any faculty/staff (except the Jones Lot - Lot R), resident or day space after 4 p.m. This option is available to other students after 5 p.m.

§-1.11. ~~It is a violation to purchase and distribute additional decals to other individuals or transfer or exchange decals for~~

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~~use on other vehicles. Such cases will be referred to the Dean of Students for appropriate action.~~

~~§ 1.12. B.~~ Jones Lot is reserved 24 hours a day, seven days a week for faculty/staff only.

§ 1.6. *Miscellaneous provisions.*

A. *It is a violation to purchase and distribute additional decals to other individuals or transfer or exchange decals for use on other vehicles. Such cases will be referred to the Dean of Students for appropriate action.*

~~§ 1.13. B.~~ Parking in the Common Glory lot (Lot D) is prohibited unless there is a curb blocker at the space.

§ 1.14. C. Individuals who are associated with the college and have handicapped tags shall also display a William and Mary parking decal.

§ 1.15. D. Fees for parking decals are not refundable.

§ 1.16. E. The use of hazard lights does not preclude the issuance of a citation if the vehicle is in violation of parking rules.

§ 1.17. F. Temporary/Visitor Permits are available from Campus Police when the Parking Services office is not open.

§ 1.18. G. When vehicle or license plate information changes, please notify the Office of Parking Services, x14764.

H. *Enforcement of the faculty/staff designation at the PBK and Morton Hall lots runs from 7:30 a.m. to 5 p.m.*

PART II. REGISTRATION OF MOTOR VEHICLES.

§ 2.1. *Registration of motor vehicles.*

A. All motor vehicles, including motorcycles and motorbikes, parked on college property shall be registered with Parking Services located at 204 S. Boundary Street. Registration may also be accomplished at the Watermen's Hall Registration Desk for those individuals at the York River Campus. The operator of each vehicle will be issued an appropriate decal or permit. The purchase of a decal entitles individuals to park only in those areas designated for the respective decal. The purchase of a decal does not guarantee a parking space. Maps highlighting the major lots by type of decal for both the Williamsburg and York River Campuses are incorporated by reference and made a part of these regulations. Decals are effective for the school year which runs from August 16 through August 31 of the following calendar year. Temporary permits are issued as necessary for durations appropriate with their purpose.

B. Acceptance of a decal or permit by an individual attests to that person's complete understanding of the College of William and Mary Motor Vehicle Regulations and such person's responsibility to adhere to these regulations. Additionally, it is a violation to purchase additional decals for distribution to other individuals.

C. Registrants who misstate their classification category will be referred to the Dean of Students. When there is a change in (i) classification status of a registrant; or (ii) the purpose for which a decal or permit was issued; or (iii) the

vehicle registration information, it shall be the sole responsibility of the registrant to notify Parking Services so that the decal or permit may be suitably altered.

PART III. REGISTRATION, ELIGIBILITY AND CLASSIFICATION.

§ 3.1. *Classification of registrant.*

Should registrants or Parking Services disagree as to proper classification, Parking Services may issue a 14-day temporary permit in favor of the registrant, who shall immediately file an appeal with the Traffic Appeals Board. The registrant is solely responsible for a clear statement of the situation in the appeal and for completing a permanent registration immediately upon receiving a decision from the Appeals Board.

§ 3.2. *Categories of decals.*

The categories of decals issued by the Parking Service office are listed below.

1. Faculty/Staff (blue). All faculty, administrative personnel, classified and hourly employees of the college are eligible to register motor vehicles and will be issued a blue decal. Students who work part-time for the college will have eligibility determined according to their student status.

2. Resident (yellow). All individuals classified as students by the Registrar of the college, who reside in college administered housing and have completed 54 semester hours (or 4 semesters), or students who reside at Dillard Complex and have completed the equivalent of two semesters, qualify as a resident and will be issued a yellow decal.

3. Day (green). Those individuals classified as students by the Registrar of the college who do not reside in college administered housing will receive a green decal upon registering a motor vehicle.

4. Evening (maroon). Students whose classes begin after 4 p.m., and who do not reside in college administered housing, qualify as an evening student and will be issued a maroon decal. After 4 p.m. they may park in any faculty/staff or student space unless otherwise posted. Evening students who have a frequent need to park on campus before 4 p.m. may purchase the Day (green) decal, as no provision is made for the Evening designation prior to 4 p.m. Evening students who have an occasional need to park on campus before 4 p.m. must obtain a temporary Day (green) permit, which allows parking in Day areas only.

5. Restricted use (red). Students otherwise ineligible to register a motor vehicle, who have obtained permission through the Traffic Appeals Board, will receive a restricted use red decal upon registration. The red decal allows parking only in the William and Mary Hall Lot. Application forms for this permission are available at Parking Services. Permission may be granted upon demonstration that a vehicle is indispensable for employment, essential to continuance at the college, for physical disability or for other college related needs. A

student who brings a vehicle to the college without prior special permission is in violation of these regulations.

The William and Mary Hall Lot only permit is available to all college community members who are otherwise eligible. This permit is priced significantly lower than other permits for which individuals may be eligible.

6. General (gold). General decals, which are gold, are intended for Marriott employees, child care center employees and noncollege affiliated persons who volunteer at the college or have a frequent need to visit and use college facilities. The General decal allows parking in faculty/staff areas only.

§ 3.3. Temporary permits.

Temporary permits are available on a limited basis for a variety of needs. Examples include loading permits, car in for repairs or temporary handicaps. These permits are available from 8 a.m. to 4 p.m. Monday through Friday from Parking Services and all other times from the Campus Police. Permits for the employees at the York River Campus may be obtained from the registration desk in Watermen's Hall.

§ 3.4. Additional or replacement decals.

An additional or replacement decal may be purchased for \$5.

§ 3.5. Motorcycle/motorbike.

Members of the college community shall register motorcycles and motorbikes. The decal will be issued in accordance with the status of the registrant.

§ 3.6. Lost/stolen decals.

If a decal is lost or stolen, it must be reported immediately to the Campus Police, and a new permit must be obtained from Parking Services. Without a proper decal or permit, a motor vehicle parked on college property is in violation of these regulations and is subject to ticketing, wheellocking or towing.

§ 3.7. Display of decals.

Vehicle registration is not complete until the permit or decal is properly displayed. Decals or permits displayed improperly will constitute an improper display violation. Decals shall be securely affixed to the left rear bumper or to the outside of the left rear windshield. Affixing the decal to the outside rear windshield facilitates removal at a later date.

PART IV. TRAFFIC REGULATIONS.

§ 4.1. Enforcement.

~~§ 4.1.~~ A. The Campus Police are authorized to enforce moving violations which will be returnable in the respective district courts.

~~§ 4.2.~~ B. Barriers may be placed by the Campus Police at any point deemed necessary for specific temporary use - most often employed for safety reasons and traffic flow. Removal of any such barriers without permission, except for passage of emergency vehicles, is prohibited.

~~§ 4.3.~~ C. In all cases, the directions of a police officer supersede the regulations posted by sign or signal.

~~§ 4.4.~~ § 4.2. Vehicles on sidewalks.

Riding, driving or parking any vehicle, other than emergency vehicles, on the sidewalks of the college is prohibited. Any other use is by special permission from the Campus Police or Parking Services.

~~§ 4.5.~~ § 4.3. Applicability of Part IV.

Sections 4.1 ~~through 4.5~~ and 4.2 apply equally to any person parking or operating a motor vehicle on college property.

PART V. PARKING REGULATIONS.

Article 1. General Provisions.

§ 5.1. Decal or permit required; exceptions.

A decal or permit is required to park on college property 24 hours a day, seven days a week, except in metered or timed spaces. Anyone may park in metered spaces and must pay the meter as posted.

§ 5.2. Parking/no parking designations.

A. Signs have been posted to designate the following parking areas which are enforced between 7:30 a.m. and 5 p.m., Monday through Friday, except for the regulation regarding evening students as set out in subdivision 4 of § 3.2:

- Visitors
- Faculty/Staff
- Day
- Resident
- Time Limit spaces

~~§ 5.3.~~ B. The following designations are reserved and enforced 24 hours a day, seven days a week:

- Firelanes
- No Parking zones
- Handicapped spaces
- Reserved For spaces
- Official Vehicle spaces
- Service/Vendor spaces
- Jones Hall Lot
- Meters at Hunt Circle and Swem Library

~~§ 5.4.~~ C. "No Parking" signs indicate an emergency lane, and no parking is permitted day or night. Parking in any portion of a No Parking zone for any length of time is a violation of these regulations.

~~§ 5.5.~~ D. Spaces reserved for Service or Vendor vehicles may only be used by vehicles displaying Service or Vendor

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permits issued by Parking Services. Employees of the college who have Service or Vendor permits must also have a William and Mary parking permit if they are using their personal vehicle and parking in a Service or Vendor space.

~~§ 5.6.~~ *E. Parking space designation as to faculty, staff, and students will be observed when the college is in session. Parking space designations will not be observed during holidays posted in the college catalog, unless otherwise posted. All other traffic and parking regulations will be enforced throughout the calendar year. Students in doubt should contact Parking Services, x14764.*

~~§ 5.7.~~ *§ 5.2. Vacating certain lots.*

A. The Cary Field/Bryan Lot, the University Center Lot, the Post Office Lot and the pull-in spaces at the rear of St. Bede's Church adjacent to College Terrace must be vacated by 8 a.m. on the Saturdays of home football games. Vehicles in violation may be towed at owner's expense.

~~§ 5.8.~~ *B. The University Center Lot and the parking along the stadium wall shall be vacated the Friday and Saturday of the Colonial Relays. This is generally the first weekend in April of each year. Vehicles in violation may be towed at owner's expense.*

~~§ 5.9.~~ *C. Brooks Street around William and Mary Hall shall be vacated by 4 p.m. on the days of home basketball games. Vehicles in violation may be towed at owner's expense.*

~~§ 5.10.~~ *§ 5.3. Parking on grass.*

Under no circumstances may any motor vehicle, other than police or emergency vehicles, be operated or parked at any time on the walkways, landscape, grass, or areas designated for grass, without a permit from Parking Services or Campus Police.

~~§ 5.11.~~ *§ 5.4. Special events.*

Special events such as convocations and home athletic events require many parking spaces on the campus to be reserved. Whenever possible, three days notice will be given to the college community so alternate parking plans can be made.

Members of the college community should be alert to posted notices because vehicles in violation may be towed at owner's expense.

~~§ 5.12.~~ *§ 5.5. Motorcycles.*

Parking or storing motorcycles or motorbikes inside a building or in or near an entrance way is prohibited. In order to comply with state regulations and to preclude possible fire hazards, motorcycles and motorbikes will be ticketed and removed at the owner's expense when so parked. Cycle owners are asked to make use of the motorcycle parking spaces throughout campus.

~~§ 5.13.~~ *§ 5.6. Double parking.*

Double parking is never permitted.

~~§ 5.14.~~ *§ 5.7. Bumper blocks.*

Bumper blocks, if present, establish parking spaces. This is especially true in Common Glory (Lot D) where parking is only permitted at bumper blocks.

~~§ 5.15.~~ *§ 5.8. Disabled vehicles.*

The driver of any disabled vehicle is subject to ticketing. If the vehicle cannot be removed immediately, the driver should notify the Campus Police or Parking Services at once and take steps to remove it without delay. A note left on a disabled vehicle does not preclude ticketing.

~~§ 5.16.~~ *§ 5.9. Handicapped parking.*

Parking in spaces designated as "Handicapped Parking" is limited exclusively for that purpose. Vehicles parked in these spaces without proper authorization may be towed at the owner's expense. Members of the college community who have handicap permits shall also display a current decal or permit.

Article 2.

York River Campus Parking.

~~§ 5.17.~~ *§ 5.10. Parking by permit only.*

Parking at the York River Campus is by permit only. All employees are entitled to park in any nonreserved space. Provisions for handicapped parking are set out in ~~§ 5.21~~ *§ 5.14*, and visitor parking is set out in ~~§ 5.22~~ *§ 5.15*.

Article 3.

Williamsburg Campus Parking.

~~§ 5.18.~~ *§ 5.11. Faculty/staff parking.*

Members of the faculty and staff are expected to observe the parking regulations and are encouraged not to drive their vehicles point-to-point on campus. Faculty and staff are expected to park only in faculty and staff areas.

~~§ 5.19.~~ *§ 5.12. Day student parking.*

Students having Day decals may park only in areas designated as day parking.

~~§ 5.20.~~ *§ 5.13. Resident student parking.*

Resident students may park only in resident areas. Resident students are encouraged to abstain from driving to class to help reduce parking congestion and to afford other residents across campus availability to resident spaces. As an exception, Dillard and the Graduate Student Complex residents may park in the Common Glory Lot (Lot D) and other resident designated areas provided they have current resident and Dillard decals.

~~§ 5.21.~~ *§ 5.14. Handicapped parking.*

Permanent handicap license plates or placards may be obtained from the Department of Motor Vehicles. Faculty and staff members requiring temporary handicapped parking may make application through the Affirmative Action Office (College Apt #3). Students requiring temporary handicapped parking may make application through the Office of the Dean of Students (James Blair 102) and employees at the York River Campus should contact the Manager of Administrative Services (Watermen's Hall). Vehicles displaying appropriate handicap plates or placards may park in any handicapped,

faculty/staff or student space. Those individuals affiliated with the college who have handicapped parking permission must also display a William and Mary parking decal.

§ 5.22. § 5.15. Visitor parking.

Visitor spaces are provided only for individuals outside the college community who have legitimate business on campus. No vehicle which has, or should have, a decal or permit is considered a visitor. Spaces reserved for "Visitors To" are intended for noncollege affiliated individuals only. Permits to use these spaces may be obtained from the respective office visited.

Visitors with visitor permits may park in any faculty/staff, student or visitor space. Visitor permits are not valid at metered spaces. Members of both campuses who have visitors coming to the campus should contact Parking Services for appropriate permits.

§ 5.23. § 5.16. Metered spaces.

Metered spaces are intended for high turn over, high demand areas. Anyone may park at a meter, and everyone must pay. Meters are enforced from 7:30 a.m. to 5 p.m., Monday through Saturday, except for the Swem Library and Hunt Circle meters which are enforced 24 hours a day, 7 days a week. It is a violation to park in a metered space when the violation flag is visible. Multiple citations may be issued at meters.

PART VI. ENFORCEMENT.

§ 6.1. *Enforcement authority.*

Campus Police will enforce all appropriate provisions of the motor vehicle laws described in the Code of Virginia, the City of Williamsburg Traffic Regulations and the Motor Vehicle Regulations of the College of William and Mary. Parking Services will enforce the Motor Vehicle Regulations of the College of William and Mary.

§ 6.2. *Additional citations for same violation.*

After the first citation for violation of a motor vehicle regulation, any vehicle which remains in violation of the same regulation is subject to additional citations.

§ 6.3. *Consistency of enforcement.*

Every attempt will be made to maintain consistency of enforcement. Lack of space in the immediate proximity to a building or observation that others have parked in violation of the regulations will not be considered a valid excuse for violating any regulation. Hazard lights do not exempt a vehicle from ticketing if they are in violation of a parking rule.

§ 6.4. *Responsibility for violation.*

The person in whose name a parking decal or permit is issued will be held responsible for any violation involving the vehicle. Citations are not excused on the plea that another person was driving at the time the citation was issued.

§ 6.5. *Removal of vehicle.*

Campus Police and Parking Services are authorized to remove, at the owner's expense, any vehicle which is in

violation of these regulations. This includes towing or wheellocking.

§ 6.6. *Payment of fines.*

A. Citation fines must be paid or appealed within 10 working days from the date the ticket is issued.

~~§ 6.7.~~ B. The owner or operator of a wheellocked vehicle must pay any outstanding fines and the additional wheellock fee (\$20) before the wheellock will be removed. Unauthorized removal or tampering with a wheellock may result in criminal prosecution. Vehicles wheellocked in excess of 48 hours will be towed to a private, licensed garage, and held until the owner presents a paid receipt from the college for outstanding fines, proof of ownership of the vehicle and payment of the towing fee. In addition, the garage may also charge a storage fee.

~~§ 6.8.~~ § 6.7. Schedule of fines; payment policy.

A. Schedule of fines.

Violation	If Paid Within 10 Working Days	If Paid After 10 Working Days
No Valid Decal	\$25	\$30
Handicapped Space	\$25	\$30
Towed - Special Event	\$25	\$30

Illegal Parking:

Firelane	\$10	\$15
Reserved Space	\$10	\$15
Expired Meter	\$10	\$15
No Parking Zone	\$10	\$15
Vendor's Space	\$10	\$15
Improper Display	\$10	\$15
Overtime	\$10	\$15
Visitor's Space	\$10	\$15
Sidewalk/Crosswalk/ Grass	\$10	\$15
Improper Parking/Other	\$10	\$15

B. The following policy establishes the accepted payment methods for outstanding parking fines:

1. Payment may be made by cash, personal check, cashier's check, money order, credit card (VISA or Master Card only) or William and Mary debit card.

2. Owners of vehicles that have been towed must pay all outstanding fines and fees using payment methods described in item 1 above. Additionally, the owner must pay the towing contractor the towing fee and any storage fees. If payment is made at Campus Police, they can accept forms of payment mentioned in item 1, with the exception of the William and Mary debit card.

3. Employees at the York River Campus may mail checks, money orders or cashier's checks to the Office of Parking Services. Checks should be made payable to the College of William and Mary. Alternatively, they may use the courier provided by Administrative Services.

C. Wheellock policy.

Vehicle owners with a vehicle that is wheellocked must pay all outstanding fines, plus a \$20 wheellock fee, within 48

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hours of the wheellock. Acceptable payment methods are as described in B 1 of this section, with the exception that the debit card may only be used when paying at Parking Services from 8 a.m. to 4 p.m., Monday through Friday. Vehicles wheellocked in excess of 48 hours will be towed to a private, licensed garage. Vehicles generally become eligible for wheellock when there are three or more outstanding tickets which have not been paid or appealed within 14 days of the date of the ticket. Vehicles with two tickets which have not been paid within 30 days of the date of the ticket are also eligible for wheellock.

~~§ 6.9.~~ § 6.8. Appeals.

A. Campus parking citations are treated as minor infractions of college regulations with the right of appeal as stated in the Student Handbook. The operation of a motor vehicle on the campus constitutes implied consent for college parking violations to be handled through written appeals made to the Traffic Appeals Board. The Traffic Appeals Board is, by Presidential appointment, the highest authority on campus in parking matters and consists of members from all college constituencies.

B. The board does not look favorably upon the following appeals:

No decal/failure to buy additional decal

No spaces available

Bad weather/didn't want to walk

Usually park off campus

Didn't have time to get a decal

Someone else driving my vehicle

Residents parked in day spaces

Day students parked in resident spaces

Students in faculty/staff spaces

Nonpayment of past due fines may not entitle students to register for and attend classes.

~~§ 6.10.~~ § 6.9. Revocation.

A maximum of five citations which have been paid are permitted within the decal year without additional punitive action. On receipt of the sixth citation during the decal year, in addition to the fine, the offender's registration is subject to revocation and the individual may be prohibited from parking a vehicle on campus for the year, unless reinstated.

Reinstatement of motor vehicle registration rights which have been revoked for any reason, can be granted by the Traffic Appeals Board upon direct written application by the offender to the committee.

If decals or permits are revoked, no refunds shall be made.

COLLEGE OF WILLIAM & MARY PARKING REGISTRATION FORM

The information on this form is both true and accurate. I agree to notify Parking Services if and when any information changes. I will read and agree to abide by the Rules & Regulations. I understand that obtaining or displaying a decal under false pretenses is an HONOR CODE violation.

Graduate _____
Senior _____
Junior _____
Sophomore _____
Freshman _____

LICENSE PLATE _____ STATE _____

SS# _____

LAST NAME _____ FIRST _____

Faculty and Staff \$52 _____

CHECK IF LIVING AT: DILLARD _____ GRAD COMPLEX _____

Resident Student \$52 _____

CAMPUS/LOCAL ADDRESS _____
CS BOX, DEPARTMENT, OR LOCAL ADDRESS

Day Student \$52 _____

General \$52 _____

Building, Room Number _____ Telephone _____

Part-Time Employee \$26 _____

HOME ADDRESS: _____
Street or Route

Evening Student \$26 _____

Motorcycles \$26 _____
(Additional for Car \$31)

W&M Hall \$21 _____

City _____ State _____ Zip _____ Telephone _____

Additional \$5 _____

COPY OF STATE VEHICLE REGISTRATION REQUIRED

Emeritus Faculty Free _____

Vehicle Make _____ Color _____ Year _____

Volunteer Free _____

Style ___2D ___3D ___4D ___SW ___CV ___TK ___VN ___MC

Additional \$5 _____

Signature _____ Date _____

Outstanding Tickets for \$ _____

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REQUEST FOR RESTRICTED-USE VEHICLE W&M HALL LOT ONLY \$52.00
FRESHMAN _____ SOPHOMORE _____

I request permission to register my vehicle from _____ to _____
for the reason outlined below: Date Date

NAME _____ DATE _____

COLLEGE ADDRESS _____ PHONE _____

I certify that I will only use the vehicle for the purpose outlined above. I further agree to notify Parking Services immediately and return my permit if and when the above justification for maintaining this vehicle on campus ceases to exist.
DO NOT WRITE BELOW THIS LINE

Transportation Appeals Committee:

() Permission denied

() Permission granted _____ to _____
Date Date

Date _____ Signature _____

Parking Services _____ Date _____
College of William & Mary
Williamsburg, VA 23185

Dear Sir:

This is to certify that _____
will be employed by me from _____ to _____,
and will require the use of an automobile in his/her work or for
transportation to and from the place of employment.

I agree to notify you immediately of any changes or
termination of this employment.

Company name _____ Telephone _____

Signature _____ Date _____

COLLEGE OF WILLIAM AND MARY TRAFFIC CITATION APPEAL

APPEAL OF TRAFFIC CITATION NO. _____ SOCIAL SECURITY NO. _____
DATE OF CITATION _____

Please Print

Name _____
Address _____
City _____ State _____ Zip _____

- Faculty
- Student
- Staff
- Visitor

Vehicle License No. _____ Phone No. _____ W&M Ext. _____

I appeal the traffic citation, above, for the reasons outlined below:

I certify that the statement made above is true and correct to the best of my knowledge and belief.

Signature _____ Date _____

For Traffic Appeals Committee

- Appeal DENIED for failure to file appeal within prescribed time
- Appeal denied, all fines suspended
- Appeal DENIED
- Appeal UPHOLD

Comments by Committee

Date _____ Chairperson, Traffic Appeals Committee _____

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BOARD FOR COSMETOLOGY

Title of Regulation: VR 235-01-02. **Board for Cosmetology Regulations (REPEALED).**

Title of Regulation: VR 235-01-03. **Nail Technician Regulations (REPEALED).**

Title of Regulation: VR 235-01-02:1. **Board for Cosmetology Regulations.**

Statutory Authority: §§ 54.1-201 and 54.1-1202 B of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

The Virginia Board for Cosmetology has repealed two sets of regulations and promulgated one new set of regulations. The regulations achieve consistency with existing barber regulations and statutes as well as current board policies. Further, the regulations amend the Board for Cosmetology's renewal procedures.

The regulations combine the Cosmetology regulations, effective March 27, 1991, and the Nail Technician regulations, effective August 26, 1992, into one set of regulations.

The Board for Barbers Regulations allow cosmetologists who have held a license for two years to sit for the barber licensing examination. The final regulations extend this same courtesy to licensed barbers.

There are numerous changes that incorporate current board policy into regulatory language, such as allowing an apprenticeship program for nail technicians or issuing a temporary permit to individuals reinstating who are required to sit for the examination.

The regulations modify the required curriculum of, as well as other requirements for, nail and cosmetology schools. The licensure requirements for both nail technician and cosmetology instructors are also adjusted. These modifications assure student competency and protect public welfare.

The Board for Cosmetology has eliminated their existing late renewal period which is confusing for regulants. The board has adopted a 30-day grace period for renewal and a five-year reinstatement period. After two years of the five-year reinstatement period, the board may require individuals to retake any or all of the cosmetology or nail technician examination. Such grace and reinstatement periods are consistent with other licensing programs in Virginia.

Also, the regulations adjust fees to assure that the variance between revenues and expenditures for the Board for Cosmetology does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia.

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 Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-0500.

VR 235-01-02:1. Board for Cosmetology Regulations.

PART I. GENERAL DEFINITIONS.

§ 1.1. Definitions.

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

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Board" means the Board for Cosmetology.

"Certificate holder" means any person holding a certificate issued by the Board for Cosmetology, as defined in § 54.1-1200 of the Code of Virginia.

"Compensation" means the payment of money or anything of value in exchange for services provided.

"Cosmetologist" means any person licensed by the board who cuts, curls, treats or dresses human hair and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: arranging, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, braiding, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece. Persons working in a cosmetology salon whose duties are expressly confined to the shampooing and cleansing of human hair under the direct supervision of a cosmetologist are exempt from licensure.

"Cosmetology instructor" means a licensed cosmetologist who has been certified by the board as having completed an approved curriculum and who meets the competency standards of the board.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the board.

"Cosmetology school" means any place or establishment licensed by the board to accept and train students.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Licensee" means any person, partnership, association, limited liability company, or corporation holding a license issued by the Board for Cosmetology, as defined in § 54.1-1200 of the Code of Virginia.

"Nail care" means manicuring, pedicuring, or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the board.

"Nail school" means a place or establishment licensed by the board to accept and train students.

"Nail technician" means any person licensed by the board who for compensation manicures, or pedicures natural nails or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the board as having completed an approved curriculum and who meets the competency standards of the board.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

PART II. ENTRY.

§ 2.1. Basic qualifications for licensure.

Every applicant to the board for a license shall have the following qualifications:

1. The applicant shall be in good standing as a licensed cosmetologist or nail care technician in every jurisdiction where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a cosmetologist or nail care technician. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as a cosmetologist or nail technician.
2. The applicant shall disclose his physical address. A post office box is not acceptable.
3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia cosmetology license law and the regulations of the board.

4. The board may make further inquiries with respect to the qualifications of the applicant or require a personal interview with the applicant or both. Failure of an applicant to comply with a written request from the board for additional information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

§ 2.2. Individual license.

Upon filing an application with the Board for Cosmetology on forms approved by the board, any person meeting the qualifications set by the board shall be eligible for a license if the applicant has sufficiently demonstrated that:

1. The applicant has received training as defined in §§ 2.3 and 2.4 of these regulations;
2. The applicant has qualified for licensure either by passing the required examination or by endorsement; and
3. An applicant who has had any disciplinary action taken in any jurisdiction in connection with the applicant's practice as a cosmetologist or nail technician may be approved or disapproved for licensure following consideration of the applicant's application by the board.

§ 2.3. Training in the Commonwealth of Virginia.

Any person completing an approved cosmetology training program in a Virginia licensed cosmetology school or a Virginia public school's cosmetology program shall be eligible for the cosmetology examination.

Any person completing an approved nail technician program in a Virginia licensed nail school or a Virginia public school's nail technician program shall be eligible for the nail technician examination.

§ 2.4. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

Any person completing a cosmetology training program outside of the Commonwealth of Virginia, must submit documentation of the successful completion of 1,500 hours of training. If less than 1,500 hours cosmetology training was completed, any person submitting a certificate, diploma or adequate documentation verifying the completion of a substantially equivalent cosmetology course and documentation of six months of cosmetology work experience may be eligible for the cosmetology examination.

Any person completing a nail technician training program outside of the Commonwealth of Virginia, must submit documentation of the successful completion of 150 hours of training. If less than 150 hours nail technician training was completed, any person submitting a certificate, diploma or adequate documentation verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience may be eligible for the nail technician examination.

§ 2.5. Apprenticeship training.

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Any person completing the Virginia apprenticeship program in cosmetology shall be eligible for the cosmetology examination. Cosmetology salons training apprentices shall comply with the standards for apprenticeship training established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry.

Any person completing the Virginia apprenticeship program in nail care shall be eligible for the nail technician examination. Cosmetology and nail salons training nail apprentices shall comply with the standards established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry.

§ 2.6. Exceptions to training requirements shown in §§ 2.3, 2.4, and 2.5.

A. A licensed barber enrolling in a cosmetology training school may be given credit for 50% of the training received for a barber license.

B. A student may be given educational credit for 50% of the training received in a barber school when transferring to a cosmetology school.

C. A licensed barber who has held a barber license for at least two years will be eligible to sit for the cosmetology examination without further training.

§ 2.7. Examinations.

A. Applicants for initial licensure shall take and pass both a practical and written examination provided by the board or by a testing service acting on behalf of the board.

B. Any applicant passing one part of the examination shall not be required to take that part again provided both parts are passed within one year of initial examination date.

C. Any candidate failing to appear as scheduled for examination may be required to forfeit the fee, and may be required to pay a rescheduling fee equal to the original examination fee.

§ 2.8. Administration of examination.

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

B. The examination shall be administered by examiners independent from the board. The practical examination shall be supervised by a chief examiner.

C. Every cosmetology examiner shall hold a current Virginia cosmetology license, have three or more years of active experience as a licensed cosmetologist and be a currently practicing cosmetologist. Examiners shall attend all training workshops sponsored by the board or by a testing service acting on behalf of the board.

Every nail technician examiner shall be a practicing nail technician or cosmetologist with three or more years of active

experience as a nail technician or licensed cosmetologist and shall be a currently licensed nail technician or cosmetologist. Examiners shall attend all training workshops sponsored by the board or by a testing service acting on behalf of the board.

D. No certified instructor who is currently teaching or who is a school owner shall be an examiner.

E. A cosmetology chief examiner shall hold a current Virginia cosmetology license, have five or more years of active experience as a licensed cosmetologist, have three years of active experience as an examiner, and be a currently practicing cosmetologist. Chief examiners shall attend all training workshops sponsored by the board or by a testing service sponsored by the board.

A nail technician chief examiner shall hold a current Virginia nail technician or cosmetology license, have five or more years of active experience as a nail technician or cosmetologist, have three or more years of active experience as an examiner, and be a currently practicing nail technician or cosmetologist. Chief examiners shall attend all training workshops sponsored by the board or by a testing service sponsored by the board.

§ 2.9. License by endorsement.

Upon proper application to the board, on prescribed forms, any person currently licensed to practice as a cosmetologist, nail technician, cosmetology instructor or nail technician instructor in any other state or jurisdiction of the United States may be issued a cosmetology or nail technician license or a cosmetology instructor or nail technician instructor certificate without an examination.

§ 2.10. Cosmetology instructor's certificate.

Upon filing an application with the Board for Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a cosmetology instructor certificate:

1. Hold a current Virginia cosmetology license, and pass a course in teaching techniques at the post-secondary educational level;
2. [Hold a current Virginia cosmetology license, and] complete an instructor training course approved by the Virginia Board for Cosmetology under the supervision of a certified cosmetology instructor in a cosmetology school; or
3. [Hold a current Virginia cosmetology license, and] pass an examination in cosmetology instruction administered by the board.

§ 2.11. Nail technician instructor's certificate; exception.

A. Upon filing an application with the Board for Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for an instructor certificate:

1. Hold a current Virginia nail technician or cosmetologist license, and pass a course in teaching techniques at the post-secondary level;
2. [Hold a current Virginia nail technician or cosmetologist license, and] complete an instructor

training course approved by the Virginia Board for Cosmetology under the supervision of a certified instructor in a cosmetology or nail school; or

3. [Hold a current Virginia nail technician or cosmetologist license, and] pass an examination in nail care instruction administered by the board.

B. Persons holding a cosmetology instructor certificate may teach a nail technician program without obtaining a nail technician certificate.

§ 2.12. Temporary permit.

A. A temporary permit to work as a cosmetologist [~~or cosmetology instructor~~] under the supervision of a currently licensed cosmetologist [~~or certified cosmetology instructor~~] may be issued only to applicants for initial licensure [~~or certification~~] found eligible by the board for the cosmetology [~~or cosmetology instructor~~] examination.

A temporary permit to work as a nail technician [~~or nail technician instructor~~] under the supervision of a currently licensed nail technician [~~or~~] cosmetologist [~~or a certified nail technician instructor or cosmetology instructor~~] may be issued only to applicants for initial licensure [~~or certification~~] found eligible by the board for the nail technician [~~or nail technician instructor~~] examination.

B. The temporary permit shall remain in force for 30 days following the next scheduled examination for which the applicant would be eligible to sit.

C. All temporary permits are nonrenewable.

D. All candidates applying for reinstatement who are required to sit for the examination may be issued a temporary permit in accordance with the terms of subsections A, B, and C of this section.

[§ 2.13. Temporary instructor permit.

A. A licensed cosmetologist may be granted a temporary instructor permit to function under the direct supervision of a certified cosmetology instructor.

B. A licensed nail technician may be granted a temporary instructor permit to function under the direct supervision of a certified cosmetology or nail technician instructor.

C. The temporary instructor permit shall remain in force for no more than 12 months after the date of issuance and shall be nonrenewable.

D. Failure to maintain a cosmetology or nail technician license pending examination shall disqualify an individual from holding a temporary instructor permit.]

§ [~~2.13~~. 2.14.] Salon license.

A. Any individual wishing to operate a cosmetology or nail salon shall obtain a salon license in compliance with § 54.1-1205 of the Code of Virginia.

B. A cosmetology or nail salon license shall not be transferable and shall bear the same name and address as the business. Any changes in the name of the salon, address, or owners shall be reported to the board in writing within 30 days of such changes.

C. In the event of a change of ownership of a cosmetology or nail salon the new owners shall be responsible for reporting such changes in writing to the board within 30 days of such change.

D. In the event of a cosmetology or nail salon closing the board must be notified in writing within 30 days.

§ [~~2.14~~. 2.15.] Examination fees.

Examination fees shall be as follows:

Entire cosmetology examination	\$51
Written portion of cosmetology examination	\$33
Practical portion of cosmetology examination	\$43
Cosmetology instructor examination	\$35
Entire nail technician examination	\$45
Written portion of nail technician examination	\$27
Practical portion of nail technician examination	\$37
Nail technician instructor examination	\$35

§ [~~2.15~~. 2.16.] Application fees.

All fees are nonrefundable and shall not be prorated. Application fees are valid for a period of one year from the date of receipt. Application fees shall be as follows:

Cosmetology license by endorsement	\$50
Cosmetology salon	\$120
Cosmetology instructor license by endorsement	\$75
Nail technician license by endorsement	\$50
Nail salon	\$120
Nail technician instructor license by endorsement	\$75
Bad check penalty	\$25

PART III. COSMETOLOGY SCHOOLS.

§ 3.1. School license.

A. Any individual wishing to operate a cosmetology or nail technician school shall obtain a school license in compliance with § 54.1-1206 of the Code of Virginia.

B. A cosmetology or nail technician school license shall not be transferable and shall bear the same name and address as the school. Any changes in the name of the school or address shall be reported to the board in writing within 30 days of such change. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school the new owners shall be responsible for reporting such changes in writing to the board within 30 days of such change.

D. In the event of a school closing the board must be notified in writing within 30 days.

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§ 3.2. General requirements.

A cosmetology or nail technician school shall:

1. Hold a school license for each and every location.
2. Hold a salon license if the school receives compensation for services provided in its clinic.
3. Employ a staff of certified cosmetology or nail technician instructors.
4. Develop individuals for entry level of competency in cosmetology or nail care.
5. Submit its curricula for board approval.
 - a. Cosmetology curricula may be based on a minimum of 1,500 clock hours or competencies in accordance with § 3.6 of these regulations. However, schools wishing to offer both clock hour or competency based programs must submit separate curricula for board approval.
 - b. Nail care curricula may be based on a minimum of 150 clock hours or competencies in accordance with § 3.6 of these regulations. However, schools wishing to offer both clock hour or competency based programs must submit separate curricula for board approval.
6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic.
7. Maintain separate classroom and clinic areas.

§ 3.3. Curriculum requirements for cosmetology schools.

Each cosmetology school shall submit with its application a curriculum including but not limited to a course syllabus, a detailed course outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours or performances or both for all courses to be taught which lead to licensure. The outline for cosmetology shall include, but not be limited to, the following:

1. Orientation:
 - a. School policies
 - b. State law, regulations, and professional ethics
 - c. Personal hygiene
 - d. Bacteriology, sterilization, and sanitation
2. Manicuring and pedicuring:
 - a. Anatomy and physiology
 - b. Diseases and disorders
 - c. Procedures to include both natural and artificial application
 - d. Sterilization
3. Shampooing and rinsing:
 - a. Fundamentals
 - b. Safety rules

- c. Procedures
 - d. Chemistry, anatomy, and physiology
4. Scalp treatments:
 - a. Analysis
 - b. Disorders and diseases
 - c. Manipulations
 - d. Treatments
 5. Hair styling:
 - a. Anatomy and facial shapes
 - b. Finger waving, molding and pin curling
 - c. Roller curling, combing, and brushing
 - d. Heat curling, waving, braiding and pressing
 6. Hair cutting:
 - a. Anatomy and physiology
 - b. Fundamentals, materials, and equipment
 - c. Procedures
 - d. Safety practices
 7. Permanent waving-chemical relaxing:
 - a. Analysis
 - b. Supplies and equipment
 - c. Procedures and practical application
 - d. Chemistry
 - e. Record keeping
 - f. Safety
 8. Hair coloring and bleaching:
 - a. Analysis and basic color theory
 - b. Supplies and equipment
 - c. Procedures and practical application
 - d. Chemistry and classifications
 - e. Record keeping
 - f. Safety
 9. Skin care and make up:
 - a. Analysis
 - b. Anatomy
 - c. Health, safety, and sanitary rules
 - d. Procedures
 - e. Chemistry and light therapy
 - f. Temporary removal of hair
 - g. Lash and brow tinting

<p>10. Wigs, hair pieces, and related theory:</p> <ul style="list-style-type: none"> a. Sanitation and sterilization b. Types c. Procedures <p>11. Salon management:</p> <ul style="list-style-type: none"> a. Business ethics b. Care of equipment <p>§ 3.4. Curriculum requirements for nail technician schools or cosmetology schools teaching a nail technician program.</p> <p>Each school teaching the nail technician program shall submit with its application a curriculum including but not limited to a course syllabus, a detailed course outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours or performances or both for all courses to be taught which will lead to licensure. The outline for nail care shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> 1. Orientation: <ul style="list-style-type: none"> a. School policies, b. State law, regulations and professional ethics; 2. Sterilization, sanitation, bacteriology, and safety; 3. Anatomy and physiology; 4. Diseases and disorders of the nail; 5. Nail procedures (manicuring, pedicuring and nail extensions); 6. Nail theory, nail structure and composition. <p>§ 3.5. Curriculum requirements for cosmetology or nail instructor program.</p> <p>Each school applying to teach a cosmetology or nail instructor program shall submit with its application a detailed course outline, sample of five lesson plans, and a sample of evaluation methods to be used. The outline shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> 1. Orientation, school policies, state laws, regulations and professional ethics; 2. Introduction to teaching and psychology of training; 3. Course development and lesson planning; 4. Teaching methods and aids; 5. Tests and measurements; 6. Classroom management and recordkeeping; 7. Student teaching. <p>§ 3.6. Performance completions.</p> <p>A. The curriculum requirements for cosmetology must include the following minimum performances.</p> <p style="padding-left: 40px;">Hair and scalp treatments 10</p>	<p>Shampooing and hair styling 320</p> <p>Tinting 15</p> <p>Bleaching and frosting 10</p> <p>Temporary rinses 10</p> <p>Semi-permanent color 10</p> <p>Cold permanent waving or chemical relaxing 25</p> <p>Hair shaping 50</p> <p>Wig care, styling, placing on model 5</p> <p>Finger waving and thermal waving 30</p> <p>Manicures/pedicures 15</p> <p>Facials 5</p> <p>Sculptured nails/nail tips/wraps 20</p> <p>Total 525</p> <p>B. The curriculum requirements for nail technicians must include the following minimum performances.</p> <p style="padding-left: 40px;">Manicures 30</p> <p style="padding-left: 40px;">Pedicures 15</p> <p style="padding-left: 40px;">Individual sculptured nails/nail tips 200</p> <p style="padding-left: 40px;">Individual removals 10</p> <p style="padding-left: 40px;">Individual nail wraps 20</p> <p style="padding-left: 40px;">Total 275</p> <p>§ 3.7. Performances and hours reported.</p> <p>Upon the closing of a licensed cosmetology or nail technician school, for any reason, the school shall provide a written report to the board on performances and hours of each of its students that have not completed the program within 30 days of the date of closing.</p> <p>§ 3.8. Record keeping.</p> <p>Each cosmetology or nail technician school shall maintain written records of hours and performances completed for each student for a period of five years after the student terminates or completes the curriculum.</p> <p>§ 3.9. Hours and performances required; exception:</p> <p>Curriculum and completion requirements shall be offered over a minimum of 1,500 clock hours for cosmetology and 150 clock hours for nail care unless the school presents evidence satisfactory to the board that the school:</p> <ul style="list-style-type: none"> 1. Will measure for competency, for each student enrolled, tasks specified in § 3.6 of these regulations; 2. Inform each student of progress in achieving competency of tasks taught; and 3. Record the number of clock hours of instruction and performances of each student. <p>§ 3.10. Application fees.</p>
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Application fees shall be as follows:

Nail technician school	\$145
Cosmetology school without a nail technician program	\$145
Cosmetology school offering a nail technician program	\$190
Licensed cosmetology school adding a nail technician program	\$45

Cosmetology license	\$150
Cosmetology license with instructor certificate	\$180
Cosmetology salon license	\$250
Cosmetology school license	\$300
Nail technician license	\$150
Nail technician license with instructor certificate	\$180
Nail salon license	\$250
Nail school license	\$300

PART IV. RENEWAL OF LICENSE.

§ 4.1. Renewal required.

A. All cosmetology, cosmetology salon, nail technician, and nail salon licenses shall expire two years from the last day of the month in which they were issued.

B. All cosmetology and nail care instructor certificates shall expire on the same date as the cosmetology or nail technician license.

C. Cosmetology school licenses shall expire on December 31 of each even numbered year.

§ 4.2. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee or certificate holder outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee or certificate holder of the obligation to renew. If the licensee or certificate holder fails to receive the renewal notice, a copy of the old license or certificate may be submitted as evidence of intent to renew, along with the required fee.

§ 4.3. Renewal fees.

A. All fees are nonrefundable.

B. Renewal fees shall be as follows:

Cosmetology license	\$45
Cosmetology license with instructor certificate	\$60
Cosmetology salon license	\$105
Cosmetology school license	\$140
Nail technician license	\$45
Nail technician license with instructor certificate	\$60
Nail salon license	\$105
Nail school license	\$140

§ 4.4. Failure to renew; reinstatement required.

A. When a licensed or certified individual or entity fails to renew its license or certificate within 30 days following its expiration date, the licensee or certificate holder shall apply for reinstatement of the license or certificate by submitting to the Department of Professional and Occupational Regulation a reinstatement application and reinstatement fee as follows:

B. The application for reinstatement for a school shall provide the reasons for failing to renew prior to the expiration date, a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license expired on December 31 of the last even numbered year. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and its records maintained in accordance with § 3.8 of these regulations by the Department of Professional and Occupational Regulation. Pursuant to § 4.5, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the exam.

C. When a cosmetologist or nail technician fails to renew his license within two years following the expiration date, the licensee may be required to submit the reinstatement fee outlined in subsection A of this section and may be required to pass the appropriate examination(s) in order to be reinstated.

D. When a cosmetology instructor or nail technician instructor fails to renew his certificate within two years following the expiration date, the certificate holder may be required to requalify for licensure as outlined in §§ 2.10 and 2.11.

E. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a license or certificate is applicable.

F. When a license or certificate is reinstated, the licensee or certificate holder shall be assigned an expiration date two years from the date of reinstatement.

G. A licensee or certificate holder who reinstates his license or certificate shall be regarded as having been continuously licensed or certified without interruption. Therefore, a licensee or certificate holder shall remain under the disciplinary authority of the board during this entire period and may be held accountable for its activities during this period. A licensee or certificate holder who fails to reinstate

his license or certificate shall be regarded as unlicensed or uncertified from the expiration date of the license or certificate 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 individual was licensed or certified.

H. Five years after the expiration date on the license or certificate; reinstatement is no longer possible. To resume practice, the former licensee or certificate holder shall reapply for licensure or certification as a new applicant, meeting current application requirements.

§ 4.5. Board discretion to deny renewal.

The board, in its discretion, may deny renewal or reinstatement of a license or certificate for the same reasons as it may refuse initial licensure or certification or may discipline a current licensee or certificate holder. Upon such denial, the applicant for renewal or reinstatement may request that a hearing be held.

PART V. STANDARDS OF PRACTICE.

§ 5.1. Display and maintenance of license, certificate and permit.

A. All current licenses, certificates or permits issued by the board shall be displayed in a conspicuous manner in an area that is accessible to the public in the school or establishment where business is conducted.

B. All licensees, certificate holders and permit holders shall operate under the name in which the license, certificate, or permit is issued.

C. Unless also licensed as a cosmetologist, a barber is required to hold a separate nail technician license if he or she will be performing manicures or pedicures or applying artificial nails.

§ 5.2. Sanitation.

Licensees and certificate holders shall comply with the following sanitation standards and shall ensure that all employees likewise comply:

1. Premises and equipment.

a. Cleanliness. Wash basins, sinks and workstations shall be clean. Floors shall be kept free of hair, nail product, and other waste materials. Combs, brushes, towels, razors, clippers, scissors, nippers, and other instruments shall be cleaned and sanitized after every use and stored free from contamination.

b. Soiled towels and robes or smocks shall be stored in an enclosed container.

