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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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

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

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DEPARTMENT OF AVIATION (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Aviation intends to consider amending regulations entitled: **VR 165-1-02:1. Regulations Governing the Licensing and Operations of Airports, Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.** The purpose of the proposed action is to (i) amend such regulations to conform them to legislative amendments enacted by the 1995 Session of the General Assembly regarding the licensing of airports per § 5.1-7 of the Code of Virginia; (ii) address the minimum standards specified for airport licensure; (iii) repeal and revise certain redundant and unnecessary provisions; and (iv) implement Executive Order 15 (94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 5.1-2.2 of the Code of Virginia.

Public comments may be submitted until August 9, 1995.

Contact: Keith F. McCrea, Policy Analyst, Virginia Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150-2502, telephone (804) 236-3630, toll-free 1-800-292-1034, FAX (804) 236-3635, or (804) 236-3624/TDD ☎

VA.R. Doc. No. R95-563; Filed June 21, 1995, 8:43 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

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 consider amending regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume 1 - New Construction Code/1993.** The purpose of the proposed action is to (i) amend the "Notice of Violation" section to comport with the "Statute of Limitation" section of the Code of Virginia; (ii) amend the requirement for the spacing of intermediate supports for guardrails; (iii) amend the sections which establish "Wind Zones" in Virginia, to comply with those required by new HUD federal regulation; (iv) delete vague and subjective text in the regulation regarding ice damming on roofs for one and two family dwellings; (v) amend the requirements for private suites (skyboxes) at automobile race tracks; (vi) amend the regulation to raise the size and occupancy threshold, regarding when permits are required for tents; (vii) amend the "Existing Building" section to clarify and to remove vague and subjective language which may be barriers to revitalization of existing buildings, and (viii) amend the "Inspections" section to allow the waiver of inspections pursuant to § 36-105 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until July 14, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TDD ☎

VA.R. Doc. No. R95-518; Filed May 17, 1995, 4:39 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend § 1.9 B, which restricts pharmacological treatment of obesity. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 59.1-2900 et seq. of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9908.

VA.R. Doc. No. R95-532; Filed June 5, 1995, 12:02 p.m.

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

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 consider amending regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 378-3479 or FAX (804) 378-3487.

VA.R. Doc. No. R95-544; Filed June 6, 1995, 11:07 a.m.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider promulgating regulations entitled: **VR 565-01-3. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to establish educational, experience and examination requirements; standards of ethics; grounds for disciplinary action; and fees for certification of sex offender treatment providers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-3605 of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R95-531; Filed June 5, 1995, 12:02 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-01-56. Public Assistance Programs - Meal and Snack Deductions for Self-Employed Day Care Providers.** The purpose of the proposed action is to establish a uniform allowable deduction for meals and snacks as a business expense for self-employed day care providers who care for children not residing in their homes. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until July 26, 1995.

Contact: Constance O. Hall, AFDC Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1730 or FAX (804) 692-1704.

VA.R. Doc. No. R95-543; Filed June 6, 1995, 2:02 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

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.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

August 8, 1995 - 10 a.m. -- Public Hearing
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia.

September 8, 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 Corrections intends to adopt regulations entitled: **VR 230-01-006. Regulations for Private Management and Operation of Prison Facilities.** Section 53.1-266 of the Code of Virginia directs the Board of Corrections to promulgate regulations governing certain aspects of private management and operation of prison facilities. In compliance with the statute this regulation establishes minimum standards governing administration and operational issues within private prisons.

Contact: Amy Miller, Regulatory Coordinator, P.O. Box 26963, Richmond, Virginia 23261, telephone (804) 674-3119.

DEPARTMENT OF EDUCATION (BOARD OF)

August 8, 1995 - 7 p.m. -- Public Hearing
Thomas Edison High School, 5801 Franconia Road, Alexandria, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
E. C. Glass High School, 2111 Memorial Avenue, Lynchburg, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
Godwin High School, 2102 Pump Road, Richmond, Virginia.

August 8, 1995 - 7 p.m. -- Public Hearing
Marion High School, 848 Stage Street, Marion, Virginia.

September 15, 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 Education intends to adopt regulations entitled: **VR 270-01-0064. Regulations Governing Guidance and Counseling Programs in the Public Schools of Virginia.** The regulations address requirements for parental notification about the programs and the conditions under which parental consent must be obtained for students to participate. The purpose of these hearings is to receive comments from the public on these proposed regulations. Registration will begin at 6:30 p.m.

Public comments may be submitted until September 15, 1995, to H. Douglas Cox, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23216-2120.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, P.O. Box 2120, Richmond, Virginia 23216-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

July 18, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Northern Virginia District Office, 3975 Fair Ridge Drive, Fairfax, Virginia.

July 19, 1995 - 10 a.m. -- Public Hearing
James City County Government Office Complex, Building 101-C, Mounts Bay Road, Board of Supervisors Room, James City County, Virginia.

July 25, 1995 - 10 a.m. -- Public Hearing
Virginia Highlands Airport, 18521 Lee Highway (Off Interstate 81, between Exits 13 and 14), Abingdon, Virginia.

July 26, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Salem District Office, 731 Harrison Avenue, Salem, Virginia.

July 31, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia.

September 8, 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 amend regulations entitled: **VR 385-01-8. Subdivision Street Requirements.** The Subdivision Street Requirements were originally adopted in 1949 to establish

the requirements and administrative procedures for the addition of subdivision streets into the secondary system of Virginia's highways. The geometric standards and specifications listed or referenced in the manual are consistent with the department's criteria for the design and construction of roadway facilities which are adequate to serve the traffic projected to travel over the streets involved. The regulation does make allowances to recognize unique situations concerning street development which arise during the process of subdividing land.