2. Operation and service.

a. Towels and robes. Clean towels and robes shall be used for each patron.

b. Haircloth. When a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin.

c. Brushes and combs shall be washed in soap and water and sanitized after each use.

d. Permanent wave rods shall be rinsed after each use and end papers shall not be reused.

e. Scissors, razors, clippers, nippers, and all sharp-edged cutting instruments shall be sanitized after each use with a disinfectant in accordance with the manufacturer's instructions.

f. A salon shall maintain a supply of 70% isopropyl alcohol to be used in the event that a patron's skin is accidentally broken during any service. In that event, all implements must be immersed in said alcohol for 10 minutes.

g. All artificial acrylic nail services must be performed in a facility which is in compliance with B.O.C.A. National Building Code. A certificate of occupancy issued by local building officials should be posted in each facility providing acrylic nail services.

h. An artificial nail shall only be applied to a healthy natural nail.

§ 5.3. Discipline.

The board has the power to fine any licensee or certificate holder or to suspend or revoke any license or certificate [, or both,] issued under the provisions of Chapter 12 (§ 54.1-1200 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board, if the board finds that:

1. The licensee or certificate holder violates, induces others to violate, or cooperates with others in violating any of the provisions of Chapters 3 (§ 54.1-300 et seq.) and 12 (§ 54.1-1200 et seq.) of Title 54.1 of the Code of Virginia, or these regulations;

2. The licensee or certificate holder is incompetent or negligent in practice or incapable mentally or physically to practice as a cosmetologist or nail technician;

3. The licensee or certificate holder is guilty of fraud or deceit in the practice or teaching of cosmetology or nail care;

4. The licensee or certificate holder obtained or renewed a license or certificate by false or fraudulent representation;

5. The owner or operator of a school allowed a person to teach cosmetology or nail care without the person obtaining an instructor's certificate, or temporary instructor's permit issued by the board. Exception: Holders of associate degrees or higher shall not be prohibited from teaching theory;

6. The owner or operator of a salon allowed a person to practice cosmetology or nail care without the person obtaining a cosmetology or nail technician license or cosmetology or nail technician temporary permit issued by the board;

7. The licensee or certificate holder refuses or fails, upon request or demand, to produce to the board or any of its agents, any document, book, record, or copy

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thereof in a licensee's or owner's possession maintained in accordance with these regulations;

8. An individual licensee or certificate holder fails to notify the board of a change of name or address in writing within 30 days of the change. The board shall not be responsible for the licensee's or certificate holder's failure to receive notices, communications and correspondence caused by the licensee's or certificate holder's failure to promptly notify the board in writing of any change of name or address; or

9. The licensee or certificate holder publishes or causes to be published any advertisement that is false, deceptive, or misleading.

For Staff Use Only.

Cert. No. _____
Date _____
Initials _____

COMMONWEALTH OF VIRGINIA
BOARD FOR COSMETOLOGY
Post Office Box 11066
Richmond, Virginia 23230-1066
804-367-8509

SCHOOL APPLICATION

TYPE OF SCHOOL: () Cosmetology
() Cosmetology with Nail Program
() Nail

FEES: Cosmetology School \$145.00
Nail School \$145.00
Cosmetology School adding Nail Program \$45.00

MAKE CHECK PAYABLE TO "TREASURER OF VIRGINIA".

DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED. ALL FEES ARE NON-REFUNDABLE

Please Print or Type.

NAME OF SCHOOL: _____

T/A NAME OF SCHOOL: _____

ADDRESS OF SCHOOL: _____
Street and Number

City Zip Code

SCHOOL TELEPHONE NUMBER: _____

OWNER'S NAME: _____
Last First Middle

- OVER -

OWNER'S SOCIAL SECURITY NUMBER: _____
Not required; but will assist in the maintenance of accurate license files and records.

OWNER'S MAILING ADDRESS: _____
Street and Number
City Zip Code

OWNER'S TELEPHONE NUMBER: _____

APPLICANT AFFIDAVIT

I hereby certify by my signature that the statements contained in this application package are true, that I have not suppressed any information that might affect this application package, and that I have read and understood the Virginia Board for Cosmetology Regulations and Statutes.

Signature _____ Date _____

COSMO\APPLCS\SCHOOL.APP

SCHOOLS AND PROGRAMS MUST BE APPROVED BY THE BOARD

HOURS PROGRAMCosmetology

Section 3.3 Curriculum Requirements - Each school shall submit with its application a curriculum including but not limited to a course syllabus, a detailed course outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and/or performances for all courses to be taught which lead to licensure. NOTE: Refer to § 3.3.1 of the Board's regulations for a detailed course outline.

Nail Technician

Section 3.4 Each school teaching the nail technician program shall submit with its application a curriculum including but not limited to a course syllabus, a detailed course outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and/or performances for all courses to be taught which will lead to licensure. NOTE: Refer to § 3.3.2 of the Board's regulations for a detailed course outline.

COMPETENCY BASED PROGRAM

Section 3.7. Hours and performances required, exception:

Curriculum and completion requirements shall be offered over a minimum of 1500 clock hours for cosmetology and 150 clock hours for nail care unless the school presents evidence satisfactory to the Board that the school:

1. Will measure for competency, for each student enrolled, tasks specified in § 3.6 of these regulations; and
2. Inform each student of progress in achieving competency of tasks taught; and
3. Record the number of clock hours of instruction and performances of each student.

- OVER -

If your school is seeking approval to offer a Competency Based Curriculum you must submit evidence of compliance with the above regulations. This may take the form of:

1. Identify the competencies a worker on the job must have.
2. Students informed prior to instruction, of the competencies or tasks they are expected to master.
3. The tests used to evaluate performance to job standards.
4. A system exists for documenting each student's performance on each task.

COSMO\APPLCS\SCHOOL.APP

For Staff Use Only.

FEE \$120.00

Cert. No. _____
Date _____
Initials _____

COMMONWEALTH OF VIRGINIA
BOARD FOR COSMETOLOGY
Post Office Box 11066
Richmond, Virginia 23230-1066
804-367-8509

SALON APPLICATION

TYPE OF SALON: () Cosmetology () Nail

MAKE CHECK PAYABLE TO "TREASURER OF VIRGINIA".

DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED. ALL FEES ARE NON-REFUNDABLE

Please Print or Type.

NAME OF SALON: _____

T/A NAME OF SALON: _____

ADDRESS OF SALON: _____
Street and Number

City Zip Code

SALON TELEPHONE NUMBER: _____

OWNER'S NAME: _____
Last First Middle

OWNER'S SOCIAL SECURITY NUMBER: _____
Not required; but will assist in the maintenance of accurate license files and records.

OWNER'S MAILING ADDRESS: _____
Street and Number

City Zip Code

OWNER'S TELEPHONE NUMBER: _____

AFFIDAVIT OF INSPECTION
(If Required By Local Ordinance)

This is to certify _____
Salon Name

() cosmetology salon _____
() nail salon Address

has been inspected and found to comply with the regulations of the Local and/or State Health Department(s).

State and/or Local Health Department Signature of Inspector

APPLICANT AFFIDAVIT

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 understood the Virginia Board for Cosmetology Regulations and Statutes.

Signature Date

COSMO\APPLCS\SALON.APP

For Staff Use Only.

Cert. No. _____
Date _____
Initials _____

COMMONWEALTH OF VIRGINIA
BOARD FOR COSMETOLOGY
Post Office Box 11066
Richmond, Virginia 23230-1066
804-367-8509

ENDORSEMENT APPLICATION

TYPE OF LICENSURE: () Cosmetology () Cosmetology Instructor
Mark (X) () Nail Technician () Nail Tech. Instructor
FEES: Cosmetology \$50.00 Cosmetology Instructor \$75.00
Nail Technician \$50.00 Nail Tech. Instructor \$75.00

MAKE CHECKS PAYABLE TO "TREASURER OF VIRGINIA".

DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED. ALL FEES ARE NON-REFUNDABLE.

Please Print

1. Name: _____
(Last) (First) (Middle)
2. Social Security Number: _____
Not required; but will assist in the maintenance of accurate license files and records.
3. Date of Birth: ___ - ___ - 1 9 ___
4. Address: _____
(Street)

(P.O. Box)
5. City: _____
6. State: _____ 7. Zip Code: _____
8. Telephone Number: (____) _____
where you can be reached between 9:00am and 5:00pm.

9. Attach a copy of your current cosmetology, cosmetology instructor, nail technician, or nail technician instructor (appropriate one) license to this application.
10. Send or have mailed to the Board an original Letter of Certification not more than 60 days old. This document should be requested from the state board or licensing body in the state where you are currently licensed. The information should be mailed to the attention of the Licensing Section at the address on the above letterhead.
11. I hereby certify by my signature that the statements contained in or associated with this application are true, that I have not suppressed any information that might affect this application, and that I have read and understood the Virginia Board for Cosmetology Regulations and Statutes.

Signature _____ Date _____

FOR STAFF USE ONLY.

Cert. No. _____

Date _____

Initials _____

**STUDENT TEACHER
TEMPORARY PERMIT
APPLICATION**

COMMONWEALTH OF VIRGINIA
BOARD FOR COSMETOLOGY
Post Office Box 11066
Richmond, Virginia 23220-1066
804-367-8509

Please Print or Type

1. Name: _____
(Last & Generation) (First) (Middle)

2. Address: _____
(Street)

_____ (P. O. Box)

3. City: _____

4. State: _____ 5. Zip Code: _____

5. Telephone: _____

6. Social Security Number: _____
Not Required; but will assist Board Staff in the maintenance of accurate license files.

7. VA Cosmetology Lic. No.: _____

VA Nail Technician Lic No.: _____

Failure to maintain a cosmetology or nail technician license shall disqualify an individual from holding a student teacher temporary permit !

8. Date Scheduled for Examination: _____ Mth. _____ Day _____ Yr.

9. Expiration of Temporary License: _____ Mth. _____ Day _____ Yr.

- OVER -

STUDENT TEACHER TEMPORARY PERMIT SPONSORSHIP

I, the undersigned, agree to supervise all activities related to the instruction of cosmetology or nail care for the above named individual and am responsible for the actions of the applicant in this regard.

Sponsor Signature: _____

Sponsor VA Cosmetology Lic. No.: _____

Sponsor VA Cosmetology Instructor Certificate No.: _____

Sponsor VA Nail Lic. No.: _____

Sponsor VA Nail Instructor Certificate No.: _____

APPLICANT AFFIDAVIT

I hereby certify by my signature that the statements contained in this application package are true, that I have not suppressed any information that might affect this application package, and that I have read and understood the Virginia Board for Cosmetology Regulations and Statutes.

Applicant Signature _____

Date _____



1995

Commonwealth of Virginia
Board For Cosmetology

Department of Professional and Occupational Regulation
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8509

APPLICATION FOR REINSTATEMENT - COSMETOLOGY/NAILS

1. Regulation 4.4.A. states when a licensed or certified individual or entity fails to renew its license or certificate within thirty days following its expiration date, the licensee or certificate holder shall apply for reinstatement of the license or certificate by submitting to the Department of Professional and Occupational Regulation a reinstatement application and reinstatement fee as follows:

Cosmetology license	\$150.00
Cosmetology license with instructor certificate	\$180.00
Cosmetology salon license	\$250.00
Cosmetology school license	\$300.00
Nail technician license	\$150.00
Nail technician license with instructor certificate	\$180.00
Nail salon license	\$250.00
Nail school license	\$300.00

NOTE: ALL FEES ARE NON-REFUNDABLE. Deposit of applicant processing fee does not indicate licensure has been approved.

2. Regulation 4.4.B. states that an application for reinstatement for a school shall provide the reason for failing to renew prior to the expiration date, a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license expired on December 31 of the last even numbered year. All of these materials shall be called the application package. Reinstatement will be considered by the Board if the school consents to and satisfactorily passes an inspection of the school and its records maintained in accordance with Section 3.8 of these regulations by the Department of Professional and Occupational Regulation. Pursuant to Section 4.5 of the Regulations, upon receipt of the reinstatement fee, application package, and inspection results, the Board may deny reinstatement for the same reasons it may refuse initial licensure or may discipline a current licensee or certificate holder. If within six months following the expiration date of the school's license, the Board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the exam.

3. Regulation 4.4.C. states when a cosmetologist or nail technician fails to renew his license within two years following the expiration date, the licensee may be required to submit the reinstatement fee outlined in §4.4.A. and may be required to pass the appropriate examination(s) in order to be reinstated.

4. The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether a penalty fee or the requirement of a license or certificate is applicable.

5. Make check or money order payable to the "Treasurer of Virginia".

COSMO\APPLCS\REINST.COV

For Staff Use Only.

Certificate No: _____

Date: _____

Processor: _____

COMMONWEALTH OF VIRGINIA
BOARD FOR COSMETOLOGY
Post Office Box 11066
Richmond, Virginia 23230-1066

APPLICATION FOR REINSTATEMENT

Deposit of applicant processing fees does not indicate the license has been approved. ALL FEES ARE NON-REFUNDABLE.

Please Print

1. Name: _____
(Last) (First) (Middle)
2. Social Security Number: _____
Not required, but will assist in the maintenance of accurate license files and records.
3. Address: _____
(Street)

(P.O. Box)
4. City: _____
5. State: _____ 6. Zip Code: _____
7. Telephone: (____) - _____
Where you can be reached between 9:00am and 5:00pm.

Complete items 8 through 13 only for reinstatement of a salon or school license!

8. Salon/School Name: _____
9. Street Address: _____
10. City: _____
11. State: _____ 12. Zip Code: _____
13. Tax I.D. Number: _____

Please indicate below, reinstatement of:

- | | |
|---|---|
| <input type="checkbox"/> Cosmetology License | <input type="checkbox"/> Nail Technician License |
| <input type="checkbox"/> Cosmetology Instructor Certificate | <input type="checkbox"/> Nail Technician Instructor Certificate |
| <input type="checkbox"/> Cosmetology Salon License | <input type="checkbox"/> Nail Technician Salon License |
| <input type="checkbox"/> Cosmetology School License | <input type="checkbox"/> Nail Technician School License |

For each license indicated above please provide the following information.

- Certificate Number: _____ Date Expired: _____
- Certificate Number: _____ Date Expired: _____
- Certificate Number: _____ Date Expired: _____

Give reasons for failure to renew. (Use a separate sheet if necessary.)

I hereby certify by my signature that the statements contained in this reinstatement package are true, that I have not suppressed any information that might affect this application, and that I have read and understood the Virginia Board for Cosmetology Regulations and Statutes.

Signature Date

VA.R. Doc. No. R95-484, R95-485 and R95-486; Filed May 4, 1995, 3:05 p.m.

**DEPARTMENT OF CRIMINAL JUSTICE SERVICES
(CRIMINAL JUSTICE SERVICES BOARD)**

Title of Regulation: VR 240-03-2. Regulations Relating to Private Security Services.

Statutory Authority: § 9-182 of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

The purpose of these regulations is to set forth a regulatory program that protects the public from unscrupulous, incompetent or unqualified persons engaging in the activities of private security services; and to prescribe standards and procedures that will guide the department and inform the general public of the methods, process, and requirements relating to the administration, operation, licensing, registration, training, and certification of persons engaged in the activities of private security services.

These final regulations establish requirements and prescribe procedures as to how to obtain a private security services business license, a private security services registration or a training certification. Additionally, these regulations set forth standards of training, standards of conduct, and prohibited practices relating to persons engaged in the activities of private security services.

Essentially, these regulations address the operation, administration, and enforcement procedures relating to private security services; establish methods, standards, and procedures for training, registration, and certification of private security services business personnel, and set forth standards of conduct and prohibited practices for persons engaged in the business or activities relating to private security services.

The following substantial changes were made to the regulation after its publication in proposed form:

1. The final regulations include provisions to "grandfather" persons seeking registration in the electronic security and personal protection categories on the basis of experience. In addition, changes were made to the regulations providing for registration on the basis of previous training which meets or exceeds the standards established. Certification procedures for electronic security employees and electronic security technician's assistants is in accordance with Chapter 79 of the 1995 Acts of Assembly (HB 1691).
2. Since authority to certify training schools and instructors for electronic security and personal protection specialist training is not granted until July 1, 1995, an individual applying for registration in these categories may have until October 31, 1995, to meet the training standard.
3. The final regulations establish these minimum entry-level training standards: alarm respondent, 16 hours; central station dispatcher, eight hours; electronic security sales representative, eight hours; electronic security

technician, 14 hours; electronic security technician's assistant, four hours; personal protection specialist, 68 hours; personal protection specialist advanced handgun training, 24 hours. The in-service training requirements are established as follows: alarm respondent, four hours; central station dispatcher, four hours; electronic security sales representative, four hours; electronic security technician, six hours; electronic security technician's assistant, two hours; personal protection specialist, 16 hours; personal protection specialist advanced handgun retraining, eight hours.

4. Provisions have been inserted into the regulations to grant partial exemptions to individuals with experience and training in private security as required by Chapter 79 of the 1995 Acts of Assembly (HB 1691).

5. The final regulations include authorization for extension of the period of time for renewal of a license, registration or certification, and the time to meet in-service requirements when precluded from doing so because of illness, injury or military service.

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 Leon Baker, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-4700.

VR 240-03-2. Regulations Relating to Private Security Services.

**PART I.
DEFINITIONS.**

§ 1.1. Definitions.

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

"Alarm respondent" means a natural person who responds to the [first] signal of [an] alarm [for the purpose of detecting an intrusion] of the home, business or property of the end user.

"Armed security officer" means a security officer, as defined below, who carries or has immediate access to a firearm or other deadly weapon in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Bodyguard" means a security officer, armed or unarmed as defined herein until June 30, 1995.

Final Regulations

"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used primarily to summon aid for other emergencies.

[*"Certification"* means a method of regulation whereby certain individual personnel employed by a private security services business or a private security training school are required to obtain certification from the department pursuant to the Code of Virginia.]

"Certified school director" means the chief administrative officer of a certified training school.

"Certified training school" means a training school which provides instruction in at least the minimum training mandated and is certified by the department for the specific purpose of training private security services business personnel.

"Class" means a minimum of 50 minutes of instruction on a particular subject.

"Combat load" means tactical loading of shotgun while maintaining coverage of threat area.

"Compliance agent" means a natural person who is an owner of, or employed by, a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with all applicable requirements as provided in § 9-183.3 of the Code of Virginia.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Department" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; or (ii) respond to or cause a response to electronic security equipment for an end user.

"Electronic security employee" means a natural person who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent or status of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices including burglar alarms or holdup alarms or cameras used to detect intrusion, concealment or theft.

"Electronic security sales representative" means a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

[*"Electronic security technician's assistant"* means a natural person who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.]

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Engaging in the business of providing or undertaking to provide private security services" means any person who solicits business within the Commonwealth of Virginia through advertising, business cards, submission of bids, contracting, public notice for private security services, directly or indirectly, or by any other means.

"Firearms certification" means the verification of successful completion of either initial or retraining requirements for handgun or shotgun training, or both.

"Firm" means a business entity, regardless of method of organization, applying for a private security services business license or for the renewal or reinstatement of same.

"Guard dog handler" means any person employed by a private security services business to handle dogs in the performance of duty in protection of property or persons.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Licensed firm" means a business entity, regardless of method of organization, which holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

"Locksmith security equipment" means mechanical, electrical or electro-mechanical locking devices for the control of ingress or egress that do not primarily detect intrusion, concealment and theft.

"On duty" means that time during which a registrant or unarmed security officer receives or is entitled to receive compensation for employment for which a registration or training certification is required and that time while he is traveling, immediately before and after the period of actual duty, to and from the place of duty.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Personal protection specialist" specialist, on and after July 1, 1995, means any person who engages in the business of providing protection from bodily harm to another.

"Principal" means any sole proprietor, officer or director of the corporation, member of the association, or partner of a licensed firm or applicant for licensure.

"Private investigator" means any person who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, (i) armored car personnel, security officers, personal protection specialists, private investigators, couriers, or guard dog handlers to another person under contract, express or implied; or (ii) alarm respondents, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians to another person under contract, express or implied.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, guard dog handler private investigator, personal protection specialist, alarm respondent, central station dispatcher, electronic security employee, electronic security sales representative [or ,] electronic security technician [or electronic security technician's assistant] .

"Registrant" means any individual who has met the requirements for registration in any of the categories listed under "registration category."

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to obtain a registration from the department pursuant to Part V of this regulation.

"Registration category" means any one of the following categories: (i) armed security officer/courier, (ii) guard dog handler, (iii) armored car personnel, (iv) private investigator, (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, or (ix) electronic security technician.

"Security officer" means any person employed by a private security service business to safeguard and protect persons and property or to prevent theft, loss, or concealment of any tangible or intangible personal property.

"Session" means a group of classes comprising the total hours of mandated training in any of the following categories: unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, guard dog handler, private investigator, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician [—or , electronic security technician's assistant] or compliance agent.

"Store detective" means a security officer in the context of these regulations.

"Training certification" means verification of the successful completion of any training requirement established in these regulations.

"Training requirement" means any initial or retraining standard established in these regulations.

"Unarmed security officer" means a security officer who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties.

["~~Unarmed security officer training certification~~" means verification that the individual has passed the Virginia Criminal Records Search (VSP-167), and of the successful completion of either initial or in-service unarmed security officer training requirements.]

"Undercover person" means a private investigator in the context of these regulations.

"Uniform" means any clothing with a badge, patch or lettering which clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

PART II. SCHEDULE OF FEES.

§ 2.1. Schedule of fees.

A. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, registration, certification and other administrative requests for services relating to private security services.

Categories	Fees
Initial business license	\$600
Business license renewal	\$250
Initial compliance agent	\$126
Initial registration	\$76
Registration renewal	\$35
Initial training school	\$500
Training school renewal	\$250
[Firearms training credit	\$25]
Instructor	[\$50 \$91]
Instructor renewal	\$10
Initial unarmed security officer training certification	\$15
Unarmed security officer training certification renewal	\$15
Application for [training] exemption	[\$35 \$25]
Unarmed security officer training session	\$10
Private investigator training session	\$25
Armored car training session	\$15
Armed security officer training session	\$15
Firearms training session	\$10
Guard dog handler training session	\$15
In-service training session	\$10
Firearms retraining session	\$10
Fingerprint card processing	\$41
Additional registration categories	\$25
Replacement photo identification	\$15
Training completion roster form	\$10
[Initial Electronic Security Technician's Assistant Certification	\$56
Electronic Security Technician's Assistant Certification Renewal	\$15
Initial Electronic Security Employee Certification	\$56
Electronic Security Employee Certification Renewal	\$15]

§ 2.2. Reinstatement fee.

Final Regulations

A. The department shall collect a reinstatement fee for registration, license, or certification, renewal applications not received on or before the expiration date of the expiring registration, license, or certification.

B. The reinstatement fee shall be 50% above and beyond the renewal fee of the registration, license, certification, or any other credential issued by the department wherein a fee is established and renewal is required.

§ 2.3. Dishonor of fee payment due to nonsufficient funds.

A. The department may suspend the registration, license, certification, or authority it has granted any person, licensee or registrant who submits a check or similar instrument for payment of a fee required by statute or regulation which is not honored by the financial institution upon which the check or similar instrument is drawn.

B. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person, registrant or licensee may request that the suspended registration, license, certification, or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompany the request. Suspension under this provision shall be exempt from the Administrative Process Act.

PART III.

LICENSING PROCEDURES AND REQUIREMENTS.

§ 3.1. Initial licensing requirements for a private security services business.

Each person seeking a license as a private security services business shall file an application furnished by the department accompanied by a nonrefundable application fee of \$600. Each principal of the business entity applying for a private security services business license must be listed on the application *and is responsible for the firm's adherence to the Code of Virginia and these regulations*. Each person listed on the application shall complete a supplemental business license application and submit *his fingerprints* cards on one completed set of two fingerprint cards along with a nonrefundable fee of \$41; however, a maximum of two sets of fingerprint cards may accompany the application at no additional cost. Licenses shall be issued for a period not to exceed 12 months. All forms shall be completed in full compliance with the instructions provided by the department. Applicants shall meet or exceed the requirements of §§ 3.2 through 3.14 prior to the issuance of a license.

§ 3.2. Surety bond or insurance required.

Each person seeking a license as a private security services business shall secure a surety bond in the amount of \$25,000, executed by a surety company authorized to do business in Virginia, or a certificate of insurance showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 and \$300,000, issued by an insurance company authorized to do business in Virginia. *Documentation of continuous and current coverage of the surety bond or comprehensive general liability insurance must be filed and maintained with the department.*

§ 3.3. Irrevocable consent.

Each nonresident applicant for a license or nonresident licensee shall, on a form provided by the department, file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth.

§ 3.4. Compliance agent *required*; certification requirements; duties and responsibilities; restriction; retention and replacement.

A. Each firm applying for a license as a private security services business shall designate at least one individual as compliance agent who is not designated as compliance agent for any other licensee. To become a compliance agent, an individual shall file a properly completed application furnished by the department and conform to the following requirements and procedures:

1. Be a minimum of 18 years of age;
2. Have three years of managerial or supervisory experience in a private security services business, or in a federal, state, or local law-enforcement agency, or in a related field;
3. Successfully complete the applicable compliance agent training requirements pursuant to §§ 7.9 F and 7.10 E and achieve a ~~minimum of 70%~~ *passing score* on the compliance agent examination;
4. Be designated by a licensed private security services business as its compliance agent;
5. Be in good standing in every jurisdiction where licensed or registered in private security services; and
6. Submit *his fingerprints* on two completed fingerprint cards, as provided by the department, and a nonrefundable application fee of \$126.

B. The compliance agent shall at all times comply with the following:

1. Ensure that the licensed firm is in full compliance with the Code of Virginia and these regulations;
2. Ensure that VSP Form-167 has been ~~processed by~~ *submitted to the Virginia State Police for processing before the individual may begin work, and maintained maintain a copy* in the firm's files for each unarmed guard as required by § 9-183.3 of the Code of Virginia;
3. Ensure the maintenance of documentary evidence that each unarmed [*guard security officer or electronic security technician's assistant*] has complied with, or been exempted from, the compulsory minimum training standards as required by § 9-183.3 of the Code of Virginia;
4. Ensure that the licensed firm does not utilize or otherwise employ any person as an unarmed security officer [*or electronic security technician's assistant*] in excess of 90 days prior to the completion of the [*applicable*] compulsory minimum training standards [~~for unarmed security officer~~];

5. Maintain training, employment, and payroll records which document the licensee's compliance with the Code of Virginia and these regulations;

6. Ensure that an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth is submitted to the department within 30 days after the licensee moves to a location outside Virginia.

C. No individual shall be certified by the department as a compliance agent for more than one licensee at any given time.

D. 1. Each licensee shall maintain at least one individual as a compliance agent who has met the requirements of § 3.4 of these regulations and has been certified by the department.

2. Each licensee shall notify the department in writing within 10 calendar days of the termination of employment of a certified compliance agent.

3. Within 90 days of termination of the employment of a licensee's sole remaining compliance agent, the licensee shall submit, ~~on a form provided by the department,~~ the name of a new compliance agent who has met the requirements of § 3.4 of these regulations.

§ 3.5. Criminal history records search.

Upon application for a private security services business license, each compliance agent and principal of the applicant firm shall submit to the department *their fingerprints* on one completed set of two fingerprint cards on forms provided by the department, and a \$41 nonrefundable fee for each set of fingerprint cards beyond the allowable two sets provided with the initial business application. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

§ 3.6. Unclassifiable fingerprint cards.

Fingerprint cards found to be unclassifiable will be returned to the applicant. Action on the application will be suspended pending the resubmittal of classifiable fingerprint cards. The applicant should be so notified in writing and shall submit new fingerprint cards and a nonrefundable fee of \$41 to the department before the processing of his application shall resume. However, no such fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.

§ 3.7. Basis for denial of licensure.

A. The department may deny licensure to a firm in which any compliance agent or principal has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage. Any plea of *nolo contendere* shall be considered a conviction for the purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as *prima facie* evidence of such conviction.

B. The department may deny licensure to a firm in which any compliance agent or principal has not maintained good standing in every jurisdiction where licensed or registered or has had his license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for licensure in Virginia.

C. The department may deny licensure to a firm for other just cause.

§ 3.8. Physical address.

Each firm applying for a private security services business license shall provide the department with its physical address in Virginia at which records required to be maintained by the Code of Virginia and these regulations are kept and available for inspection by the department. A post office box is not a physical address.

§ 3.9. Authority to inspect.

Each licensee shall permit the department to inspect, review, or copy those documents, business records or training records in the compliance agent's or licensed firm's possession that are required to be maintained by the Code of Virginia and these regulations.

§ 3.10. Display of license.

The private security services business license issued by the department shall be prominently displayed for public inspection at all times.

§ 3.11. Change of ownership or entity.

A. Each licensee shall report in writing to the department any change in its ownership or principals which does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change and shall include the application form, fingerprint cards and a nonrefundable fee of \$41 for each new individual.

B. A new license is required whenever there is any change in the ownership or manner of organization of the licensed entity which results in the creation of a new legal entity.

§ 3.12. Change of name or address.

Each licensee shall upon application, and at all times, keep the department informed of its physical address, and shall report in writing to the department any change in its name or physical address no later than 15 days after the effective date of that change. Name change reports shall be accompanied by certified true copies of the documents which establish the name change. A post office box is not a physical address.

§ 3.13. Transfer of license prohibited.

Each license shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity.

§ 3.14. Exemptions.

Final Regulations

The ~~director~~ department may grant a temporary exemption from the requirement of licensure for a period of not more than 30 days in a situation deemed an emergency by the department.

§ 3.15. Probation, suspension, and revocation.

The certified compliance agent and licensed private security services business shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or these regulations. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation of the firm's private security services business license or his status as compliance agent.

PART IV. RENEWAL OF LICENSE.

Article 1.

License Expiration, Renewal, Reinstatement.

§ 4.1. Renewal notification; invalid license.

A. The department will mail to the last known address of the licensee a renewal notification. Failure of the licensee to renew prior to the expiration of the license shall be the sole responsibility of the licensed firm's compliance agent.

B. A private security services business license not renewed on or before the expiration date of the license shall become null and void. Operating a private security services business without a valid private security services business license is a violation of § 9-183.3 of the Code of Virginia and these regulations.

§ 4.2. License expiration ; renewal; reinstatement .

A. All licenses issued to private security services businesses shall be valid for a period not to exceed 12 months.

§ 4.3. License renewal; reinstatement.

~~A.~~ B. Applications for license renewal [~~must should~~] be received by the department at least 30 days prior to expiration. License renewal applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus reinstatement fees.

~~B.~~ C. The department may renew the license for a period not to exceed 12 months from the expiration date of the license when the following are received by the department:

1. A properly completed renewal application;
2. A nonrefundable license renewal fee of \$250; and
3. Documentation that the firm has in force a policy of comprehensive general liability insurance or a surety bond in at least the amount required by § 3.2 of these regulations ; *documentation of continuous and current coverage of the surety bond or comprehensive general liability insurance must be filed and maintained with the department .*

~~C.~~ D. Each compliance agent listed on the license renewal application shall have satisfactorily completed all applicable training requirements.

~~D.~~ E. Each principal or compliance agent listed on the license renewal application shall be in good standing and free of disciplinary action in every jurisdiction where licensed or registered.

~~E.~~ F. A renewal application received by the department within 180 days following the expiration date of the license shall be accompanied by a nonrefundable renewal fee of \$250 and a nonrefundable reinstatement fee of \$125.

~~F.~~ G. No license shall be renewed or reinstated when the application and fee are received by the department more than 180 days following the expiration date of the license. After that date, the applicant shall meet all initial licensing requirements.

~~G.~~ H. The department may deny renewal or reinstatement of a license for the same reason as it may refuse initial licensure or discipline a licensee.

[§ 4.3. Extension of time period to renew a private security services business license.

A. An extension of the time period to renew a private security services business license may be approved only under these specific circumstances which do not allow the private security services business to renew its license within the prescribed time period. The private security services business shall be nonoperational during the period of extension. The following are the only circumstances for which extensions may be granted:

1. Illness,
2. Injury, or
3. Military service.

B. An application for extension of the time period for renewal of a private security services business license shall:

1. Be submitted in writing prior to the expiration date of the private security services business license; and
2. Indicate the projected date the licensee will be able to comply with the requirements for private security services business license renewal.

C. An extension will not be approved for a private security services business license which has expired.

D. Applications for additional extensions may be approved upon written request of the principal of the private security services business.]

PART V. REGISTRATION PROCEDURES AND REQUIREMENTS.

§ 5.1. Initial registration requirements.

[A.] Individuals seeking registration under § [9-183.3 9-183.3 B] of the Code of Virginia shall file an application furnished by the department which shall be accompanied by a nonrefundable application fee of \$76. Each applicant shall

meet or exceed the following requirements prior to the issuance of a registration:

1. Be at least 18 years of age;
2. Disclose to the department his physical address (a post office box is not a physical address);
3. Submit ~~one set of~~ two completed fingerprint cards on forms provided by the department; and
4. [~~Provide evidence of the successful completion of (i) successfully complete~~] all initial training requirements for each registration category requested [- ; or (ii) during the period of July 1, 1995, through September 30, 1995, each individual applying for registration as an electronic security technician, central station dispatcher, electronic security sales representative or personal protection specialist may be granted a temporary waiver from the requirement of complying with the compulsory minimum training standards. With the exception of the completion of the minimum training standards, all other initial registration requirements shall apply. Individuals issued temporary registrations in accordance with this provision shall complete the compulsory minimum training standards on or before October 31, 1995. Individuals seeking registration as alarm respondents are not eligible under this provision.

B. Individuals seeking registration under the provisions of § 9-183.3 I of the Code of Virginia, effective for a period of one year from July 1, 1995, shall file an application furnished by the department which shall be accompanied by a nonrefundable application fee of \$76. Each applicant shall meet or exceed the following requirements prior to the issuance of a registration:

1. Be at least 18 years of age;
2. Disclose to the department his physical address (a post office box is not a physical address);
3. Submit his fingerprints on two completed fingerprint cards provided by the department; and
4. Provide documentary evidence of full-time active employment as required for each category in which registration is requested:
 - a. Electronic security technician - employment for a period of three years immediately preceding the date of application;
 - b. Central station dispatcher - employment for a period of one year immediately preceding the date of application;
 - c. Electronic security sales representative - employment for a period of one year immediately preceding the date of application;
 - d. Alarm respondent - employment for a period of one year immediately preceding the date of application.

C. Individuals seeking registration under the provisions of § 9-183.3 J of the Code of Virginia, effective for a period of one year from July 1, 1995, shall file an application furnished by the department which shall be accompanied by a

nonrefundable application fee of \$76. Each applicant shall meet or exceed the following requirements prior to the issuance of a registration:

1. Be at least 18 years of age;
2. Disclose to the department his physical address (a post office box is not a physical address);
3. Submit his fingerprints on two completed fingerprint cards provided by the department;
4. Provide documentary evidence of employment as a personal protection specialist for a period of the three years immediately preceding the date of application; and
5. Provide documentary evidence of successful completion of personal protection training approved by the department.]

§ 5.2. Additional categories and [training] certifications.

Registered individuals seeking additional registration categories or [training] certifications shall file an application, furnished by the department, documenting that the following training requirements for the requested categories or [training] certifications have been met:

1. The nonrefundable fee for each filing is \$25.
2. Individuals may avoid paying a separate fee for additional categories or [training] certifications when [~~evidence of satisfactory completion of the training requirements for each additional category or certification accompanies a renewal application for registration the additional registration categories or certifications are requested on the application for registration renewal~~] .

§ 5.3. Criminal history records search.

Upon receipt of an initial registration application, the department shall submit the fingerprints of the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the applicant has a record of conviction. Applicants submitting unclassifiable fingerprint cards shall be required to submit *his* fingerprints on new fingerprint cards along with a nonrefundable fee of \$41. However, no such fee shall be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted. In the case of registration renewal application for armored car personnel only, a Virginia Criminal History Records search and a national criminal records search to determine whether the applicant has a record of conviction shall be conducted.

§ 5.4. Temporary registration.

The department may issue a letter of temporary registration to individuals seeking registration under § 9-183.3 of the Code of Virginia for not more than 120 days while awaiting the results of the national fingerprint search, provided the applicant has met the conditions and requirements set forth in §§ 5.1 through 5.5 of these regulations, and the Virginia Criminal Records search proved negative.

§ 5.5. Duties and responsibilities of registrant.

Final Regulations

The registrant must at all times comply with the following:

1. Carry ~~the a valid~~ registration issued by the department at all times while on duty;
2. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in § 9-183.2 of the Code of Virginia;
3. Carry or have immediate access to firearms while on duty only while possessing a valid firearms certification;
4. Carry a firearm concealed while on duty only with the expressed authorization of the licensed private security services business employing the registrant and only in compliance with § 18.2-308 of the Code of Virginia;
5. Transport, carry and utilize firearms while on duty only in a manner which does not endanger the public health, safety and welfare;
6. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest;
7. Engage in no conduct which through word, deed or appearance suggests that a registrant is a law-enforcement officer or other government official;
8. Display one's registration while on duty in response to the request of a law-enforcement officer ~~or other orderly person, department personnel or client~~ [~~however, this requirement shall not apply to armored car personnel or personal protection specialists~~] ;
9. Never perform any unlawful or negligent act resulting in a loss, injury or death to any person;
10. ~~Wear while on duty. Private security personnel are not required to wear a uniform while on duty; however, if wearing the military style or law-enforcement style uniform of a private security licensee which has while on duty, that uniform must have :~~
 - a. At least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and
 - b. No patch or other writing (i) containing the word "police" or any other words suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the words "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction;
11. ~~Never use~~ Utilize a vehicle [*with flashing lights*] in the conduct of a private security services business which ~~uses or displays a flashing red, blue or amber light except when specifically authorized by the Code of Virginia only as provided in the Code of Virginia and these regulations ;~~
12. Never use or display the state seal of Virginia as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement;
13. Never display the uniform, badge or other insignia while not on duty;
14. During the course of any private investigation, never provide information obtained by any licensed firm and its employees to any person other than the client who employed the licensee to obtain that information, without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, or from the department, shall not constitute a violation of these regulations. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of these regulations;
15. Inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage;
16. Inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed;
17. Acting as a registrant only in such a manner as to not endanger the public health, safety and welfare;
18. Engage in no unethical, fraudulent, or dishonest conduct;
19. Never represent as one's own a registration issued to another individual, or represent oneself as certified compliance agent of a licensee, training school, school director or instructor unless so certified by the department;
20. Never falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, unarmed security officer training certification, or certification as a compliance agent, training school, school director or instructor.

§ 5.6. Replacement photo identification.

Registered individuals seeking a replacement photo identification shall submit to the department:

1. A properly completed application; [*and*
2. ~~Copy of training completion forms; and~~
3. 2.] A nonrefundable processing fee of \$15.

§ 5.7. Transfer of registration prohibited.

Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be utilized by any individual other than the individual named on the registration. No registration shall be transferred to another individual.

§ 5.8. Change of name or address.

Each registrant shall upon application, and at all times, keep the department informed of his physical address and shall report in writing to the department any change in his name or physical address no later than 15 days after the effective date of that change. A post office box is not a physical address.

§ 5.9. Basis for registration denial.

A. The department may deny registration to any person who:

1. Has been convicted in any jurisdiction of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, property damage or physical injury. Any plea of nolo contendere shall be considered a conviction for purposes of these regulations. 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; or

2. Has failed to maintain his license or registration in good standing in every jurisdiction where licensed or registered as private security personnel, or has been fined or had any private security license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for registration or licensure in Virginia.

B. The department may deny registration to an individual for other just cause.

§ 5.10. Exemptions.

The ~~director~~ department may grant a temporary exemption from the requirement of registration for a period of not more than 30 days in a situation deemed an emergency by the department.

§ 5.11. Probation, suspension, and revocation.

The registrant shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia and these regulations. Disciplinary action shall be in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension, or revocation of his registration.

§ 5.11- 5.12. Registration expiration, renewal, reinstatement [; extension of time period to review].

A. The department will mail a renewal notification to the last known address of the registrant. Failure of the registrant to renew prior to the expiration date of the registration shall be the sole responsibility of the individual registrant.

B. A private security services registration not renewed on or before the expiration date of the registration shall become null and void. Performing private security services duties without a valid private security services registration is a violation of the Code of Virginia.

C. 1. All registrations issued *on or after* July 1, 1993, shall be valid for a period not to exceed 12 months.

2. All registrations issued prior to July 1, 1993, shall expire on the expiration date of the registration.

D. 1. Applications for registration renewal [~~must~~ *should*] be received by the department at least 30 days prior to expiration. A registration renewal application received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus nonrefundable reinstatement fees.

2. The department may renew the registration for a period not to exceed 12 months from the expiration date of the expiring registration when [~~the following are received by the department~~ *each applicant meets or exceeds the following requirements*] :

a. [~~Submit~~] a properly completed renewal application [~~to the department~~] ;

b. [~~Evidence of satisfactory completion of~~ *Successfully complete*] the applicable training or retraining requirements for each registration category and each training certification requested; and

c. A nonrefundable registration renewal fee of \$35 [~~is received by the department~~] .

E. 1. Registration renewal applications received within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of \$35 and a nonrefundable reinstatement fee of \$17.50.

2. No registration shall be renewed or reinstated when the application for renewal and fee are received by the department after 180 days following the expiration date of the registration. After that date, the applicant shall meet then current initial registration requirements.

3. The date on which the application and fee are received by the department shall determine whether the registrant is eligible for renewal or reinstatement or is required to apply for initial registration.

4. The department may deny renewal or reinstatement of a registration for the same reason as it may refuse initial registration or discipline a registrant.

[F. 1. *An extension of the time period to renew a private security services registration may be approved only under these specific circumstances which do not allow the individual to renew his registration within the prescribed time period. The individual shall not perform private security functions during the period of extension. The following are the only circumstances for which extensions may be granted:*

a. *Illness,*

b. *Injury, or*

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c. *Military service.*

2. *An application for extension of the time period for renewal of a private security services registration shall:*

a. *Be submitted in writing prior to the expiration date of the private security services registration; and*

b. *Indicate the projected date the registrant will be able to comply with the requirements for private security services registration renewal.*

3. *An extension will not be approved for a private security services registration which has expired.*

4. *Applications for additional extensions may be approved upon written request of the registrant.]*

§ 5-12- 5.13. Firearms certification, expiration, renewal.

A. An individual who has successfully completed the handgun training requirements may submit a properly completed application for registration with handgun certification.

1. Handgun certification will be documented on the registration and shall expire on the expiration date of the registration.

2. The department may grant a handgun certification [*upon receipt of the following*] :

a. [*Upon receipt of*] a properly completed application; and

b. [~~Documentary evidence of~~] Satisfactory completion of the applicable handgun training requirements.

B. An individual who has successfully met the handgun training requirements, and has successfully completed the shotgun training requirement, may submit a properly completed application for registration with shotgun certification.

1. Shotgun certification will be documented on the registration and shall expire on the expiration date of the registration.

2. The department may grant a shotgun certification upon receipt of the following:

a. [*Upon receipt of*] a properly completed application; and

b. [~~Documentary evidence of~~] Satisfactory completion of the applicable shotgun training requirements.

C. All handgun and shotgun certifications shall be issued for a period not to exceed 12 months and shall become null and void on the expiration date of the registration. "Firearms endorsements" issued prior to July 1, 1993, shall become null and void on the expiration date of the endorsement.

D. The department may renew handgun and shotgun certifications for a period not to exceed 12 months from the expiration date of the registration [~~when the following are received by the department~~] :

1. [*Upon receipt of*] a properly completed registration renewal application;

2. [~~Evidence of~~] Satisfactory completion of all applicable training, firearms retraining and in-service training requirements; and

3. A nonrefundable fee of \$35 [*is received by the department*] . (One \$35 fee for registration renewal includes firearms certifications if all requirements have been met.)

E. The department may deny renewal of a firearms certification for the same reason as it may refuse initial firearms certification or discipline a registrant.

PART VI.

[~~UNARMED SECURITY OFFICER TRAINING~~] CERTIFICATION PROCEDURES AND REQUIREMENTS.

§ 6.1. [~~Training certification~~ *Initial unarmed security officer certification requirements*] .

A. Each person employed or utilized as an unarmed security officer shall successfully complete the compulsory minimum training standards for unarmed security officers and make application to the department for the issuance of an unarmed security officer [*training*] certification, except that such persons may be employed for not more than 90 days while completing the compulsory minimum training standards.

B. Individuals seeking unarmed security officer [*training*] certification shall file an application provided by the department which shall be accompanied by a nonrefundable processing fee of \$15. Each applicant shall meet or exceed the following requirements prior to issuance of an unarmed security officer [*training*] certification:

1. Be at least 18 years of age;

2. Disclose to the department a physical address (a post office box is not a physical address);

3. [~~Provide documentary evidence of compliance with~~ *Successfully complete*] the initial unarmed security officer training requirement and, if appropriate, in-service training requirements for unarmed security officers; and

4. Have the compliance agent of his employer attest that documentary evidence exists that an investigation to determine suitability of the applicant has been conducted and reviewed as required by the Code of Virginia.

C. Each person employed or utilized as an unarmed security officer on or after July 13, 1994, shall comply with the unarmed security officer [*training*] certification requirements.

[§ 6.2. *Initial electronic security technician's assistant certification requirements.*

A. *No person shall be employed or utilized as an electronic security technician's assistant until he has submitted a fingerprint processing application and his fingerprints on two cards provided by the department.*

B. *Each person employed or utilized as an electronic security technician's assistant shall successfully complete the compulsory minimum training standards for electronic*

security technician's assistants and make application to the department for the issuance of an electronic security technician's assistant certification, except that such persons may be employed for not more than 90 days while completing the compulsory minimum training standards.

C. Individuals seeking certification as an electronic security technician's assistant shall file an application provided by the department which shall be accompanied by a nonrefundable processing fee of \$56. Each applicant shall meet or exceed the following requirements prior to the issuance of an electronic security technician's assistant certification:

1. Be at least 18 years of age;
2. Disclose to the department his physical address (a post office box is not a physical address);
3. Submit his fingerprints on two completed fingerprint cards provided by the department; and
4. Successfully complete the initial electronic security technician's assistant training requirement.

§ 6.3. Initial electronic security employee certification requirements.

A. No person shall be employed or utilized as an electronic security employee until he has submitted the following to the department:

1. A fingerprint processing application with his fingerprints on two fingerprint cards provided by the department; and
2. A certification application indicating the applicant has met or exceeded these requirements:
 - a. Be at least 18 years of age;
 - b. Disclose to the department his physical address (a post office box is not a physical address); and
 - c. A nonrefundable fee of \$56.

B. Each person must receive a temporary authorization letter from the department before being employed or utilized as an electronic security employee.

~~§ 6.2.~~ § 6.4.] Criminal history records search.

[A.] Upon hiring a person to be employed as an unarmed security officer, the compliance agent of the business shall submit on the first day of employment, VSP Form 167 signed by the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search to determine whether the applicant has a record of conviction. An individual may not be employed for more than 30 days without documentation of the completion of the Virginia Criminal History Records search.

[B. Upon receipt of an initial application for certification as electronic security technician's assistant or electronic security employee, the department shall submit the fingerprints of the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the applicant has a record of conviction. Applicants submitting

unclassifiable fingerprint cards shall be required to submit his fingerprints on new fingerprint cards along with a nonrefundable fee of \$41. However, no such fee shall be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.

~~§ 6.3.~~ § 6.5.] Duties and responsibilities [of certified unarmed security officers, electronic security technician's assistants, and electronic security employees] .

The unarmed security officer [, electronic security technician's assistant and electronic security employee] must at all times comply with the following:

1. Carry a valid [unarmed security officer training] certification issued by the department card at all times while on duty [except under the provisions of § 9-183 D or § 9-183 F of the Code of Virginia] ;
2. Perform those duties authorized by these regulations only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is employed as an unarmed security officer from being employed by a nonlicensee as provided for in § 9-183.2 of the Code of Virginia;
3. Never carry or have immediate access to firearms while on duty;
4. Engage in no conduct which through word, deed or appearance suggests that an unarmed security officer is a law-enforcement officer or other government official;
5. Display one's certification while on duty in response to the request of a law-enforcement officer or other orderly person , department personnel or client ;
6. Never perform any unlawful or negligent act resulting in a loss, injury or death to any person;
7. ~~Wear while on duty, Private security personnel are not required to wear a uniform while on duty; however, if wearing the law-enforcement style or military style uniform of a private security licensee which has while on duty, that uniform must have :~~

a. At least one insignia clearly identifying the name of the licensed firm employing the individual and a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. No patch or other writing (i) containing the word "police" or any other words suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction;

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8. ~~Never use~~ Utilize a vehicle [*with flashing lights*] in the conduct of a private security services business which ~~uses or displays a flashing red, blue or amber light except when specifically authorized by the Code of Virginia only as provided in [§ 46.2-1025 of] the Code of Virginia [and these regulations]~~;

9. Never use or display the state seal of Virginia as a part of any logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement;

10. Never display the uniform, badge or other insignia while not on duty;

11. Inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage;

12. Inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed;

13. Acting as an unarmed security officer only in such a manner as to not endanger the public health, safety and welfare;

14. Engage in no unethical, fraudulent, or dishonest conduct;

15. Never represent as one's own certification issued to another individual, or representing oneself as a certified compliance agent of a licensee, school director or instructor unless certified as such by this department;

16. Never falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, unarmed security officer training certification, or certification as a compliance agent, training school, school director or instructor.

§ [~~6-4.~~ 6.6.] Change of name or address.

Each unarmed security officer [, *electronic security technician's assistant and electronic security employee*] shall upon application, and at all times, keep the department informed of his physical address and shall report in writing to the department any change in his name or physical address no later than 15 days after the effective date of that change. A post office box is not a physical address.

§ [~~6-5.~~ 6.7.] Transfer of certification prohibited.

Each [~~unarmed security officer training~~] certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No [~~unarmed security officer training~~] certification shall be utilized by any individual other than the individual named on the certification. No [~~unarmed security officer training~~] certification shall be transferred to another individual.

§ [~~6-6.~~ 6.8.] Replacement photo identification.

Unarmed security officers [, *electronic security technician's assistants or electronic security employees*] seeking a replacement photo identification shall submit to the department:

1. A properly completed application; and
2. A nonrefundable processing fee of \$15.

§ [~~6-7.~~ 6.9.] [Training] Certification denial.

The department may deny [*certification as*] an unarmed security officer [~~training certification~~ , *electronic security technician's assistant, or electronic security employee*] to any person who has been convicted in any jurisdiction of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, property damage or physical injury. Any plea of nolo contendere shall be considered a conviction for purposes of these regulations. 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 prima facie evidence of such conviction. The department may deny certification for other just cause.

§ [~~6-8.~~ 6.10.] Probation, suspension, and revocation.

The certified unarmed security officer [, *electronic security technician's assistant, or electronic security employee*] shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia and these regulations. Disciplinary action shall be in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension, or revocation of his certification.

§ ~~6-8.~~ [~~6-9.~~ 6.11.] Certification expiration, renewal, reinstatement.

A. The department will mail a renewal notification to the last known address of the individual. Failure of the individual to renew prior to the expiration date of the [~~unarmed security officer training~~] certification shall be the sole responsibility of the individual.

B. [~~An unarmed security officer training A~~] certification not renewed on or before the expiration date of the certificate shall become null and void. Performing private security services duties *beyond the initial 90 days of employment* without a valid [~~unarmed security officer training~~] certification is a violation of the Code of Virginia and these regulations.

C. [~~An unarmed security officer training A~~] certification shall be valid for a period not to exceed 24 months from the date of issue. All such [~~training~~] certifications shall expire on the expiration date of the [~~unarmed security officer training~~] certification.

- D. 1. An application for [~~unarmed security officer training~~] certification renewal must be received by the department at least 30 days prior to expiration. [~~Unarmed security officer training~~] Certification applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus reinstatement fees.

2. The department may renew [~~the unarmed security officer training a~~] certification for a period not to exceed 24 months from the expiration date of the [~~unarmed security officer training~~] certification [~~when the following are received by the department~~] :

- a. [~~Upon receipt of~~] a properly completed renewal application;
- b. [~~Evidence of~~] Satisfactory completion of the in-service training requirements; and
- c. A nonrefundable renewal fee of \$15 [~~is received by the department~~] .

E. 1. Renewal applications received within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of \$15 and a nonrefundable reinstatement fee of \$7.50.

2. No [~~unarmed security officer training~~] certification shall be renewed or reinstated when the application for renewal and fee are received by the department after 180 days following the expiration date of the [~~unarmed security officer training~~] certification. After that date, the applicant shall meet then current initial [~~unarmed security officer training~~] certification requirements.

3. The date on which the application and fee are received by the department shall determine whether the individual is eligible for renewal or reinstatement or is required to apply for initial [~~unarmed security officer training~~] certification.

4. The department may deny renewal or reinstatement of [~~an unarmed security officer training a~~] certification for the same reason as it may refuse the initial certification or discipline an unarmed security officer.

PART VII.

COMPULSORY MINIMUM TRAINING STANDARDS FOR PRIVATE SECURITY SERVICES BUSINESS PERSONNEL.

Article 1.

Applicability and Scope.

§ 7.1. Entry level training.

Each person employed by a private security services business or applying to the department for registration as an armed security officer/courier, personal protection specialist, armored car personnel, guard dog handler, private investigator, alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician as defined by § 9-183.1 of the Code of Virginia, or applying to the department for training certification as an unarmed security officer as required by § 9-183.3 of the Code of Virginia, or for certification as a compliance agent as required by § 9-183.3 of the Code of Virginia, who has not met the compulsory minimum training standards prior to July 13, 1994, must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with §§ 7.2 and 7.3 of these regulations.

§ 7.2. Exemptions.

[~~Persons who meet the statutory requirements as set forth in § 9-182 of the Code of Virginia and who have completed a~~

~~law-enforcement entry-level training course may apply for a partial exemption from the mandatory training. Individuals requesting such exemption shall file an application furnished by the department. The nonrefundable application fee for each filing is \$35. The department may issue such partial exemption, on the basis of individual qualifications as supported by required documentation. The department shall not issue more than a partial exemption to those persons who have remained out of law-enforcement employment in excess of 24 months. Those applying for and receiving exemptions must also comply with all firearms requirements, if applicable, and all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from date of issuance, otherwise the partial exemption shall become null and void. Persons who meet the statutory requirements as set forth in § 9-182 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the nonrefundable application fee of \$25. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from the date of issuance, otherwise the partial exemption shall become null and void. The following are the requirements for qualification for a partial exemption from the compulsory training standards:~~

1. ~~Persons having previous employment as law-enforcement officers must submit official documentation of the following with the application for partial exemption:~~

a. ~~Completion of law-enforcement entry-level training, and~~

b. ~~Five continuous years of law-enforcement employment provided such employment as a law-enforcement officer was not terminated due to misconduct or incompetence.~~

2. ~~Persons having previous training or employment in any of the classifications defined in § 9-183.1 of the Code of Virginia must submit official documentation of the following with the application for partial exemption:~~

a. ~~Completion of previous private security training, which has been approved by the department and which meets or exceeds the compulsory minimum training standards promulgated by the board, or~~

b. ~~Five years continuous employment in the category for which partial exemption is sought, provided such employment was not terminated due to misconduct or incompetence.~~

3. ~~Persons having previous department-approved firearms training may be authorized credit for such training which meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application.]~~

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~~§ [7.3. 7.3.] Credit for approved firearms training.~~

~~The department may authorize credit for firearms training received at a department approved school which meets or exceeds the compulsory minimum training standards required for private security services business personnel, provided that such training has been successfully completed within 12 months of the date of application. Applicants requesting credit for firearms training shall file an application furnished by the department. The nonrefundable application fee for each filing is \$25.]~~

~~§ [7.4. 7.3.] Firearms training.~~

~~Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.~~

~~§ [7.5. 7.4.] In-service training.~~

~~Each person registered with the department as an armed security officer/courier, personal protection specialist, armored car personnel, guard dog handler, private investigator, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, or applying to the department for [training] certification as an unarmed security officer [or electronic security technician's assistant] , or certified by the department to act as a compliance agent, shall complete the compulsory in-service training standard once during each 24-month period of registration or certification as determined by the department. *Compliance agent in-service training is required within 24 months of entry-level training, or the last completed in-service training.*~~

~~1. Each person registered as armed security officer/courier, personal protection specialist, guard dog handler, armored car personnel, private investigator, alarm respondent, central station dispatcher, electronic security sales representative, and electronic security technician shall complete applicable in-service training within each 24-month period of registration.~~

~~2. Each person employed or utilized as an unarmed security officer shall complete applicable in-service training within each 24-month period of certification.~~

~~3. Each person certified as a compliance agent shall complete compliance agent in-service training within each 24-month period of certification.~~

~~§ [7.6. 7.5.] Instructor recertification.~~

~~Each person certified as an instructor shall complete recertification training within each 36-month period of initial certification date.~~

~~§ [7.7. 7.6.] Compulsory minimum entry level training by category.~~

~~Total hours do not include time for examinations, practical exercises and range qualification. Refer to § [7.9 7.8] for the minimum training requirements for each category.~~

- ~~Unarmed security officer -- 16 hours~~
- ~~Armed security officer/courier -- 24 hours~~
- ~~Armored car personnel -- 20 hours~~

- Guard dog handler -- 28 hours
- Private investigator -- 60 hours
- Personal protection specialist -- 68 hours*
- Unarmed alarm respondent -- 16 hours*
- Armed alarm respondent -- 24 hours*
- Central station dispatcher -- 8 hours*
- Electronic security sales representative -- 8 hours*
- Electronic security technician -- 14 hours*
- [*Electronic security technician's assistant -- 4 hours*]
- Compliance agent -- 6 hours

~~§ [7.8. 7.7.] Compulsory minimum in-service training by category.~~

~~Total hours do not include time for examinations.~~

~~Refer to § [7.10 7.9] for the minimum in-service training requirements for each category.~~

- Unarmed security officer -- 4 hours
- Armed security officer/courier -- 4 hours
- Armored car personnel -- 4 hours
- Guard dog handler -- 8 hours
- Private investigator -- 8 hours
- Personal protection specialist -- 16 hours*
- Unarmed alarm respondent -- 4 hours*
- Armed alarm respondent -- 4 hours*
- Central station dispatcher -- 4 hours*
- Electronic security sales representative -- 4 hours*
- Electronic security technician -- [12 6] hours*
- [*Electronic security technician's assistant -- 2 hours*]
- Compliance agent -- 4 hours

~~§ [7.9. 7.8.] Minimum entry level training requirements.~~

~~A. The entry level curriculum for unarmed security officer, armed security officer/courier, and guard dog handler , *unarmed alarm respondent and armed alarm respondent* sets forth the following areas identified as:~~

Core Subjects	Hours
Administration and security orientation/regulations [4 2]	
Legal authority <i>and arrest authority</i> [<i>and procedures</i>]	[4 6]
Emergency and defensive procedures	8
Written examination	
Total hours (excluding exam)	16

~~B. Armed security officer/courier. 46~~

In addition to the successful completion of the core subjects curriculum (§ [7.9 7.8] A), each armed security officer/courier must also comply with firearms training requirements. (Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.)

1. Handgun classroom training (refer to § 9.2) -- 8 hours
2. Shotgun classroom instruction, if applicable (refer to § 9.3) -- ~~4 hours~~ 2 hours
3. Written firearms examination
4. Range qualification. No minimum hours required (refer to § 9.3). Each person who carries or has immediate access to firearms in the performance of duty shall qualify with each type and calibre *caliber* of firearm to which he has access.

Total hours (excluding examination, shotgun) classroom instruction and range qualification -- 24 hours

C. Armored car personnel.

1. Armored car orientation/state regulations -- 3 hours
2. Armored car procedures -- 9 hours
3. Written examination
4. Firearms training (§ [7.9-B 7.8 B]) -- 8 hours

Total hours (excluding examinations and range qualification) -- 20 hours

D. Guard dog handler.

~~In addition to the successful completion of the core subjects curriculum (§ 7.9 A), each guard dog handler must also comply with the following requirements:~~

~~Basic obedience retraining -- 6 hours~~

~~Canine patrol techniques -- 6 hours~~

~~Written examination~~

~~Total hours (excluding examinations) -- 28 hours~~

1. Prerequisites for guard dog handler entry-level (official documentation required):

a. Successful completion of the core subjects curriculum (§ [7.9-A 7.8 A]) -- 16 hours

b. Successful completion of basic obedience training

2. Following successful completion of the above prerequisites, each guard dog handler must also comply with the following requirements:

a. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards -- 2 hours

Evaluation by a certified private security guard dog handler instructor

Basic obedience retraining

b. Guard dog handler orientation/legal authority -- 4 hours

c. Canine patrol techniques -- 6 hours

d. Written examination

Total hours (excluding examinations) -- 28 hours

E. Private investigator.

1. Investigator orientation/regulations -- 8 hours

2. Collecting and reporting information -- 6 hours

3. General investigative techniques -- 20 hours

4. Interviewing techniques -- 8 hours

5. Criminal law, procedure and rules of evidence -- 8 hours

6. Civil law, procedure and rules of evidence -- 10 hours

~~Collecting and reporting information -- 6 hours~~

7. Written comprehensive examination

8. Three practical field exercises

Total hours in classroom (excluding written examination and practical exercises) -- 60 hours

F. Personal protection specialist. Each personal protection specialist student must also comply with the following requirements:

1. Personal protection orientation -- 4 hours

2. Assessment of threat and protectee vulnerability -- 8 hours

3. Legal authority and issues -- 16 hours

4. Protective detail operations -- 28 hours

5. Emergency procedures -- 12 hours

[a. CPR -- 8 hours]

[a. b.] Emergency first aid [/CPR (8 hours)]

[b. c.] Defensive preparedness

[e. d.] Emergency relocation

[6. Performance evaluation -- Five practical exercises]

[6. 7.] Written examination

Total hours (excluding [written] examination [and performance evaluation]) -- 68 hours

G. Unarmed alarm respondent. Each unarmed alarm respondent student must successfully complete the core subjects curriculum (§ [7.9-A 7.8 A]). -- 16 hours

H. Armed alarm respondent. In addition to the successful completion of the core subjects curriculum (§ [7.9-A 7.8 A]), each armed alarm respondent must also comply with firearms training requirements. Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty.

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1. *Handgun classroom instruction (refer to § 9.2 B) -- 8 hours*

2. *Shotgun classroom instruction (if applicable) (refer to § 9.3 C) -- [2-hours 1 hour]*

3. *Written firearms examination*

4. *Range qualification. No minimum hours required. Each person who carries or has immediate access to firearms in the performance of duty shall qualify with each type and caliber of firearm to which he has access.*

Total hours (excluding examination, shotgun classroom instruction, and qualification on the range) -- 24 hours

[I. *Electronic security subjects.*

1. *Orientation*

2. *Code of Virginia*

3. *Regulations Relating to Private Security Services*

4. *Introduction to electronic security*

5. *Written examination*

Total hours (excluding examination) -- 4 hours]

[~~I. J.~~ *Central station dispatcher.*

1. *Electronic security subjects [(refer to § 7.8 J)] -- 4 hours*

2. *Central station dispatcher subjects -- 4 hours*

a. *Duties and responsibilities*

b. *Communications skills*

c. *Emergency procedures*

d. *False alarm prevention*

[3. *Written examination]*

Total hours [(excluding examination)] -- 8 hours

[~~J. K.~~ *Electronic security sales representative.*

1. *Electronic security subjects (refer to § [~~7.9~~ 7.8 J)] - 4 hours*

2. *Electronic security sales representative subjects -- 4 hours*

a. *Duties and responsibilities*

b. *System design/components*

c. *False alarm prevention*

[3. *Written examination]*

Total hours [(excluding examination)] -- 8 hours

[~~K. L.~~ *Electronic security technician. Each electronic security technician student must also comply with the following requirements:*

1. *Electronic security subjects (refer to § [~~7.9~~ 7.8 J)] - 4 hours*

2. *Electronic security technician subjects -- 10 hours*

a. *Duties and responsibilities*

b. *Electronics*

c. *Control panels*

d. *Protection devices and application*

e. *Test equipment*

f. *Power and grounding*

g. *National electrical code*

h. *Job safety*

i. *False alarm management*

[3. *Written examination]*

Total hours [(excluding examination)] -- 14 hours

[~~L. M.~~ *Compliance agent.*

1. *Industry overview and responsibilities: regulations review, business practices, ethical standards, records requirements and other related issues -- 6 hours*

2. *Written examination*

Total hours (excluding written examination) -- 6 hours

[~~M. N.~~ *Firearms training. Firearms certification is required for all private security services business personnel prior to carrying or having immediate access to a firearm in the performance of duty. Firearms training must be completed within 12 months immediately preceding submission of an application. Firearms training completed longer than 12 months prior to application shall not be valid.*

1. *Handgun classroom training (refer to § 9.2) -- 8 hours*

2. *Shotgun classroom instruction, if applicable (refer to § 9.3) -- 1-hour [2-hours 1 hour]*

3. *Written firearms examination (refer to § 9.3).*

4. *Range qualification. No minimum hours required. Each person who carries or has immediate access to firearms in the performance of duty shall qualify with each type and calibre caliber of firearm to which he has access.*

Total hours do not include examination shotgun classroom instruction or range qualification -- 8 hours

[~~N. O.~~ *Personal protection specialist advanced firearms training. In addition to the successful completion of the personal protection specialist entry-level curriculum (§ 7.8 F), each armed personal protection specialist student must also comply with the [following: personal protection specialist advanced handgun training -- 24 hours.]*

[1. ~~Prerequisite for personal protection specialist advanced firearms training:~~

~~(official documentation required)~~

~~Successful completion of handgun classroom instruction (refer to § 9.2 B) -- 8 hours]~~

[2. ~~Personal protection specialist advanced firearms training -- 24 hours]~~

1. *Weapon selection and nomenclature*
2. *Safety and functioning*
3. *Fundamentals of marksmanship*
4. *Decision making for the personal protection specialist*
5. *Firearms skill development*
6. *Virginia private security [~~modified~~] course of fire for handguns*
7. *Personal protection specialist advanced firearms course of fire [for handguns]*
8. *Written examination*

Each private security employee who carries or has immediate access to firearms in the performance of duty shall qualify with each type and caliber of firearm to which he has access.

Total hours (excluding written examination) -- [~~32~~ 24] hours

§ [~~7.10~~ 7.9.] *Compulsory minimum in-service training requirements.*

A. *Unarmed security officer/armed security officer/courier /unarmed alarm respondent/armed alarm respondent .*

- Legal authority/regulations review -- 2 hours*
- Job related training -- 2 hours*
- Total -- 4 hours*

B. *Armored car personnel.*

- Statutory authorization/ state regulations review -- 2 hours*
- Armored car procedures -- 2 hours*
- Total -- 4 hours*

C. *Guard dog handler.*

- Basic obedience evaluation and retraining -- 2 hours*
- Legal authority/regulations review -- 2 hours*
- Job related training -- 2 hours*
- Basic obedience retraining -- 2 hours*
- Canine patrol techniques -- 2 hours*
- Total -- 8 hours*

D. *Private investigator.*

- Legal authority/issues (civil and criminal)/regulations review -4 hours*
- Investigative procedures -- 4 hours*
- Total -- 8 hours*

E. *Personal protection specialist [--16 hours]*

- [Regulations review -- 1 hour*
- Legal authority and issues -- 2 hours*

Protective detail operations -- 10 hours

Emergency procedures -- 3 hours

Total -- 16 hours]

F. *Central station dispatcher [--4 hours]*

- [Code and regulation review -- 1 hour*
- Job related training/false alarm prevention -- 3 hours*
- Total -- 4 hours]*

G. *Electronic security sales representative [--4 hours]*

- [Code and regulation review -- 1 hour*
- Job related training/false alarm prevention -- 3 hours*
- Total -- 4 hours]*

H. *Electronic security technician [--12 hours]*

- [Code and regulation review -- 1 hour*
- Job related training/false alarm prevention -- 3 hours*
- Total -- 4 hours]*

[I. Electronic security technician's assistant -- 2 hours]

~~E~~ [~~I. J.~~] *Compliance agent.*

- [Code and regulation review -- 5 hours*
- Job related training/false alarm prevention -- 1.5 hours*
- Total -- 4 hours]*

Industry overview and responsibilities, regulations review, business practices, ethical standards, records requirements, and other related issues [--4 hours]

[§ 7.10. *Partial in-service training credit.*

A. Partial in-service training credit may be approved for attendance at training programs which are not conducted through a Department of Criminal Justice Services certified private security training school. Individual partial in-service training credit applications must be submitted on forms provided by the department. The following procedures for applying for partial in-service training credit must be followed:

1. Job-related training sessions which meet or exceed Department of Criminal Justice Services standards and are offered by institutions, associations, or private firms may be approved for partial in-service training credit.

2. Applications for partial in-service training credit shall include information relating to the sponsoring organization and a copy of the training schedule. The schedule shall contain the dates, times, subject matter and instructor for each session.

3. Applications must be submitted within 60 days of the last day of the training session.

B. Partial in-service training credit for regulations review may be approved upon successful completion of compliance agent in-service training.

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§ 7.11. *Extension of time period to meet in-service training requirement.*

A. An extension of the time period to complete in-service training requirements may be approved only under specific circumstances which do not allow the private security employee to complete the required in-service training within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Illness,
2. Injury, or
3. Military service.

B. An application for extension shall:

1. Be submitted prior to the expiration date of the time limit required for completion of the compulsory in-service training requirements; and
2. Indicate the projected date the individual will be able to comply with the in-service training requirements.

C. No extension will be approved for registrations or certifications which have expired.

D. Applications for additional extensions may be approved upon written request of the individual.]

§ [7.14. 7.12.] Firearms retraining.

A. All armed private security services business personnel must satisfactorily complete two hours of firearms classroom retraining, range training, and requalify as prescribed in §§ 9.2 B and 9.3, if applicable, within each calendar year during each 12 months of registration. Certified schools providing firearms retraining must meet the requirements of Part VIII of these regulations.

B. Each armed registrant who has complied with the initial firearms training requirement shall comply annually with firearms retraining prior to within the 12-month period preceding the expiration date of his registration. Firearms training completed longer than 12 months prior to the expiration date of his registration is not valid.

~~C. Firearms (handgun and shotgun) classroom retraining -- 2 hours~~

C. Firearms classroom retraining.

Handgun classroom retraining -- 2 hours

Shotgun classroom retraining -- 1 hour

Range qualification (no minimum hour hours required).

Total hours (excluding range qualification and shotgun classroom training) -- 2 hours

§ [7.12. 7.13.] Personal protection specialist advanced [firearms handgun] retraining -- 8 hours

A. Each armed personal protection specialist registrant must satisfactorily complete eight hours of personal protection specialist advanced [firearms handgun] classroom training, range [training retraining], and requalify, if applicable. Certified schools providing [firearms

personal protection specialist advanced handgun] retraining must meet the requirements of Part VIII of these regulations.

B. Each armed personal protection specialist registrant who has complied with the initial personal protection specialist advanced firearms training requirement, shall comply annually with [firearms personal protection specialist advanced handgun] retraining within the 12-month period preceding the expiration date of his registration. [Firearms training Personal protection specialist advanced handgun retraining] completed longer than 12 months prior to the expiration date of his registration is not valid.

§ [7.13. 7.14.] Guard dog handler basic obedience evaluation and retraining -- 2 hours

Each guard dog handler registrant shall comply annually with the requirement for basic obedience evaluation and retraining.

§ 7.12. [7.14. 7.15.] Instructor recertification training .

A. Regulations review, legal issues, ethical standards, records requirements and other related topics -- 3 2 hours

B. Techniques of instruction delivery -- 5 6 hours

Including practical exercises.

Total hours (excluding testing) -- 8 hours

PART VIII.

PRIVATE SECURITY SERVICES TRAINING SCHOOLS.

Article 1.

School Certification.

§ 8.1. Application for certification; fee. Initial requirements for the certification of a private security services training school.

In accordance with § 9-182 of the Code of Virginia, the department may certify those schools which on the basis of curricula, instructors and facilities, provide training which meets the compulsory minimum training standards. Each person seeking to establish a certified certify a private security services training school shall file an application, provided by the department, which shall be accompanied by a nonrefundable fee of \$500. The department may certify such schools for a period not to exceed 12 months. Each principal of the business entity applying for certification as a private security services training school must be listed on the application and is responsible for the school's adherence to the Code of Virginia and these regulations. Each person listed on the application shall complete a supplemental fingerprint processing application and submit his fingerprints on one completed set of two fingerprint cards along with a nonrefundable fee of \$41; however, a maximum of two sets of fingerprint cards may accompany the application at no additional cost. Certifications shall be issued for a period not to exceed 12 months. All forms shall be completed in full compliance with the instructions provided by the department. Applicants shall meet or exceed all of the requirements contained in this part prior to the issuance of a training school certification.

§ 8.2. Certification requirements; designation of school director; school director duties and responsibilities; retention and replacement of school director.

A. Each person seeking to establish a certified private security services training school shall designate a school director. The school director shall be an individual, who is not designated as school director for any other certified private security services training school, and shall meet the following requirements: *possess current certification as a private security instructor.*

~~1. Possess current certification as a private security instructor; and~~

~~2. Successful completion of compulsory minimum training requirements for each category of training for which school certification is requested.~~

B. The certified school director shall at all times comply with the following:

1. Ensure that the certified training school is in full compliance with the Code of Virginia and these regulations;

2. Ensure that all applications for session approval sessions conducted meet the requirements for mandated training;

3. Ensure that all instructors of the certified training school have been certified by the department as private security instructors and instruct in accordance with the ~~current~~ Code of Virginia and these regulations;

4. Ensure that all training completion rosters are filed with the department within seven business days of the training completion date;

4. 5. Ensure the maintenance of training, employment and payroll records which document compliance with the Code of Virginia and these regulations.

C. 1. Each certified training school shall maintain an individual as school director who has met the requirements of these regulations and has been certified by the department.

2. Each training school shall notify the department in writing within 10 calendar days of the termination of employment of a certified school director.

3. Within 90 days of termination of the school's certified director, the school shall submit, on a form provided by the department, the name of a new school director who has met the requirements of these regulations.

~~§ 8.3. Certification authority.~~

~~The department, in accordance with § 9-182 of the Code of Virginia, may certify these schools, which on the basis of curricula, instructors and facilities provide training that meets the compulsory minimum training standards. A denial may be appealed in accordance with the procedures prescribed by the Administrative Process Act.~~

[§ 8.3. Criminal history records search.

Upon application for certification as a private security services training school, each training director and principal of the applicant firm shall submit his fingerprints to the department on one completed set of two fingerprint cards on forms provided by the department, and a \$41 nonrefundable fee for each set of fingerprint cards beyond the allowable two sets provided with the initial training school application. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual has a record of conviction.

§ 8.4. Unclassifiable fingerprint cards.

Fingerprint cards found to be unclassifiable will be returned to the applicant. Action on the application will be suspended pending the resubmittal of classifiable fingerprint cards. The applicant should be so notified in writing and shall submit his fingerprints on new fingerprint cards and a nonrefundable fee of \$41 to the department before the processing of his application shall resume. However, no such fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.]

§ [~~8.3.~~ 8.5.] Basis for denial of certification.

A. The department may deny certification to a school in which any training director or principal has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage. Any plea of nolo contendere shall be considered a conviction for the purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

B. The department may deny certification to a school in which any training director or principal has not maintained good standing in every jurisdiction where licensed, registered or certified, or has had his license, registration, or certification denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for certification in Virginia.

§ [8.4. 8.6.] Physical address required.

Each person applying to become a certified private security services training school shall provide the department with its physical address in Virginia at which records required to be maintained by the Code of Virginia and these regulations are kept and available for inspection by the department. A post office box is not considered a physical address.

§ 8.5. 8.7.] Authority to inspect.

Each certified training school shall permit the department to inspect, review and copy those training, employment and payroll records which document compliance with the Code of Virginia and these regulations.

§ 8.6. 8.8.] Display of certificate.

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The private security services training school certificate shall be prominently displayed for public inspection at all times.

§ [~~8-7~~ 8.9.] Change of ownership or entity.

A. Each certified training school shall report in writing to the department any change in its ownership or principals which does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change.

B. A new training school certification is required whenever there is any change in the ownership or manner of organization of the certified training school entity which results in the creation of a new legal entity.

§ [~~8-8~~ 8.10.] Change of name or address.

Each training school shall upon application, and at all times, keep the department informed of its physical address, and shall report in writing to the department any change in its name or physical address no later than 15 days after the effective date of that change. Name change reports shall be accompanied by certified true copies of the documents which establish the name change. A post office box is not a physical address.

§ [~~8-9~~ 8.11.] Transfer of certification prohibited.

Each training school certification shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity.

§ [~~8-10~~ 8.12.] School expiration, renewal, reinstatement.

A. The department will mail a renewal application to the last known address of the certified school director. Failure of the certified school director to renew certification prior to the expiration date of the certification shall not be the responsibility of the department.

B. A private security training school not renewed on or before the expiration date of the certification shall become null and void. Operating a training school without valid certification is a violation of the Code of Virginia and these regulations.

C. All certifications granted to private security services training schools shall be valid for a period not to exceed 12 months.

D. Applications for renewal must be received 30 days prior to expiration. School renewal applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus nonrefundable reinstatement fees.

1. The department may renew the certification of a training school for a period not to exceed 12 months when the following are received by the department:

- a. A properly completed renewal application; and
- b. A nonrefundable renewal fee of \$250.

2. The certified school director and each certified instructor listed on the school renewal application must have satisfactorily completed all applicable *instructor* training requirements.

3. Each certified director, principal or certified instructor listed on the school renewal application shall be in good standing and free of disciplinary action in every jurisdiction where licensed or certified.

E. 1. A renewal application received by the department within 180 days following the expiration date shall be accompanied by a nonrefundable renewal fee of \$250 and nonrefundable reinstatement fee of \$125.

2. No training school shall be renewed or reinstated when the renewal application and fee are received by the department after 180 days following the expiration date of the approval. After that date, the applicant shall meet then current initial school certification requirements.

3. The date on which the application and fee are received by the department shall determine whether the applicant is eligible for renewal or reinstatement or is required to apply for initial certification as a private security training school.

§ [~~8-11~~ 8.13.] Exemptions.

The department may grant a temporary exemption from the [requirement for certification of a] training school [requirements] for a period of not more than 30 days in a situation deemed an emergency by the department.

§ ~~8-11~~. [~~8-12~~ 8.14.] Suspension and revocation.

The certified private security services training school director *and the certified training school* shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or these regulations. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include, but is not limited to, a letter of censure, fine, suspension, or revocation of the school's certification status or his certification as school director.

*Article 2.
Instructor Certification.*

~~§ 8.12. Certified instructors required; qualifications; criminal history records search; denial or renewal of certification; credit for hours.~~

§ [~~Instructor qualifications~~ 8.15. *Certified instructors*] .

A. Instructors desiring to instruct in a certified training school shall submit an application for instructor certification. The applicant must provide documentation of previous work experience, instructor experience, training and education for those subjects in which certification is requested. The department will evaluate qualifications based upon the justification provided. In addition, all instructor applicants shall meet the following requirements and provide documentation thereof:

1. Have a minimum of three years management or supervisory experience with a private security services business or with any federal, military police, state, county

or municipal law-enforcement agency, or in a related field; or have a minimum of one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which certification is requested, or in a related field;

2. Have a high school diploma or equivalent (GED);

3. Successful completion of an instructor development program, within the three years immediately preceding the date of the application, that meets or exceeds standards established by the department; or successful completion of an instructor development program longer than three years prior to the date of application, and has provided instruction during the three years immediately preceding, or has provided instruction in a related field at an institution of higher learning;

4. Submit his fingerprints on one set of two completed fingerprint cards on forms provided by the department; and

5. Submit a properly completed instructor application and a nonrefundable application fee of \$91.

B. In addition to the instructor qualification requirements described in subsection A of this section, each firearms instructor must have completed a firearms instructors school specifically designed for law-enforcement or private security personnel. Each firearms instructor candidate must provide documentation of range qualification with:

1. A revolver;
2. A semi-automatic handgun; and
3. A shotgun.

The school firearms instructor training must have been completed within the three years immediately preceding the date of the instructor application; or in the event that the school completion occurred prior to three years, the applicant shall have provided firearms instruction during the three years immediately preceding.

C. In addition to the requirements of subsection A of this section, each candidate for certification as a guard dog handler instructor, [armored car personnel instructor,] personal protection specialist instructor, and electronic security instructor shall submit to the department official documentation of qualifications in each specified area.

~~G.~~ § [~~8-14.~~ 8.16.] Criminal history records search.

Upon receipt of an initial application for instructor certification, the department shall submit the fingerprints of the applicant to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a national criminal records search to determine whether the applicant has a record of conviction. Applicants submitting unclassifiable fingerprint cards shall be required to submit their fingerprints on new fingerprint cards along with a nonrefundable fee of \$41. However, no such fee shall be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted.

[§ 8.17. Subject matter specialists.

Subject matter specialists may be utilized to instruct those subjects in which he holds credentials issued by the government agency or professional association specific to that profession. Authorization to utilize such subject matter specialists may be obtained upon submission to the department of a written request by the school director. A copy of the credentials of the proposed subject matter specialist must be included with the request.]

~~D.~~ § [~~8-15.~~ 8.18.] Denial of instructor certification.

A. The department may deny certification to an instructor who has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage. Any plea of nolo contendere shall be considered a conviction for the purposes of these regulations. The record of a conviction, authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.

B. The department may deny certification to any instructor who has not maintained good standing in every jurisdiction where licensed or registered or has had his license or registration denied upon initial application, suspended, revoked, surrendered, not renewed, or otherwise disciplined in connection with a disciplinary action prior to applying for certification in Virginia.

~~E.~~ The department may renew the certification of an instructor for a period not to exceed 12 months when the following are received by the department:

1. A properly completed renewal application;
2. Documentation of satisfactory completion of applicable requirements; and
3. A nonrefundable renewal fee of \$10.

§ [~~8-16.~~ 8.19.] Exemptions.

The department may grant a temporary exemption from the [requirement for certification private security instructor certification requirements] for a period of not more than 30 days in a situation deemed an emergency by the department.

§ [~~8-17.~~ 8.20.] Probation, suspension, and revocation.

The certified private security services instructor shall be subject to disciplinary action for violation or noncompliance with the Code of Virginia and these regulations. Disciplinary action shall be in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The disciplinary action may include, but is not limited to, a letter of censure, fine, probation, suspension or revocation of his certification as an instructor.

~~F.~~ § [~~8-18.~~ 8.21.] Renewal of instructor certification.

A. The department may deny renewal of instructor certification for the same reason as it may refuse initial certification or discipline an instructor.

~~G.~~ B. Instructors certified to teach mandatory [in-service] training classes, except firearms [training retraining] , may

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receive credit for hours towards in-service training requirements for classes in which they provide instruction, upon submission of proper documentation and department approval.

H. C. Each person certified as a private security instructor shall complete the instructor recertification requirements by December 31 of the third calendar year following initial certification and every third calendar year thereafter.

All private security instructors certified prior to June 30, 1994, must comply with this requirement by December 31, 1997.

§ [~~8.19.~~ 8.22.] *Certification expiration, renewal, reinstatement.*

A. *The department will mail to the last known address of the instructor a renewal notification. Failure of the instructor to renew prior to the expiration of the certification shall be the sole responsibility of the instructor.*

A private security services instructor certification not renewed on or before the expiration date shall become null and void. Operating as a private security services instructor without a valid private security services instructor certification is a violation of the Code of Virginia and these regulations.

B. *All certifications issued to private security services [instructor instructors] shall be valid for a period not to exceed 12 months.*

C. 1. *Applications for instructor certification must be received by the department at least 30 days prior to expiration. Renewal applications received by the department after the expiration date shall be subject to all applicable nonrefundable renewal fees plus reinstatement fees.*

2. *The department may renew the instructor certification for a period not to exceed 12 months from the expiration date of the certification when the following are received by the department:*

- a. *A properly completed renewal application;*
- b. *A nonrefundable renewal fee of \$10; and*
- c. *Documentation that the [applicant instructor] has met the applicable recertification training standards.*

3. *Each instructor must have satisfactorily completed all applicable training requirements.*

4. *Each instructor shall be in good standing and free of disciplinary action in every jurisdiction where licensed, registered or certified.*

5. *A renewal application received by the department within 180 days following the expiration date of the certification shall be accompanied by a nonrefundable renewal fee of \$10 and a nonrefundable reinstatement fee of \$5.00.*

6. *No instructor certification shall be renewed or reinstated when the application and fee are received by the department more than 180 days following the expiration date of the certification. After that date, the*

applicant shall meet all initial instructor certification requirements.

7. *The department may deny renewal or reinstatement of an instructor for the same reason as it may refuse initial certification or discipline a licensee.*

PART IX. FIREARMS TRAINING.

§ 9.1. Firearms training requirements.

A. Private security services business personnel who apply for armed registration shall be required to meet the provisions of § 9.2 and, if applicable, § 9.3.

B. Every student must qualify with each type and calibre of firearm he will have access to while on duty.

§ 9.2. Handgun training.

A. The eight hours of classroom training will emphasize but not be limited to:

1. The proper care of the weapon;
2. Civil liability of the use of firearms;
3. Criminal liability of the use of firearms;
4. *Weapons retention;*
4. 5. Deadly force;
5. 6. Justifiable deadly force;
6. 7. Range safety;
7. 8. Practical firearms handling; and
8. 9. Principles of marksmanship;

B. No minimum hours are required for range qualification. The purpose of the range qualification course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.

1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training.

2. Ammunition - 60 rounds - factory loaded semi-wadcutter or duty ammunition may be used for practice or range qualification or both.

3. Target - Silhouette (M-9, *Transitional Target 2*, full-size B21, B21x or B-27) - Alternate targets may be utilized with prior approval by the department.

4. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

5. [~~An approved A certified~~] firearms instructor must be on the range during all phases of firearms training. There shall be one firearms instructor ~~or assistant~~ per four shooters on the line.

6. Directional draw holsters only.

7. Scoring:

a. *M-9, Transitional Target 2*, B21, B21x, B27 target - (use indicated K-value) 8, 9, 10 X rings - value 5 points, 7 ring - value 4 points, other hits on silhouette - value 3 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, e.g., $225 \div 300 = .75 = 75\%$.

b. Q targets - any fired round striking the bottle area to include its marked border - value 5 points - any fired round striking outside the bottle area - value 3 points.

8. Course: [~~Modified Course for Handguns~~ *Virginia Private Security Course of Fire for Handguns*].

Target -- Silhouette (B21, B21X, B27) -- 60 rounds

Double action, except for single action semi-automatic weapons.

Minimum qualifying score - 75%

Phase 1 -- 3 yards, point shoulder position, 18 rounds:

Load 6 rounds and holster loaded weapon.

On command, draw and fire 2 rounds (3 seconds) repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 6 rounds with strong hand.

Unload, reload 6 rounds and fire 6 rounds with weak hand (25 seconds).

Phase 2 -- 7 yards, point shoulder position, 24 rounds:

Load 6 rounds and holster loaded weapon.

On command, draw and fire 1 round (2 seconds), repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 2 rounds (3 seconds), repeat.

Load 6 rounds and holster loaded weapon.

On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds).

Phase 3 -- 15 yards, 70 seconds, 18 rounds:

Load 6 rounds and holster loaded weapon.

On command, assume kneeling position, draw and fire 6 rounds with strong hand.

Assume standing position, unload, reload and fire 6 rounds from weak hand barricade position.

Unload, reload and fire 6 rounds from strong hand barricade position (70 seconds).

(Kneeling position may be fired using barricade position.)

§ 9.3. Shotgun training.

A. The ~~one hour~~ [~~two hours~~ *one hour*] of classroom instruction will emphasize but not be limited to:

1. Safe and proper use and handling of shotgun;
2. Nomenclature; and
3. Positions and combat loading techniques.

B. No minimum hours required for range firing. The purpose of the range firing course is to provide practical shotgun training to those individuals who carry or have immediate access to a shotgun in the performance of their duties.

C. [~~Ammunition must be of same type as carried in the performance of duty~~ *For certification, 12 gauge, double aught "00" buckshot ammunition shall be used*]. Five rounds.

D. Scoring - 70% of available pellets must be within silhouette.

E. Course: [~~Modified Shotgun Range~~ *Virginia Private Security Course of Fire for Shotguns*].

	Distance	Position	No. Rounds	Target	Time
Combat load & fire	15 Yds.	Standing/ Shoulder	3	B-27 Silhouette	20 sec.
Combat load & fire	25 Yds.	Kneeling/ Shoulder	2	B-27 Silhouette	15 sec.

F. A certified firearms instructor must be on the range during all phases of firearms range training. There shall be one certified firearms instructor ~~or assistant~~ per four shooters on the line.

§ 9.4. Firearms retraining.

A. All armed private security services business personnel must satisfactorily complete two hours of firearms classroom training, range training, and requalify as prescribed in ~~§§ 9.2 and 9.3~~ *§ 9.2 B for handgun, and one hour of classroom training, range training, and requalify with the shotgun as prescribed in § 9.3, if applicable, within each calendar year the 12-month period immediately preceding the expiration date of his registration.*

B. Approved schools providing firearms retraining must meet the requirements of Part VIII of these regulations.

~~B. Each armed registrant who has complied with the initial firearms training requirement shall successfully complete firearms retraining annually prior to the expiration date of his registration.~~

[§ 9.5. *Personal protection specialist advanced handgun training.*

A. *The personal protection specialist advanced handgun training will emphasize but not be limited to:*

1. *Weapon selection and nomenclature;*
2. *Safety and functioning;*
3. *Fundamentals of marksmanship review; and*
4. *Decision making for the personal protection specialist.*

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B. No minimum hours required for range qualification. The purpose of this course of fire is to assess and improve the tactical, protection-related shooting skills for personal protection specialist candidates seeking certification to be armed. This course entails five increasingly challenging stages of advanced firearms exercises with a 92% score required for qualification.

1. In order to be eligible for the personal protection specialist advanced handgun course of fire, each personal protection specialist student must qualify on the Virginia private security course of fire for handgun by shooting a minimum score of 85%.

2. The advanced handgun course of fire is comprised of the following exercises:

- a. Shoot/don't shoot judgment
- b. Turn and fire drills
- c. Failure to stop drills
- d. Multiple target drills
- e. Judgmental shooting

3. For all range practicals (stage two through stage four), the student will fire at a man-size silhouette target with the following requirements:

- a. 4" diameter circle in head
- b. 8" diameter circle in chest/body area
- c. Center points of circles - 13 1/2 inches apart
- d. All rounds fired must hit within these circles
- e. Minimum 92% qualification score = 25 rounds total requiring 23 hits

4. Scoring:

- a. 25 points (1 round is good for 1 point)
- b. 92% of shots must be "in circle" hits for a passing grade (2 misses allowed on total course)
- c. Shots not taken during stage five, when a "no-shoot" situation is presented scores a point, just as an accurate shot in a hostile situation.
- d. 92 % is 23 of 25 possible

5. A certified personal protection specialist firearms instructor must be on the range during all phases of personal protection specialist advanced handgun training. There shall be one certified personal protection specialist firearms instructor per four students.

6. Virginia private security course of fire for personal protection specialist.

a. Stage One: Shoot/don't shoot drill

Stage one of the personal protection specialist advanced handgun course of fire is conducted in a classroom using a 16 mm film or video cassette tape of firearms combat scenarios to assess the student's

decision making capability given job-related shoot/don't shoot incidents.

After the interaction of the scenario, the students must explain all their commands and actions.

Dry-fire response from a weapon rendered safe should be incorporated into the scenario interaction.

b. Stage Two: Turn-and-fire drill

Stage two of the personal protection specialist advanced handgun course of fire is held at a firing range and consists of turn-and-fire drills from varying distances (straight draw hip holsters only).

All handguns are loaded with six rounds of ammunition and safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," the students must quickly turn while acquiring a firm grip on the weapon. Once facing the target and in a stable position, they must safely draw and fire two rounds at the designated target circle. After shooting, while facing the target, the student must reholster safely, then turn around to face up-range, ready to continue the exercise. The "fire" commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

c. Stage Three: Failure to stop drill

Stage three of the personal protection specialist advanced handgun course of fire is held at a firing range and consists of failure to stop drills fired from the seven-yard line (straight draw hip holsters only).

All handguns are loaded with six rounds of ammunition and are safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at normal pace, directly away from the target. Upon the command "fire," given at approximately the seven-yard line, each shooter must safely turn around while acquiring a firm grip on their weapon as performed in the previous drill. Once facing the target, the students will draw and fire two rounds at the 8 inch body circle, and then one immediate round to the 4 inch head circle. The student will then safely reholster. The drill will be repeated three times.

d. Stage Four: Multiple target identification drill

Stage four of the personal protection specialist advanced handgun course of fire is held at a firing range and consists of multiple target identification drills fired from varying distances (straight draw hip holsters only).

Each shooter will line up on a set of three targets. Only two shooters at one time can complete this exercise on a standard 10-12 station range. However, smaller ranges may allow for only 1 shooter at a time.

Each handgun is loaded with 6 rounds of ammunition and safely holstered. The shooters are positioned with

their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the targets. Upon the command "left," "right," or "center," the student must again turn around safely while establishing a firm grip on the weapon. Then, once stable, the student must quickly draw and fire 2 rounds at the designated circle on the "called" target ("L," "R," "C"). Then, the shooter, while still facing the targets, must safely reholster, turn around to face up-range, and continue the exercise. Each two round pair must be fired within 4 seconds of the called command. Direction commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

e. Stage Five: Judgmental shooting

This drill combines the skills developed in the prior four stages. The shooter will be required to safely turn and fire at a "photograph" type target which may be either friendly or hostile. It requires hostile targets to be stopped using deadly force. Necessity (immediate jeopardy) is presumed for this exercise. This stage allows the instructor to evaluate the decision-making capability of the student as well as his shooting accuracy and safety.

Shooter is placed on the 15-yard line facing the instructor with the target to his rear. The target will be placed at any location along the range target line and should not be seen by the student until he is given the "turn" command during the drill. Each shooter has the opportunity to complete this drill four times. Each decision is worth one point. If he shoots at a hostile target, a hit anywhere on that target will score the point. If a friendly target is presented, it is clearly a no-shoot situation and the student should merely holster safely to score the point. There is a four-second time limit at this stage for any "shoot" situation.

The instructor may choose to allow each shooter only two opportunities to complete this drill and place two targets downrange for each. Four points or hits are still necessary at this stage for the total score. If two targets are used, then the time limit is raised to six seconds, regardless of whether two hostile targets are used or one hostile with one friendly. This allows the instructor the opportunity to challenge a stronger shooter.

§ 9.10. Personal protection specialist advanced handgun retraining.

- 1. Legal authority and decision making -- 4 hours
2. Handgun safety, marksmanship and skill development -- 4 hours

Personal protection specialist advanced handgun course of fire total hours (not including range qualification) -- 8 hours]

PART X.
CERTIFIED PRIVATE SECURITY SERVICES TRAINING
SCHOOLS ATTENDANCE AND ADMINISTRATIVE
REQUIREMENTS.

Article 1.

Attendance and Administrative Requirements.

§ 10.1. Attendance.

The compulsory minimum training standards for initial and in-service training shall be met by attending and satisfactorily completing an approved private security services training session.

- 1. Private security services business personnel enrolled in an approved training session are required to be present for the entire period of each training class.
2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed.
3. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the certified school director.

§ 10.2. Administrative requirements.

A. Each certified school director will be required to maintain a current file of approved sessions, [training sessions,] attendance records, examination scores, firearms qualification scores, training completion rosters, and training completion forms for each student for three years from the date of the training session in which the individual student was enrolled.

B. [Students shall be under the supervision of a certified private security instructor during all classes and examinations A certified private security instructor or an authorized subject matter specialist must be present at all times while mandated training is being conducted] .

C. Instruction shall be provided in no less than 50-minute classes.

D. Classroom and range training may not exceed eight hours per day. (This does not include time allotted for testing, lunch and breaks.)

E. Mandated training conducted without prior approval from the department not in accordance with the Code of Virginia and these regulations is null and void.

F. Failure to file and maintain required forms and documentation may result in the imposition of sanctions on the training school and its training director.

G. Certified training schools will be subject to inspection and review by department staff. Certified training schools which conduct training sessions not located within Virginia may be required to pay the expenses of inspection and review.

Article 2.

Final Regulations

Approved Training School Operation.

§ 10.3. Training session schedules .

~~Prior to conducting any mandated private security services training, approved training schools shall submit to the department a proposed training schedule on a form provided by or approved by the department to be received by the department no less than 10 days prior to the beginning of each training session.~~

~~1. Each proposed training session schedule shall be accompanied by a nonrefundable fee. The fee for each type of training session is set forth below:~~

- ~~a. Core subjects training session \$10~~
- ~~b. Firearms training \$10~~
- ~~c. Armored car subjects \$10~~
- ~~d. Canine handler subjects \$15~~
- ~~e. Private investigator \$25~~
- ~~f. Firearms retraining \$10~~
- ~~g. In-service training \$10~~

~~2. The proposed training schedule shall include the date, time, location, subject and name of the approved instructor for each class to be conducted during the training session.~~

~~3. Any changes in an approved training session shall be reported to the department immediately. Written notification shall be received by the department within seven business days. An approved training session shall be conducted as scheduled.~~

[A. A training session must be conducted in accordance with the compulsory minimum training standards and must be presented in its entirety. School directors may require additional hours of instruction, testing or evaluation procedures.

B. A notification to conduct a training session shall be submitted to the department postmarked no less than seven calendar days prior to the beginning of each training session. The notification shall be on a form provided by the department and shall include the date, time, and location of the training session.

C. Notification of any changes to the dates, times, location or cancellation of a training session must be submitted to the department in writing.

D. School directors and training schools in violation of the above notification requirements are subject to sanctions as set forth in § 13.8 A of these regulations.

E. Session notifications require no fee from the training school.

F. A notification to conduct a training session shall be deemed to be in compliance unless the school director is notified by the department to the contrary.]

~~4. The [G.] A session curriculum, as approved by the department, must be adhered to and all subject matter must~~

~~be presented in its entirety. The compulsory training standards constitute the minimum requirements; training adhere to the minimum compulsory training standards and must be presented in its entirety. Training directors may require additional hours of instruction, testing or evaluation procedures.~~

§ 10.4. Examination and testing.

A. A written examination shall be administered at the conclusion of each entry level training session. [The examination shall include at least three questions for each 50 minutes of instruction of a mandated subject. Each examination shall include three questions based on each learning objective for the compulsory minimum training session.] The student must attain a minimum grade of 70% to satisfactorily complete the training session.

B. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

C. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

D. To successfully complete the firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

[E. To successfully complete the private investigator entry-level training session, the individual must:

1. Complete each of the three graded practical exercises required; and
2. Pass the written examination with a minimum score of 70%.

F. To successfully complete the personal protection specialist entry-level training session, the individual must:

1. Complete each of the five graded practical exercises required under Protective Detail Operations (the practical exercises in total must be passed with a minimum 70% score and must be successfully completed prior to the written examination); and
2. Pass the written examination with a minimum score of 70%.]

§ 10.5. Training completion forms.

On forms provided by the department, each training director shall issue an original training completion form to each student who satisfactorily completes a training session, no later than seven business days following the training completion date. A copy shall be retained on file with the certified training school for a minimum of three years.

§ 10.6. Training completion roster.

The school director shall submit a private security training roster affirming each student's successful completion of the session. [This form ~~The training completion roster~~] shall be received by the department within seven business days of the completion date of an approved training session. One copy shall be retained on file with the approved training school for

a minimum of three years. *The nonrefundable fee for processing a training completion roster is \$10 per roster.*

§ 10.7. Sanctions.

The private security services training director, training school and instructor shall be subject to disciplinary action for violation or noncompliance with the Code of Virginia and these regulations. Failure to file the forms and reports required by the Code of Virginia and these regulations shall be a basis for [sanction. Failure to submit the training completion roster to the department within the required seven business days shall be viewed as a violation by the department imposition of sanctions] .

PART XI.
STANDARDS OF PRACTICE AND PROHIBITED ACTS.

Article 1.
Standards of Practice.

§ 11.1. Professional services.

In accordance with § 9-182 of the Code of Virginia, these regulations establish standards designed to secure the public safety and welfare against incompetent or unqualified persons engaging in private security services. It shall be the responsibility of the licensee, and its compliance agents, to provide private security services in a professional manner, adhering to ethical standards and sound business practices.

§ 11.2. Documentation required.

A. In the event a complaint against the licensee is received by the department, the compliance agent shall be required to furnish documentary evidence of the terms agreed to between licensee and client, which shall include at a minimum the scope of services and fees assessed for such services. This information is necessary for the department to assess the validity of the complaint.

B. Failure to produce such information may result in the imposition of sanctions as set forth in § 13.8 A of these regulations.

Article 2.
Violations and Prohibited Acts.

§ 11.3. Violations.

Each person subject to jurisdiction of these regulations, who violates any statute or regulation pertaining to private security services ~~may~~ shall be subject to sanctions imposed by the ~~director~~ department regardless of criminal prosecution. The sanctions imposed may include, but shall not be limited to, a letter of censure, *probation*, suspension, revocation, and fine not to exceed \$2,500 for each violation.

§ 11.4. Prohibited acts.

It shall be unlawful for a person to engage in any of the following acts. Each of the acts listed below is cause for disciplinary action:

1. Violating or aiding and abetting others in violating the provisions of Article 2.1 (§ 9-183.1 et seq.) of Chapter 27 of Title 9 of the Code of Virginia or these regulations.

2. Having committed any act or omission which resulted in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

3. Having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any felony or a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury, or property damage, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of these regulations. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

4. Failing to inform the department in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug offense, physical injury or property damage.

5. Obtaining a license, license renewal, registration, registration renewal, training certification, training certification renewal, or certification to act as compliance agent for a licensee, a training school, school director, or instructor, through any fraud or misrepresentation.

6. Failing or refusing to produce to the department, during regular business hours, for inspection or copying any document or record in the compliance agent's or the licensed firm's possession which is pertinent to the records required to be kept by the Code of Virginia or by these regulations.

7. *Engaging in conduct which through word, deed, or appearance [falsely] suggests that a private security registrant or employee is a law-enforcement officer or other government official.*

7. 8. Failing to inform the department in writing within 30 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed.

8. 9. Conducting a private security services business or acting as a registrant or compliance agent in such a manner as to endanger the public health, safety and welfare.

9. 10. Engaging in *unethical*, fraudulent or dishonest conduct.

10. 11. Falsifying, or aiding and abetting others in falsifying, training records for the purpose of obtaining a license, registration, [~~unarmed security officer training~~] certification, or certification as a compliance agent, training school, school director or instructor.

11. 12. Representing as one's own a license issued to another private security services business or a registration issued to another individual, or representing oneself as a certified compliance agent of a licensee, training school, school director or instructor.

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~~12.~~ 13. Employing individuals who do not possess a valid registration issued by the department showing the registration categories required to perform one's duties.

~~13.~~ 14. Utilizing a person as an armed security officer who has not successfully completed the compulsory minimum standards for armed security officers or who does not have a valid firearms certification.

~~14.~~ 15. Performing any unlawful or negligent act resulting in loss, injury or death to any person.

~~15.~~ 16. If wearing while on duty, the law-enforcement style or military style uniform of a private security licensee:

a. Which does not have at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name and first and middle initials attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Having a patch or other writing containing the word "police" or any other words suggesting a law-enforcement officer, or "officer," unless used in conjunction with the word "security"; or resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words which accurately represent that distinction.

~~16.~~ Using ~~17.~~ Utilizing a vehicle in the conduct of for a private security services business which uses or displays a flashing red, blue or amber light not specifically authorized by the Code of Virginia.

~~17.~~ 18. Using or displaying the state seal of Virginia as a part of any licensed firm's logo, stationery, business card, badge, patch, insignia or other form of identification or advertisement.

~~18.~~ 19. Displaying of the uniform, badge or other insignia by employees of licensed firms while not on duty.

~~19.~~ 20. During the course of any private investigation, providing information obtained by any licensed firm and its employees to any person other than the client who employed the licensee to obtain that information, without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, or from the department, shall not constitute a violation of these regulations. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of these regulations.

~~20.~~ 21. The failure of a licensee's approved compliance agent to at all times comply with the following:

a. Ensure that the licensed firm is at all times in full compliance with the Code of Virginia and these regulations;

b. Ensure that the documentary evidence concerning unarmed security officers required by § 9-183.3 D of the Code of Virginia is maintained;

[c. *Ensure that the documentary evidence concerning electronic security technician's assistant required by § 9-193.3 E of the Code of Virginia is maintained.*]

[e. d.] Ensure that the licensed firm does not utilize or otherwise employ any person as an unarmed security officer [or electronic security technician's assistant] in excess of 90 days prior to the completion of the compulsory minimum training standards for unarmed security officer [or electronic security technician's assistant]; and

[d. e.] Maintain VSP Forms 167, training, employment and payroll records which document the licensed firm's compliance with the Code of Virginia and these regulations.

~~21.~~ 22. Failure of the certified school director or certified instructor to comply with the following:

a. Conduct training in compliance with the ~~approved training—schedule compulsory minimum training standards~~ ;

b. Utilize only certified training instructors;

c. Provide only accurate and current instruction and information to students;

d. Maintain and file with the department all records required by the Code of Virginia and these regulations; and

e. Ensure that the certified training school ~~and each approved session are held~~ is in compliance with the Code of Virginia and these regulations ; or

f. *Submit training completion rosters and fees to the department within seven business days of the completion of training.*

23. *Soliciting private security services business through advertising, business cards, bidding on contracts, or other means without having first obtained a private security services business license.*

24. *Failing to carry the private security photo identification card at all times while on duty.*

25. *Failure of an individual to present his private security registration photo identification card while on duty in response to the request of a law-enforcement officer, department personnel or client. This shall not apply to armored car personnel or personal protection specialists.*

PART XII.

AUTHORITY OF THE DEPARTMENT.

§ 12.1. Authority of the director.

A. In addition to the authority conferred by law, the director and his appointed agents are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of these regulations. The director, or agents appointed by him, shall be sworn to enforce the statutes and regulations pertaining to private security services businesses and private security services business personnel and shall have the authority to serve and execute any warrant, paper or process issued by any court or magistrate within jurisdiction of the department.

B. Further, in addition to the authority granted in § 9-6.14:13 of the Code of Virginia to issue subpoenas, the director, or a designated subordinate, shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the department.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by these regulations but do not hold a valid license, certificate or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director may summarily suspend a license under these regulations without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee or registrant would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm, personal injury or loss.

PART XIII. ADMINISTRATIVE REVIEW.

§ 13.1. Authority.

Pursuant to the authority conferred in § 9-182 B 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed herein, the department is empowered to receive, review, investigate and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

§ 13.2. Complaints; complaint requirements; source of complaint; telephonic complaint.

A. Complaint requirements:

1. May be oral or in writing; and
2. Must allege a violation of the law or these regulations relating to private security services.

B. Any aggrieved or interested person may file a complaint against any individual, person, firm or licensed firm, school or

certified school whose conduct and activities are regulated by the board. Additionally, the department may initiate proceedings to adjudicate an alleged violation as a result of its own audit, inspection, or investigation.

C. The department may accept and investigate telephonic complaints regarding activities which constitute a life-threatening situation, or have resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm or personal injury.

§ 13.3. Adjudication of complaints.

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact finding conference or formal hearing as established in §§ 13.4 and 13.5.

§ 13.4. Informal fact finding conference.

A. The purpose of an informal fact finding conference is to resolve allegations through informal consultation and negotiation. Informal fact finding conferences shall be conducted in accordance with § 9-6.14:11 of the Code of Virginia.

B. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact finding decision was served by mail, three days shall be added to that period.

§ 13.5. Formal hearing.

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 9-6.14:12 of the ~~Administrative Process Act~~ *Code of Virginia*. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 9-6.14:12 of the Code of Virginia wherein a sanction is imposed to fine, or to suspend, revoke or deny issuance or renewal of any license, registration, certification or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such license, registration, certification or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer; and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

§ 13.6. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention: Director, Department of Criminal

Final Regulations

Justice Services, 805 East Broad Street, Richmond, Virginia 23219, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

§ 13.7. Court review; appeal of final agency order.

A. The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia.

B. Notification shall be given to the attention Director, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

§ 13.8. Disciplinary action; sanctions; publication of record.

A. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation, or in noncompliance, of these regulations:

1. Letter of reprimand or censure;
2. *Probation for any period of time;*
- ~~2-~~ 3. Suspension of license, registration, certification, or approval granted, for any period of time;
- ~~3-~~ 4. Revocation;
- 4- 5. Refusal to issue, renew or reinstate a license, registration, certification or approval;
- ~~5-~~ 6. Fine not to exceed \$2,500 per violation.

B. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons, licensees, firms, registrants, training schools, school directors, compliance agents and licensed firms whose conduct and activities are subject to these regulations and have been sanctioned or denied licensure, registration, certification or approval.



Commonwealth of Virginia

Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS BL 7-193

**Initial License Application
 Private Security Services Business**

Fee: \$600 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

INSTRUCTIONS	DCJS USE ONLY
1. A Certificate of Insurance on a Form provided by the department showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 and \$300,000 (FormPSS BL 7-253). 2. Applicant shall file with the department evidence of a \$25,000 surety bond, (FormPSS BL 7-353) 3. Two (2) complete fingerprint cards for the sole proprietor 4. Non-refundable fee of \$600 Incomplete application will be returned	Application Type: <u>LA</u> Date Received: _____ Business License Number: _____ Fee Codes: <u>120</u> _____ Amount Applied: _____ Transaction Number: _____

Pursuant to the Provisions of Article 2.1, Chapter 27 Title 9, Code of Virginia as amended the below named hereby makes application for a license as a private security services business.

1. Business Name: _____ Federal ID Number: _____
 Trading As: _____
Name under which Applicant wishes to do business
 Physical Address: _____
Street & No. City County State Zip
 Mailing Address: _____
Street & No. City County State Zip
 Business Telephone: (____) _____ Other Number: (____) _____

If your business address is not in Virginia you must attach an Irrevocable Consent for Service form (Form PSS BL 7-493).

2. Type of Ownership: (Check one)
 Sole Proprietor Partnership Corporation
 If Incorporated, please submit a copy of your Certificate of Authority from the Virginia State Corporation Commission.

3. Category of services the business will provide: (Check each that applies)
 Armored Car Personnel Private Investigator/Private Detective Armed Guard/Couriers
 Unarmed Guard Guard Dog Handler

4. Name of Compliance Agent: _____ SSN: _____
 over

5. If Sole Proprietorship, list owner: _____ SSN: _____
 6. If Corporation or Partnership, List Officers/Directors/Partners: Each person listed below shall complete Form PSS BL 7-193a and submit with this application.
 President/Director/Partner: _____ SSN: _____
 Vice President/Director/Partner: _____ SSN: _____
 Secretary/Director/Partner: _____ SSN: _____
 Director/Partner: _____ SSN: _____

7. Have you or any compliance agent, officer or partner ever been convicted of a felony or misdemeanor? Yes No
 If yes, attach an explanation providing full detail including charge, date, place, law enforcement agency involved and disposition of each charge.
 8. Are you now or have you ever been licensed or registered as a private security business or employee by any other jurisdiction? Yes No
 If yes, which jurisdiction? _____
 9. Has a license or registration issued to you to operate in a Private Security Business in Virginia, or any other jurisdiction, ever been suspended or revoked for any reason? Yes No
 If yes, attach an explanatory letter.

AFFIDAVIT
 Commonwealth of: _____ County/City of: _____
 The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has reviewed and understands this affidavit.

Signature of Compliance Agent

Date

Signature of Principal Owner

Date
 Subscribed and sworn to before me this _____ day
 of _____ 19_____

Signature of Notary Public
 My Commission Expires: _____

DCJS ACTION TAKEN
 Approved Disapproved

Authorized Signature
 Date: _____



COMMONWEALTH OF VIRGINIA
 Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS MB 7-94

**Supplemental Private Security Services
 Business License Application
 FEE: \$41 Non-Refundable**

Make checks payable to: Treasurer, Commonwealth of Virginia

INSTRUCTIONS	DCJS USE ONLY
The following must accompany this application: 1. Two (2) completed DCJS fingerprint cards and 2. Non-refundable fee of \$41. INCOMPLETE APPLICATIONS WILL BE RETURNED.	Application Type: <u>MB</u> Date Received: _____ Fee Codes: <u>125</u> Amount applied: _____ Transaction Number: _____

BUSINESS NAME: _____ PHONE: (____) _____

BUSINESS ADDRESS: _____
Number and Street City/Town State Zip

NAME OF INDIVIDUAL: _____ SSN: _____
Last First Middle

BIRTH DATE: _____ TELEPHONE: (____) _____ FAX: (____) _____

PHYSICAL ADDRESS: _____
City/Town State Zip

MAILING ADDRESS: _____
City/Town State Zip

Have you ever been convicted of a felony or a misdemeanor in Virginia or any other jurisdiction? Yes No
 If yes, attach an explanation.

Are you now or have you ever been licensed or registered in Private Security by any other jurisdiction? Yes No
 If yes, which jurisdiction? _____

Has a license or registration issued to you to operate a Private Security Services Business in Virginia, or any other jurisdiction, ever been suspended or revoked for any reason? Yes No
 If yes, attach an explanation.

AFFIDAVIT

Commonwealth of: _____ County/City of: _____

The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit.

Subscribed and sworn to before me this _____ day of _____ 19__

 Signature of Applicant

 Signature of Notary Public

My Commission Expires: _____



Commonwealth of Virginia
 Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form
 PSS BL 7-293

Certificate of Insurance

PSS Business License # _____

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not extend or alter the coverage afforded by the policies listed below.

Agent Information

Name: _____
 Address: _____
 City/State/Zip: _____ Phone: (____) _____

Insured Information

Licensee: _____
 DBA: _____
(Doing Business As)
 Address: _____
 City/State/Zip: _____ Phone: (____) _____
 Compliance Agent: _____

Company Affording Coverage

Name: _____
 Address: _____
 City/State/Zip: _____ Phone: (____) _____

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

Type of Insurance	Policy Number	Effective Date	Policy Expiration Date	Limits of Liability in Thousands (000)		
				Auto	Home	Other
General Liability						
<input checked="" type="checkbox"/> Comprehensive Form				Minimum	100	300
				Coverage		

This certificate is evidence of the above listed licensee's compliance with Section 9-183.6 Code of Virginia.

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER
 Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110
 Richmond, Virginia 23240-9998

Date issued: _____

 Authorized Representative



Commonwealth of Virginia

Department of Criminal Justice Services

Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS BL 7-393

Private Security Services Bond

Bond #
PSS Business License #

KNOW ALL MEN BY THESE PRESENTS:

That I/We of Principal, and Surety, are held and firmly bound unto the Secretary of the Commonwealth of Virginia, in the just and full sum of Twenty-Five Thousand Dollars (\$25,000) to the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above bound has made application for license to be a Private Security Services business.

NOW, THEREFORE, if the said shall well and faithfully perform its duties as a Private Security Services business AND does not act or acts meriting suspension or revocation of its license under the provisions of Chapter 27, Title 9, Code of Virginia, 1950 as amended, then this obligation is void, otherwise to remain in full force and effect, subject, however, to the following conditions:

- 1. That this bond shall be continuous in form, and shall remain in full force and effect until canceled as hereinafter provided.
2. This bond may be canceled at any time by the Principal or the Surety upon giving thirty (30) days written notice to the Department of Criminal Justice Services, at Richmond, Virginia, of its intention to do so, it being understood that the Surety shall be liable for any violation of the terms of this bond by the Principal accruing during the life of this bond.
3. Any person aggrieved by any act of the above bounden principal in violation of the provisions of Chapter 27, Title 9, Code of Virginia, 1950as amended, may proceed against the principal or surety on said bond, or both, to recover damages not to excess of the penalty of such bond, in accordance with the provisions of Chapter 27, Title 9, Code of Virginia, 1950 as amended.

IN WITNESS THEREOF, The said Principal(s) has hereunto affixed his or her signature and seals, and the Surety has caused these presents to be executed by its duly authorized Attorney-in-Fact, this day of 19

Expiration Date (SEAL)
(SURETY)
Authorized to conduct business in the Commonwealth of Virginia
(SEAL)



Commonwealth of Virginia

Department of Criminal Justice Services

Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS BL 7-493

Irrevocable Consent for Service

To be executed by each non-resident business of Virginia applying for license

PSS Business License #

Firm Name:

Business Address:

Compliance Agent:

WHEREAS, I, or we, the above named applicant for license privileges as a Private Security Services Business trading and/or operating individually or for or under the firm name of have made application for a license to act as a Private Security Services Business, Non-Resident, within the Commonwealth of Virginia, in accordance with the provisions of Chapter 27, Title 9 of the Code, 1950 as amended.

WHEREAS, under the provisions of said Chapter, it is necessary to file with the Director, Department of Criminal Justice Services, Richmond, Virginia, an irrevocable consent that actions against the subscriber (or subscribers) may be filed in any appropriate court of any county or municipality of this Commonwealth in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process in any action may be served on the subscriber (or subscribers) by leaving two copies thereof with the Director of the Department. Such consent shall stipulate and agree that such service of process shall be valid and binding for all purposes;

NOW THEREFORE, I, or we, the above named applicant for license privilege as a Private Security Services Business as aforesaid, hereby execute and file with the Director of the Department of Criminal Justice Services our (or my) Irrevocable Consent that actions against the subscriber (or subscribers) may be filed in any appropriate court of any county or municipality of this Commonwealth in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process in any action may be served on the subscriber (or subscribers) by leaving two copies thereof with the Director of the Virginia Department of Criminal Justice Services. Such consent shall stipulate and agree that such service of process shall be valid and binding for all purposes.

In witness whereof, I, or we have hereunto signed our name, this day of 19

Subscribed and sworn to before me this day

Signature of Principal Owner of 19

Signature of Compliance Agent Signature of Notary Public

My Commission Expires:



COMMONWEALTH OF VIRGINIA
Department of Criminal Justice Services
Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS FP 7-94

Fingerprint Processing Application

FEE: \$41 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

Table with 2 columns: INSTRUCTIONS and DCJS USE ONLY. Contains application requirements and data entry fields.

APPLICANT'S NAME: Last First Middle

SSN: DOB:

PHYSICAL ADDRESS: Number and Street City/Town State Zip

MAILING ADDRESS: City/Town State Zip

TELEPHONE: Residence: () Business: ()

BUSINESS NAME: Fax: ()

EMPLOYMENT CATEGORY(S) : Please check all boxes which apply:

- Owner/Director/Partner Compliance Agent Alarm Respondent Armored Car Personnel
Central Station Dispatcher Electronic Security Employee Electronic Security Technician
Electronic Security Sales Representative Other (Describe)

Have you ever been convicted of a felony or a misdemeanor in Virginia or any other jurisdiction? Yes No
If yes, attach an explanation.

Are you now or have you ever been licensed or registered by any other jurisdiction? Yes No
If yes, which jurisdiction?

Has a license or registration issued to you to operate in a Private Security Services Business in Virginia, or any other jurisdiction,
ever been suspended or revoked for any reason? Yes No
If yes, attach an explanation.

AFFIDAVIT

Commonwealth of: County/City of:

The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed
any information that might affect this application, and that he has read and understands this affidavit.

Subscribed and sworn to before me this day of 19

Signature of Applicant Signature of Notary Public



COMMONWEALTH OF VIRGINIA
Department of Criminal Justice Services
Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS LR 7-9-

Private Security Services
Business License Renewal Application
FEE: \$250 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

INSTRUCTIONS
The following must accompany this application:
1. Certificate of Insurance; or
2. Evidence of \$25,000 Surety Bond; and
3. Non-refundable fee of \$250.
INCOMPLETE APPLICATIONS WILL BE RETURNED.

DCJS USE ONLY
Application Type: LR Date Received:
Fee Codes: 121
Amount applied:
Transaction Number:

LICENSED FIRM: I.D.#:

FEDERAL IDENTIFICATION NUMBER:

PHYSICAL ADDRESS: Number and Street City/Town State Zip

MAILING ADDRESS: City/Town State Zip

TELEPHONE: () FAX: ()

PLEASE LIST ALL COMPLIANCE AGENTS:

NAME: Soc.Sec.#:

INITIAL TRAINING DATE: IN-SERVICE TRAINING DATE:

NAME: Soc.Sec.#:

INITIAL TRAINING DATE: IN-SERVICE TRAINING DATE:

NAME: Soc.Sec.#:

INITIAL TRAINING DATE: IN-SERVICE TRAINING DATE:

CATEGORY OF SERVICES THE BUSINESS PROVIDES: (Check each that applies)

- Armored Car Personnel
Private Investigator
Armed Security Officers/Couriers
Unarmed Security Officers
Guard Dog Handlers

ATTACH PROOF OF PUBLIC LIABILITY (Check one): Insurance Bond

INSURANCE/BOND EXPIRES:

SOLE PROPRIETORSHIP, LIST OWNER: Soc.Sec.#:

IF CORPORATION OR PARTNERSHIP, LIST ALL OFFICERS/DIRECTORS/PARTNERS:

President of Partner: Soc.Sec.#:

Vice President or Partner: Soc.Sec.#:

Secretary or Partner: Soc.Sec.#:

Partner: Soc.Sec.#:

Have you or any officer, partner or employee in your private security services business been convicted or found guilty of a criminal offense, other than traffic violations, not previously reported to the Department?

YES NO (If yes, submit written explanation and official court disposition(s))

Have you or any officer or partner in your private security services business committed any act or omission since your last renewal which resulted in a license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction?

YES NO (If yes, submit written explanation)

Commonwealth of: County/City of:

The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit. The undersigned also understands that any misrepresentation or falsification of this application may be cause for denial.

Subscribed and sworn to before me this day of 19

Signature of Compliance Agent

Date

Signature of Notary Public

My Commission Expires:

Signature of Principal Owner

Date



COMMONWEALTH OF VIRGINIA
Department of Criminal Justice Services
Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS UA 7

UNARMED SECURITY OFFICER TRAINING CERTIFICATION APPLICATION

FEE: \$15 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

INSTRUCTIONS: The following must accompany this application: 1. Copy of PSS TCF COMPLETION OF TRAINING FORM 2. Non-refundable fee of \$15
DCJS USE ONLY: Application Type: UA Date Received: Fee Codes: 170 Amount applied: Transaction Number:

APPLICANT'S NAME: Last First Middle

SSN: DOB: PLACE OF BIRTH:

PHYSICAL ADDRESS: Number and Street City/Town State Zip

MAILING ADDRESS: Number and Street City/Town State Zip

TELEPHONE: EMPLOYER:

DATE OF EMPLOYMENT:

Have you ever been convicted of a felony or a misdemeanor in Virginia or any other jurisdiction? Yes No
If yes, on a separate piece of paper, please give full details, including charge, date, place, law enforcement agency involved and dispositions.

Have you ever had a private security license, certificate, registration or permit suspended, revoked or denied in Virginia, or any other jurisdiction? Yes No
If yes, attach an explanation.

Name of Certified School that provided training:

Training Session Completed:

Date(s) Training Completed:

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Section 9-183.3, Code of Virginia, requires an investigation to determine the suitability of each unarmed security officer by submission of VSP Form 167 to the Virginia State Police.

Have you as the compliance agent for this applicant's employer received the results of the VSP Form 167 and determined this applicant to be suitable for employment in the Private Security Industry in Virginia? Yes No

Is this Private Security Services Business in compliance with Section 9-183.3, Code of Virginia (1950), as amended for this unarmed officer? Yes No

I certify that the above statements are true and correct to the best of my knowledge, and that I am the compliance agent for the firm which employs this security officer and authorized to submit this information.

Compliance Agent: Signature Licensed Firm: Telephone: Date:

AFFIDAVIT

Commonwealth of: County/City of:
The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit.

Subscribed and sworn to before me this day of 19

Signature of Applicant

Signature of Notary Public

My Commission Expires:

DCJS ACTION TAKEN
[] Approved [] Denied
Authorized Signature
Date:



COMMONWEALTH OF VIRGINIA
 Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS WA 7

**APPLICATION FOR EXEMPTION FROM THE COMPULSORY
 MINIMUM TRAINING STANDARDS
 for PRIVATE SECURITY SERVICES BUSINESS PERSONNEL**

FEE: \$35 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

Please Note: No individual may be exempted from all training in any category. There are no total exemptions. The Code of Virginia restricts exemptions to law enforcement officers with five consecutive years of service, and whose termination is not the result of his/her misconduct or incompetence.

PRIOR LAW ENFORCEMENT EMPLOYMENT
 List all previous law enforcement employment in chronological order.

EMPLOYER	DATES	POSITION/RANK	REASON FOR LEAVING

PREVIOUS TERMINATION

Were you previously terminated from any law enforcement employment as a result of:
 Misconduct? Yes ___ No ___ Incompetence? Yes ___ No ___
 (If yes, please attach explanation on a separate piece of paper.)

STATUTORY AUTHORITY

List the specific state statute or U.S. Code title that granted you law enforcement authority for each law enforcement position listed. (Your application will be returned if the required information is not listed.)

U.S. Code Title: _____ Section(s): _____
 State of: _____ Section(s): _____

AFFIDAVIT

Commonwealth of: _____ County/City of: _____
 The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit.

Subscribed and sworn to before me this _____ day of _____ 19__

Signature of Applicant

Signature of Notary Public

My Commission Expires: _____

INSTRUCTIONS	DCJS USE ONLY
The following must accompany this application: 1. Official documentation of law enforcement employment and entry-level training for law enforcement officers 2. Non-refundable fee of \$35	Application Type: <u>WA</u> Date Received: _____ Fee Codes: <u>160</u> _____ Amount applied: _____ Transaction Number: _____
INCOMPLETE APPLICATIONS WILL BE RETURNED.	

FULL NAME: _____
Last First Middle
 SSN: _____ DOB: _____
 ADDRESS: _____
Number and Street City/Town State Zip
 TELEPHONE: () _____ FAX: () _____

TRAINING CATEGORY OF EXEMPTION REQUEST

Applicants must include documentation showing completion of an entry-level training course for law enforcement officers.

- Private Investigator Guard Dog Handler Unarmed Security Officer Armed Security Officer/Courier

PRESENT EMPLOYMENT

NAME OF AGENCY/FIRM: _____
 POSITION HELD: _____ DATES OF EMPLOYMENT: _____
 CERTIFIED PRIVATE SECURITY TRAINING SCHOOL PLANNING TO ATTEND: _____

< OVER >

Exemptions approved under this policy must be submitted to the Department of Criminal Justice Services for action within twelve (12) months of date of approval.

Approved Denied

 Authorized Signature

Date: _____



COMMONWEALTH OF VIRGINIA
Department of Criminal Justice Services
Private Security Section
P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form PSS IR 7-94

Private Security Instructor Certification Renewal Application

FEE: \$10 Non-Refundable

Make checks payable to: Treasurer, Commonwealth of Virginia

INSTRUCTIONS: The following must accompany this application: 1. Documentation verifying instructor position and development program(s) 2. Non-refundable fee of \$10. DCJS USE ONLY: Application Type: IR, Date Received: Fee Codes: Amount applied: Transaction Number:

APPLICANT'S NAME: Last First Middle

SSN: DOB:

PHYSICAL ADDRESS: Number and Street City/Town State Zip

MAILING ADDRESS: City/Town State Zip

TELEPHONE: Residence: Business:

FAX:

GENERAL INSTRUCTOR COURSE AND COMPLETION DATE:

FIREARMS INSTRUCTOR COURSE AND COMPLETION DATE:

CERTIFIED PRIVATE SECURITY TRAINING SCHOOL EMPLOYER(S)

Name of Training School ID #

Name of Training School ID #

Name of Training School ID #

CHECK ALL SUBJECTS YOU WISH TO INSTRUCT:

- CORE SUBJECTS: Administration & Security Orientation Legal Authority Emergency & Defensive Procedures

- PRIVATE INVESTIGATOR: Orientation and Administration Collecting & Reporting Information Investigative Techniques Criminal Law Interviewing Techniques Civil Law

OTHER:

- Armored Car Subjects Guard Dog Handler Subjects

FIREARMS:

- Handgun Training Shotgun Training

Have you ever been convicted of a felony or a misdemeanor in Virginia or any other jurisdiction? Yes No If yes, on a separate sheet of paper, please give full details, including charge, date, place, law enforcement agency involved and dispositions.

Has a license, certificate, permit or registration issued to you to operate in a Private Security Services Business in Virginia, or any other jurisdiction, ever been suspended, denied or revoked for any reason? Yes No If yes, attach an explanation.

I have read and understand the Regulations Relating To Private Security Services in effect on the date of this application. Yes No

I hereby certify that the information contained in this application is true and accurate, and that I will comply with all applicable sections of the Code of Virginia and the Regulations Relating to Private Security Services.

AFFIDAVIT

Commonwealth of: County/City of: The undersigned being duly sworn, states that he is the person who executed this application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit.

Subscribed and sworn to before me this day of 19

Signature of Applicant

Signature of Notary Public

My Commission Expires:

DCJS ACTION TAKEN: Approved Denied Authorized Signature Date:



Commonwealth of Virginia
 Department of Criminal Justice Services
 Private Security Section
 P.O. Box 10110, Richmond, VA 23240-9998 (804) 786-4700

Form
 PSS C-0793

Complaint Form
Private Security Services

Case #: _____
 Complaint #: _____
 Date Entered: _____

DESCRIBE YOUR COMPLAINT IN DETAIL. Be specific and include dates. Please enclose copies of any contracts or other documents relating to your complaint. *If additional space is needed, attach additional sheet(s).*

This form is to be used to register with the Department of Criminal Justice Services complaints of possible violations of the private security services license laws and regulations. Complaints should be typewritten or printed clearly. State facts briefly and clearly. Submit any and all documents you have to support your complaint. Complaint must be signed. Please complete both sides of this form. Mail complaint to the above address.

■ Person Registering Complaint

Name: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone: Home (____) _____ Work (____) _____
 Are you the owner, partner or compliance agent of a private security business? Yes No
 Complainant: Client Aggrieved Party Other _____

■ Complaint Registered Against

Name: _____
 Company: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone: Home (____) _____ Work (____) _____

■ Witness(es) (If applicable)

Name: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone: Home (____) _____ Work (____) _____
 Name: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone: Home (____) _____ Work (____) _____

NOTE: If additional witnesses are available, list names, addresses, and other pertinent data on a separate sheet.

OVER

I certify that the above statements are true and accurate to the best of my recollection.

 Signature of Complainant Date

Virginia Register of Regulations
 2950

Final Regulations

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

REGISTRAR'S NOTICE: The Department of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife. However, it is required to publish proposed and final regulations pursuant to § 9-6.14:22 of the Code of Virginia.

Title of Regulations: VR 325-02-1. Game: In General (§§ 6-1, 7 and 27).

VR 325-02-5. Game: Crow (§ 1).

VR 325-02-6. Game: Deer (§§ 2-1, 4, 5, 7, 7.1, 7.2, 10, 11, 13, 14, 14.2, 15 and 17).

VR 325-02-17. Game: Quail (§ 1).

VR 325-02-22. Game: Turkey (§§ 1, 2, 2-1 and 4).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

The amendments to VR 325-02-1 allow the use of electronic calling devices in taking fox, allow certain types of dog training at Quantico Marine Corps Reservation, and establish that the general regulations of the board apply to department-owned and controlled lands except as altered by posted rules at entrances to the lands.

The amendment to VR 325-02-5 changes the days of the week on which crows may be hunted during crow season.

The amendments to VR 325-02-6 change the sets of either-sex hunting days that apply to Clinch Mountain Wildlife Area and certain counties during the special muzzleloading seasons. Language identifying the types of sights permitted on muzzleloading guns during special muzzleloading seasons is eliminated. Either-sex hunting days that apply to certain localities and public lands during the general firearms season are changed. Wise County and national forest lands in Lee and Scott Counties are added to the list of lands on which only bucks may be taken. Language is added to deer tagging the provision specifying that the provision applies to tags from special licenses for hunting bear, deer and turkey, bonus deer permits, and special permits.

The amendment to VR 325-02-17 changes the opening date of quail season from the second to the fourth Monday in November.

The amendments to VR 325-02-22 change the dates of the fall turkey seasons and the counties to which each season applies. The part of Southampton County that lies north of U.S. Route 58 is excepted from the list of areas with a continuous closed turkey season.

Agency Contact: Copies of the regulation may be obtained from Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341.

VR 325-02-1. Game: In General.

§ 1. Hunting in the snow.

Except as otherwise provided in VR 325-02-17, § 5, it shall be lawful to hunt game birds and game animals in the snow.

§ 2. Hunting with crossbows, arrows to which any drug, chemical or toxic substance has been added or explosive-head arrows prohibited.

A. Generally. Except as otherwise provided by law or regulation, it shall be unlawful to use a crossbow, arrows to which any drug, chemical or toxic substance has been added or arrows with explosive heads at any time for the purpose of hunting wild birds or wild animals. A crossbow is defined as any bow that can be mechanically held in the drawn or cocked position.

B. Crossbows permitted for persons with permanent physical disabilities. For the purposes of this section any person, possessing a medical doctor's written statement based on a physical examination declaring that such person has a permanent physical disability that prohibits the person from holding the mass weight of a conventional bow and arrow at arm's length perpendicular to the body, or drawing or pulling or releasing the bow string of a conventional bow, and thus prevents that person from hunting with conventional archery equipment, may hunt with a crossbow on his own property during established special archery seasons. The doctor's written statement must be carried by the person while hunting and a copy of the doctor's written statement must be provided to the department on a form provided by the department, prior to hunting with a crossbow and the department's verification form shall be presented upon demand to any officer whose duty it is to enforce the game and inland fish laws.

§ 3. Recorded wild animal or wild bird calls or sounds prohibited in taking game; coyotes [and ,] crows [, and foxes] excepted.

It shall be unlawful to take or attempt to take wild animals and wild birds, with the exception of coyotes [and ,] crows, [and foxes] by the use or aid of recorded animal or bird calls or sounds or recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting coyotes [and foxes] with the written permission of the landowner.

§ 4. Live birds or animals as decoys prohibited.

Game birds and game animals shall not be taken by the use or aid of live birds or animals as decoys.

§ 5. Poisoning of wild birds and wild animals prohibited; certain control programs excepted.

It shall be unlawful to put out poison at any time for the purpose of killing any wild birds and wild animals, provided that rats and mice may be poisoned on one's own property. The provisions of this section shall not apply to the

Final Regulations

Commissioner of Agriculture and Consumer Services, or his representatives or cooperators, and those being assisted in a control program following procedures developed under the "Virginia Nuisance Bird Law."

§ 6. Hunting with dogs or possession of weapons in certain locations during closed season.

A. National forests and department-owned lands. It shall be unlawful to have in possession a bow or a gun which is not unloaded and cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains and on national forest lands east of the Blue Ridge Mountains and migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the above-mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target shooting only and no birds or animals shall be molested.

B. Certain counties. Except as otherwise provided in VR 325-02-1, § 6-1, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

C. Meaning of "possession" of bow or firearm. For the purpose of this section the word "possession" shall include, but not be limited to, having any bow or firearm in or on one's person, vehicle or conveyance.

D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands.

E. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or clip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

§ 6-1. Open dog training season.

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill and Fort Pickett, and *Quantico Marine Reservation*. Participants in this dog training season shall not have any weapons other

than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive waterfowl and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

§ 7. ~~Quantico Marine Reservation; Training or running dogs. (Repealed.)~~

~~It shall be unlawful to train deer dogs at any time, or to train or run any dogs in the designated hunting areas between March 1 and September 1, both dates inclusive, within the confines of Quantico Marine Reservation.~~

§ 8. Quantico Marine Reservation; Hunting after sunset prohibited.

It shall be unlawful to hunt with any firearm or bow and arrow after sunset on any day within the confines of Quantico Marine Reservation.

§ 9. Hog Island Wildlife Management Area; Waterfowl refuge established.

Hog Island, in Surry County, and all of the waters of the James River within a radius of 1,000 yards contiguous thereto is hereby declared a waterfowl refuge for the purpose of developing a feeding and resting area for such birds.

§ 10. Hog Island Wildlife Management Area; Hunting, trapping, etc., prohibited; exception.

It shall be unlawful to hunt, shoot, kill, trap or molest or attempt to hunt, shoot, kill, trap or molest at any time any waterfowl including ducks, geese, brant, or coot, or to hunt, shoot, kill, trap, molest, or attempt to hunt, shoot, kill, trap, or molest any other birds or animals on or in the area described in § 9 of this regulation, except at designated times from waterfowl blinds established by the department, provided that the department may, when deemed necessary for the better development of said refuge, remove by trapping or otherwise any birds or animals as would not be beneficial to the purposes for which such refuge is established.

§ 11. Hog Island Wildlife Management Area; possession of loaded gun prohibited; exception.

It shall be unlawful to have in possession at any time a gun which is not unloaded and cased or dismantled on that portion of the Hog Island Wildlife Management Area bordering on the James River and lying north of the Surry Nuclear Power Plant, except while hunting deer or waterfowl in conformity with a special permit issued by the department.

§ 12. Disturbing waterfowl adjacent to Lands End Waterfowl Management Area.

It shall be unlawful to take, attempt to take, pursue or disturb waterfowl within the public waters adjacent to the Lands End Waterfowl Management Area located in King George County for such distance offshore as may be established by the board and properly posted so as to give adequate notice to the public.

§ 13. Hunting, etc., prohibited on Buggs Island and certain waters of the Gaston Reservoir.

It shall be unlawful to hunt or have in one's possession a loaded gun on Buggs Island or to shoot over or have a loaded gun upon the water on Gaston Reservoir (Roanoke River) from a point beginning at High Rock and extending to the John H. Kerr Dam.

§ 14. Trapping prohibited except by permit on certain wildlife management areas.

It shall be unlawful to trap except by department permit on the Chickahominy, Barbour's Hill, Briery Creek, Hog Island, Lands End, Pocahontas-Trojan, Powhatan and Saxis Wildlife Management Areas.

§ 15. Molesting, damaging, removing or disturbing traps prohibited; release of game from lawful traps prohibited.

It shall be unlawful to willfully molest, damage or remove any trap, or any lawfully caught bird or animal therefrom, or in any way disturb traps or snares legally set by another person.

§ 16. Marking of traps by person setting.

Any person setting or in possession of a steel leghold or body gripping trap or snare shall have it marked by means of nonferrous metal tag bearing his name and address. This requirement shall not apply to landowners on their own land, nor to a bona fide tenant or lessee within the bounds of land rented or leased by him, nor to anyone transporting any such trap from its place of purchase.

§ 17. Trapping fur-bearing animals damaging property during closed season.

When fur-bearing animals are doing damage to crops or other property, the game warden of the county may issue a permit to the landowner or his lessee to trap such fur-bearing animals as are doing damage. Where such a permit is obtained by a landowner or a lessee, it shall be lawful during the closed season to trap such animals as are doing damage.

§ 18. Restricted use of body-gripping traps in excess of 7-1/2 inches.

The use of body-gripping traps with a jaw spread in excess of 7-1/2 inches is prohibited except when such traps are covered by water.

§ 19. Restricted use of above ground body-gripping traps in excess of five inches.

It shall be unlawful to set above the ground any body-gripping trap with a jaw spread in excess of five inches baited with any lure or scent likely to attract a dog.

§ 20. Restricted use of certain steel leg-hold traps.

It shall be unlawful to set above the ground any steel leg-hold trap with teeth set upon the jaws or with a jaw spread exceeding 6-1/2 inches.

§ 21. Use of deadfalls prohibited; restricted use of snares.

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the top of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner.

§ 22. Dates for setting traps in water.

It shall be unlawful to set any trap in water prior to December 1.

§ 23. Animal population control.

Whenever biological evidence suggests that populations of game animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever the health or general condition of a species, or the threat of human public health and safety indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction during the open season by licensed hunters on areas prescribed by wildlife biologists. Designated game species may be taken in excess of the general bag limits on special permits issued under this section under such conditions as may be prescribed by the director.

§ 24. Wanton waste.

No person shall kill or cripple and knowingly allow any nonmigratory game bird or game animal to be wasted without making a reasonable effort to retrieve the animal and retain it in their possession. Nothing in this section shall permit a person to trespass or violate any state, federal, city or county law, ordinance or regulation.

§ 25. Sunday hunting on controlled shooting areas.

A. Except as otherwise provided in the sections appearing in this regulation, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514. The length of the hunting season on such preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this regulation, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on Sunday on controlled shooting areas in those counties having a population of not less than 54,000, nor more than 55,000, or in any county or city which prohibits Sunday operation by ordinance.

§ 26. Sale of unclaimed taxidermy specimens by licensed taxidermists.

Unclaimed mounted native wildlife specimens or their processed hides, when taken in accordance with the provisions of law and regulations, may be sold by a Virginia licensed taxidermist with the exception of black bears, migratory waterfowl, migratory birds and state and federally listed threatened and endangered species.

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A mount or processed hide shall be considered unclaimed if it has been left in a taxidermy place of business for more than 30 days beyond the period the mount was to remain on the premises pursuant to a contract. This contract must inform the owner of the possibility of such sale. After the 30-day period a notice by registered or certified mail with a return receipt requested must be mailed to the owner of record therein, instructing him to reclaim the mount within 15 days of the notice. This notice shall identify the species and the date it was received, set forth the location of the taxidermist facility where it is held, and inform the owner of his rights to reclaim the mount within 15 days of this notice after payment of the specified costs. This notice shall state that the failure of the owner to reclaim the mount or hide within this 15-day time frame may result in the sale of the unclaimed mount or hide.

If a mount or hide is not claimed after the return of a signed certified receipt and within the 15-day period, then the taxidermist may sell the mount for an amount not to exceed the remainder of the amount of the original invoice plus reasonable administrative and storage costs. Within seven days of the sale of any unclaimed mount the taxidermist shall notify the department in writing of the name and address of the purchaser, invoice price, species sold, taxidermist, and previous owners' name and address.

§ 27. Department-owned or controlled lands; general regulations.

The open seasons for hunting and trapping, as well as hours, methods of taking, and bag limits for department-owned and controlled lands shall conform to the general regulations of the board unless excepted by posted rules appearing on a notice displayed at each recognized entrance to the land where the posted rules are in effect. Failure to comply with the posted rules will be treated as trespass in accordance with applicable trespass laws.

VR 325-02-5. Game: Crow.

§ 1. Open season.

It shall be lawful to hunt crow on Monday, ~~Thursday~~, ~~Wednesday~~, Friday and Saturday of each week from the third Saturday in August through the third Saturday in March, both dates inclusive.

VR 325-02-6. Game: Deer.

§ 1. Open season; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this regulation, it shall be lawful to hunt deer from the third Monday in November through the first Saturday in January, both dates inclusive.

§ 2. Open season; cities and counties west of Blue Ridge Mountains and certain cities and counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the third Monday in November and for 11 consecutive hunting days following in the cities and counties west of the Blue Ridge Mountains (except on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities within) of

Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad), and on the Chester F. Phelps and G. Richard Thompson Wildlife Management areas.

§ 2-1. Open season; cities of Virginia Beach [, ~~and~~] Chesapeake [and Suffolk east of Dismal Swamp Line] .

It shall be lawful to hunt deer from October 1 through November 30, both dates inclusive, in the cities of Virginia Beach [, ~~and~~] Chesapeake [, and Suffolk east of the Dismal Swamp Line (~~except on the Dismal Swamp National Wildlife Refuge~~)] .

§ 2-2. (Repealed.)

§ 2-3. Open season; Back Bay National Wildlife Refuge and False Cape State Park.

It shall be lawful to hunt deer on the Back Bay National Wildlife Refuge and on False Cape State Park from October 1 through October 31.

§ 3. (Repealed.)

§ 4. Bow and arrow hunting.

A. Early special archery. It shall be lawful to hunt deer with bow and arrow from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. Late special archery season west of Blue Ridge Mountains and certain cities and counties east of Blue Ridge Mountains. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer with bow and arrow from the Monday following the close of the general firearms season on deer west of the Blue Ridge Mountains through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains and in the counties of (including cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake [, Suffolk (east of the Dismal Swamp line) (~~except on the Dismal Swamp National Wildlife Refuge~~)] and Virginia Beach.

C. Either-sex deer hunting days. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery season.

E. Requirements for bow and arrow. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from

the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive.

G. Crossbows permitted for persons with permanent physical disabilities. As provided in § 2 B of VR 325-02-1, it shall be lawful for persons whose permanent physical disabilities prevent them from hunting with conventional archery equipment to hunt deer with a crossbow on their own property as provided in subsections A, B, C, D, and F of this section.

§ 5. Muzzleloading gun hunting.

A. Early special muzzleloading season. It shall be lawful to hunt deer with muzzleloading guns from the first Monday in November through the Saturday prior to the third Monday in November, both dates inclusive, in all cities and counties where hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake [, Suffolk (east of the Dismal Swamp Line) ~~(except on the Dismal Swamp National Wildlife Refuge)~~] and Virginia Beach.

B. Late special muzzleloading season west of Blue Ridge Mountains and in certain cities and counties east of Blue Ridge Mountains. It shall be lawful to hunt deer with muzzleloading guns from the third Monday in December through the first Saturday in January, both dates inclusive, in all cities and counties west of the Blue Ridge Mountains, and east of the Blue Ridge Mountains in the counties of (including the cities within) Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad).

C. Either-sex deer hunting days. Deer of either sex may be taken during the entire early special muzzleloading season in all cities and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands, department-owned lands and Philpott Reservoir) and on the first Saturday only in all cities and counties west of the Blue Ridge (except Buchanan, Dickenson, Lee, Russell ~~(except the Clinch Mountain Wildlife Management Area)~~, Scott, Smyth, Tazewell ~~(except the Clinch Mountain Wildlife Management Area)~~, Washington ~~(except the Clinch Mountain Wildlife Management Area)~~, Wise and on national forest lands in *Frederick*, Page, Rockingham, Shenandoah, and *Smyth Warren*) ~~and on the Clinch Mountain Wildlife Management Area~~ and east of the Blue Ridge Mountains on national forest lands, state forest lands, state park lands, department-owned lands and on Philpott Reservoir. It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, *Smyth*, Tazewell, Washington, and Wise ~~and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area~~) and in the counties (including cities within) or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. Provided further it shall be lawful to hunt deer of either sex during the last day only of the last special muzzleloading season in the cities and counties within ~~Dickenson (north of Pound River and west of Russell Fork River)~~, Lee, Russell, Scott, *Smyth*, Tazewell, and Washington, ~~Wise and on national forest lands~~

~~in Smyth and on the Clinch Mountain Wildlife Management Area.~~

D. Use of dogs prohibited. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

E. Muzzleloading gun defined. A muzzleloading gun, for the purpose of this regulation, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single lead projectile or sabot (with a .38 caliber or larger nonjacketed lead projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent). ~~Open or peep sights only (iron sights) are permitted during special muzzleloading seasons.~~

F. Unlawful to have other firearms in possession. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

§ 6. Bag limit; generally; bonus deer permits and tag usage.

The bag limit for deer statewide shall be two a day, three a license year, one of which must be antlerless. Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery season, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted and on Fort Belvoir and other special deer problem and harvest management areas identified and so posted by the Department of Game and Inland Fisheries during the special archery, special muzzleloading gun and the general firearms seasons. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

§ 7. General firearms season either-sex deer hunting days; Saturday following third Monday in November and last two hunting days.

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last two hunting days only, in the counties of (including cities within) Alleghany ~~(except on national forest lands)~~, Augusta ~~(except on national forest and department-owned lands)~~, Bath ~~(except on national forest and department-owned lands)~~, Bland ~~(except on national forest lands)~~, Carroll ~~(except on national forest and department-owned lands)~~, Craig ~~(except on national forest lands)~~, Giles ~~(except on national forest lands)~~, ~~Grayson~~, Highland ~~(except on national forest and department-owned lands)~~, Montgomery ~~(except on national forest lands)~~, Page ~~(except on national forest lands)~~, Pulaski ~~(except on national forest lands and the Radford Army Ammunition Plant)~~, Roanoke, Rockbridge ~~(except on national forest and department-owned lands)~~, Rockingham ~~(except on national forest lands)~~, Shenandoah ~~(except on national forest lands)~~, ~~Smyth (except on national forest lands and Clinch Mountain Wildlife Management Area)~~, and Wythe ~~(except on national forest lands)~~ and on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area.

§ 7.1. General firearms season either-sex deer hunting days;

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Saturday following third Monday in November and last hunting day.

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last hunting day on national forest and department-owned lands in Alleghany, Augusta, Bath, Bland, Carroll, Craig, Giles, Highland, Montgomery, Pulaski, Roanoke, Rockbridge, and Wythe.

§ 7.2. *General firearms season either-sex deer hunting days; last 12 hunting days.*

During the general firearms season, deer of either sex may be taken on the last 12 hunting days in the cities of Chesapeake (except on Dismal Swamp National Wildlife Refuge and Fentress Naval Auxiliary Landing Field on the Northwest Naval Security Group) and Virginia Beach (except on Back Bay National Wildlife Refuge, Dam Neck Amphibious Training Base, Naval Air Station Oceana, False Cape State Park, and Fentress Naval Auxiliary Landing Field).

[§ 7.3. *General firearms season either-sex deer hunting days; last 24 hunting days.*

During the general firearms season, deer of either sex may be taken on the last 24 hunting days in the City of Suffolk east of the Dismal Swamp line (except on Dismal Swamp National Wildlife Refuge).]

§ 8. (Repealed.)

§ 9. (Repealed.)

§ 10. *General firearms season either-sex deer hunting days; full season.*

During the general firearms season, deer of either sex may be taken full season, in the counties of (including cities within) Amherst (west of U.S. Route 29, except on national forest lands), Bedford, Botetourt (except on national forest lands), Campbell (west of Norfolk Southern Railroad and in the City of Lynchburg only on private lands for which a special permit has been issued by the chief of police), Clarke, Fairfax (restricted to certain parcels of land by special permit), Floyd, Franklin (except Philpott Reservoir and Turkeycock Mountain Wildlife Management Area), Frederick (except on national forest lands), *Greensville, Grayson (except on national forest lands and portions of Grayson Highland State Park open to hunting)*, Henry (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area), *Isle of Wight*, Loudoun, Nelson (west of Route 151, except on national forest lands), Patrick (except on Fairystone Farms Wildlife Management Area, Fairystone State Park and Philpott Reservoir), Pittsylvania (west of Norfolk Southern Railroad), *Roanoke (except on national forest and department-owned lands)*, Southampton, Surry (except on the Carlisle Tract of the Hog Island Wildlife Management Area), Sussex, Warren (except on national forest lands) and on Back Bay National Wildlife Refuge, Fort A.P. Hill, Caledon Natural Area, Camp Peary, Cheatham Annex, Chincoteague National Wildlife Refuge, *Chippokes State Park*, Dahlgren Surface Warfare Center Base, Dam Neck Amphibious Training Base, Dismal Swamp National

Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, False Cape State Park, Fentress Naval Auxiliary Landing Field, Fisherman's Island National Wildlife Refuge, Fort Belvoir, Fort Eustis, Fort Lee, Fort Pickett, Harry Diamond Laboratory, Langley Air Force Base, Naval Air Station Oceana, Northwest Naval Security Group, Presquile National Wildlife Refuge, Quantico Marine Corps Reservation, Radford Army Ammunition Plant, Sky Meadows State Park, York River State Park, Yorktown Naval Weapons Station and ~~Hog Island Wildlife Management Area (except on the Carlisle Tract).~~

§ 11. *General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.*

During the general firearms season, deer of either sex may be taken the Saturday immediately following the third Monday in November in the counties (including cities within) of Lee (*except on national forest lands*), Russell, Scott (*except on national forest lands*), Smyth, Tazewell, Washington, ~~Wise~~, and on the ~~Clinch Mountain Wildlife Management Area~~, Buckingham-Appomattox State Forest, Cumberland State Forest and Pocahontas State Forest, Prince Edward State Forest and on national forest lands in Frederick, *Grayson*, Page, Shenandoah, ~~Smyth~~, Rockingham and Warren counties *and on portions of Grayson Highlands State Park open to hunting.*

§ 12. (Repealed.)

§ 13. *General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.*

During the general firearms season, deer of either sex may be taken on the first Saturday immediately following the third Monday in November and the last six hunting days, in the counties of (including cities within) Middlesex, Mathews, Warren and York (except on Camp Peary, Cheatham Annex and Naval Weapons Station) and on the Horsepen Lake Wildlife Management Area, James River Wildlife Management Area, Occoneechee State Park, Amelia Wildlife Management Area, Briery Creek Wildlife Management Area, Dick Cross Wildlife Management Area, White Oak Mountain Wildlife Management Area and Powhatan Wildlife Management Area and on national forest lands in Amherst, Botetourt and Nelson counties; ~~and in the Cities of Chesapeake (except on Dismal Swamp National Wildlife Refuge, Fentress Naval Auxiliary Landing Field and on the Northwest Naval Security Group), and Virginia Beach (except on Back Bay National Wildlife Refuge, Dam Neck Amphibious Training Base, Naval Air Station Oceana and False Cape State Park and Fentress Naval Auxiliary Landing Field).~~

§ 14. *General firearms season either-sex deer hunting days; first three Saturdays following third Monday in November and last 24 hunting days.*

During the general firearms season, deer of either sex may be taken on the first three Saturdays immediately following the third Monday in November and on the last 24 hunting days, in the counties of (including cities within) Accomack (except Chincoteague National Wildlife Refuge), ~~Greensville~~,

Isle of Wight, Northampton (except on Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge), Southampton, Surry (except Hog Island Wildlife Management Area), and Sussex, and in the City of Suffolk (except on the Dismal Swamp National Wildlife Refuge).

§ 14.1. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last 12 hunting days.

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last 12 hunting days, in the counties of (including the cities within) Albemarle, Amelia (except Amelia Wildlife Management Area), Amherst (east of U.S. Route 29), Appomattox (except Buckingham-Appomattox State Forest), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area), Campbell (east of Norfolk Southern Railroad except City of Lynchburg), Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Forest and Presquile National Wildlife Refuge), Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Essex, Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas, Sky Meadows State Park and Quantico Marine Reservation), Fluvanna, Gloucester, Goochland, Greene, Halifax, Hampton (except on Langley Air Force Base), Hanover, Henrico (except Presquile National Wildlife Refuge), James City (except York River State Park), King and Queen, King George (except Caledon Natural Area and Dahlgren Surface Warfare Center), King William, Lancaster, Louisa, Lunenburg, Madison, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nelson (east of Route 151 except James River Wildlife Management Area), New Kent, Newport News (except Fort Eustis), Northumberland, Nottoway (except on Fort Pickett), Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Powhatan (except Powhatan Wildlife Management Area), Prince Edward (except on Prince Edward State Forest and Briery Creek Wildlife Management Area), Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation), Rappahannock, Richmond, Spotsylvania, Stafford (except on Quantico Marine Reservation), Westmoreland, and York (except on Camp Peary, Cheatham Annex and Yorktown Naval Weapons Station).

§ 14.2. General firearms season; bucks only.

During the general firearms season, only deer with antlers visible above the hairline may be taken in that portion of the counties of (including the cities within) Dickenson County [in that portion lying north of the Pound River and west of the Russell Fork River and ,] Wise and on national forest lands in Lee and Scott and on the Chester F. Phelps Wildlife Management Area, G. Richard Thompson Wildlife Management Area, Chickahominy Wildlife Management Area

and on the Carlisle Tract of Hog Island Wildlife Management Area.

§ 15. Tagging deer and obtaining official game tag; by licensee.

A. Detaching game tag from license special license for hunting bear, deer, and turkey, bonus deer permit, or special permit. It shall be unlawful for any person to detach the game tag from any license special license for hunting bear, deer, and turkey, bonus deer permit, or special permit to hunt deer prior to the killing of a deer and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass. Any person killing a deer shall, before removing the carcass from the place of kill, detach from his special license for hunting deer *their special license for hunting bear, deer, and turkey, bonus deer permit, or special permit* the appropriate tag and shall attach such tag to the carcass of his *their* kill. Place of kill shall be defined as the location where the animal is first reduced to possession.

C. Presentation of tagging carcass for checking; obtaining official game check card. Upon killing a deer and tagging same, as provided above, the licensee *or permittee* shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the tagged carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the tag attached to the carcass shall be exchanged for an official game check card, which shall be securely attached to the carcass and remain attached until the carcass is processed.

D. Destruction of deer prior to tagging; forfeiture of untagged deer. It shall be unlawful for any person to destroy the identity (sex) of any deer killed unless and until tagged and checked as required by this section. Any deer not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 16. Tagging deer and obtaining official game tag; by person exempt from license requirement.

Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the person shall be given an official game check card furnished by the department, which shall be securely attached to the carcass and remain attached until the carcass is processed.

§ 17. Hunting prohibited in certain counties.

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It shall be unlawful to hunt deer at any time in the counties of Arlington [, ~~and~~] Buchanan [and in that portion of Dickenson County south of the Pound River and east of the Russell Fork River.]

§ 18. Hunting with dogs prohibited in certain counties and areas.

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison.

§ 19. Hunting with dogs or drives prohibited on Quantico Marine Reservation.

It shall be unlawful to use dogs or to organize drives for the purpose of hunting deer within the confines of Quantico Marine Reservation.

§ 20. Sale of hides.

It shall be lawful to sell hides from any legally taken deer.

VR 325-02-17. Game: Quail.

§ 1. Open season -- generally.

Except as otherwise specifically provided by the sections appearing in this regulation, it shall be lawful to hunt quail from the [~~second~~ *fourth*] Monday in November through January 31, both dates inclusive.

§ 2. Repealed.

§ 3. Repealed.

§ 4. Bag limit.

The bag limit for quail shall be six a day.

§ 5. Hunting in snow prohibited.

It shall be unlawful to hunt quail in the snow.

VR 325-02-22. Game: Turkey.

§ 1. Open season; generally.

Except as otherwise specifically provided in the sections appearing in this regulation, it shall be lawful to hunt turkeys from the first ~~last~~ Monday in ~~November~~ through the first Saturday in January, both dates inclusive ~~October and for 11 consecutive hunting days following and on the Monday nearest December 9 [for 17 consecutive hunting days following through the first Saturday in January, both dates inclusive]~~.

§ 2. ~~Open season; certain counties and areas; first Monday in November and for 11 hunting days following. [(Repealed.)~~
Open season; certain counties and areas; last Monday in October and for 11 hunting days following.]

~~It shall be lawful to hunt turkeys on the first Monday in November and for eleven consecutive hunting days following in the counties of Charles City, Chesterfield, Gloucester, Greenville, Henrico, Isle of Wight, James City, King George, Lancaster, Middlesex, New Kent, Northumberland, Prince George, Richmond, Surry, Sussex, Westmoreland and York, and on Camp Peary. [It shall be lawful to hunt turkeys on the last Monday in October and for 11 consecutive hunting days following in the counties of Charles City, Chesterfield, Gloucester, Greenville, Henrico, Isle of Wight, James City, King George, Lancaster, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton (north of U.S. Route 58), Surry, Sussex, Westmoreland and York; and on Camp Peary.]~~

§ 2-1. ~~Open season; same; first Monday in November through Saturday prior to third Monday in November and fourth Monday in November through first Saturday in January. (Repealed.)~~

~~It shall be lawful to hunt turkeys on the first Monday in November through the Saturday prior to the third Monday in November and from the fourth Monday in November through the first Saturday in January, both dates inclusive, in the counties of Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Brunswick, Buckingham, Caroline,, Charlotte, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Goochland, Greene, Hanover, Highland, King and Queen, King William, Loudoun, Louisa, Lunenburg, Madison, Mecklenburg, Nelson, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince William, Rappahannock, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford and Warren.~~

§ 3. Open season; spring season for bearded turkeys.

It shall be lawful to hunt bearded turkeys only from the Saturday nearest the 15th of April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time. Bearded turkeys may be hunted by calling. It shall be unlawful to use dogs or organized drives for the purpose of hunting. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

§ 4. Continuous closed season in certain counties, cities and areas.

There shall be continuous closed turkey season, except where a special spring season for bearded turkeys is provided for in § 3 of this regulation, in the counties of Accomack, Arlington, [Buchanan,] Mathews, [~~and~~] Northampton [, and Southampton (except north of U.S. Route 58)] ; and in the cities of Chesapeake, Hampton, Newport News, Suffolk and Virginia Beach.

§ 5. Bow and arrow hunting.

A. Season. It shall be lawful to hunt turkey with bow and arrow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with bow and arrow shall be the same as permitted

during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during special archery season.

D. Requirements for bow and arrow. Arrows used for hunting turkey must have a minimum width head of 7/8 of an inch, and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

E. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

§ 6. Bag limit.

The bag limit for hunting turkeys shall be one a day, three a license year, no more than two of which may be taken in the fall and no more than two of which may be taken in the spring.

§ 7. Tagging turkey and obtaining official game check card; by licensee.

A. Detaching game tag from license. It shall be unlawful for any person to detach the game tag from any license to hunt turkey prior to the killing of a turkey and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass. Any person killing a turkey shall, before removing the carcass from the place of kill, detach from his special license for hunting turkey the appropriate tag and shall attach such tag to the carcass of his kill. Place of kill shall be defined as the location where the animal is first reduced to possession.

C. Presentation of tagged carcass for checking; obtaining official game check card. Upon killing a turkey and tagging same, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the tagged carcass to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed. At such time, the tag attached to the carcass shall be exchanged for an official game check card, which shall be securely attached to the carcass and remain attached until the carcass is processed.

D. Destruction of identity of turkey prior to tagging; forfeiture of untagged turkey. It shall be unlawful for any person to destroy the identity (sex) of any turkey killed unless and until tagged and checked as required by this section. Any turkey not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 8. Tagging turkey and obtaining official game tag; by person exempt from license requirement.

Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in §

29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the turkey was killed. At such time, the person shall be given an official game check card furnished by the department, which shall be securely attached to the carcass and remain so attached until the carcass is processed.

VA.R. Doc. No. R95-505; Filed May 10, 1995, 10:20 a.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following regulations are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-02-01. Hazard Communication Standard, General Industry (1910.1200).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On December 22, 1994, federal OSHA made three corrections to the recent amendments to the Hazard Communication Standard, § 1910.1200, along with revisions to the Hazard Communication Standard in other industries (59 Fed. Reg. 65947).

This amendment corrects language in section (b)(6)(ii) of the Hazardous Communications standard to make clear federal OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making federal OSHA's Hazard Communication Standard requirements duplicative. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This amendment also corrects a typographical error in section (c) by revising the paragraph to read "convey the specific physical and health" instead of "convey the specific physical or health." Also, in paragraph (g)(7)(iv), the language was revised by deleting the phrase "...as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell,..." This paragraph deals with wholesale distributors who sell hazardous chemicals to employers providing material

Final Regulations

safety data sheets upon the request of the employer at the time of the over-the-counter sale.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Hazard Communication Standard for General Industry (1910.1200) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the correcting amendments to federal OSHA's final rule entitled, "Hazard Communication Standard, General Industry," § 1910.1200, which was published in the Federal Register, Vol. 59, No. 245, pp. 65947-65948, Thursday, December 22, 1994. The amendments as adopted are not set out.

When the regulations as set forth in the correcting amendments to the Hazard Communication Standard, General Industry, § 1910.1200, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
December 22, 1994

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-01 Hazard Communication Standard
General Industry (§ 1910.1200)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agg

VA.R. Doc. No. R95-475; Filed May 2, 1995, 3:05 p.m.

Final Regulations

Title of Regulation: VR 425-02-03. Marine Terminals Standard (1917.1-1917.158).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On December 22, 1994, federal OSHA made three corrections to the recent amendments to the Marine Terminals Standard, Public Sector Employment Only, § 1917.28, along with revisions to the Hazard Communication Standard in other industries (59 Fed. Reg. 65947).

This amendment corrects language in section (b)(6)(ii) of the Hazardous Communications standard to make clear federal OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making federal OSHA's Hazard Communication Standard requirements duplicative. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This amendment also corrects a typographical error in section (c) by revising the paragraph to read "convey the specific physical and health" instead of "convey the specific physical or health." Also, in paragraph (g)(7)(iv), the language was revised by deleting the phrase "...as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell,...." This paragraph deals with wholesale distributors who sell hazardous chemicals to employers providing material safety data sheets upon the request of the employer at the time of the over-the-counter sale.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Marine Terminals Standard (1917.1-1917.158) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the correcting amendments to federal OSHA's final rule entitled, "Hazard Communication Standard, Marine Terminals," § 1917.28, which was published in the Federal Register, Vol. 59, No. 245, pp. 65947-65948, Thursday, December 22, 1994. The amendments as adopted are not set out.

When the regulations as set forth in the correcting amendments to the Marine Terminals Standard, Public Sector Employment Only, §§ 1917.1 through 1917.158, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
December 22, 1994

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-03 Marine Terminals Standard, Public Sector
Employment Only, (§§ 1917.1 Thru 1917.158)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

✓ Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agm

VA.R. Doc. No. R95-476; Filed May 2, 1995, 3:05 p.m.

Final Regulations

Title of Regulation: VR 425-02-09. **Occupational Exposure to Asbestos, General Industry (1910.1001).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 10, 1995.

Summary:

Federal OSHA extended the start-up dates for some provisions of the Asbestos Standard, General Industry, until July 10, 1995, to give the public more time to understand the provisions and implement compliance. The provisions initially listed for the extension (60 Fed. Reg. 9624, February 21, 1995) were corrected by federal OSHA (60 Fed. Reg. 11194, March 1, 1995) as follows:

For Part 1910 -- General Industry, § 1910.1001, the start-up date for compliance extends until July 10, 1995, for the following provisions:

- (d)(2) - initial monitoring,*
- (e) - regulated area,*
- (f) - methods of compliance,*
- (g) - respiratory protection,*
- (i) - hygiene facilities,*
- (j) - communication of hazards,*
- (k) - housekeeping, and*
- (l) - medical surveillance*

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Occupational Exposure to Asbestos, General Industry Standard (1910.1001) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of federal OSHA's extension of start-up dates for compliance with certain sections of the final rule entitled, "Occupational Exposure to Asbestos, General Industry," § 1910.1001, as published in the Federal Register, Vol. 60, No. 34, pp. 9624 - 9626, Tuesday February 21, 1995. The board also adopted an identical version of federal OSHA's corrections to this standard which were published in the Federal Register, Vol. 60, No. 40, p. 11194, Wednesday March 1, 1995.

The sections of this standard which are affected by the extension and subsequent corrections are paragraphs (d)(2)--initial monitoring, (e)--regulated area, (f)--methods of

compliance, (g)--respiratory protection, (i)--hygiene facilities, (j)--communication of hazards, (k)--housekeeping, and (l)--medical surveillance.

The amendments as adopted are not set out.

When the regulations as set forth in the Occupational Exposure to Asbestos, General Industry, § 1910.1001, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
October 11, 1994
February 21, 1995
July 10, 1995

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
May 1, 1995
April 18, 1995
July 10, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-09 Occupational Exposure to Asbestos,
General Industry, (§ 1910.1001)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agm

VA.R. Doc. No. R95-477; Filed May 2, 1995, 3:05 p.m.

Final Regulations

Title of Regulation: VR 425-02-10. Occupational Exposure to Asbestos, Construction Industry (1926.1101).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 10, 1995.

Summary:

Federal OSHA extended the start-up dates for some provisions of the Asbestos Standard, Construction Industry, until July 10, 1995, to give the public more time to understand the provisions and implement compliance. The provisions initially listed for the extension (60 Fed. Reg. 9624, February 21, 1995) were corrected by federal OSHA (60 Fed. Reg. 11194, March 1, 1995) as follows:

For Part 1926 -- Construction Industry, § 1926.1101, the start-up date for compliance extends until July 10, 1995, for the following provisions:

- (g) - methods of compliance,*
- (h) - respiratory protection,*
- (j) - hygiene facilities,*
- (k) - communication of hazards,*
- (l) - housekeeping,*
- (m) - medical surveillance, and*
- (o) - competent person*

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Occupational Exposure to Asbestos, Construction Industry Standard (1926.1101) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of federal OSHA's extension of start-up dates for compliance with certain sections of the final rule entitled, "Occupational Exposure to Asbestos, Construction Industry," § 1926.1101, as published in the Federal Register, Vol. 60, No. 34, pp. 9624 - 9626, Tuesday, February 21, 1995. The board also adopted an identical version of federal OSHA's corrections to this standard which were published in the Federal Register, Vol. 60, No. 40, p. 11194, Wednesday, March 1, 1995.

The sections of this standard which are affected by the extension and subsequent corrections are paragraphs (g)--methods of compliance, (h)--respiratory protection, (j)--hygiene facilities, (k)--communication of hazards, (l)--

housekeeping, (m)--medical surveillance and (o)--competent person.

The amendments as adopted are not set out.

When the regulations as set forth in the Occupational Exposure to Asbestos, Construction Industry, § 1926.1101, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR Assistant Secretary	VOSH Standard Commissioner of Labor and Industry Department
Agency October 11, 1994	May 1, 1995
February 21, 1995	April 18, 1995
July 10, 1995	July 10, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-10 Occupational Exposure to Asbestos,
Construction Industry, (§ 1926.1101)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agg

VA.R. Doc. No. R95-478; Filed May 2, 1995, 3:05 p.m

Final Regulations

Title of Regulation: VR 425-02-24. Virginia Recordkeeping Requirements for Tests, Inspections, and Maintenance Checks: Welding, Cutting and Brazing Standard, General Industry (1910.252) (REPEALED).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

The current federal-identical regulation, VR 425-02-24, "Virginia Recordkeeping Requirements for Tests, Inspections and Maintenance Checks: Welding, Cutting and Brazing, General Industry" is being repealed because it is duplicative of Section § 1910.252 of VR 425-02-50:1, "Welding, Cutting and Brazing Standard, General Industry."

In 1990, federal OSHA published an amendment to the Welding, Cutting and Brazing Standard, 29 CFR 1910.251 through 1910.255 (55 Fed. Reg. 13694) which reorganized its existing Part 1910. On December 19, 1994, the Safety and Health Codes Board readopted the federal Welding, Cutting and Brazing Standard as published in the Federal Register, Vol. 55, No. 70, Wednesday, April 11, 1990, so that the Virginia and federal standards are identical. The Virginia regulation is VR 425-02-50:1, "Welding, Cutting and Brazing Standard, General Industry, (1910.251-1910.255)," effective April 1, 1995.

The federal-identical VR 425-02-24 (1910.252) is included in VR 425-02-50:1. To eliminate this duplication, the Safety and Health Codes Board repealed VR 425-02-24, effective July 1, 1995. The recordkeeping requirements for tests, inspections and maintenance checks for welding, cutting and brazing is now included in VR 425-02-50:1, "Welding, Cutting and Brazing Standard, General Industry."

Agency Contact: Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 18, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-24 Virginia Recordkeeping Requirements for
Tests, Inspections & Maintenance Checks:
Welding, Cutting and Brazing Standard,
General Industry, (§ 1910.252)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agri

VA.R. Doc. No. R95-503; Filed May 10, 1995, 10:20 a.m.

Final Regulations

Title of Regulation: VR 425-02-31. Hazard Communication for Construction Industry (1926.59).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On December 22, 1994, federal OSHA made three corrections to the recent amendments to the Standard for Hazard Communication for Construction Industry, § 1926.59, along with revisions to the Hazard Communication Standard in other industries (59 Fed. Reg. 65947).

This amendment corrects language in section (b)(6)(ii) of the Hazardous Communications standard to make clear federal OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making federal OSHA's Hazard Communication Standard requirements duplicative. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This amendment also corrects a typographical error in section (c) by revising the paragraph to read "convey the specific physical and health" instead of "convey the specific physical or health." Also, in paragraph (g)(7)(iv), the language was revised by deleting the phrase "...as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell,...." This paragraph deals with wholesale distributors who sell hazardous chemicals to employers providing material safety data sheets upon the request of the employer at the time of the over-the-counter sale.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Hazard Communication for Construction Industry Standard (1926.59) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the correcting amendments to federal OSHA's final rule entitled, "Hazard Communication for Construction Industry," § 1926.59, which was published in the Federal Register, Vol. 59, No. 245, pp. 65947-65948,

Thursday, December 22, 1994. The amendments as adopted are not set out.

When the regulations as set forth in the correcting amendments to the Hazard Communication Industry, § 1926.59, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
December 22, 1994

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-31 Hazard Communication for
Construction Industry (§ 1926.59)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agri

VA.R. Doc. No. R95-479; Filed May 2, 1995, 3:05 p.m.

Final Regulations

Title of Regulation: VR 425-02-173. Shipyard Employment Standard for Hazard Communication (1915.1200).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On December 22, 1994, federal OSHA made three corrections to the recent amendments to the Shipyard Employment Standard for Hazard Communication, § 1910.1200, along with revisions to the Hazard Communication Standard in other industries (59 Fed. Reg. 65947).

This amendment corrects language in section (b)(6)(ii) of the Hazardous Communications standard to make clear federal OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making federal OSHA's Hazard Communication Standard requirements duplicative. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This amendment also corrects a typographical error in section (c) by revising the paragraph to read "convey the specific physical and health" instead of "convey the specific physical or health." Also, in paragraph (g)(7)(iv), the language was revised by deleting the phrase "...as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell,...." This paragraph deals with wholesale distributors who sell hazardous chemicals to employers providing material safety data sheets upon the request of the employer at the time of the over-the-counter sale.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Shipyard Employment Standard for Hazard Communication (1915.1200) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the correcting amendments to federal OSHA's final rule entitled, "Shipyard Employment Standard for Hazard Communication," § 1915.1200, which was published in the Federal Register, Vol. 59, No. 245, pp.

65947-65948, Thursday, December 22, 1994. The amendments as adopted are not set out.

When the regulations as set forth in the correcting amendments to the Shipyard Employment Standard for Hazard Communication, § 1915.1200, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
December 22, 1994

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-173 Shipyard Employment Standard for
Hazard Communication, (§ 1915.1200)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agc

VA.R. Doc. No. R95-480; Filed May 2, 1995, 3:05 p.m.

Final Regulations

Title of Regulation: VR 425-02-174. Longshoring Standard for Hazard Communication (1918.90).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On December 22, 1994, federal OSHA made three corrections to the recent amendments to the Longshoring Standard for Hazard Communication, § 1918.90 along with revisions to the Hazard Communication Standard in other industries (59 Fed. Reg. 65947).

This amendment corrects language in section (b)(6)(ii) of the Hazardous Communications standard to make clear federal OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making federal OSHA's Hazard Communication Standard requirements duplicative. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This amendment also corrects a typographical error in section (c) by revising the paragraph to read "convey the specific physical and health" instead of "convey the specific physical or health." Also, in paragraph (g)(7)(iv), the language was revised by deleting the phrase "...as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell,...." This paragraph deals with wholesale distributors who sell hazardous chemicals to employers providing material safety data sheets upon the request of the employer at the time of the over-the-counter sale.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Longshoring Standard for Hazard Communication (1918.90) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the correcting amendments to federal OSHA's final rule entitled, "Longshoring Standard for Hazard Communication," § 1918.90, which was published in the Federal Register, Vol. 59, No. 245, pp. 65947-65948, Thursday, December 22, 1994. The amendments as adopted are not set out.

When the regulations as set forth in the correcting amendments to the Longshoring Standard for Hazard Communication, § 1918.90, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR Assistant Secretary	VOSH Standard Commissioner of Labor and Industry Department
Agency December 22, 1994	July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-174 Longshoring Standard for Hazard
Communication, (§ 1918.90)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agg

VA.R. Doc. No. R95-481; Filed May 2, 1995, 3:06 p.m.

Final Regulations

Title of Regulation: VR 425-02-178. **Occupational Exposure to Asbestos, Shipyard Employment (1915.1001).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: July 10, 1995.

Summary:

Federal OSHA extended the start-up dates for some provisions of the Asbestos Standard, Shipyard Employment, until July 10, 1995, to give the public more time to understand the provisions and implement compliance. The provisions initially listed for the extension (60 Fed. Reg. 9624, February 21, 1995) were corrected by federal OSHA (60 Fed. Reg. 11194, March 1, 1995) as follows:

For Part 1915 -- Shipyard Employment, § 1915.1001, the start-up date for compliance extends until July 10, 1995, for the following provisions:

- (g) - methods of compliance,*
- (h) - respiratory protection,*
- (j) - hygiene facilities,*
- (k) - communication of hazards,*
- (l) - housekeeping,*
- (m) - medical surveillance, and*
- (o) - competent person*

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Occupational Exposure to Asbestos, Shipyard Employment Standard (§ 1915.1001) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of federal OSHA's extension of start-up dates for compliance with certain sections of the final rule entitled, "Occupational Exposure to Asbestos, Shipyard Employment," § 1915.1001, as published in the Federal Register, Vol. 60, No. 34, pp. 9624 - 9626, Tuesday, February 21, 1995. The board also adopted an identical version of federal OSHA's corrections to this standard which were published in the Federal Register, Vol. 60, No. 40 p. 11194, Wednesday, March 1, 1995.

The sections of this standard which are affected by the extension and subsequent corrections are paragraphs (g)--

methods of compliance, (h)--respiratory protection, (j)--hygiene facilities, (k)--communication of hazards, (l)--housekeeping, (m)--medical surveillance and (o)--competent person. The amendments as adopted are not set out.

When the regulations as set forth in the Occupational Exposure to Asbestos, Shipyard Employment, § 1915.1001, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
October 11, 1994
February 21, 1995
July 10, 1995

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
May 1, 1995
April 18, 1995
July 10, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-178 Occupational Exposure to Asbestos,
Shipyard Employment, (§ 1915.1001)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Ag

VA.R. Doc. No. R95-482; Filed May 2, 1995, 3:06 p.m.

Final Regulations

Title of Regulation: VR 425-02-184. **Confined and Enclosed Spaces and Other Dangerous Atmospheres, Shipyard Employment (1915.11 through 1915.16).**

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

On July 25, 1994, federal OSHA published in the Federal Register a revised standard for Confined and Enclosed Spaces and Other Dangerous Atmospheres, Shipyard Employment, Subpart B of 29 CFR Part 1915, which extended the previous requirements for work in explosive and other dangerous atmospheres on ships to cover all work involving confined or enclosed spaces and other dangerous atmospheres throughout shipyard employment (59 Fed. Reg. 37816).

Corrections to the final rule are as follows:

1. § 1915.12--*Precautions Before Entering Confined and Enclosed Spaces and Other Dangerous Atmospheres clarifies the order of testing before employees may enter a confined or enclosed space or other dangerous atmosphere. As a result of the correction, before shipyard workers can enter a confined/enclosed space or other dangerous area, atmospheric tests must be done in the following order: first, oxygen content, then flammability, then toxicity.*

2. § 1915.12(b)--*Flammable Atmospheres clarifies when flammable atmospheres must be maintained above the upper explosive limit during installation of ventilation or rescue. As a result of the correction, only flammable atmospheres that are at or exceed the upper explosive limit (UEL) need to be kept at those levels. As originally published, the standard implied that employers had to raise levels of air contaminants above the UEL before workers could enter. (Employees may only enter flammable atmospheres when it is necessary to set up ventilation or rescue people in emergencies. In these cases, the employer must follow other OSHA requirements for working in dangerous atmospheres.)*

3. § 1915.14--*Hot Work clarifies the limited locations and conditions where hot work may be performed without first being certified by a marine chemist.*

4. § 1915.15(e)--*Tests to Maintain a Competent Person's Findings clarifies a visual inspection as part of the testing to maintain a competent person's findings. A marine chemist must test and certify the atmosphere before workers can do hot work on tank vessels. Moreover, even for other hot work spaces that do not need to be certified by a marine chemist, a competent person must still visually inspect the space and test the atmosphere.*

Minor typographical errors were also corrected in §1915.12(d)(3)(ii) and (e)(1)(iii).

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator,

Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Confined and Enclosed Spaces and Other Dangerous Atmospheres, Shipyard Employment standard (1915.11 through 1915.16) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in *The Virginia Register of Regulations*. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Buildings, Capitol Square, Room 262, Richmond, Virginia 23219.

On April 17, 1995, the Safety and Health Codes Board adopted an identical version of the corrections to federal OSHA's final rule entitled, "Confined and Enclosed Spaces and Other Dangerous Atmospheres, Shipyard Employment," §§ 1915.11 through 1915.16, as published in the Federal Register, Vol. 60, No. 51, pp. 14218-14220, Thursday, March 16, 1995. The amendments as adopted are not set out.

When the regulations as set forth in the amended standard for Confined and Enclosed Spaces and Other Dangerous Atmospheres, Shipyard Employment, §§ 1915.11 through 1915.16, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as shown below:

Federal Terms

29 CFR
Assistant Secretary

Agency
March 16, 1995

VOSH Equivalent

VOSH Standard
Commissioner of Labor
and Industry
Department
July 1, 1995



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 15, 1995

Mr. Charles B. Ashby, Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

Attn: John J. Crisanti, Director, Office of Enforcement Policy

Re: VR 425-02-184 Confined and Enclosed Spaces & Other Dangerous
Atmospheres, (§§ 1915.11 Through 1915.16)

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jhc

Register/FedEx/Agri

VA.R. Doc. No. R95-483; Filed May 2, 1995, 3:06 p.m.

Final Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: VR 460-01-11. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1 (b)).

VR 460-02-2.1100. Definition of Medicaid State Plan Health Maintenance Organizations (HMOs) (Attachment 2.1 A).

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

Effective Date: July 1, 1995.

Summary:

The Appropriations Act, passed by the 1994 General Assembly, required DMAS to implement a health maintenance organization contracting program effective May 1, 1994. Federal regulations at 42 CFR 434.20(c) require that the Commonwealth define health maintenance organizations in the State Plan prior to entering into risk contracts with entities that are not federally qualified health maintenance organizations and that are providing comprehensive services. The federal regulations define extensive requirements for health maintenance organizations, which the State Corporation Commission's Bureau of Insurance has promulgated as Regulation 28. Rather than promulgate a separate set of regulations, DMAS is incorporating by reference Regulation 28. A new Attachment (2.1 A) is being added to the State Plan to define a Medicaid health maintenance organization as required.

The Medicaid services covered by the health maintenance organizations will be specifically defined in provider contracts. Applicable State Plan services not provided in these contracts will be covered through fee-for-service Medicaid providers.

The agency projects no negative issues involved in implementing this regulation. There are no disadvantages to the public, the agency, or the Commonwealth. The primary advantage to all parties is the inclusion of health maintenance organizations as Medicaid providers. The health maintenance organizations will be reimbursed as providers, the agency and Commonwealth will arrange for services more economically and more efficiently, and the recipients will receive more consistent services from centralized providers. Each health maintenance organization is licensed to operate in specific service areas. Health maintenance organizations will be covered by these regulations statewide.

In the emergency regulations which preceded these regulations, DMAS incorporated only the requirements of State Corporation Commission's Bureau of Insurance Regulation 28, which specifies the requirements for all state-licensed health maintenance organizations. Adopting Regulation 28 rather than promulgating separate regulations allows DMAS to avoid imposing additional regulatory constraints on the health maintenance organizations beyond the requirements for state licensing. This alternative imposes the minimum

possible new regulations. DMAS has determined that this regulatory change is the least burdensome and least intrusive means by which to satisfy the state and federal legal requirements and achieve the essential purpose for the regulatory action.

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 Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8850.

VR 460-01-11. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1 (b)).

Citation: 42 CFR 435.914, 1902(a)(34) of the Act

§ 2.1(b) (1) Except as provided in § 2.1(b)(2) and (3) below, individuals are entitled to Medicaid services under the plan during the three months preceding the month of application; if they were, or on application would have been, eligible. The effective date of prospective and retroactive eligibility is specified in Attachment 2.6-A.

Citation: 1902(e)(8) and 1905(a) of the Act

(2) For individuals who are eligible for Medicaid cost-sharing expenses as qualified Medicare beneficiaries under § 1902(a)(10)(E)(i) of the Act, coverage is available for services furnished after the end of the month in which the individual is first determined to be a qualified Medicare beneficiary. Attachment 2.6-A specifies the requirements for determination of eligibility for this group.

Citation: 1902(a)(47) and 1920 of the Act

(3) Pregnant women are entitled to ambulatory prenatal care under the plan during a presumptive eligibility period in accordance with § 1920 of the Act. Attachment 2.6-A specifies the requirements for determination of eligibility for this group.

Citation: 42 CFR 434.20

§ 2.1(c) The Medicaid agency elects to enter into a risk contract with an HMO a health maintenance organization that is:

Qualified under Title XIII of the Public Health Service Act or is provisionally qualified as an HMO a health maintenance organization pursuant to § 1903(m)(3) of the Social Security Act.

Not federally qualified, but meets the requirements of 42 CFR 434.20(c) and is defined in Attachment 2.1-A.

Not applicable.

VR 460-02-2.1100. Definition of Medicaid State Plan Health Maintenance Organizations (HMOs) (Attachment 2.1 A).

§ 1. Definitions.

A Virginia Medicaid qualifying health maintenance organization (HMO) is defined as an entity which has a license to operate as a health maintenance organization issued by the Bureau of Insurance of the State Corporation Commission.

§ 2. Incorporation by reference.

The Bureau of Insurance of the State Corporation Commission, through Insurance Regulation No. 28, Rules Governing Health Maintenance Organizations, effective September 1, 1987, provides licensing only to health maintenance organizations meeting the requirements of 42 CFR 434.20 (c). The Department of Medical Assistance Services hereby incorporates by reference Insurance Regulation No. 28.

§ 3. Organization and description.

Virginia Medicaid qualifying health maintenance organizations shall be primarily organized for the purpose of providing health care services. As provided for in Regulation 28, a health maintenance organization is an organization which undertakes to provide or arrange for one or more health care plans. A health care plan is any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

§ 4. Accessibility of services.

Virginia Medicaid qualifying health maintenance organizations shall make the services they provide as accessible to Medicaid enrollees as those services are available to nonenrolled Medicaid recipients within the area served by the Virginia Medicaid qualifying health maintenance organization. As provided for in Regulation 28, all Virginia Medicaid qualifying health maintenance organizations must establish and maintain arrangements satisfactory to the Medicaid agency to assure both availability and accessibility of personnel and facilities providing health care services including:

1. Reasonable hours of operation and after-hours emergency health care;
2. Reasonable proximity to enrollees within the service area, so as not to result in unreasonable barriers to accessibility;
3. Sufficient personnel, including health professionals, administrators, and support staff, to reasonably assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of the enrollee; and
4. Adequate arrangements to provide inpatient hospital services for basic health care.

§ 5. Financial requirements.

Regulation 28 provides controls limiting the risk of insolvency of Virginia Medicaid qualifying health maintenance organizations, and assuring that Medicaid enrollees will not be liable for any Virginia Medicaid qualifying health maintenance organization's debts should it become insolvent. Specifically, Regulation 28 sets forth the requirements for a Virginia Medicaid qualifying health maintenance organization's minimum net worth, deposits with the State Treasurer, mandated liability insurance, enrollee hold harmless provisions in subcontracts, and accounting and reporting responsibilities.

§ 6. Terms and conditions.

The Medicaid agency shall, through the terms and conditions of risk contracts with Virginia Medicaid qualifying health maintenance organizations, make provisions for meeting the additional requirements provided for in 42 CFR 434.

VA.R. Doc. No. R95-471; Filed May 9, 1995, 11:07 a.m.

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Due to the length, only the amended page of VR 460-02-2.2100:1, Coverage and Conditions of Eligibility, is being published; however, a summary is being published in lieu of full text. The full text of the regulations is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219 or at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: State Plan for Medical Assistance Relating to Medicaid Eligibility for Drug Addicts and Alcoholics.

VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination (Attachment 2.2-A).

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

Effective Date: June 30, 1995.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance concerning Medicaid eligibility for drug addicts and alcoholics due to recent amendments to the Social Security Act. These amendments are

Final Regulations

intended to continue medical coverage yet establish barriers to using cash benefits to support an addiction.

Individuals eligible for Supplemental Security Income (SSI) are also eligible for Medicaid. Under current policy, suspension or termination of SSI benefits makes the individual no longer eligible for Medicaid unless he can establish eligibility based on a factor other than as an SSI recipient. Under the amendments to the Social Security Act as a result of the Social Security Independence and Improvements Act of 1994, individuals whose drug addiction or alcoholism is a contributing factor material to a finding of disability and whose SSI benefits have been suspended or terminated, must be made eligible for Medicaid. States must continue Medicaid eligibility for disabled individuals who would be ineligible but for these provisions. These provisions affect individuals currently on the disability rolls, as well as those to be awarded benefits in the future.

Individuals meeting the criteria established by § 1634(e) of the Act, who would be eligible for SSI benefits but for the suspension of benefits for noncompliance or termination of benefits due to the 36-month limit on benefits, and who continue to meet the more restrictive Medicaid eligibility requirements under the State Plan, must be eligible for Medicaid as categorically needy. Medicaid does not continue for individuals whose benefits were terminated after 12 consecutive months of SSI benefits suspension because of any ineligibility reason, including noncompliance with treatment requirements. The individual will be ineligible for Medicaid unless he can establish eligibility based on a factor other than as an SSI recipient.

The Commonwealth currently covers these individuals for both SSI and Medicaid in the same way as other disabled individuals. This regulatory change will result in these individuals being treated differently than other disabled recipients. SSI eligibility may be terminated due to noncompliance with treatment programs or because of limits to benefits to prevent disabled drug addicts and alcoholics from using cash benefits to support their addiction. Because loss of SSI would normally terminate Medicaid eligibility, this category of disabled individuals would lose coverage for whatever medical conditions also exist. This regulatory action will allow the Commonwealth to continue necessary medical coverage while eliminating potential sources of money to fund the addiction.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination (Attachment 2.2-A).

Page 9b2

Citation: § 1634(e) of the Act

A. Mandatory coverage; categorically needy and other required special groups. (Continued)

28. a. *Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.*

l b. *The state applies more restrictive eligibility standards than those under SSI.*

Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

May 5, 1995

Mr. Robert C. Metcalf, Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

Re: VR 460-02-2.2100 Groups Covered and Agencies Responsible for
Eligibility Determination: (Medicaid Eligibility
for Drug Addicts and Alcoholics.)

Dear Mr. Metcalf:

This will acknowledge receipt of the above-referenced regulations from the
Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C.4(c) of the Code of Virginia, I have determined
that these regulations are exempt from the operation of Article 2 of the
Administrative Process Act, since they do not differ materially from those required
by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agm

VA.R. Doc. No. R95-449; Filed April 24, 1995, 11:53 a.m.

Final Regulations

REGISTRAR'S NOTICE: The Department of Medical Assistance Services has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 460-02-4.1920. **Methods and Standards for Establishing Payment Rates -- Other Types of Care.**

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

Effective Date: July 1, 1995.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance concerning outpatient physician services reimbursement and the pharmacy dispensing fee due to action taken by the 1995 General Assembly in the Appropriations Act. The section of the state plan affected by this action is Attachment 4.19B: Methods and Standards for Establishing Payment Rate - Other Types of Care (VR 460-02-4.1920). These changes are being implemented as a way to contain costs without jeopardizing the quality of services offered to recipients.

There are certain services that have historically been performed on an outpatient basis that can safely be performed in a physician's office without jeopardizing the quality of care to the recipient. When such services are provided in the physician's office, the added charge for the use of the hospital facility is eliminated. The 1995 Appropriation Act mandates that the reimbursement rates for designated physician services performed in hospital outpatient settings be 50% of the reimbursement rate established for those services when performed in a physician's office.

The pharmacy dispensing fee for Virginia Medicaid providers is currently \$4.40. As a cost containment initiative, the 1995 Appropriation Act mandated the fee be reduced to \$4.25. This small reduction will contain increasing costs while only having a marginal impact on providers.

This regulation affects all providers who perform services in an outpatient hospital setting. Recipients will only be affected in that the same services will be available but in different locations. The 1995 Appropriation Act reduced DMAS' appropriation in FY 96 by (\$3,300,000) GF and (\$3,300,000) NGF. Similar savings will continue in years beyond FY 96.

Reduction of the pharmacy dispensing fees affects approximately 1,600 providers of pharmaceutical services. The fee is being reduced \$0.15 per prescription. This small reduction will cause only a minimal impact on the providers. The 1995

Appropriation Act reduced DMAS' appropriation in FY 96 by (\$468,000) GF and (\$468,000) NGF. Similar savings will continue in years beyond FY 96.

In compliance with 42 CFR 447.205, DMAS considers this regulatory review summary to be public notice of these two changes in the statewide methods for setting payment rates. Because these changes were mandated by the 1995 General Assembly, public hearings will not be held.

Agency Contact: Copies of the regulation may be obtained from and comments may be submitted to Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VR 460-02-4.1920. **Methods and Standards Used for Establishing Payment Rates -- Other Types of Care.**

§ 1. General.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

1. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.
2. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.
3. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

§ 2. Services which are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost

reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.
2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

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

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and

reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency departments which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above. Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.

4. Rehabilitation agencies.

5. Comprehensive outpatient rehabilitation facilities.

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6. Rehabilitation hospital outpatient services.

§ 3. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (Supplement 4 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (Supplement 1 has obstetric/pediatric fees). *Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office.* The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

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

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above.

Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services

3. Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

4. Podiatry

5. Nurse-midwife services

6. Durable medical equipment

7. Local health services

8. Laboratory services (Other than inpatient hospital)

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

10. X-Ray services

11. Optometry services

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by Supplement 3.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

C. Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items 6 and 7 below:

1. The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF.

3. The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the methodology set out in a through c below. (Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made which reduce such limits or fees for covered outpatient drugs).

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

4. A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives.

5. The provider's usual and customary charge to the public, as identified by the claim charge.

6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. However, oral contraceptives shall not be subject to the one month dispensing rule. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.

7. The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

8. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of ~~October 1, 1990~~ July 1, 1995, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.40 4.25.

D. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

E. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

F. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special emergency transportation	Rate set by the single state agency

G. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges

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determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan. See Supplement 2 of this methodology.

H. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

I. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

J. Targeted case management for high-risk pregnant women and infants up to age two and for community mental health and mental retardation services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

§ 4. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

A. All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

B. Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

C. Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

D. All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past 12 months shall be declared inactive.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

§ 5. Refund of overpayments.

A. Providers reimbursed on the basis of a fee plus cost of materials.

1. When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

2. If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

3. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

4. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

5. If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

6. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

7. In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

8. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

9. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

10. The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which

it is entitled, plus any applicable interest which the provider paid to DMAS.

B. Providers reimbursed on the basis of reasonable costs.

1. When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputed in whole or in part DMAS's determination of the overpayment.

2. If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, an underpayment discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

3. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

4. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment, or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

5. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

6. If during the time an extended repayment schedule is in effect, the provider withdraws from the program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

7. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

8. In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

9. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

10. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

11. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

§ 6. EPSDT.

A. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, reimbursement shall be provided for services resulting from early and periodic screening, diagnostic, and treatment services. Reimbursement shall be provided for such other measures described in Social Security Act § 1905(a) required to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

B. Payments to fee-for-service providers shall be in accordance with § 3 of Attachment 4.19 B the lower of (i) state agency fee schedule or (ii) actual charge (charge to the general public).

C. Payments to outpatient cost-based providers shall be in accordance with § 2 of 4.19 B.

D. Psychiatric services delivered in a psychiatric hospital for individuals under age 21 shall be reimbursed at a uniform all-inclusive per diem fee and shall apply to all service providers. The fee shall be all-inclusive to include physician and pharmacy services. The methodology to be used to determine the per diem fee shall be as follows. The base period uniform per diem fee for psychiatric services resulting from an EPSDT screening shall be the median (weighted by children's admissions in state-operated psychiatric hospitals) variable per day cost of state-operated psychiatric hospitals in the fiscal year ending June 30, 1990. The base period per diem fee shall be updated each year using the hospital market basket factor utilized in the reimbursement of acute care hospitals in the Commonwealth.

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§ 7. Dispute resolution for state-operated providers.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after the receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other Cabinet Secretary as appropriate. Any determination by such Secretary or Secretaries shall be final.

VA.R. Doc. No. R95-502; Filed May 10, 1995, 10:18 a.m.

Title of Regulation: VR 460-03-4.1940:1. Nursing Home Payment System (Smaller Nursing Facility Indirect Ceiling Adjustment).

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

Effective Date: July 1, 1995.

Summary:

The purpose of this action is to comply with the 1994 Virginia Acts of Assembly which appropriated funds for use in increasing the indirect patient care operating per diem ceiling for small nursing facilities.

Under current DMAS policy, the indirect patient care operating cost ceiling is adjusted only to reflect geographical peer groups and is not modified to recognize any differences in the bed size of facilities. The Virginia Health Care Association (VHCA) and the Joint Legislative Audit and Review Commission (JLARC) have recommended that DMAS adjust reimbursement to nursing facilities to reflect the relatively higher indirect operating costs incurred in operating a smaller facility. Based upon information from these organizations, the 1994 General Assembly appropriated funds for this purpose and directed DMAS to work with the VHCA to develop an appropriate methodology.

DMAS analyzed appropriate adjustments to the indirect patient care operating ceiling based upon the number of beds within the nursing facility. From this analysis, DMAS, in cooperation with the VHCA, developed a rate change methodology. This regulatory change will increase the indirect patient care operating cost ceiling for smaller nursing facilities. For the purposes of this regulatory action, both DMAS and the nursing home industry have agreed that a smaller nursing facility is one with 90 or fewer beds.

Effective July 1, 1995, existing indirect peer group ceilings of smaller nursing facilities will be adjusted by the predetermined amount identified in the regulation. In subsequent fiscal years, the facilities' adjusted ceilings will be increased according to a formula reflecting the increase in cost due to inflation.

Nursing facilities with a smaller number of beds are inherently less efficient due to economies of scale and an increased indirect patient care operating ceiling is appropriate in order to be reimbursed for these increased costs. Since the VHCA originally proposed this legislation, the nursing facility industry supports these changes. DMAS has consulted with the nursing home industry in development of the procedures to be implemented. The advantage of this action is more appropriate reimbursement for smaller nursing facilities. The agency projects no negative issues involved in implementing this change.

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 Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VR 460-03-4.1940:1. Nursing Home Payment System.

PART I. INTRODUCTION.

§ 1.1. General.

Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Cost components.

Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. Ceiling limitations.

In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Exemptions.

Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Medicare principles of reimbursement.

Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the

DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supersede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II. RATE DETERMINATION PROCEDURES.

Article 1. Plant Cost Component.

§ 2.1. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.10.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the

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date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued.

§ 2.3. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing \$100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in § 2.10) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see § 2.10.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with § 2.2 B.

§ 2.4. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and

result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under § 2.1 B, 2.1 C, and 2.14 A.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with §§ 2.4 A 1 through 2.4 A 4 for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total

incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

7. Balloon loan reimbursement. This regulation applies to the construction and acquisition of nursing facilities (as defined in §§ 2.2 and 2.5) and major capital expenditures (as defined in § 2.3) that are financed with balloon loans. A balloon loan requires periodic payments to be made that do not fully amortize the principal balance over the term of the loan; the remaining balance must be repaid at the end of a specified time period. Demand notes and loans with call provisions shall not be deemed to be balloon loans.

a. Incurred interest. Reimbursement for interest of a balloon loan and subsequent refinancings shall be considered a variable interest rate loan under § 2.4 B.

(1) A standard amortization period of 27 years, from the inception date of the original balloon loan, must be computed by the provider and submitted to DMAS and used as the amortization period for loans for renovation, construction, or purchase of a nursing facility.

(2) A standard amortization period of 15 years, from the inception of the original balloon loan, must be used as the amortization period for loans on furniture, fixtures, and equipment.

(3) A loan which is used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for the purpose of determining the amortization period.

b. The allowable interest rate shall be limited to the interest rate upper limit in effect on the date of the original balloon loan, unless another rate is allowable under § 2.4 B.

c. Financing costs. The limitations on financing costs set forth in § 2.4 B shall apply to balloon loans. Financing costs exceeding the limitations set forth in these sections shall be allowed to the extent that such excess financing costs may be offset by any available interest savings.

(1) A 27-year amortization period must be used for deferred financing costs associated with the construction or purchase of a nursing facility.

(2) A 15-year amortization period must be used for deferred financing costs associated with financing of furniture, fixtures, and movable equipment.

(3) Financing costs associated with a loan used partially for the acquisition of buildings, land, and land

improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for determination of the amortization period.

d. Cumulative credit computation. The computation of allowable interest and financing costs for balloon loans shall be calculated using the following procedures:

(1) A standard amortization schedule of allowable costs based upon the upper limits for interest and financing costs shall be computed by the provider and submitted to DMAS for the applicable 27-year or 15-year periods on the original balloon loan.

(2) For each cost reporting period, the provider shall be allowed the lesser of loan costs (interest and financing costs) computed in accordance with subdivision 7 a of this subsection, or the actual loan costs incurred during the period.

(3) To the extent that there is a "credit" created by the actual loan costs being less than the loan costs computed on the amortization schedule in some periods, the provider may recover any otherwise allowable costs which result from the refinancing, extension, or renewal of the balloon loan, and any loan costs which have been disallowed because the loan costs are over the limitation for some periods. However, the cumulative actual loan cost reimbursement may not exceed the cumulative allowable loan cost as computed on the amortization schedule to that date.

(4) In refinancing or refinancings of the original balloon loan which involve additional borrowings in excess of the balance due on the original balloon loan, the excess over the balance due on the balloon loan shall be treated as new debt subject to the DMAS financing policies and regulations. Any interest and financing costs incurred on the refinancing shall be allocated pro rata between the refinancing of the balloon loan and the new debt.

(5) In the event of a sale of the facility, any unused balance of cumulative credit or cumulative provider excess costs would follow the balloon loan or the refinancing of the balloon loan if the balloon loan or its refinancing is paid by the buyer under the same terms as previously paid by the seller. Examples of this are (i) the buyer assumes the existing instrument containing the same rates and terms by the purchaser; or (ii) the balance of the balloon loan or its refinancings is financed by the seller to the buyer under the same rates and terms of the existing loan as part of the sale of the facility. If the loan is otherwise paid in full at any time and the facility is sold before the full 27-year or 15-year amortization period has expired, the balance of unused cumulative credit or cumulative provider excess costs shall expire and not be considered an allowable cost.

e. In accordance with § 2.4 A (5), no refinancing incentive shall be available for refinancings, extensions, or renewals of balloon loans.

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f. The balloon loan and refinancing of the balloon loan shall be subject to all requirements for allowable borrowing, except as otherwise provided by this subsection.

B. Interest rate upper limit.

Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in §§ 2.4 B 1 and 2.4 B 2 shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date

of commitment for construction financing or the date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the provider's interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in § 2.4 B 1, 2, and 3 shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

- a. Examination Fees
- b. Guarantee Fees
- c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)
- d. Underwriters Discounts
- e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

- a. Legal Fees
- b. Cost Certification Fees
- c. Title and Recording Costs
- d. Printing and Engraving Costs
- e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

§ 2.5. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of § 2.10, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See § 2.10 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.

2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

- a. That a sale or transfer is about to be made;
- b. The location and general description of the property to be sold or transferred;
- c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and
- d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility

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by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.

Operating Cost Component.

§ 2.6. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

§ 2.7. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings.

a. In accordance with § 1.3, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in VR 460-03-1491.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in VR 460-03-4.1941 as direct patient care operating costs and NATCEPs costs.

c. *Effective July 1, 1995, existing indirect peer group ceilings of nursing facilities shall be adjusted according to the schedule below. These adjustments shall be added to the ceiling in effect for each facility on July 1, 1995, and shall apply from that day until the end of the facility's fiscal year in progress at that time. Peer group ceilings for the subsequent fiscal year shall be calculated by adding the adjustments below to the existing interim ceiling. The resulting adjusted interim ceiling shall be increased by 100% of historical inflation to the beginning of the facility's next fiscal year to obtain the new "interim" ceiling, and by 50% of the forecast inflation to the end of the facility's next fiscal year. This action increases the number of indirect patient care operating cost peer groups to a total of eight, four peer groups for the area within the Washington DC-MD-VA MSA, and four for the rest of the state.*

Licensed Bed Size	Ceiling Adjustment
1 to 30	add \$1.89
31 to 60	add \$1.28
61 to 90	add \$0.62
Over 90	add \$0.00

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal

year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See VR 460-03-4.1944 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SIIs.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See VR 460-03-4.1944 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through

September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2.7 A shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both §§ 2.7 A 5 a and 2.7 A 5 c. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

1. Allowable plant costs shall be reimbursed in accordance with Part II, Article 1. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII.

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E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement. A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2.8. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by § 2.7 above and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by § 2.7 above and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in § 2.7 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See VR 460-03-4.1944 for example calculations.

§ 2.8. 2.8.1. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.

Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. Operating costs.

1. Direct patient care operating costs shall be defined in VR 460-03-4.1941.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920).

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill. Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

D. Cost of protecting employees from blood borne pathogens. Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.

1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed \$.09 per day for SFY 1995.

2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by \$.07, effective July 1, 1994, to recognize continuing OSHA compliance costs other than immunization.

3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.

§ 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR 460-03-4.1943, Cost Reimbursement Limitations.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate

family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes

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the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

§ 2.11. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR 460-03-4.1943, Cost Reimbursement Limitations).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40-hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

§ 2.13. Rent/Leases.

Rent or lease expenses shall be limited by the provisions of VR 460-03-4.1942, Leasing of Facilities.

§ 2.14. Provider payments.

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete

signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;
2. Insolvency of the provider at the time the cost report is submitted;
3. Lack of a valid provider agreement and decertification;
4. Moneys owed to DMAS;
5. Errors or inconsistencies in the cost report; or
6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in VR 460-03-4.1943, Cost Reimbursement Limitations.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4. New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. On the first day of its second cost reporting period, a new nursing facility's interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

F. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

G. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2.19. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2.7 F.)

Article 5. Cost Reports.

§ 2.20. Cost report submission.

A. Cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following, with the exception that the audited financial statements required by subdivisions

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3 a and 6 b of this subsection shall be considered timely filed if received not later than 120 days after the provider's fiscal year end:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
 2. The provider's trial balance showing adjusting journal entries;
 3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by § 2.20 A 6;
 - b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
 - c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;
 4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
 5. Depreciation schedule;
 6. NFs which are part of a chain organization must also file:
 - a. Home office cost report;
 - b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;
 - c. The NFs financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;
 - d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
 - e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and
 7. Such other analytical information or supporting documentation that may be required by DMAS.
- B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

§ 2.21. Reporting form.

All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

§ 2.22. Accounting method.

The accrual method of accounting and cost reporting is mandated for all providers.

§ 2.23. Cost report extensions.

A. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control.

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;
2. Financial statements not completed;
3. Office or building renovations;
4. Home office cost report not completed;
5. Change of stock ownership;
6. Change of intermediary;
7. Conversion to computer; or
8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6. Prospective Rates.

§ 2.25. Time frames.

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See § 2.20 A.) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The

DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7.
Retrospective Rates.

§ 2.26. The retrospective method of reimbursement shall be used for Mental Health/Mental Retardation facilities.

§ 2.27. (Reserved)

Article 8.
Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in § 2.29.

§ 2.29. Types of records to be maintained.

Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;
2. Itemized depreciation schedules;
3. Mortgage documents, loan agreements, and amortization schedules;
4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

§ 2.30. Record availability.

The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

§ 2.31. Audit overview.

Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also

include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.
2. For the first cost report in which costs for bed additions or other expansions are included.
3. When a NF is sold, purchased, or leased.
4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. Audit delay.

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In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.20 B.

§ 2.37. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART III. APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.
2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.
3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.
4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.
5. The establishment of separate ceilings for direct operating costs and indirect operating costs.
6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

- a. Determination of resource indexes for each patient class that measures relative resource cost.
- b. Determination of each NF's average relative resource cost index across all patients.
- c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.
2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.
3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons;

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to

discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV. INDIVIDUAL EXPENSE LIMITATION.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in VR 460-03-4.1943, Cost Reimbursement Limitations.

PART V. COST REPORT PREPARATION INSTRUCTIONS.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART VI. STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

§ 6.2. Merger of unrelated parties.

A. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

§ 6.3. Merger of related parties.

The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a

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new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART VII.

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM AND COMPETENCY EVALUATION PROGRAMS (NATCEPs).

§ 7.1. *The Omnibus Budget Reconciliation Act of 1989.*

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

§ 7.2. NATCEPs costs.

A. NATCEPs costs shall be as defined in VR 460-03-4.1941.

B. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. The NATCEPs interim reimbursement rate determined in § 7.2 B shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in § 7.2 B times the Medicaid patient days from the DMAS MMR-240.

E. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in § 2.14 A.

PART VIII.

CRIMINAL RECORDS CHECKS FOR NURSING FACILITY EMPLOYEES.

§ 8.1. Criminal records checks.

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for compensated employment persons who have been convicted of:

1. Murder;

2. Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;

3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;

5. Pandering as set out in § 18.2-355 of the Code of Virginia;

6. Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;

7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;

8. Abuse and neglect of children as set out in § 18.2-371.1 of the Code of Virginia;

9. Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;

10. Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or

11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider will be handled through the cost reporting form provided by the DMAS and will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual charges will be a pass-through cost which is not a part of the operating or plant cost components.

PART IX.

USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X.

COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI.

PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.

START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

§ 12.2. Applicability.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up

costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

§ 12.3. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART XIII. DMAS AUTHORIZATION.

§ 13.1. Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with

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Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in § 2.10 who provide assets and other goods and services to the provider.

PART XIV. HOME OFFICE COSTS.

§ 14.1. General.

Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

§ 14.2. Purchases.

Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

§ 14.3. Allocation of home office costs.

Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

§ 14.4. Nonrelated management services.

Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

§ 14.5. Allowable and nonallowable home office costs.

Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

PART XV. REFUND OF OVERPAYMENTS.

§ 15.1. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk audit, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS' determination of the overpayment.

§ 15.2. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any

underpayments discovered by subsequent review or audit shall be used to reduce the balance of the overpayment.

§ 15.3. Payment schedule.

A. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request in writing an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request in writing an extended repayment schedule.

B. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amounts.

D. If, during the time an extended repayment schedule is in effect, the provider ceases to be a participating provider or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

E. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered from interim payments to the provider or by lump sum payments.

§ 15.4. Extension request documentation.

In the written request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

§ 15.5. Interest charge on extended repayment.

A. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

B. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

C. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the

provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

PART XVI. REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or
2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or
2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;
2. Appraised replacement cost value; or
3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not

determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

NOTICE: The forms used in administering the Department of Medical Assistance Services 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 Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Cost Reporting Forms (PIRS 1090 Series) Effective 7-1-93

Facility Description and Statistical Data, Schedule A
 Certification by Officer or Administrator of Provider, Schedule A-2
 Reclassification and Adjustment of Trial Balance of Expenses, Schedule B
 Reclassifications, Schedule B-1
 Analysis of Administrative and General - Other, Schedule B-2
 Adjustment to Expenses, Schedule B-4
 Cost Allocation - Employee Benefits, Schedule B-5, Part I
 Cost Allocation - Employee Benefits Statistical Basis, Schedule B-5, Part II
 Computation of Title XIX Direct Patient Care Ancillary Service Costs, Schedule C
 Statement of Cost of Services from Related Organizations, Schedule D
 Statement of Compensation of Owners, Schedule E
 Statement of Compensation of Administrators and/or Assistant Administrators, Schedule F
 Balance Sheet, Schedule G
 Statement of Patient Revenues, Schedule G-1
 Statement of Operations, Schedule G-2
 Computation of Title XIX Base Costs and Prospective Reimbursement Rate, Schedule H, Part I
 Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates, Schedule H-1
 Calculation of Medical Service Reimbursement Settlement, Schedule J
 Computation of Nursing Facility Medical Service Potential Prospective Reimbursement, Schedule J, Part II
 Settlement Computations, Schedule J, Part III
 Analysis of Nursing Facility Interim Payments for Title XIX Services, Schedule J, Part IV
 Analysis of Quarterly Title XIX Patient Days, Schedule J, Part V
 Accumulation of Title XIX Charges, Schedule J, Part VI
 Calculation of NATCEPs Reimbursement Settlement, Schedule J-1
 Calculation of Criminal Record Check Costs Reimbursement, Schedule J-2
 Debt and Interest Expense, Schedule K
 Limitation on Federal Participation for Capital Expenditures Questionnaire, Schedule L
 Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs) Schedule N

Final Regulations

VA.R. Doc. No. R95-495; Filed May 5, 1995, 11:31 a.m.

REGISTRAR'S NOTICE: The Department of Medical Assistance Services has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 460-05-2000.0000. New Drug Review Program Regulations (REPEALED).
VR 460-05-2000.1000. New Drugs Not Covered by Medicaid (REPEALED).

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

Effective Date: July 1, 1995.

Summary:

The purpose of this action is to repeal state regulations regarding the New Drug Review Program because they conflict with specific restrictions in federal law as contained in OBRA 90. This program was intended to limit the coverage of new drug products without prior approval by the agency. The regulations affected by this action are New Drug Review Program (VR 460-05-2000.0000) and New Drug Review Program Supplement 1: New Drugs Not Covered by Medicaid (VR 460-05-2000.1000).

The 1989 Appropriations Act directed the agency to implement the New Drug Review Program to control pharmacy costs. The regulations promulgated to implement the plan limited coverage of new drugs without prior approval by the agency. The New Drug Review Committee, created by the regulations, was established to make recommendations to the Board of Medical Assistance Services (BMAS) regarding the coverage of drugs newly approved by the United States Food and Drug Administration. The BMAS, based on the recommendations of the committee, limited coverage and payment for new drugs for which effective, safe, and less expensive therapeutic alternatives were available.

Provisions of OBRA 90 required changes to the New Drug Review Program. Essentially, the New Drug Review Program created a restrictive formulary by limiting coverage to only those drugs approved by the board. OBRA 90 provided that Medicaid must cover all prescription products of manufacturers who signed an agreement with the U.S. Secretary of Health and Human Services. States that had instituted restrictive formularies had to cease using the formularies, though provisions were made for prior authorization of particular drugs. The Commonwealth redesigned its policies to create the Drug Utilization Review program currently used. The regulations for the New Drug Review

Program must be repealed to comply with the OBRA 90 requirements.

Agency Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R95-501; Filed May 10, 1995, 10:19 a.m.

REAL ESTATE BOARD

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

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

Effective Date: June 28, 1995.

Summary:

The Virginia Real Estate Board has amended its existing regulations governing the licensure and practice of real estate salespersons, brokers and entities to provide differentiation in areas of practice between sales and leasing; to eliminate regulations which deal with rental location agents, a certification category which was deregulated by statute; to allow the use by licensees of professional names once registered with the board; and to provide clarification of language and elimination of duplicated or unnecessary regulations.

The regulations adjust fees to assure that the variance between revenues and expenditures for the Real Estate Board does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia.

The following substantial changes were made to the final regulations:

- 1. Section 5.3 B 1 b now specifically states that a security deposit in a lease transaction will be held in accordance with the provisions of § 55-248.11 of the Code of Virginia, generally known as the Virginia Landlord and Tenant Act; and*
- 2. Section 6.11 2 has been reworded to require licensees to provide information about the physical condition of the property, information related to the property and the transaction. Failure to provide this information is a violation of the regulations.*

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 Emily O. Wingfield, Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia 23230, telephone (804) 367-8552.

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

PART I. GENERAL.

§ 1.1. Definitions.

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

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

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

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

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

"*Licensee*" means any person, partnership, association, or corporation holding a license issued by the Real Estate Board to act as a real estate broker or real estate salesperson, as defined, respectively, in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

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

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

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

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

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

PART II.

ENTRY.

§ 2.1. Necessity for license [or registration] .

~~It shall be unlawful for any person, partnership, association or corporation, to act as a real estate broker, real estate salesperson, or rental location agent or to advertise or assume to act as such real estate broker, real estate salesperson, or rental location agent without a salesperson or broker license or rental location agent registration issued by the Real Estate Board. No partnership, association or corporation shall be granted a license unless every member, and officer of such partnership, association or corporation, who actively participates in its brokerage business shall hold a license as a real estate broker, and unless every employee and every independent contractor who acts as a salesperson for such partnership, association or corporation shall hold a license as a real estate salesperson; provided, however, that a person who holds a license as a real estate broker may act as a salesperson for another real estate broker. Refer to § 54.1-2106 of the Code of Virginia.~~

A. ~~Individual license Sole proprietor (principal broker owner)~~ . A real estate broker's license shall not be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, until the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the Clerk of Court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.

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

1. Sole proprietor (nonbroker owner). Each sole proprietor (nonbroker owner) acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of the owner; the name and style of the firm; and the address of the office of the real estate entity. Each change in the information contained on the certificate filed with the board must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

2. Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the

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partnership; the name and style of the firm; the address of the Virginia office of the firm; *and* the length of time for which it is to continue; ~~and the percentage or part of the partnership owned by each partner.~~ Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

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

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

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

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

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

§ 2.2. Qualifications for licensure.

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

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

2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing

examination and applies for licensure. ~~See § 7.6 of these regulations for educational requirements for salespersons.~~

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

4. The applicant shall not have been convicted *or found guilty regardless of adjudication* in any jurisdiction of the *United States* of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, *there being no appeal pending therefrom or the time for appeal having elapsed*. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction *certified or 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 *or guilt*.

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

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

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

§ 2.3. Additional qualifications for brokers.

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

A. ~~New broker applicants.~~

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

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

B. ~~Previous brokers.~~

~~Any person who has previously held a Virginia real estate broker's license which license was not revoked, suspended or surrendered in connection with a disciplinary action may~~

be issued a broker's license without first having to meet the experience requirements of § 2.3 A 2 of these regulations by:

1. ~~Completing the current educational requirements of § 54.1-2105 of the Code of Virginia; and~~
2. ~~Passing a written examination provided by the board or by a testing service selected by the board.~~

§ 2.4. Concurrent licenses.

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

§ 2.5. Qualifications for licensure by reciprocity.

Every applicant to the Real Estate Board for a license by reciprocity shall have the following qualifications, except that § 2.4 A 5 shall only be applicable for salesperson applicants:

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

1. The applicant shall be at least 18 years of age.
2. The applicant shall have received the salesperson or broker's license by virtue of having passed in the jurisdiction of ~~original~~ licensure a written examination deemed to be substantially equivalent to the Virginia examination.
3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate license law and the regulations of the Real Estate Board.
4. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
5. At the time of application for a salesperson's license, the applicant must have been actively engaged in real estate for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia.
6. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.
7. The applicant shall not have been convicted *or found guilty regardless of adjudication* in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony *there*

being no appeal pending therefrom or the time for appeal having elapsed. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction *or guilt*.

B. Additional qualifications for reciprocal licensure as a broker.

An individual who is currently licensed as a real estate broker in another jurisdiction may obtain a Virginia real estate broker's license without taking a written examination by meeting the following requirements in addition to those set forth in § 2.5 A 1 through A 4, A 6 and A 7.

1. The applicant shall have been licensed as a real estate broker and actively engaged as a real estate broker or salesperson ~~in the current jurisdiction of licensure~~ for at least 36 of the 48 months immediately prior to making application in Virginia. (See § 1.1 of these regulations for the definition of "actively engaged.")
2. The applicant ~~shall have met~~ *meets* broker educational requirements ~~that are~~ substantially equivalent to those required in Virginia.

§ 2.6. Activation of license.

A. Any inactive licensee may affiliate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Continuing education pursuant to § 54.1-2105 of the Code of Virginia shall be completed within two years prior to activation of a license.

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

§ 2.7. Rental location agent.

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

1. ~~The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a rental location agent as defined in § 54.1-2102 of the Code of Virginia.~~
2. ~~The applicant shall be at least 18 years old.~~
3. ~~A rental location agent shall not be concurrently registered with more than one rental location agency.~~
4. ~~The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude,~~

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~~sexual offense, drug distribution or physical injury, or any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.~~

~~§ 2.8. Rental location agency.~~

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

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

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

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

~~§ 2.9. 2.7. Application and registration fees.~~

~~A. All application fees for licenses and registrations are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether [or not] it is on time.~~

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

Salesperson by education and examination	\$ 50 100
Salesperson by reciprocity	\$ 75 125
Broker by education and examination	\$ 70 115
Broker by reciprocity	\$ 100 150
Broker concurrent license	\$ 60 100
Rental location agent	\$ 60
Rental location agency	\$100
Firm license	\$ 100 150
Branch office license	\$ 50 75
Transfer application	\$ 35 50
Activate application	\$ 35 50
Certification of licensure	\$ 35

Bad check penalty \$25

~~B. C. Examination fees are as follows:~~

Registration for sales and brokers	\$68.50
Additional fee for phone or "fax" registrations	\$ 5

PART III.
RENEWAL OF LICENSE/REGISTRATION.

§ 3.1. Renewal required.

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

§ 3.2. Qualification for renewal ; *continuing education requirements* .

A. ~~Continuing education requirements.~~

A. As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course of not less than six *eight* classroom hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete this course within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see § 2.6, Activation of license).

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

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

a. Continuing education courses offered in other jurisdictions must meet Virginia's statutory requirements and must conform to the board's specifically prescribed course content and curriculum as described in § 54.1-2105(2) of the Code of Virginia. Such courses must be approved in advance of offering to be certified for course credit for licensees.

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

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

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

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

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

B. Applicants for renewal of a license shall meet the standards for entry as set forth in §§ 2.2 1, 2.2 3 and 2.2 4 of these regulations.

C. *The board may deny renewal of a license if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.*

§ 3.3. Procedures for renewal.

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

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

§ 3.4. Fees for renewal.

All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date which will be used to determine whether or not it is on time, and are as follows:

Salesperson	\$ 50 100
Broker	\$ 70 115
Concurrent broker	\$ 70 115
Firm	\$ 400 150
Rental location agent	\$ 60
Rental location agency	\$100
Branch office	\$ 50 75

§ 3.5. Board discretion to deny renewal.

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

PART IV.
REINSTATEMENT.

§ 4.1. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in §§ 3.2 A and 3.2 B of these regulations. Applicants for reinstatement of an active license must have completed the continuing education requirement in order to reinstate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. ~~If the renewal fee is not received by the board requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee~~ within 30 days of the expiration date noted on the license or registration, a reinstatement fee of \$ 200 250 is required.

C. *A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After 12 months, reinstatement is not possible one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.*

D. ~~While a license may be reinstated with additional fee for up to one year following expiration, any real estate activity conducted subsequent to the expiration shall constitute unlicensed activity and may be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia. [The board may deny renewal of a license if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest. Any real estate activity conducted subsequent to the expiration may constitute unlicensed activity and be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia.]~~

§ 4.2. Board discretion to deny reinstatement.

[A. *The board may deny reinstatement of a license if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.*]

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

PART V.
STANDARDS OF PRACTICE.

§ 5.1. Place of business.

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

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

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Each place of business and each branch office shall be supervised and personally managed by an on-premises real

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estate broker who shall supervise only that office and shall be at the office or within easy access during regular business hours.

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

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

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

§ 5.2. Maintenance of licenses.

A. Salespersons and individual brokers shall at all times keep the board informed of their current home address *and changes of address must be reported to the board in writing within 10 calendar days of such change*. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee shall notify the board in a written form acceptable to the board within 10 days of any change in the licensee's *legal name in which they do business. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use.*

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

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

D. When any salesperson or broker is discharged or in any way terminates his employment or affiliation or *changes status as a principal or associate broker* with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days

of the date of termination or *status change*. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

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

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

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

A. Maintenance of escrow accounts.

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

2. Funds to be deposited in the escrow account will necessarily include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by § 6.12 6.13 5 of these regulations, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by § 6.13 5 of these regulations.

B. Disbursement of funds from escrow accounts.

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

b. Lease transactions: security deposits. ~~[Upon acceptance of a lease (ratification), security deposits required by the terms of the lease to be held by the principal or supervising broker or his associates shall be placed in an escrow account and shall remain in that account until the terms of the lease have been met. In the event the terms of the lease are not met, the principal or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the lease which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each principal to the transaction by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this regulation. Any security deposit held by a broker shall be placed in an escrow account. Each such security deposit shall be treated in accordance with the provisions of § 55-~~

248.11 of the Code of Virginia, generally known as the Virginia Residential Landlord and Tenant Act, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control.]

c. Lease transactions: [rentals rents] and escrow fund advances. ~~[Unless otherwise agreed in writing by all principals to the transaction,] all [rentals rents] and other money paid to the licensee in connection with the lease shall be placed in an escrow account and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.~~

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

b. Lease transactions. ~~Unless otherwise agreed in writing by [all the] principals to the lease [and property management agreement, as applicable] , a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission until the terms of the lease have been met.~~

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

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

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

C. Maintenance of financial records.

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

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

§ 5.4. Advertising by licensees.

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

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

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

"Institutional advertising" means advertising in which neither the licensed name nor any other identification of any licensed individual is disclosed, no real property is identified, and a service mark is identified.

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

B. Every licensee is prohibited from advertising and marketing under the licensee's own name (except for sole proprietors trading under the principal broker's own name) in any manner offering on behalf of others to buy, sell, exchange, rent, or lease any real property. All advertising and marketing must be under the direct supervision of the principal broker or supervising broker and in the name of the firm. The firm's licensed name must be clearly and legibly displayed on all display signs and other types of advertising and marketing.

C. ~~Notwithstanding the above restrictions, where a licensee is the owner of~~ *If a licensee advertises property which he owns or in which he has any ownership interest in the property being advertised, without using the services of a licensed real estate entity,* the licensee shall advertise with the notice that the owner is a real estate licensee, but such

advertisement must not indicate or imply that the licensee is operating a real estate brokerage business.

D. Service marks and institutional advertising.

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

2. Any service mark constituting a part of written noninstitutional advertising shall conspicuously disclose that the licensed brokerage firm or sole proprietorship is independently owned and operated. Disclosure that the licensed brokerage firm or sole proprietorship is independently owned and operated shall not be required in the following categories of written noninstitutional advertising: of specific property for sale or lease;

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

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

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

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

PART VI.

STANDARDS OF CONDUCT.

§ 6.1. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, and to suspend or revoke any license ~~or registration~~ issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, or any regulation of the board.

§ 6.2. Disclosure of interest.

A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property through purchase or lease and the licensee is a party to the transaction, the [~~agent licensee]~~ must disclose that information to the owner in writing in the offer to purchase or lease.

B. A licensee selling or leasing property in which he has any interest must disclose that he is a real estate licensee *and he has an interest in the property* to any purchaser or lessor lessee [*in writing*] in the [*written*] offer to purchase or lease , *the application, the offer to lease, or the lease, whichever occurs first* .

§ 6.3. Disclosure of agency relationships.

A. All licensees shall promptly disclose their agency relationship(s) to all actual and prospective buyers and sellers and optioners and optionees in these ways: ~~1. [As seen as Before]~~ the licensee has substantive discussions about specific property(ies) with a principal or prospective principal [*to a sale or option transaction*] , the licensee shall disclose to the principal or prospective principal the person(s) whom the licensee represents in a principal-agency relationship; and . ~~2. Further,~~ This disclosure shall be made in writing at the earliest practical time, but in any case not later than the time when specific real estate assistance is first provided. This written disclosure shall be acknowledged by the principals.

B. All licensees shall promptly disclose their agency relationships to all actual and prospective lessors and lessees ~~in the following way:~~ . ~~1. A disclosure statement shall be included in writing in all applications for lease or in the lease itself, whichever occurs first; and .~~ ~~2. The disclosure requirement shall not apply to lessors and lessees in single or multi-family residential units on leases of less than two months.~~

§ 6.4. Licensees dealing on own account.

Any licensee failing to comply with the provisions of Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia, may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

§ 6.5. Provision of records to the board.

A licensee of the Real Estate Board shall upon request or demand, promptly produce to the board or any of its agents any document, book, or record ~~in a licensee's possession~~ concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents.

§ 6.6. Response to inquiry of the board.

A licensee must respond to an inquiry by the board or its agents within 15 days.

§ 6.6. 6.7. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in these regulations;

3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;

4. As a currently licensed real estate broker, sitting for a real estate licensing examination;

5. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in

evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty *regardless of adjudication* of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury;

7. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968, or the Civil Rights Act of 1866, there being no appeal therefrom or the time for appeal having elapsed; and

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

§ 6.7. 6.8. Conflict of interest.

Actions constituting a conflict of interest include:

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

§ 6.8. 6.9. Improper brokerage commission.

Actions resulting in an improper brokerage commission or fee include:

1. *Offering to pay or* paying a commission or other valuable consideration to any person for acts or services performed in violation of Title 54.1, Chapter 21 of the Code of Virginia, or these regulations; provided, however, that referral fees and shared commissions may be paid to any real estate firm ~~firm~~ entity licensed in this or another jurisdiction, or to any referral firm ~~firm~~ entity in the United States, the members of which are brokers

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licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

2. ~~[Notwithstanding the provisions of § 54.1-2102 of the Code of Virginia,]~~ Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, for the performance of any of the acts specified in Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the board, from any person except the licensee's principal broker at the time of the transaction;

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or both principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

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

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

§ 6-9. 6.10. Improper dealing.

Actions constituting improper dealing include:

1. Making an exclusive agency contract or an exclusive right-to-sell contract which does not have a definite termination date;

2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized agent;

4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship; *[and]*

5. Acting in the capacity of settlement agent in a real estate closing by a salesperson, except:

a. When the salesperson is under the direct supervision of the principal/supervising broker;

b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed;

c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar; or

d. When the settlement agent is a title insurance company or an agency thereof or a firm regularly engaged in the business of closing real estate transactions;

§ 6-10. 6.11. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee ~~or registrant~~ did in fact have at least that quantity for sale or rent;

2. Failing to disclose ~~[in a timely manner to a prospective purchaser/lessee, or seller/lessor,]~~ any material information *[in a timely manner to a prospective purchaser/lessee, or seller/lessor,]* related to the property *[, the physical condition of the property,]* or the transaction reasonably available to the licensee ~~or registrant~~;

3. Failing as a licensee to *tender* promptly tender to the buyer and seller every written offer ~~or , every written counteroffer , and every written rejection~~ to purchase *[, option or lease]* obtained on the property involved;

4. Failing to include the complete terms and conditions of the real estate transaction in any *lease* or offer to purchase ~~or rent, including identification of all those holding any deposits~~;

5. ~~Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;~~

5. 6. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in ~~§ 6.10-5 this subdivision 6~~ whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in ~~§ 6.10-5 subdivision 6 a of this section~~ a without the prior written consent of the principals to the transaction.

6. 7. Making any misrepresentation; and
7. 8. Making a false promise through agents, salespersons, advertising, or other means.

~~§ 6.11.~~ 6.12. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each party *principal* to a ~~document transaction~~, complete and legible copies of any written listings, offers to lease, offers to purchase, counteroffers, addenda, and ratified agreements, and other documentation required by the agreement;
2. Failing to provide in a timely manner to all parties *principals* to the transaction written notice of any material changes to the transaction;
3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and
4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

~~§ 6.12.~~ 6.13. Record keeping and escrow funds.

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

1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing [*the closing or*] ratification, [*if the transaction fails to close,*] a complete and legible copy of each contract and agreement, notice and closing statement related to a real estate transaction, and all other documents material to that transaction available and accessible to the broker;
2. Having received moneys on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing *or termination of a lease* [*or conclusion of the licensee's involvement in the lease*];
3. Failing, within a reasonable time, to account for or to remit any moneys coming into a licensee's possession which belong to others;
4. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

5. Commingling the funds of any person by a principal or supervising broker or his employees or associates *or any licensee* with his own funds, or those of his corporation, firm, or association; and

6. Failure to deposit such escrow funds in an account or accounts designated to receive only such funds as required by these regulations (see § 5.3 A 1).

~~§ 6.13.~~ Rental location agents.

Actions constituting improper activities of a rental location agent include:

1. ~~Accepting or agreeing to accept any fee as a rental location agent without giving the person paying or agreeing to pay such fee a contract or receipt in which the agent sets forth a definite termination date for the services to be provided. The termination date shall not be later than one year from the date of the original agreement or acceptance of a fee. The rental location agent shall agree in the contract or receipt to repay, upon request, within 10 days of the expiration date, any amount of fee collected over and above the sum of the service charge if no rental is obtained. The rental location agent shall further agree in the contract or receipt that if rental information provided by the agent is not current or accurate, the full fee shall be repaid upon request within 10 days of the delivery of the inaccurate rental information;~~
2. ~~Referring, as a rental location agent, a prospective tenant to any property for which the agent has not verified the availability of the property within seven working days prior to the referral; and~~
3. ~~Failing, as a rental location agent, to maintain a written registry of all lists of rentals provided to customers and of all advertisements published or caused to be published by the agent, together with the address of the property listed or advertised, the date of verification of the availability, and the name, address, and telephone number, if any, of the party who offered the property for rent. This registry shall be kept for a period of three years from the date of the lists or the publication of any advertisement listed in it.~~

§ 6.14. Principal and supervising broker's responsibility for acts of licensees *and employees*.

Any unlawful act or violation of any of the provisions of Title 54.1, Chapter 21 or of Title 36, Chapter 5 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, supervising broker, or both, may not be cause for disciplinary action against the principal broker, supervising broker, or both, unless it appears to the satisfaction of the board that the principal broker, supervising broker, or both, knew or should have known of the unlawful act or violation.

§ 6.15. Effect of disciplinary action on subordinate licensees.

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

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as they are reissued upon the written request of a sole proprietor or principal broker pursuant to § 5.2 B.

PART VII. SCHOOLS.

§ 7.1. Definitions.

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

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

"Classroom hour/clock hour" means 50 minutes.

"Equivalent course" means any course encompassing the ~~principles and practices of real estate~~ basic educational curriculum [~~or of~~] Virginia courses and approved by the board.

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

§ 7.2. Proprietary school standards : *educational environment; instructor qualifications; courses .*

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the following standards: *provided in this section.*

A. ~~Educational environment.~~

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

B. ~~Instructor qualifications.~~

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

1. Baccalaureate degree in real estate, or in business with a concentration in real estate or a closely related field; ~~or~~
2. Baccalaureate degree, a real estate license, and two years of discipline-free active real estate experience within the past five years; ~~or~~
3. Seven years of discipline-free active experience acquired in the real estate field in the past 10 years and an active broker's license; ~~or~~
4. ~~Approval may be granted to an active Virginia licensed attorney whose primary area of practice is real estate law; or~~

5. 4. Qualified experts in a specific field of real estate who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five years of active appraisal experience in Virginia, may be approved to teach Real Estate Appraisals. Such applicants will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicants expertise.

C. ~~Courses.~~

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

1. *Prelicensing courses may be completed by correspondence if such courses are not available in a reasonable proximity to the applicant's residence or business location in the Commonwealth. Students seeking board approval to take prelicensing correspondence courses must make a written request to the board in which they specify that the classroom course(s) are not available in a reasonable geographical proximity to the applicant's residence or business location.*

2. *Those schools which propose to offer prelicensing correspondence courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:*

a. *Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in § 7.6. All requests to offer broker courses must include a comparable course syllabus from an accredited university, college, or community college to establish equivalency.*

b. *Name of the course's text and any research materials used for study assignments.*

c. *Description of any research assignments.*

d. *Copies of test or quizzes.*

e. *Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia.*

f. *Information about record keeping for this type of course delivery.*

3. *Correspondence courses must have a final, monitored written examination which is administered at the school's main, or branch, site.*

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

maintain all student and class records for a minimum of five years.

§ 7.3. Fees.

A. The application fee for original certificate for a proprietary school shall be \$ 400 150 .

B. The renewal fee for proprietary school certificates expiring annually on June 30 shall be \$ 50 150 .

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

§ 7.4. Posting school certificate of approval and registration.

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

§ 7.5. Withdrawal of approval.

The board may withdraw approval of any school for the following reasons:

1. The school, instructors, or courses no longer meet the standards established by the board.
2. The school solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

§ 7.6. Course content of real estate principles and practices.

The following shall be included in the four-semester-hour or seven six -quarter-hour course which shall not have less than 60 classroom hours:

1. Economy and social impact of real estate
2. Real estate market and analysis
3. Property rights
4. Contracts
5. Deeds
6. Mortgages and deeds of trust
7. Types of mortgages
8. Leases
9. Liens
10. Home ownership

11. Real property and title insurance
12. Investment
13. Taxes in real estate
14. Real estate financing
15. Brokerage and agency contract responsibilities
16. Real estate marketing
17. Real property management
18. Search, examination, and registration of title
19. Title closing
20. Appraisal of residential and income producing property
21. Planning subdivision developments and condominiums
22. Regulatory statutes
23. Housing legislation
24. Fair housing statutes
25. Real Estate Board regulations

§ 7.7. Related subjects.

"Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

§ 7.8. Required specific course.

Brokerage shall be a required specific course with three semester hours or six quarter hours constituting a complete course.

§ 7.9. Credit for broker-related courses.

No more than three semester hours or three four quarter hours of broker-related courses shall be accepted in lieu of specific broker courses.

§ 7.10. Broker-related course approval procedure.

Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval. ~~In addition, the school must accompany these materials with a copy of a comparable course syllabus from an accredited university, college, or community college to establish equivalency.~~

NOTICE: The forms used in administering the Virginia Real Estate Board Licensing Regulations are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Real Estate Broker Application

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Real Estate Salesperson Application
Real Estate Concurrent Broker Application
Real Estate Business License Application
Real Estate Branch Office Application
Real Estate Transfer Application (VREB Fm 1; Apr 95)
Real Estate Activate Application (VREB/Fm 2; Apr 95)

VA.R. Doc. No. R95-496; Filed May 8, 1995, 11:25 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.

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

Effective Date: July 1, 1995.

Summary:

According to amended federal regulations in the Aid to Families with Dependent Children (AFDC) Program, states are mandated to count income and resources of an AFDC family unless specifically identified as disregarded. The regulation adds bona fide loans to the types of income and resources which shall be disregarded. The disregard of bona fide loans applies to the principal of the loan only. If a loan is placed in a bank account or other financial instrument, any interest earned is not exempt under this disregard and shall be treated according to existing rules in the AFDC Program applicable to treatment of interest. In addition to mandating this disregard, amended federal regulations require states to establish criteria to determine whether a loan is bona fide. In response to this requirement, the final regulations indicate, for purposes of Virginia's AFDC Program, what constitutes a bona fide loan.

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 Carolyn Ellis, Department of Social Services, Division of Benefit Programs, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1730.

VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Agent Orange payments" means any payment from the Agent Orange Settlement Fund or any other fund established pursuant to the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

"Aid to Families with Dependent Children (AFDC) Program" means the program administered by the Virginia Department

of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Allowable reserve" means the type and amount of real and personal property, including cash and liquid assets, which may be retained by the assistance unit without affecting eligibility for financial assistance.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive an assistance payment.

"Attendance costs" means tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

"Emergency" means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

"Native Corporation" means regional, village, urban or group corporations organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage, or distribute lands, funds, and other rights and assets for or on behalf of members of a native group in accordance with the Alaska Native Claims Settlement Act.

PART II. DISREGARDED INCOME AND RESOURCES.

§ 2.1. Disregarded income.

A. The following income of members of the assistance unit, a parent not included in the assistance unit or anyone whose income is used in determining eligibility or the amount of assistance in the Aid to Families with Dependent Children (AFDC) program, shall be disregarded.

B. Income which is disregarded under the following provisions shall not be counted in determining the need for assistance of any individual under any other federal assistance program:

1. Home produce of the assistance unit utilized for their own consumption;
2. The value of food coupons under the Food Stamps program;
3. The value of foods donated under the U.S.D.A. Commodity Distribution Program, including those furnished through school meal programs;
4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;
6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. Commissioner Secretary of Education. Programs that are administered by the U.S. Commissioner Secretary of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;
7. Funds derived from the College Work Study Program;
8. A scholarship, loan, or grant obtained and used under conditions which preclude its use for current living costs;
9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs. This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;
10. Any portion of an SSI payment or Auxiliary Grant;
11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less than the minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1973;
12. The Veterans Administration educational amount for the caretaker 18 or older is to be disregarded when it is used specifically for educational purposes. Any additional money included in the benefit amount for dependents is to be counted as income to the assistance unit;
13. Foster care payments received by anyone in the assistance unit;
14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible child(ren) is to be counted as income to the assistance unit;
15. Income tax refunds including earned income tax credit advance payments and refunds;
16. Payments made under the Fuel Assistance program;
17. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;
18. HUD Section 8 and Section 23 payments;
19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) is to be disregarded;
20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;
21. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):
 - a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year;
 - b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);
 - c. A partnership interest;
 - d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and
 - e. An interest in a settlement trust.
22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);
23. The first \$50 of total child or spousal support payments received each month by an assistance unit prior to the issuance of the first ongoing check;
24. Payments sent to the recipient by the Commonwealth which are identified as disregarded support;
25. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster

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assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

26. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383);

27. Agent Orange payments;

28. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

29. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law 96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

30. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

31. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392); and

32. Student financial assistance received under the Bureau of Indian Affairs student assistance programs; and

33. *All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of a loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources.*

§ 2.2. Disregarded resources.

In determining eligibility for financial assistance for the Aid to Families with Dependent Children (AFDC) program, all resources shall be considered in relation to the \$1,000 allowable reserve, except as specifically disregarded below. These resources shall be disregarded as long as they are kept separate from the allowable reserve. In the event any funds derived from subdivisions 3 through 11 of this section are combined with other resources, they shall be considered in determining eligibility.

1. The value of the food coupons under the Food Stamp Program;

2. The value of foods donated under the U.S.D.A. Commodity Distribution Program;

3. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

4. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

5. Grants or loans to undergraduate students for educational purposes, made or insured under any program administered by the U.S. Commissioner Secretary of Education. Programs that are administered by the U.S. Commissioner Secretary of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

6. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs, the Women, Infants, and Children (WIC) program, and the Child Care Food program;

7. Payments to VISTA volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-113, the Domestic Volunteer Service Act of 1973;

8. Funds distributed to, or held in trust for, members of any Indian tribe under Public Law 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

9. The following types of distributions received from a Native Corporation under the Alaska Native Claims Settlement Act (Public Law 100-241):

a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per year;

b. Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

c. A partnership interest;

d. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

e. An interest in a settlement trust.

10. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 94-114);

11. Disregarded support payments which were sent to the recipient by the Virginia Department of Social Services or determined to be a disregard by the eligibility worker;

12. Tools and equipment belonging to a temporarily disabled member of the assistance unit during the period of disability, when such tools and equipment have been and will continue to be used for employment;

13. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

14. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Island Restitution Act (Public Law 100-383);

15. Agent Orange payments;

16. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426);

17. Funds received pursuant to the Maine Indians Claims Settlement Act of 1980 (Public Law 96-420) and the Aroostook Band of Micmacs Settlement Act (Public Law 102-171);

18. Student financial assistance received under Title IV of the Higher Education Amendments of 1992 (Public Law 102-325);

19. Student financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act made available for attendance costs (Public Law 101-392); and

20. Student financial assistance received under the Bureau of Indian Affairs student assistance programs; ; and

21. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The disregard is limited to the principal of a loan. A simple statement signed by both parties indicating that the payment is a loan and must be repaid is sufficient to verify that a loan is bona fide. Interest earned on the proceeds of a loan while held in a savings or checking account or other financial instrument shall be counted as income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources.

V.A.R. Doc. No. R95-497; Filed May 8, 1995, 11:25 a.m.

REGISTRAR'S NOTICE: The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 615-36-01 and VR 175-10-01.
Regulation for Criminal Record Checks for Child Welfare Agencies.

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

Effective Date: July 1, 1995.

Summary:

Effective July 1, 1992, child welfare agencies subject to licensure and family day homes which are voluntarily registered are required to obtain either the original criminal record clearance with respect to specified offenses or the original criminal record history from the Central Criminal Records Exchange.

This report must be secured for all applicants, their agents, and board members who are involved in the day-to-day operations of a child welfare agency or who are alone with, in control of, or supervising one or more children, employees, volunteers, foster home applicants, adoptive home applicants, family day home providers and all adults living in the home of the family day home. A sworn disclosure statement must also be obtained.

The Division of Licensing Programs, as the agent of the Commissioner of Social Services, will enforce the provisions of §§ 63.1-198 and 63.1-198.1 of the Code of Virginia. The Central Criminal Records Exchange, Department of State Police, will issue criminal record reports as required by law. Any facility's failure to obtain a criminal record report for each designated individual shall be grounds for denial or revocation of the registration or license (§ 63.1-198.1 of the Code of Virginia). A license or registration shall not be granted to any applicant as a child welfare agency who has been convicted of any offense specified in § 63.1-198.1 of the Code of Virginia (§ 63.1-199 of the Code of Virginia).

Child welfare agencies are prohibited from hiring or using as volunteers any persons who have been convicted of any offense specified in § 63.1-198.1. Child placing agencies are prohibited from approving foster and adoptive home applicants who have been convicted of a barrier crime. Family day systems are prohibited from approving a family day home if the caretaker has been convicted of a barrier crime. Family day systems are required to obtain a criminal record clearance or a criminal history record from the Central Criminal Records Exchange for all family day providers and any other adult living in the home of the family day providers. Contract agencies are prohibited from recommending registration or continued registration for any family day home if the caretaker or other adult living in the home has been convicted of a barrier crime.

This regulation establishes the criminal record check procedures to be followed by licensed and registered child welfare agencies. It has been amended to limit the required criminal record report and sworn disclosure statement to only those applicants, agents or board members who are involved in the day-to-day operations of a child welfare agency or who are alone with, in control of, or supervising one or more of the children.

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The regulation includes the following topics: (i) legal base and applicability; (ii) the sworn disclosure statement; (iii) general requirements for the criminal record report; (iv) validity of criminal record reports; (v) maintenance of criminal record reports; and (vi) requirements for board members.

Agency Contact: Copies of the regulation may be obtained from Kathryn Thomas, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, VA 23219, telephone (804) 692-1793.

VR 615-36-01 and 175-10-01. Regulation for Criminal Record Checks for Child Welfare Agencies.

PART I. INTRODUCTION.

§ 1.1. Definitions.

The following words and terms when used in conjunction with this regulation shall have the following meaning:

"*Applicant for licensure or registration*" means all agents of child welfare agencies and family day homes, including owners, partners or officers of the governing board of a corporation or association, who have applied for licensure or registration.

"*Barrier crimes*" means certain crimes which automatically bar an individual convicted of same from employment or volunteer services at child welfare agencies. It also prevents persons convicted of same who are screened as adoptive or foster parents by child-placing agencies, and caretakers approved by family day systems, from assuming such roles. These crimes, as specified by § 63.1-198.1 of the Code of Virginia, are murder; abduction for immoral purposes; sexual assault; pandering; crimes against nature involving children; taking indecent liberties with children; abuse and neglect of children, including failure to secure medical attention for an injured child; obscenity offenses; and abuse and neglect of incapacitated adults.

"*Central Criminal Records Exchange*" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request is processed.

"*Contracting organization*" means the agency which has been designated by the Department of Social Services to administer the voluntary registration program for family day home providers.

"*Criminal history record request*" means the Department of State Police form used to authorize the State Police to generate a criminal record report on an individual.

"*Criminal record report*" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes. The criminal history record discloses all known conviction data.

"*Employee*" means all personnel hired at a facility regardless of role, service, age, function or duration of

employment at the facility. Employees also include those individuals hired through a contract to provide services for the facility.

"*Facility*" means a child welfare agency as defined in § 63.1-195 of the Code of Virginia and subject to licensure or voluntarily registered by the Department of Social Services.

"*Officer of the board*" means anyone holding an office on the board of the facility and responsible for its operation in any manner.

"*Parent-volunteer*" means someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.1-198.1 or § 63.1-198.2 of the Code of Virginia.

"*Sworn disclosure statement*" means a document to be completed, signed, and submitted by the applicant for licensure or registration and applicants for employment or volunteer service, applicants for foster home and adoptive home approval, and adults living in the family day home. The document indicates that the individual has neither a conviction nor pending charges in, or outside, the Commonwealth of Virginia of those crimes which act as barriers to employment at or approval of the indicated facilities. This is required as specified in §§ 63.1-198 and 63.1-198.1 of the Code of Virginia.

"*Volunteer*" means anyone who, without pay, at any time would be alone with, in control of, or supervising one or more children outside the physical presence of a paid facility staff member. This pertains to all activities occurring at the facility location or sponsored by the licensed facility. This also includes volunteer staff counted for purposes of maintaining required ratios for the program.

§ 1.2. Legal base and applicability.

A. ~~Sections 63.1-198 and 63.1-198.1 of the Code of Virginia require all employees, volunteers, and applicants for licensure or registration of a child welfare agency, as defined by § 63.1-195 of the Code of Virginia, to obtain a criminal record report from the Department of State Police. This includes caretakers approved by family day systems, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents.~~

~~Exception: (As set forth in § 63.1-198.1 of the Code of Virginia) "The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties."~~

B. ~~Section 63.1-198.1 of the Code of Virginia requires that all employees, volunteers, foster or adoptive parents, and applicants for licensure or registration as a child welfare agency as defined by law (§ 63.1-195) shall provide the hiring or approving authority, facility or agency with a sworn disclosure statement. This includes caretakers approved by family day systems and those individuals approved by child-placing agencies as foster or adoptive parents. Pursuant to §~~

63.1-198 of the Code of Virginia, all adults living in the family day home must also provide a sworn disclosure statement.

A. Sections 63.1-198 and 63.1-198.1 of the Code of Virginia require all applicants, their agents, and board members who are involved in the day-to-day operations of a child welfare agency or who are alone with, in control of, or supervising one or more children to obtain a criminal record report from the Department of State Police. All employees and volunteers of child welfare agencies as defined by § 63.1-195 of the Code of Virginia, including caretakers approved by family day systems, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents, must also obtain a criminal record report.

Exception: (As set forth in § 63.1-198.1 of the Code of Virginia) "The provisions of this section...shall not apply to a parent-volunteer of a child attending such licensed or registered facility whether or not such parent-volunteer will be alone with any child in the performance of his duties."

B. Section 63.1-198.1 of the Code of Virginia requires all applicants, their agents, and board members who are involved in the day-to-day operations of a child welfare agency or who are alone with, in control of, or supervising one or more children to provide the hiring or approving authority, facility or agency with a sworn disclosure statement. All employees and volunteers as defined by § 63.1-195 of the Code of Virginia, including caretakers approved by family day systems, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive partners, must also provide a sworn disclosure statement.

PART II. THE SWORN DISCLOSURE STATEMENT.

§ 2.1. Sworn disclosure statement.

A. The sworn disclosure statement shall be completed prior to employment or commencement of volunteer service, registration, or approval. (NOTE: A model form is available from the department upon request.)

B. Any person making a false statement on the sworn disclosure statement shall be guilty of a Class 1 misdemeanor.

C. The sworn disclosure statement shall be attached and filed with the criminal record report.

PART III. THE CRIMINAL RECORD REPORT.

§ 3.1. General requirements.

A. Prior to the issuance of an initial license or registration, the criminal record report for the applicant(s) for licensure or registration shall be made available to the commissioner's representative.

B. The criminal record report shall be obtained on or prior to the 21st day of employment or volunteer service for individuals participating in the operation of a facility.

Exception: The criminal record report shall be obtained prior to approval of foster and adoptive homes by private

child-placing agencies and prior to approval of family day providers by family day systems.

C. Any person required by these standards and regulations to obtain a criminal record report shall be ineligible for employment, volunteer service or any facility related activity, if the report contains convictions of the barrier crimes.

D. If a criminal history record report is requested, it shall be the responsibility of the licensee or registered family day home provider to ensure that the employee has not been convicted of any of the barrier crimes.

E. Criminal record reports shall be kept confidential. Reports on employees and volunteers shall only be received by the facility administrator, board president, licensee, registered provider, or their designee.

F. A criminal record report issued by the State Police shall not be accepted by the facility, registration or contract agency if the report is dated more than 90 days prior to the date of employment or volunteer service at the facility or date of application for approval as a foster home, adoptive home, or family day home.

§ 3.2. Validity of criminal record reports.

A. Contract agencies or facility staff shall accept only the original criminal record report. Photocopies will not be acceptable.

Exception: Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;
2. The date of employment; and
3. A statement verifying that the criminal record report has been obtained within 21 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal record report.

B. Each criminal record report shall be verified by the contract agency or operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, a new criminal history request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal record report remains valid as long as the employee, volunteer, foster parents, or family day home provider remains in continuous service at the same facility.

Exception: Criminal record reports are required every two years for voluntary registration program participants.

D. When an individual terminates employment or ceases volunteer work at one facility and begins work at another facility, the criminal record report secured for the prior facility

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shall not be valid for the new facility. A new criminal record report and sworn disclosure statement shall be required.

Exceptions:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal record report has been transferred or forwarded to the new location.

2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal record report and sworn disclosure statement are required.

§ 3.3. Maintenance of criminal record reports.

A. The original report shall be maintained at the facility where the person is employed, volunteers or is approved.

B. Criminal record reports conforming to the requirements for all employed staff or utilized volunteers and approved homes shall be maintained in the files of the facility during the time the individual is employed, volunteering or is approved and for one year after termination.

Criminal record reports shall be made available by the facility to the licensing representative or the representative of the contract agency.

Exception: See § 3.2 D 1.

C. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

D. Criminal record reports shall be maintained in locked files. These files shall be accessible only to the following facility related staff: the licensee, administrator, registered provider, board president, or their designee.

§ 3.4. Requirements for board members.

~~A. When an individual becomes an officer of the board which serves as the licensee of a facility, a criminal record report shall be obtained by the facility within 21 days after the board member assumes the position. A criminal record report shall be obtained from any officer of the board who is involved in the day-to-day operations of the facility, or who is alone with, in control of, or is supervising one or more children. When applicable, the criminal record report shall be obtained by the facility within 21 days after the board member assumes the position.~~

B. When a board officer changes position within a board, a new criminal record report is not required.

C. Officers of advisory boards are not required to obtain criminal record reports.

STATE CORPORATION COMMISSION

PROPOSED REGULATIONS

Bureau of Financial Institutions

Title of Regulation: VR 225-01-0601. **Establishing Maximum Rates of Charge and Loan Ceilings (REPEALING).**

Statutory Authority: §§ 6.1-271 and 12.1-13 of the Code of Virginia.

AT RICHMOND, MAY 10, 1995

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. BFI950172
repealing the regulation
establishing maximum rates of
charge and loan ceilings under
the Consumer Finance Act

ORDER DIRECTING NOTICE

Chapter 2 of the 1995 Acts of the General Assembly repealed §§ 6.1-271 and 6.1-271.1 of the Code of Virginia, which provide that the Commission is to determine the maximum rates of charge and the amounts of loan ceilings permitted in connection with loans made under the Consumer Finance Act ("the Act"), Chapter 6 (§ 6.1-244 et seq.) of Title 6.1 of the Code of Virginia. Effective July 1, 1995, such rates will be governed by Code § 6.1-272.1. Accordingly, the Commission proposes to repeal, effective July 1, the current regulation, VR 225-01-0601, "Establishing Maximum Rates of Charge and Loan Ceilings."

IT APPEARING that interested parties should be afforded notice of the proposed repeal and an opportunity to be heard in the matter,

IT IS ORDERED:

(1) That this matter be assigned Case No. BFI950172 and papers relating to this matter be filed therein;

(2) That on or before June 19, 1995, any interested person may file comments in support of, or in opposition to, repeal of the subject regulation, or a written request for a hearing with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. All comments and requests for a hearing shall make reference to Case No. BFI950172;

(3) That this order shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register; and

(4) That the Bureau of Financial Institutions shall send a copy of this Order to every licensee under the Act, the Virginia Financial Services Association, the Virginia Citizens Consumer Council, the Virginia Poverty Law Center, and the Office of the Attorney General, Division of Consumer Counsel, and provide a copy to any other interested person who requests one.

This Order shall also be available for inspection at, or distribution from, the Commission's Document Control Center, Tyler Building, First Floor, 13th and Main Streets, P.O. Box 2118, Richmond, Virginia 23216, telephone (804) 371-9033.

ATTESTED COPIES hereof shall be sent to the Commissioner of Financial Institutions and the Office of General Counsel.

VA.R. Doc. No. R95-504; Filed May 10, 1995, 10:20 a.m.

Bureau of Insurance

Title of Regulation: Insurance Regulation No. 24. **Rules Governing Credit Life Insurance and Credit Accident and Sickness Insurance (REPEALING).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

AT RICHMOND, MAY 4, 1995

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of CASE NO. INS950058
repealing the Commission's
Rules Governing Credit Life
Insurance and Credit Accident
and Sickness Insurance

ORDER TO TAKE NOTICE

WHEREAS, the Commission's Rules Governing Credit Life Insurance and Credit Accident and Sickness Insurance adopted in Case No. INS820162 have been superseded by the adoption of Chapter 37.1 of Title 38.2 of the Code of Virginia;

THEREFORE, IT IS ORDERED:

(1) That all interested persons TAKE NOTICE that the Commission shall enter an order subsequent to June 15, 1995, repealing the Commission's Rules Governing Credit Life and Credit Accident and Sickness Insurance unless on or before June 15, 1995, any person objecting to the repeal of the aforesaid regulation files a request for a hearing and a responsive pleading setting forth in detail their objections to the repeal of the regulation;

(2) That an attested copy of this Order be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall give further notice of the proposed repeal of the Commission's Rules Governing Credit Life Insurance and Credit Accident and Sickness Insurance by mailing a copy of this order to all insurance companies licensed to write credit life insurance and credit 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.

VA.R. Doc. No. R95-509, Filed May 10, 1995, 12:37 p.m.

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

FINAL REGULATION

Title of Regulation: VR 450-01-0078. Pertaining to Pound Net License Sales.

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: April 7, 1995.

Preamble:

This regulation limits the sale of pound net licenses to the number of pound nets licensed on or before August 5, 1994.

This regulation is promulgated pursuant to authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia. This regulation amends and readopts previous VR 450-01-0078 that was adopted on July 29, 1994, and was effective on August 5, 1994. The effective date of this regulation is April 7, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah McCalester, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

VR 450-01-0078. Pertaining to Pound Net License Sales.

~~§ 1. Authority, effective date.~~

~~A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.~~

~~B. The effective date of this regulation is August 5, 1994.~~

§ 2. 1. Purpose.

The purpose of this regulation is to limit the number of pound net licenses to the number of pound net licenses sold on or after January 1, 1994, ~~but prior to and through August 5, 1994.~~ This regulation is part of recent restrictions adopted by the Marine Resources Commission in order to reduce the weakfish fishing mortality rate and ~~thereby establish compliance with mandatory requirements of the Atlantic Coastal Fisheries Cooperative Management Act (Public Law 103-206).~~ *to be consistent with federal and interstate management measures.*

~~§ 3. 2. Definition of pound net Definitions.~~

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

~~For the purposes of this regulation a "Pound net" means a stationary or fixed fishing device consisting of several stakes or poles which have been pushed or pumped into the bottom and attached to netting which forms a straight wall or leader which serves to guide fish through a funnel and heart-shaped enclosure into a terminal head or pocket with a netting floor.~~

§ 4. 3. Limit on sale of licenses.

A. Except as provided in § 5 4 of this regulation, the total number of pound net licenses issued for 1995 shall be limited to the number of pound net licenses sold ~~prior to~~ *on or before* August 5, 1994, for calendar year 1994. No additional pound net licenses shall be sold for calendar year ~~1994~~ *1995*.

B. All eligible license renewals by those licensees who meet the requirements of subsection A of this section, applications for vacant locations, if available, and requests for transfer of license shall be made in accordance with VR 450-01-0004.

§ 5. 4. Exceptions to limit on pound net licenses.

Licenses issued for pound nets to be set in the following areas shall not be limited in number:

1. In the James River, upstream of a line connecting Scotland Wharf with Jamestown Wharf.
2. In the Mattaponi and Pamunkey Rivers, upstream of the Route 33 bridges at West Point.
3. In the Rappahannock River, upstream of the Route 360 bridge at Tappahannock.
4. In the Virginia Potomac River tributaries, upstream of the Route 301 bridge.

§ 6. 5. Penalty.

As provided in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, *and a second or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.*

/s/ William A. Pruitt
Commissioner

VA.R. Doc. No. R95-435; Filed April 7, 1995, 3:20 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD FOR ACCOUNTANCY

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

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. This regulation will help reduce the current burdensome and restrictive educational requirements for the licensure of accountants in Virginia. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-488; Filed May 4, 1995, 12:06 p.m.

AUCTIONEERS BOARD

Title of Regulation: VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board (REPEAL).

VR 150-01-2:1. Rules and Regulations of the Virginia Auctioneers Board.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-493; Filed May 4, 1995, 12:05 p.m.

BOARD FOR COSMETOLOGY

Title of Regulation: VR 235-01-02. Board for Cosmetology Regulations (REPEAL).

VR 235-01-03. Nail Technician Regulation (REPEAL).
VR 235-01-02:1. Board for Cosmetology Regulations.

Governor's Comment:

The proposed regulation would enhance the agency's efficiency by consolidating two regulations into one. It also would improve the protection of consumers through enhanced licensing standards and procedures. The agency, the Department of Planning and Budget and the Secretary have assured me that this regulation is necessary and that the fee adjustments are needed to cover the increasing administrative costs. I reserve the right to take action

authorized by the Administrative Process Act during the final adoption period after a review of the public comment.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-487; Filed May 4, 1995, 12:06 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Title of Regulation: VR 240-03-2. Regulations Relating to Private Security Services.

Governor's Comment:

This proposed regulation is partially mandated by state law. I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no specific objection to this regulation based on the information and public comment currently available. However, I am asking the agency to ensure that the final proposed regulation only exceeds the statutory mandate to the minimum extent necessary to prevent misleading or deceptive practices by unqualified or incompetent personnel, and reviews all possible alternatives to achieve that goal in the least burdensome fashion.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-492; Filed May 4, 1995, 12:04 p.m.

DEPARTMENT OF HEALTH

Title of Regulation: VR 355-18-000. Waterworks Regulations (amendments to VR 355-18-001.02, VR 355-18-002.04, VR 355-18-004.01, VR 355-18-004.04, VR 355-18-004.08, VR 355-18-004.09, VR 355-18-005.09, VR 355-18-005.10, VR 355-18-005.11, and Appendices B, F and M relating to lead and copper).

Governor's Comment:

This regulation is mandated by federal law. I have reviewed the proposed regulation on a preliminary basis. Adoption of the regulation on lead and copper levels in drinking water will enable the state to retain its primacy enforcement status under the federal Safe Drinking Water Act, thus maintaining certain flexibility in implementation. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available. However, I am asking the State Board of Health to seek the guidance of the Attorney General to ensure that this regulation is the least burdensome necessary to retain state control of this program.

/s/ George Allen
Governor
Date: April 28, 1995

VA.R. Doc. No. R95-465; Filed May 2, 1995, 12:15 p.m.

Title of Regulation: **VR 355-18-000. Waterworks Regulations** (amendments to VR 355-18-001.02, VR 355-18-004.04, VR 355-18-004.06, VR 355-18-004.07, VR 355-18-004.08, VR 355-18-004.09, VR 355-18-004.11, VR 355-18-009.13, and Appendices B, F and N relating to Phases II, IIB, and V).

Governor's Comment:

This regulation is mandated by federal law. Adoption of the regulation will enable the state to retain its primacy enforcement status under the federal Safe Drinking Water Act, thus maintaining certain flexibility in implementation. I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available. However, I am asking the State Board of Health to seek the guidance of the Attorney General to ensure that this regulation is the least burdensome necessary to retain state control of this program.

/s/ George Allen
Governor
Date: April 28, 1995

VA.R. Doc. No. R95-466; Filed May 2, 1995, 12:14 p.m.

Title of Regulation: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia (§ 2.22 D, Neonatal Services).**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. This proposed regulation has generated a large amount of public comment and written contacts to my office, much of it expressing concern about the allegedly burdensome requirements of this proposed regulation. To the extent the proposed regulation is mandated by statute, the Board of Health obviously has no discretion. However, to the extent this proposed regulation may go beyond the statutory mandate, I am asking the Board to review the proposed regulation to ensure that the worthy goal of providing better neonatal care is done in a manner that does not reduce access to care for rural populations or unnecessarily reduce the total amount of hospital capacity engaging in neonatal care.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-491; Filed May 4, 1995, 12:04 p.m.

BOARD FOR HEARING AID SPECIALISTS

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

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-494; Filed May 4, 1995, 12:05 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **VR 460-01-11. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1 (b)).**
VR 460-02-2.1100. Definition of Medicaid State Plan Health Maintenance Organizations (HMOs) (Attachment 2.1 A).

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. This regulation ensures the continuation of using Health Maintenance Organizations (HMOs) for Medicaid patients. The use of HMOs for this purpose will allow the agency to realize significant savings. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: April 28, 1995

VA.R. Doc. No. R95-469; Filed May 2, 1995, 12:13 p.m.

Title of Regulation: **VR 460-03-4.1940:1. Nursing Home Payment System (Smaller Nursing Facility Indirect Ceiling Adjustment).**

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. The regulation is mandated by state law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: May 2, 1995

VA.R. Doc. No. R95-490; Filed May 4, 1995, 12:04 p.m.

Title of Regulation: VR 460-04-8.7. Client Appeals Regulations.**Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. The regulation is intended to comply with a recent federal court decision on the agency's administrative review of client appeals. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: April 28, 1995

VA.R. Doc. No. R95-470; Filed May 2, 1995, 12:13 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY**Title of Regulation: VR 480-03-19. Coal Surface Mining Reclamation Regulation (VR 480-03-19.816.102 and VR 480-03-19.817.102. Backfilling and Grading: General Requirements).****Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. The regulation is in response to a change in the interpretation of federal regulations by the U.S. Office of Surface Mining Reclamation and Enforcement. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: April 28, 1995

VA.R. Doc. No. R95-464; Filed May 2, 1995, 12:15 p.m.

BOARD OF NURSING AND BOARD OF MEDICINE**Title of Regulation: VR 495-02-1 and VR 465-07-1. Regulations Governing the Licensure of Nurse Practitioners.****Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: April 28, 1995

VA.R. Doc. No. R95-467; Filed May 2, 1995, 12:13 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**Title of Regulation: VR 190-03-1. Regulations Governing Polygraph Examiners.****Governor's Comment:**

I have reviewed the proposed regulation on a preliminary basis. This regulation would enhance the efficiency and effectiveness of the agency's polygraph examiners licensing program. The agency, the Department of Planning and Budget and the Secretary have assured me that the proposed amendments are appropriate and that the fee adjustments are needed to cover the increasing administrative costs. However, I reserve the right to take action authorized by the Administrative Process Act after a review of the public comment during the final adoption period.

/s/ George Allen
Governor

Date: May 2, 1995

VA.R. Doc. No. R95-489; Filed May 4, 1995, 12:05 p.m.

REAL ESTATE BOARD**Title of Regulation: VR 585-01-1. Virginia Real Estate Board Licensing Regulations.****Governor's Comment:**

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: April 28, 1995

VA.R. Doc. No. R95-468; Filed May 2, 1995, 12:13 p.m.

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 VA.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.

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

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the regulations of the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects. As a part of this process public input and comments are being solicited; comments may be provided until July 29, 1995, to the administrator of the program, Mark N. Courtney, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. 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 they may be used and implemented by all those who interact with the regulatory process.

Regulations:

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

VR 130-01-1:1. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Public Participation Guidelines.

A public hearing on the regulations will be held on June 30, 1995, 2:30 p.m. at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until July 29, 1995, to Mark N. Courtney, Assistant Director, Virginia Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact Mark N. Courtney, Assistant Director, Virginia Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8514.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the regulations of the Board for Waterworks and Wastewater Works Operators. As a part of this process, public input and comments are being solicited; comments may be provided

until July 31, 1995, to the Administrator of the program, Nancy Taylor Feldman, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. 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 they may be used and implemented by all those who interact with the regulatory process.

Regulations:

VR 675-01-02. Board for Waterworks and Wastewater Works Operators.

VR 675-01-01:1. Board for Waterworks and Wastewater Works Operators Public Participation Guidelines.

A public hearing on the regulations will be held on July 13, 1995, 10 a.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until July 31, 1995, to Nancy Taylor Feldman, Assistant Director, Virginia Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact Nancy Taylor Feldman, Assistant Director, Virginia Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8590.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the *Virginia Register*

DEPARTMENT FOR THE AGING

† Notice of Public Comment Period on 1996-99 State Plan for Aging Services

Notice is hereby given that the Department for the Aging will accept comments on the proposed State Plan for Aging Services developed pursuant to Titles III and VII of the Older Americans Act, as amended. Interested persons may submit data, views, and arguments, either orally or in writing, to the department.

The State Plan for Aging Services will (i) identify the Virginia Department for the Aging as the sole state agency designated to develop and administer Title III programs in Virginia; (ii) identify the geographic boundaries of each Planning and Service Area in Virginia and the Area Agency on Aging designated for each Planning and Service Area; (iii) include a plan for the distribution and proposed use of Title III funds within Virginia; (iv) set forth statewide program objectives to implement the requirements of Title III; and (v) provide prior federal fiscal year information related to low-income minority and rural older persons in Virginia.

The Older Americans Act requires that an Elder Rights Plan be included in the State Plan as an addendum. The Elder Rights Plan will describe the manner in which the department for the Aging will develop a comprehensive, coordinated Elder Rights system to carry out Title VII of the Older Americans Act, including the goals, priorities, and expected outcomes of such a system. The Plan also will describe the methods which the Department for the Aging will use to periodically assess the status of elder rights in Virginia. The State Plan for Aging Services will cover the four-year period from October 1, 1995, through September 30, 1999. The Department anticipates submitting the Plan to the federal Administration on Aging in August, 1995. At least one public hearing will be held on the proposed State Plan for Aging Services. Contact the department for information about the time and location. Persons who testify at the hearing are encouraged to provide a written copy of their comments to the hearing officer. An interpreter for the deaf and hard-of-hearing will be provided upon request. Written comments on the Plan may be submitted until 5 p.m. on July 1, 1995. Comments should be sent to: Ms. Kathy Vesley, Director, Division of Aging Consumer Services, Virginia Department for the Aging, 700 East Franklin Street - 10th Floor, Richmond, Virginia 23219-2327. To receive a copy of the proposed State Plan and to obtain further information, write to the Department for the Aging at the address above or call 804-225-2271 or toll-free in Virginia 1-800-552-3402.

SECRETARY OF THE COMMONWEALTH

Notice to Counties, Cities, Towns, Authorities, Commissions, Districts and Political Subdivisions of the Commonwealth

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year.

The following form may be photocopied for use herein described.

Contact: Sheila Evans, Conflict of Interest and Appointments Specialist, P.O. Box 2454, Richmond, VA 23201-2454, Old Finance Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

General Notices/Errata

Filing Form per §2.1-71 of the *Code of Virginia-1995*
Office of the Secretary of the Commonwealth

OFFICIAL TITLE OF POLITICAL SUBDIVISION: _____
ADDRESS: _____

<u>Type of Obligation</u>	<u>Date Issued</u>	<u>Amount of Issue</u>	<u>Balance Outstanding</u>	<u>Type of Project Financed</u>
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DEPARTMENT OF ENVIRONMENTAL QUALITY

† Notice of Availability for Public Review

An Environmental Assessment of a Proposal to Drill Coalbed Methane Gas Wells in Chesterfield County, Virginia

Purpose of notice: This notice serves to inform persons interested in reviewing and commenting on the environmental impact assessment described herein of the availability of the assessment as required by § 62.1-195.1(D) of the Code of Virginia. A general description of the proposed activity, its location, and the content of the environmental impact assessment follows.

Location: Commonwealth Energy Company, the operating affiliate of Maverick Oil and Gas Company, has proposed locating three coalbed methane gas extraction wells within the Chesterfield County portion of the Richmond Basin. The three proposed well sites are located approximately one half mile from the community of Winterpock. The actual sites are within 1,500 feet of each other in an area to the south of Route 664 (Coalboro Road) and to the west of Route 621. The proposed sites are located on the Winterpock, Virginia Quadrangle, USGS topographic map, 7.5 minute series (1987).

Project description: The purpose of the proposed well drilling operation in Chesterfield County is to explore the possibility of extracting marketable quantities of coalbed methane or natural gas from the Richmond Basin. The proposed drilling operation would require approximately a day for site preparation, 24 to 48 hours for the actual drilling operation, and two to three days for additional testing. Each well site will require a maximum area of one acre. Up to 300 gallons of waste water per day is expected to be produced from drilling operations. If gas extraction proves marketable, the gas wells will be connected to the existing natural gas pipeline of Commonwealth Gas Company which is located approximately three miles to the north of the proposed wells. Provisional plans exist for additional wells throughout the Richmond Basin, contingent upon the success of these initial wells. Upon final restoration of the site, the well monitoring meter box and access road will be the only aboveground facilities.

The environmental impact assessment submitted for the proposed project includes an executive summary, a discussion of technical issues, location and vicinity maps, descriptions of the proposed drilling and operating plans, plat maps of the affected sites, discussions of realized and potential environmental impacts, plans for mitigation and avoidance, estimation for the probability of discharges and accidents, spill/release contingency plans, an evaluation of economic impacts, and a final assessment of secondary environmental and economic impacts.

Location of the assessment: A copy of the assessment may be reviewed during regular business hours at the offices of the Department of Environmental Quality, Office of Grants Management/Intergovernmental Affairs, 629 East Main

Street, Sixth Floor, Richmond, Virginia. Another copy of the assessment will be available for review at the Chesterfield County Planning Office located in the Chesterfield County Administration Building, 9901 Lori Road, Chesterfield, Virginia.

Deadline for public comment: Written comments on the environmental impacts of the proposed drilling activities may be submitted until 5 p.m., June 29, 1995. Comments must be addressed to Michael Murphy, Department of Environmental Quality, Office of Grants Management/Intergovernmental Affairs, 629 East Main Street, 6th Floor, Richmond, Virginia 23219.

Contact: For additional information, contact Tom Griffin, Department of Environmental Quality, at the address above or call (804) 762-4330.

DEPARTMENT OF HEALTH

**Maternal and Child Health Block Grant Application
Fiscal Year 1996**

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 15, 1995, the Maternal and Child Health Services Block Grant Application for the period October 1, 1995, through September 30, 1996, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

- Preventive and primary care services for pregnant women, mothers and infants up to age one
- Preventive and primary care services for children and adolescents
- Family-centered, community-based coordinated care and the development of community-based systems of services for children with special health care needs

The Maternal and Child Health Services Block Grant Application makes assurances to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of Section 505, Title V, Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 26 through June 25, 1995, for review and public comment on the Block Grant Application. Copies of the document will be available as of May 26, 1994, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Janice M. Hicks at the address listed below. Written comments must be received by June 25, 1995, at the following address:

Virginia Department of Health
Office of Family Health Services
1500 East Main Street, Room 104-B
Richmond, VA 23219-2448
(804) 371-0478
FAX (804) 692-0184

General Notices/Errata

DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

† VR 425-02-52. Logging, General Industry (§1910.266)

Partial Stay of Enforcement

On April 17, 1995, the Safety and Health Codes Board adopted a partial stay of enforcement of the effective date for several paragraphs of federal OSHA's final rule entitled, "Logging Operations, General Industry," §1910.266, VR 425-02-52, as published by federal OSHA on February 8, 1995 (60 Fed. Reg. 7449). Paragraphs affected by the partial stay of enforcement are as follows: (d)(1)(v), insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii), insofar as it requires face protection; (d)(2)(iii), for first-aid kits that contain all the items listed in Appendix A of the regulation; (f)(2)(iv), (f)(2)(xi), (f)(3)(ii), (f)(3)(vii), (f)(3)(viii) and (f)(7)(ii), insofar as parking brakes are required to stop the machine; (g)(1) and (g)(2), insofar as they require inspection and maintenance of employee-owned vehicles; and (h)(2)(vii), insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

The purpose of the partial stay of enforcement is to allow time for federal OSHA to clarify language in the regulatory text to more accurately express federal OSHA's intent with respect to the affected provisions.

The Virginia Occupational Safety and Health (VOSH) effective date for this partial stay of enforcement extends from June 1, 1995 until August 9, 1995. The remaining requirements of VR 425-02-52, Logging, General Industry, §1910.266, are unaffected by this partial stay and will go into effect as scheduled on June 1, 1995.

† VR 425-02-113. Personal Protective and Life Saving Equipment, Construction Industry (§§1926.95 - 1926.107)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the effective date of the Fall Protection standard, Subpart E, include §§1926.104, "Safety belts, lifelines, and lanyards," 1926.105, "Safety nets," and 1926.107, "Definitions applicable to this subpart," of VR 425-02-113, "Personal Protective and Life Saving Equipment, Construction Industry". The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work, which also impacts Subpart E.

The Virginia Occupational Safety and Health (VOSH) effective date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements for other Fall Protection regulations in the Construction Industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

† VR 425-02-175. Safety Nets, Construction Industry (§1926.753)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the Fall Protection standard, Subpart E, include VR 425-02-175, Safety nets, Construction Industry, §1926.753. The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work.

The Virginia Occupational Safety and Health (VOSH) date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements of other Fall Protection regulations for the construction industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

† VR 425-02-177. Fall Protection, Construction Industry (§§1926.500 through 1926.503)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the effective date of the Fall Protection standard include sections 1926.500 through 1926.503 of the Fall Protection standard, VR 425-02-177. The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work.

The Virginia Occupational Safety and Health (VOSH) effective date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements of other Fall Protection regulations in the Construction Industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

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: (804) 692-0625.

**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 OBJECTIONS -
RR08

CALENDAR OF EVENTS

Symbol 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

June 16, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to amend regulations entitled: **VR 105-01-2. Board for Accountancy Regulations.** The purpose of the proposed amendments is to reduce current educational requirements and eliminate the provision for specific coursework requirements.

Statutory Authority: §§ 54.1-201 and 54.1-2002 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

ADVISORY COMMITTEE ON AGING, DISABILITY AND LONG-TERM SERVICES

† May 31, 1995 - 9:30 a.m. -- Open Meeting
Wytheville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 1, 1995 - 9:30 a.m. -- Open Meeting
Richlands, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 5, 1995 - 9:30 a.m. -- Open Meeting
Bedford, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 6, 1995 - 9:30 a.m. -- Open Meeting
Blackstone, Virginia.

† June 9, 1995 - 9:30 a.m. -- Open Meeting
Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 12, 1995 - 9:30 a.m. -- Open Meeting

Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 14, 1995 - 9:30 a.m. -- Open Meeting
Fredericksburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 16, 1995 - 9:30 a.m. -- Open Meeting
Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† June 19, 1995 - 9:30 a.m. -- Open Meeting
Fairfax, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Secretary of Health and Human Resources, Kay Coles James, and the Advisory Committee on Aging, Disability and Long-Term Care Services are hosting forums on long-term care and aging services. Consumers, providers, local governments, human services agencies, and others interested in the delivery of long-term care and aging services are encouraged to attend to provide recommendations for improving the delivery of these services for the elderly and people with disabilities. To attend a forum, you must register in advance. Registration will be accepted on a first-come basis because space is limited. Confirmations containing more detailed information will be sent to registrants. For information on the forums or to register, call or write to the Advisory Committee on Aging, Disability and Long-Term Care Services at the address below. If you are unable to attend and would like to submit written comments, please send your remarks to the Advisory Committee.

Contact: Cindi Bowling, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 225-4512 or toll-free 1-800-343-0634/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

† June 7, 1995 - 10 a.m. -- Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia. ☎

The board will discuss tax collections, new board appointees, the 1995-96 budget, and marketing recommendations. 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 accommodations in order to participate at 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 1008, Richmond, VA 23219, telephone (804) 371-6104.

Virginia Horse Industry Board

June 6, 1995 - 10 a.m. -- Open Meeting

July 11, 1995 - 10 a.m. -- Open Meeting

Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ☎

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 accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., #906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

Virginia Marine Products Board

† **June 6, 1995 - 5:30 p.m.** -- Open Meeting

Nick's Steak and Spaghetti House, Route 17, Gloucester Point, 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 to discuss old and new 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 accommodations in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA 23602, telephone (804) 874-3474.

STATE AIR POLLUTION CONTROL BOARD

State Advisory Board on Air Pollution

June 2, 1995 - 9 a.m. -- Open Meeting

Department of Environmental Quality, Innsbrook Corporate Center, Board Room, 6900 Cox Road, Richmond, Virginia.

A regular meeting of the board.

Contact: Kathy Frahm, Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4376 or FAX (804) 762-4346.

ALCOHOLIC BEVERAGE CONTROL BOARD

May 31, 1995 - 9:30 a.m. -- Open Meeting

June 12, 1995 - 9:30 a.m. -- Open Meeting

June 26, 1995 - 9:30 a.m. -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

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

June 30, 1995 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

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 ☎

† **June 30, 1995 - 2:30 p.m.** -- Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A public hearing will be held in accordance with the provisions of Executive Order 15(94) requiring a comprehensive review of all regulations relating to architects, professional engineers, land surveyors and landscape architects. Persons desiring to participate in the meeting and requiring special accommodations or

Calendar of Events

interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

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 Interior Designers

June 22, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Landscape Architects

June 15, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

June 7, 1995 - 9 a.m. -- Open Meeting
June 8, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

NOTE: CHANGE IN MEETING DATE

† **June 13, 1995 - 9 a.m. -- Open Meeting**
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

VIRGINIA COMMISSION FOR THE ARTS

June 1, 1995 - 10 a.m. -- Open Meeting
Bloemendaal, 1800 Lakeside Avenue, Lecture Hall, Richmond, Virginia. ♿

A quarterly business meeting to approve grants.

Contact: Lorraine Woodbury, Executive Secretary, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219-2010, telephone (804) 225-3132 or FAX (804) 225-4327.

AVIATION BOARD

† **June 20, 1995 - 3 p.m. -- Open Meeting**
Department of Aviation, 5702 Gulfstream Road, Sandston, Virginia. ♿ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

† **June 21, 1995 - 9 a.m. -- Open Meeting**
Sheraton Inn, Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular bi-monthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BARBERS

NOTE: CHANGE IN MEETING TIME

June 5, 1995 - 10 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 the department at (804) 367-0500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations 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, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **June 22, 1995 - 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)

A meeting to conduct general business, including a review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by June 1, 1995, from the Chesapeake Bay Local Assistance Department.

Contact: Florence E. Jackson, Program Support Technician, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

Central Area Review Committee

June 1, 1995 - 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 review committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the 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

June 7, 1995 - 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 review committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the 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 ☎

Southern Area Review Committee

June 1, 1995 - 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 review committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the 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 ☎

BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

† **June 7, 1995 - 10:30 a.m.** -- Open Meeting

Virginia Marine Resources Commission, Meeting Room, Newport News, Virginia. ☎

A meeting to discuss proposals from localities requesting matching grant funds from the board.

Contact: Susan M. Townsend, Program Support Technician, Department of Conservation and Recreation, P.O. Box 1024, Gloucester Point, VA 23062, telephone (804) 642-7121 or FAX (804) 642-7126.

Calendar of Events

DEPARTMENT OF CONSERVATION AND RECREATION

Shenandoah Scenic River Advisory Board

June 15, 1995 -- 4 p.m. -- Open Meeting
Clarke County Courthouse, 2nd Floor, Board Room, Berryville, 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., Richmond, VA 23219, telephone (804) 786-4132, (804) 786-2121/TDD, or FAX (804) 371-7899.

BOARD FOR CONTRACTORS

† June 21, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act, and to review consent order offers in lieu of further disciplinary proceedings. 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 accommodations at least two weeks in advance for consideration of your request.

Contact: Debbie A. Amaker, Legal Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582 or (804) 367-9753/TDD ♿

Recovery Fund Committee

June 28, 1995 - 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 Holly Erickson. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

BOARD FOR COSMETOLOGY

June 12, 1995 - 10 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 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, FAX (804) 367-2475 or (804) 367-9753/TDD ♿

DISABILITY SERVICES COUNCIL

† June 9, 1995 - 1 p.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review Rehabilitative Services Incentive Fund proposals and to authorize awards.

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 INTERAGENCY COORDINATING COUNCIL ON EARLY INTERVENTION

June 14, 1995 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health and Mental Retardation Services, 10299 Woodman Road, Richmond, Virginia. ♿

A quarterly meeting of the council to discuss issues relating to the implementation of a comprehensive system of early intervention services for infants and toddlers with disabilities, and their families.

Contact: Richard Corbett, Department of Mental Health, Mental Retardation and Substance Abuse Services, Early Intervention, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

BOARD OF EDUCATION

June 22, 1995 -- 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 meetings. 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) 225-2024 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

June 14, 1995 - 6 p.m. -- Open Meeting
Virginia-American Water Company, 2223 Duke Street, Alexandria, Virginia. (Interpreter for the deaf provided upon request)

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, City of Alexandria, P.O. Box 178, Alexandria, VA 22313, telephone (703) 838-3825 or (703) 838-5056/TDD

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† June 7, 1995 - 3 p.m. -- Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A regular meeting.

Contact: L.A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298 or (703) 665-5645.

DEPARTMENT OF ENVIRONMENTAL QUALITY

June 14, 1995 - 9 a.m. -- Open Meeting
July 19, 1995 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

A meeting of the joint panel. This meeting is designed to define, assess and make recommendations in more closely aligning the Department of Environmental Quality's air, water and waste permitting procedures. This meeting date is subject to change. Please contact Kim Anderson for possible changes in meeting date or additional information.

Contact: Kim Anderson, Administrative Staff Assistant, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4020, FAX (804) 762-4019 or (804) 762-4021/TDD

STATE EXECUTIVE COUNCIL

† June 30, 1995 - 9 a.m. -- Open Meeting
Department of Youth and Family Services, 700 East Franklin Street, 4th Floor, Board Room, Richmond, Virginia.

The State Executive Council is established under § 2.1-746 of the Code of Virginia. The monthly meeting of the council is to discuss and make decisions, set policies, and review and act appropriately on Comprehensive Services Act-related issues as they pertain to at-risk youth and families.

Contact: Alan G. Saunders, Director, State Executive Council, 700 E. Franklin St., Richmond, VA 23219, telephone (804) 786-5394.

VIRGINIA FIRE SERVICES BOARD

† June 15, 1995 - 7:30 p.m. -- Public Hearing
Sheraton Inn, Fredericksburg, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† June 16, 1995 - 9 a.m. -- Open Meeting
Sheraton Inn, Fredericksburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† June 15, 1995 - 10 a.m. -- Open Meeting
Sheraton Inn, Fredericksburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† June 15, 1995 - 9 a.m. -- Open Meeting
Sheraton Inn, Fredericksburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† June 15, 1995 - 1 p.m. -- Open Meeting
Sheraton Inn, Fredericksburg, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

Calendar of Events

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

July 12, 1995 - 9 a. m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. The public hearing will begin at 10 a.m. Pursuant to Executive 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following:

- VR 320-01-2. General Regulations of the Board of Funeral Directors and Embalmers
- VR 320-01-3. Regulations for Preneed Funeral Planning
- VR 320-01-4. Resident Training Regulations.

These regulations will be reviewed to ensure that (i) it is essential to protect the health and safety of the citizens or necessary for the performance of an important government function; (ii) it is mandated or authorized by law; (iii) it offers the least burdensome alternative and the most reasonable solution; and (iv) it is clearly written and easily understandable.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, (804) 662-7197/TDD ☎, or FAX (804) 662-9943.

BOARD OF GAME AND INLAND FISHERIES

† **June 9, 1995 - 10 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Finance Committee will meet to review the Department of Game and Inland Fisheries' budget.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY TRAINING COMMITTEE

June 6, 1995 - 10 a.m. -- Open Meeting
VDES Training Room, 310 Turner Road, Richmond, Virginia.

A regularly scheduled meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990,

desiring to attend this meeting should contact the Virginia Department of Emergency Services 10 days prior to the event to ensure appropriate accommodations are provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 308 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

June 1, 1995 - 10 a.m. -- Open Meeting
Stratford Inn, 2500 Riverside Drive, Danville, Virginia. (Interpreter for the deaf provided upon request)

There will be a worksession from 10 a.m. to 5 p.m.; a reception at 6:30; and an informal dinner from 7 to 10 p.m.

Contact: Paul W. Matthias, Interim Staff to the Board of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

June 2, 1995 - 9 a.m. -- Open Meeting
Stratford Inn, 2500 Riverside Drive, Danville, Virginia. (Interpreter for the deaf provided upon request)

A business meeting.

Contact: Paul W. Matthias, Interim Staff to the Board of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

June 3, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-18-000. Waterworks Regulations (R-Phase II, IIB and V)**. The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency mandates to retain this authority. These proposed amendments to the existing Waterworks Regulations incorporate the federal Safe Drinking Water Act Phase II, IIB, and V Rules. These amendments consist of maximum contaminant levels, reporting, public notification, treatment technique and monitoring requirements for 13 new volatile organic chemicals, four revised and 24 new synthetic organic chemicals, three revised and nine new inorganic chemicals, and 11 new unregulated chemicals. These regulations follow the United States Environmental Protection Agency's standardized monitoring requirements with a nine-year compliance cycle broken into three three-year compliance periods. The monitoring requirements also define the locations and frequency with which the waterworks owners must comply. The amendments conform the state program to federal law and should

avoid duplicative enforcement action by the United States Environmental Protection Agency under federal law.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Contact: Monte J. Waugh, Technical Services Assistant, Division of Water Supply Engineering, Department of Health, 1500 East Main St., Room 109, Richmond, VA 23219, telephone (804) 371-2885 or FAX (804) 786-5567.

June 3, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-18-000. Waterworks Regulations (Lead and Copper)**. The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency mandates to retain this authority. These proposed amendments to the existing Waterworks Regulations incorporate the federal Safe Drinking Water Act Lead and Copper Rule. These amendments consist of maximum contaminant levels, reporting, public notification, treatment technique and monitoring requirements for lead and copper. The amendments conform the state program to federal law and should avoid duplicative enforcement action by the United States Environmental Protection Agency under federal law.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Contact: Allen R. Hammer, P.E., Director, Division of Water Supply Engineering, Department of Health, 1500 East Main St., Room 109, Richmond, VA 23219, telephone (804) 371-2885 or FAX (804) 786-5567.

DEPARTMENT OF HEALTH PROFESSIONS

Task Force on Unified Regulation of Psychologists

† **June 19, 1995 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting to review statutory revisions which provide for psychologists being licensed under a single board, including public comment on its proposal. Public comment on this topic will be received at the beginning of the meeting.

Contact: Robert A. Nebiker, Deputy Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **June 13, 1995 - 9:30 a.m.** -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☎

A monthly meeting.

Contact: Barbara Ryder, Director of Administration, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

June 13, 1995 - 9:30 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

July 11, 1995 - 9:30 a.m. -- Open Meeting
Northern Virginia Community College, Annandale Campus, Annandale, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. For additional information about the meeting or location please contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632

COMMISSION ON THE FUTURE OF HIGHER EDUCATION IN VIRGINIA

June 14, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to discuss issues of interest to higher education in Virginia. For a more detailed agenda please contact the Council of Higher Education.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **June 14, 1995 - 10:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, Virginia Historic Preservation Foundation, 222 Governor St., Richmond, VA 23219, telephone (804) 786-3143, FAX (804) 225-4261 or (804) 786-1934/TDD ☎

Calendar of Events

HOPEWELL INDUSTRIAL SAFETY COUNCIL

June 6, 1995 - 9 a.m. -- Open Meeting
July 11, 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 Services Coordinator,
300 North Main Street, Hopewell, VA 23860, telephone (804)
541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

June 2, 1995 -- Public comments may be submitted through
this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of
the Code of Virginia that the Board of Housing and
Community Development intends to amend regulations
entitled: VR 394-01-21. **Virginia Uniform Statewide
Building Code, Volume I, New Construction
Code/1993.** The purpose of the proposed action is to
amend the building code to provide for local option
enforcement of acoustical treatment measures in the
construction of residential buildings near airports.

Statutory Authority: § 36-99.10:1 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager,
Department of Housing and Community Development, The
Jackson Center, 501 N. 2nd St., Richmond, VA 23219,
telephone (804) 371-7170.

† June 26, 1995 - Noon -- Open Meeting
Department of Housing and Community Development, The
Jackson Center, 501 North Second Street, Richmond,
Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly business meeting of the board.

Contact: Stephen Calhoun, CPA, Department of Housing
and Community Development, The Jackson Center, 501 N.
2nd St., Richmond, VA 23219, telephone (804) 371-7013,
FAX (804) 371-7090 or (804) 371-7089/TDD ♿.

STATEWIDE INDEPENDENT LIVING COUNCIL

† June 6, 1995 - 10 a.m. -- Open Meeting
Central Virginia Independent Living Center, 2900 West Broad
Street, Richmond, Virginia.

A meeting to finalize the Fiscal Year 1996 Independent
Living State Plan.

Contact: Catherine Northan, Chairperson, or Kathy Hayfield,
SILC Staff, Department of Rehabilitative Services, 8004
Franklin Farms Drive, Richmond, VA 23288, telephone (804)
662-7134 (Hayfield), (804) 850-5922 (Northan), toll-free 1-
800-552-5019/TDD and Voice and (804) 662-9040/TDD ♿.

VIRGINIA'S INTERCOMMUNITY TRANSITION COUNCIL

† June 1, 1995 - 9:30 a.m. -- Open Meeting
Virginia Polytechnic Institute and State University, 225 Squire
Student Center, Old Dominion Room, Blacksburg, Virginia. ♿
(Interpreter for the deaf provided upon request)

State and local representative from 13 state agencies,
the Social Security Administration, and representatives
of the business and consumer community form the
Virginia Intercommunity Transition Council (VITC). The
VITC meets quarterly to focus on strategic targets to
move Virginia forward in the development of statewide
and systematic transition services for all youth with
disabilities. Eleven-thirty to 12:30 of every meeting is
designated for public comment to enable persons or
groups who are not standing members of the VITC to
express opinions and recommendations to the VITC
regarding transition issues.

Contact: Kathy Trossi, Education Services Manager, or
Sharon deFur, Associate Specialist/Transition, Department of
Rehabilitative Services, 8004 Franklin Farms Dr., Richmond,
VA 23288-0300, telephone (804) 662-7606, toll-free 1-800-
552-5019 or (804) 225-2702/TDD ♿.

LIBRARY BOARD

June 5, 1995 - 10:30 a.m. -- Open Meeting

June 6, 1995 - 10:30 a.m. -- Open Meeting

Location to be announced.

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian,
The Library of Virginia, 11th Street at Capitol Square,
Richmond, VA 23219, telephone (804) 786-2332.

State Networking Users Advisory Board

† June 12, 1995 - 10 a.m. -- Open Meeting
Jefferson-Madison Regional Library, 201 East Market Street,
Madison Room, Charlottesville, Virginia. ♿ (Interpreter for the
deaf provided upon request)

A meeting to discuss administrative matters of the board.

Contact: Jean H. Taylor, Secretary to the State Librarian,
The Library of Virginia, 11th Street at Capitol Square,
Richmond, VA 23219, telephone (804) 786-2332.

VLIN Task Force/Automation and Networking Committee

June 1, 1995 - 10 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd
Floor, Supreme Court Room, Richmond, Virginia. ♿

A meeting to discuss strategic directions for the
development of the Virginia Library and Information
Network.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

June 21, 1995 - 11 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting of the council, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting date to ascertain whether 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

June 5, 1995 - 11 a.m. -- Open Meeting
Pearisburg Community Center, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg - Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ♿

June 5, 1995 - 7 p.m. -- Public Hearing
Pearisburg Community Center, Pearisburg, Virginia.

A public hearing regarding the Town of Pearisburg - Giles County Voluntary Settlement Agreement. Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 Eighth Street Office Bldg, Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ♿

MARINE RESOURCES COMMISSION

† **June 27, 1995 - 9:30 a.m.** -- Open Meeting
Marine Resources Commission, 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

† **June 13, 1995 - 10 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss medical assistance services and to take action on issues pertinent to the board.

Contact: Cynthia Klisz, Executive Assistant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099 or toll-free 1-800-343-0634.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

June 2, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.7. Client Appeals Regulations**. The purpose of this proposal is to abolish the Medical Assistance Appeals Panel (MAAP) as is necessary for the efficient and economical operation of a government function and to comply with the order of the court.

42 CFR Part 431 Subpart E concerns fair hearings for applicants and recipients. This subpart implements § 1902(a)(3) of the Social Security Act (Act), which requires that a State Plan for Medical Assistance provide an opportunity for a fair hearing to any persons whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements §§ 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and those adversely

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affected by the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Act.

This section of the federal regulations establishes the requirements for a hearing system, recipient notice requirements which must be met by the agency, recipients' rights to hearings, procedures, hearing decisions, due process standards, and corrective actions. DMAS' current MAAP is not required by either federal or state law.

The present DMAS administrative appeals process involves two levels. If the client is dissatisfied with the local social services agency's decision denying or reducing eligibility or services, the decision may be appealed to DMAS. A DMAS hearing officer conducts a fair and impartial hearing and issues a decision. That decision may be appealed to a circuit court or, at the option of the appellant, to the Medical Assistance Appeal Panel. If MAAP review is sought, the MAAP decision can also be appealed to a circuit court.

On January 28, 1994, an order was entered by Judge James H. Michael, Jr., in the U.S. District Court for the Western District of Virginia in the case of Shifflet v. Kozlowski (Civil Action No. 92-00072). Judge Michael ordered DMAS to comply with federal law by issuing final agency decisions to appellants within 90 days of the appeals. The court concluded that both hearing officer decisions and MAAP decisions must comply with the 90-day rule. The department has concluded that it is impossible, with present staff, to complete both levels of appeals within 90 days.

Currently, the Virginia Medical Assistance Program operates with two levels of appeal: the hearing officer level and the Medical Assistance Appeal Panel. The MAAP is not required by state or federal law. A recent federal court ruled that the entire administrative appeals process for applicants for or recipients of medical assistance must be completed within 90 days. The 90-day deadline cannot be met as long as both appeal levels exist.

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

Public comments may be submitted through June 2, 1995, to Diana Salvatore, Director, Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

BOARD OF MEDICINE

June 7, 1995 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

July 1, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The proposed amendments clarify prohibited sexual contact with patients; remove burdensome, outdated language on acupuncture; and eliminate the requirements for a state examination for chiropractic licensure.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 et seq. of the Code of Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9925.

(703) 464-7206.

† **June 8, 1995 - 8 a.m.** -- Open Meeting

† **June 9, 1995 - 8 a.m.** -- Open Meeting

† **June 10, 1995 - 8 a.m.** -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1, 2, 3 and 4, Richmond, Virginia. ☎

A meeting to conduct general board business, receive committee and board reports, and discuss any other items which may come before the board. The board will also meet to review reports, interview licensees, and make decisions on disciplinary matters. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9923, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Credentials Committee

† **June 10, 1995 - 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 board 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 entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9923, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† June 2, 1995 - 9 a.m. -- Open Meeting
Western State Hospital, Jeffries Building, Room 86,
Staunton, Virginia.

A regular meeting to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Theresa P. Evans, Acting State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988 or (804) 371-8977/TDD ☎

DEPARTMENT OF MINES, MINERALS AND ENERGY

June 6, 1995 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, Buchanan-Smith Building, U.S. Route 23, Room 219, Big Stone Gap, Virginia.

June 16, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-03-19. Coal Surface Mining Reclamation Regulations.** The proposed amendment makes permanent the October 19, 1994, emergency regulation amendment allowing continued use of scalp rock in highwall backfills on surface coal mines.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted through June 16, 1995, to Danny Brown, Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

Contact: Les Vincent, Reclamation Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

VIRGINIA MUSEUM OF FINE ARTS

June 6, 1995 - 8 a.m. -- Open Meeting
July 5, 1995 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A briefing for museum officers of museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Planning Committee

June 7, 1995 - 9:30 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Library Reading Room, Richmond, Virginia. ☎

A review of the Strategic Plan Steering Committee meeting of June 6. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Strategic Plan Steering Committee

June 6, 1995 - 2 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Library Reading Room, Richmond, Virginia. ☎

A long-range planning workshop. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

Nurse Aide Registry

† June 12, 1995 - 9 a.m. -- Open Meeting
† June 14, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A special conference committee will meet to hold informal conferences for certified nurse aides. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7310 or (804) 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

June 2, 1995 -- Public 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 Nursing and the Board of Medicine intend to amend regulations entitled: **VR 495-02-1 and VR 465-07-1. Regulations Governing the Licensure of Nurse Practitioners.** The Boards of Nursing and Medicine propose amendments to

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these regulations as the result of a biennial review. The changes proposed will add a definition of collaboration, delete a restrictive definition of supervision and clarify the categories of licensed nurse practitioners. Clarification of compliance with the Administrative Process Act in administrative proceeding is also included.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

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, FAX (804) 662-9943 or (804) 662-7197/TDD ☎.

BOARD OF OPTOMETRY

† **June 7, 1995 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

Formal hearings. 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, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

DEPARTMENT OF STATE POLICE

June 16, 1995 -- Public comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.** These regulations establish the procedures and forms to be used in the registration of persons required by law to register with the Sex Offender Registry and the lawful dissemination of the Sex Offender Registry.

Statutory Authority: § 19.2-390.1 of the Code of Virginia.

Contact: Lieutenant John G. Weakley, Assistant Records Management Officer, Department of State Police, Records Management Division, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

POLYGRAPH EXAMINERS ADVISORY BOARD

June 27, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

The board will meet to review new enforcement procedures, administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns, and to consider other matters which may require board action. A public comment period will be scheduled

at the beginning of the meeting. 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. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Polygraph Examiners Advisory Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☎

BOARD OF PROFESSIONAL COUNSELORS

† **June 8, 1995 - 9 a.m.** -- Public Hearing
Koger Center, 8004 Franklin Farms Drive, Lee Building, 1st Floor, Room 101, Richmond, Virginia.

† **July 28, 1995** -- Public 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 Professional Counselors intends to adopt regulations entitled: **VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.** New regulations governing the certification of rehabilitation providers are proposed by the Board of Professional Counselors to provide for (i) fees to cover the application processing (\$100) and annual certification review (\$50); and (ii) standards of practice that establish guidelines for professional conduct, grounds for disciplinary action for misconduct, and reinstatement procedures following denial of certification or disciplinary action.

Statutory Authority: §§ 54.1-2400 and 54.1-3514 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

June 12, 1995 - 10 a.m. -- Open Meeting
Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

June 12, 1995 - 2 p.m. -- Public Hearing
Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia. ☎

The board will conduct a public hearing in connection with its study of the feasibility of including carpenters and masons in the Tradesmen Certification Program. The study is a result of Senate Joint Resolution 321, which passed in the 1995 session of the Virginia General Assembly. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS ADVISORY COUNCIL

June 15, 1995 - 9 a.m. -- Open Meeting
Shoney's Inn of Richmond, 7007 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regularly scheduled bi-monthly meeting of the council. There will be opportunity for public comment at 9 a.m.

Contact: Barbara Hoban, Advocate, 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.

BOARD OF PSYCHOLOGY

† **June 13, 1995 - 9 a.m. -- Open Meeting**
† **June 13, 1995 - 1 p.m. -- Open Meeting**
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

An informal conference conducted in accordance with § 9-6.14:11 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7328 or (804) 662-7197/TDD ☎

REAL ESTATE BOARD

May 31, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will discuss legislation enacted by the 1995 session of the General Assembly.

Contact: Emily O. Wingfield, Acting Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

† **June 16, 1995 - 8:30 a.m. -- Open Meeting**
Hyatt Regency, Reston Town Center, Reston, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting of the board to include review of investigative matters, consideration of applications, various requests to the board for information, and discussion of legislation and emergency regulations.

Contact: Emily O. Wingfield, Acting Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

RECYCLING MARKETS DEVELOPMENT COUNCIL

† **June 8, 1995 - 10 a.m. -- Open Meeting**
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

The council will meet to continue work on developing and monitoring a plan to strengthen Virginia's recycling infrastructure and markets; setting forth strategies primarily designed to improve the supply, quantity, and quality of recyclables; and providing strategies for increasing the demand for recycled products and expanding the capacity of collectors, processors and manufacturers to handle and use specified recyclable materials. Subcommittee meetings, if appropriate, will be held prior to or after the general council meeting. The subcommittees will meet from 10 to 11:30; council will meet from 11:30 a.m. to 12:30 p.m., followed by a lunch break.

Contact: Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4488.

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† **June 22, 1995 - 4 p.m. -- Open Meeting**
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

Calendar of Events

BLUE RIBBON COMMISSION ON SCHOOL HEALTH

† June 1, 1995 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

The second meeting of the commission pursuant to
Senate Joint Resolution 155(1994).

Contact: Nancy Ford, School Health Nurse Consultant,
Department of Health, Division of Child and Adolescent
Health, 1500 E. Main St., Room 137, Richmond, VA 23218-
2448, telephone (804) 786-7367.

† June 12, 1995 - 7 p.m. -- Public Hearing
Atlee High School, 10301 Atlee Station Road, Mechanicsville,
Virginia.

The commission will conduct hearings to receive
comments from the public about the following aspects of
school health programs: (i) parent and community
involvement; (ii) health education; (iii) health services;
and (iv) healthful school environment.

Contact: H. Douglas Cox, Director, Office of Student
Services, Department of Education, P.O. Box 2120,
Richmond, VA 23216-2120, telephone (804) 225-2402.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

† June 8, 1995 - 10 a.m. -- Open Meeting
Monroe Tower, 101 North 14th Street, Conference Room C,
Richmond, Virginia.

A regular meeting of the committee.

Contact: Berly A. Nguyen, Office Services Assistant,
Department of Health, 1500 E. Main St., Suite 115, P.O. Box
2448, Richmond, VA 23219, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† June 28, 1995 - 10 a.m. -- Open Meeting
Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock,
Virginia. (Interpreter for the deaf provided upon request)

A meeting to hear all administrative appeals of denials of
onsite sewage disposal systems permits pursuant to §§
32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia,
and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board,
Sewage Handling and Disposal Appeals Review Board, 1500
E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218,
telephone (804) 786-3561.

DEPARTMENT OF TAXATION

June 12, 1995 - 10 a.m. -- Open Meeting

2220 West Broad Street, Training Room, Richmond,
Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss a proposed set of new guidelines
for local business, professional and occupational license
taxes. Pursuant to § 58.1-3701, the guidelines are
exempt from the Administrative Process Act. The draft of
the new guidelines will not be published in the Virginia
Register, but may be obtained from the Department of
Taxation after May 15, 1995. Interested parties are
invited to submit comments on the new guidelines in
person or in writing no later than June 12, 1995.

Contact: John Josephs, Tax Policy Analyst, or Bill Reynolds,
Tax Auditor, Department of Taxation, P.O. Box 1880,
Richmond, VA 23282-1880, telephone (804) 367-8010 or
FAX (804) 367-6020.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† June 12, 1995 - 2 p.m. -- Public Hearing
Department of Transportation, 1401 East Broad Street,
Auditorium, Richmond, Virginia. (Interpreter for the deaf
provided upon request)

A final hearing to receive comments on highway
allocations for the upcoming year, and on updating the
Six-Year Improvement Program for the Interstate,
Primary, and Urban Systems, as well as mass transit for
the Richmond, Fredericksburg, Suffolk, Culpeper, and
Northern Virginia districts. A final allocation hearing for
the eastern districts.

Contact: James W. Atwell, Assistant Commissioner of
Finance, Department of Transportation, 1401 E. Broad St.,
Richmond, VA 23219, telephone (804) 786-5128 or (804)
786-4410/TDD.

† June 12, 1995 - 9 a.m. -- Public Hearing
Salem District Auditorium, 731 Harrison Avenue, Salem,
Virginia. (Interpreter for the deaf provided upon request)

A final hearing to receive comments on highway
allocations for the upcoming year, and on updating the
Six-Year Improvement Program for the Interstate,
Primary, and Urban Systems, as well as mass transit for
the Bristol, Salem, Lynchburg and Staunton districts. A
final allocation hearing for the western districts.

Contact: James W. Atwell, Assistant Commissioner of
Finance, Department of Transportation, 1401 E. Broad St.,
Richmond, VA 23219, telephone (804) 786-5128 or (804)
786-4410/TDD.

† June 21, 1995 - 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.

† **June 22, 1995 - 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.

† **July 12, 1995 - 4:30 p.m.** -- Public Hearing
Bluefield Rescue Squad, Bluefield, Virginia.

† **July 19, 1995 - 4 p.m.** -- Public Hearing
Lake Taylor High School, Norfolk, Virginia.

† **July 31, 1995** -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled **VR 385-01-05, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**, and **adopt** regulations entitled **VR 385-01-05:1, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**. The purpose of the proposed amendment is to change the existing Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities from a regulation based on a listing of hazardous materials to a regulation based on hazard class. All hazardous material transportation restrictions are to be lifted from the two rural interstate 77 tunnels.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Contact: Perry Cogburn, Environmental Program Planner, Department of Transportation Maintenance Division, Emergency Operations Center, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 786-6824, toll-free 1-800-367-7623 or (804) 371-8498/TDD

July 15, 1995 -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled: **VR 385-01-12. Hauling Permit Manual**, and **adopt** regulations entitled: **VR 385-01-12:1. Hauling Permit Manual**. The revised Hauling Permit Manual of the Commonwealth Transportation Board identifies conditions under which overweight and oversize hauling permits may be granted, and sets forth the fee structure for the permits. The revised manual eliminates obsolete requirements and policies required to obtain overweight or oversize hauling permits, expands weight allowances under general blanket conditions, and makes obtaining overweight and oversize permits less restrictive.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Contact: William R. Childress, Hauling Permit Manager, Department of Transportation, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676 or toll-free 1-800-828-1120/TDD

TREASURY BOARD

June 21, 1995 - 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, Treasury Board, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

† **May 30, 1995 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

A general board meeting, formal hearing, and regulatory review.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

† **May 31, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

Informal conferences.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

Calendar of Events

VIRGINIA RESOURCES AUTHORITY

† June 13, 1995 - 9:30 a.m. -- Open Meeting
Ramada Oceanfront Tower Resort and Conference Center,
57th and Oceanfront, Virginia Beach, Virginia.

† July 11, 1995 - 9:30 a.m. -- Open Meeting

† August 8, 1995 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board
Room, Richmond, Virginia.

The board will meet to approve minutes of the prior monthly meeting; 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., The Mutual Bldg., 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

† June 19, 1995 - 4 p.m. -- Public Hearing
Virginia Rehabilitation Center for the Blind, 401 Azalea
Avenue, Richmond, Virginia.

† July 28, 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 Department for the Visually Handicapped intends to **repeal** regulations entitled **VR 670-01-1, Regulation Guidelines for Public Participation** and **adopt** regulations entitled: **VR 670-01-100, Public Participation Guidelines**. VR 670-01-1 is being repealed so that the department can adopt new public participation regulations that meet the requirements of the Administrative Process Act, as amended in 1993. VR 670-01-100 provides guidelines for involving the public in the development and promulgation of regulations of the Department for the Visually Handicapped. With it, the department will comply with the public participation requirements of the Administrative Process Act, as amended in 1993. These guidelines do not apply to regulations that are exempt or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Contact: Glen R. Slonneger, Program Director, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

Advisory Committee on Services

† July 15, 1995 - 11 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the board for the Department for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

June 29, 1995 - 10 a.m. -- Public Hearing
James Madison Building, 109 Governor Street, Main Floor
Conference Room, Richmond, Virginia.

The board will hold a public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on 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 St., Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on June 29, 1995, will be made a part of the hearing record.

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

† August 17, 1995 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board
Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

July 27, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 4 A and B,
Richmond, Virginia. ☎

There will be a general board meeting beginning at 10 a.m., followed by a public hearing at 11 a.m. in compliance with Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

STATE WATER CONTROL BOARD

June 28, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road., Board Room, Glen Allen, Virginia. ☎

A regular quarterly meeting.

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **July 13, 1995 - 10 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing will be held for the purpose of receiving comment on the board's regulations and public participation guidelines in accordance with Executive Order 15(94). The comment period will end July 31, 1995. Persons desiring to participate in the hearing and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the hearing. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

VIRGINIA WORKERS' COMPENSATION COMMISSION

June 2, 1995 - 10 a.m. -- Public Hearing
Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia. ☎

A public hearing to discuss the definition of "community" as it is construed in § 65.2-605 of the Code of Virginia and proposed Rule 14 of the Virginia Workers' Compensation Commission. Speakers will be limited to 10 minutes each and should preregister. Copies of proposals under consideration may be obtained from Kim Lewis after May 1, 1995.

Contact: Kim S. Lewis, Administrative Staff Assistant, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-8661 or FAX (804) 367-9740.

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **June 12, 1995 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A meeting to discuss the concept of benchmarks for future government operations and a follow-up review of community action agencies.

Contact: Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

JUVENILE JUSTICE SYSTEM TASK FORCE

June 27, 1995 - 10 a.m. -- Open Meeting
Tidewater area; location to be announced.

A regular meeting. HJR 604.

Contact: Joyce Huey, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

June 2, 1995 - 2 p.m. -- Open Meeting
Stratford Hall, Westmoreland County, Virginia.

A final meeting to review the 1995 session and the final report of the commission.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Building, 910 Capitol St., Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

JOINT SUBCOMMITTEE STUDYING SCHOOL DROP OUT AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM AMONG YOUTH AND ADULTS

June 1, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia.

Calendar of Events

A continuing study of this resolution. Individuals requiring interpreter services or other assistance should contact Dawn Smith 10 days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23230, telephone (804) 786-7681.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 30

† Veterinary Medicine, Board of

May 31

† Aging, Disability and Long-Term Care Services, Advisory Committee on
Alcoholic Beverage Control Board
Real Estate Board
† Veterinary Medicine, Board of

June 1

† Aging, Disability and Long-Term Care Services, Advisory Committee on
Arts, Virginia Commission for the
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
Health, State Board of
† Intercommunity Transition Council, Virginia
Library of Virginia
- VLIN Task Force/Automation and Networking Committee
School Drop Out and Ways to Promote the Development of Self-Esteem Among Youth and Adults, Joint Subcommittee Studying
† School Health, Blue Ribbon Commission on

June 2

Air Pollution, State Advisory Board on
Health, State Board of
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
Population Growth and Development, Commission on

June 5

† Aging, Disability and Long-Term Care Services, Advisory Committee on
Barbers, Board for
Library Board
Local Government, Commission on

June 6

† Aging, Disability and Long-Term Care Services, Advisory Committee on
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
- Virginia Marine Products Board
Hazardous Materials Emergency Response Advisory Training Committee

Hopewell Industrial Safety Council
† Independent Living Council, Statewide
Library Board
Museum of Fine Arts, Virginia
- Strategic Plan Steering Committee

June 7

† Agriculture and Consumer Services, Department of
- Virginia State Apple Board
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Conservation and Development of Public Beaches, Board on
† Emergency Planning Committee, Local - Winchester
Museum of Fine Arts, Virginia
- Planning Committee
† Optometry, Board of

June 8

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Land Surveyors
† Medicine, Board of
† Recycling Markets Development Council, Virginia
† Sewage Handling and Disposal Advisory Committee

June 9

† Aging, Disability and Long-Term Care Services, Advisory Committee on
† Disability Services Council
† Game and Inland Fisheries, Board of
† Medicine, Board of

June 10

† Medicine, Board of
- Credentials Committee

June 12

† Aging, Disability and Long-Term Care Services, Advisory Committee on
Alcoholic Beverage Control Board
Cosmetology, Board for
† Joint Legislative Audit and Review Commission
† Library of Virginia
- State Networking Users Advisory Board
† Nursing, Board of
- Nurse Aide Registry
Professional and Occupational Regulation, Board for
Taxation, Department of
† Transportation, Department of

June 13

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Professional Engineers
† Health Services Cost Review Council, Virginia
Higher Education for Virginia, State Council on
† Medical Assistance Services, Board of
† Psychology, Board of
† Virginia Resources Authority

June 14

† Aging, Disability and Long-Term Care Services, Advisory Committee on

Emergency Planning Committee, Local - City of Alexandria
 Environmental Quality, Department of
 Higher Education in Virginia, Commission on the Future of
 † Historic Preservation Foundation, Virginia
 Interagency Coordinating Council on Early Intervention, Virginia
 † Nursing, Board of
 - Nurse Aide Registry

June 15

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Landscape Architects
 Conservation and Recreation, Department of
 - Shenandoah Scenic River Advisory Board
 † Fire Services Board, Virginia
 - Fire/EMS Education and Training Committee
 - Fire Prevention and Control Committee
 - Legislative/Liaison Committee
 Protection and Advocacy for Individuals with Mental Illness Advisory Council

June 16

† Aging, Disability and Long-Term Care Services, Advisory Committee on
 † Fire Services Board, Virginia
 † Real Estate Board

June 19

† Aging, Disability and Long-Term Care Services, Advisory Committee on
 † Health Professions, Department of
 - Task Force on Unified Regulation of Psychologists

June 20

† Aviation Board, Virginia

June 21

† Aviation Board, Virginia
 † Contractors, Board for
 Local Debt, State Council on
 † Transportation Board, Commonwealth
 Treasury Board

June 22

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Interior Designers
 † Chesapeake Bay Local Assistance Board
 Education, Board of
 † Richmond Hospital Authority
 - Board of Commissioners
 † Transportation Board, Commonwealth

June 26

Alcoholic Beverage Control Board
 † Housing and Community Development, Board of

June 27

† Marine Resources Commission
 Polygraph Examiners Advisory Board

June 28

Contractors, Board for

† Sewage Handling and Disposal Appeals Review Board
 Water Control Board, State

June 30

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 † Executive Council, State

July 5

Museum of Fine Arts, Virginia

July 11

Agriculture and Consumer Services, Department of
 - Virginia Horse Industry Board
 Higher Education for Virginia, State Council on
 Hopewell Industrial Safety Council
 † Virginia Resources Authority

July 12

Funeral Directors and Embalmers, Board of

July 15

† Visually Handicapped, Department for the
 - Advisory Committee on Services

July 19

Environmental Quality, Department of

July 27

Waste Management Facility Operators, Board for

August 8

† Virginia Resources Authority

August 17

† Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

June 2

Workers' Compensation Commission, Virginia

June 5

Local Government, Commission on

June 6

Mines, Minerals and Energy, Department of

June 7

Medicine, Board of

June 8

† Professional Counselors, Board of

June 12

Professional and Occupational Regulation, Board for
 † School Health, Blue Ribbon Commission on
 † Transportation Board, Commonwealth

June 15

† Fire Services Board, Virginia

June 19

† Visually Handicapped, Department for the

June 29

Voluntary Formulary Board, Virginia

Calendar of Events

June 30

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for

July 12

† Transportation Board

July 13

† Waterworks and Wastewater Works Operators, Board
for

July 19

† Transportation Board, Commonwealth