The proposed amendments to the Subdivision Street Requirements reflect the findings of the department documented in response to Senate Joint Resolution 61, enacted by the 1994 General Assembly. This resolution directed the department to study the need for establishing more flexible design standards to ensure these standards reflect the special needs of historical districts, and to address the need for conservation and protection of environmentally sensitive areas. As a result of this effort, the department solicited comments from municipalities, developers, and other stakeholders before securing formal permission to revise the Subdivision Street Requirements.

The proposed amendments provide a number of benefits for participants in the subdivision/development processes: updated nomenclature, references, and titles; additional definitions to reflect new conditions or design specifications; the establishment of new or expanded responsibilities of the participants; and clarifying language to resolve procedural issues. These amendments are intended to produce a document which (i) is easier to understand; (ii) provides additional flexibility to the overall addition process; and (iii) addresses economic and environmental concerns fairly.

Public comments may be submitted until September 8, 1995, to James S. Givens, Secondary Roads Engineer, Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219.

Contact: H. Charles Rasnick, Assistant Secondary Roads Engineer, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219, telephone (804) 786-7314.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: **VR 230-01-006. Regulations for Private Management and Operation of Prison Facilities.**

Statutory Authority: § 53.1-266 of the Code of Virginia.

Public Hearing Date: August 8, 1995 - 10 a.m.
Written comments may be submitted until September 8, 1995.
(See Calendar of Events section for additional information)

Basis: Section 53.1-266 of the Code of Virginia requires the Board of Corrections to make, adopt, and promulgate regulations governing certain aspects of private management and operation of prison facilities. Such aspects include provisions necessary to carry out the Corrections Private Management Act, use of deadly and nondeadly force, methods of monitoring the private facility by the department or board, public access to the private facility, and contingency plans for termination of contract.

Purpose: The Department of Corrections is experiencing a rapidly increasing inmate population which is quickly growing beyond the capabilities of existing department facilities and resources. To solve this public safety problem the department intends to manage its inmate population through future construction of correctional facilities, as well as utilizing bed space located in private prisons in Virginia and in other states. The Code of Virginia, under § 53.1-266, directs the Board of Corrections to promulgate regulations governing certain aspects of private management and operation of prison facilities. Given that these regulations must be in place before the department utilizes private prisons in Virginia, the board is now taking the necessary steps to promulgate the regulations.

Substance: The key provisions of the regulation comply with statutory requirements to govern certain aspects of private prisons. The substance of these regulations is derived largely from the Board of Corrections' Standards for State Correctional Facilities (VR 230-20-001:1) so that basic services, programs, and conditions in private facilities may be comparable to those available in state facilities.

Administrative matters addressed in the regulation include contingency plans for termination of contract, access to the facility, organizational requirements, submission of reports, financial management and personnel, training, and records management.

Operational requirements are outlined for physical plant, to include program and service areas and maintenance; safety and emergency procedures; security management; procedures for special housing assignments and the disciplinary process; food service; and sanitation and hygiene.

Programmatic issues addressed in the regulation include health care services; legal and programmatic rights of inmates; inmate rules and discipline; mail, telephone, visiting, and personal property; classification; work programs; educational services; recreation; religious programs and services; counseling and program services; release preparation; and citizen involvement.

Issues: The regulation should advantage the department, private contractors, general public, and inmates. The regulation sets forth minimum standards by which the department and board may monitor compliance with administrative, operational, and programmatic guidelines, while giving private contractors the flexibility necessary to make decentralized decisions within reasonable controls. Overall, the standards establish essential provisions for management and control of the inmate population, thus ensuring the safety of confined inmates and the surrounding community.

The agency does not anticipate any disadvantages or objections to these regulations. However, during the proposed stage of the regulation's development, the agency will be rigorously soliciting comments from all potential private contractors and the general public to ensure that the final regulation reflects sound, fair standards which are both necessary to achieve public safety objectives and reasonable to the affected entities.

Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number Thirteen (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs to affected businesses or entities to implement or comply with the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation: Section 53.1-266 of the Code of Virginia requires the Board of Corrections to make, adopt, and promulgate regulations governing certain aspects of the private management and operation of prison facilities. The proposed regulation is promulgated in compliance with these statutory requirements. The regulation sets forth standards for basic services, programs and conditions in private prison facilities that are comparable to standards for state prison facilities as established in the Board of Corrections' Standards for State Correctional Facilities (VR 230-20-001:1).

Estimated Economic Impact: The proposed regulation does not itself mandate or create private prisons. The regulation simply establishes minimum operating standards for private

vendors who choose to contract with the Department of Corrections to provide correction services. These standards impose no apparent extra-contractual costs on the private vendor. In addition, because: (i) consistent with § 53.1-262.5 d no contract for correctional services reflecting these standards will be entered into unless "an evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the services through governmental agencies"; and (ii) the Department of Corrections anticipates that enforcement of these standards can be accomplished using current certification/audit staff; the standards are not anticipated to have a fiscal impact on the Commonwealth. Given these conditions, it is the opinion of DPB that this regulation will have no economic impact.

A. Projected Number of Businesses or Other Entities to Whom the Regulation will Apply. The standards set forth in this regulation apply to all private vendors contracting with the Commonwealth to provide correctional services. The number of such vendors could range at any point in time from zero to several and will depend on the number and type of contracts negotiated by the Commonwealth. The 1995 General Assembly has authorized the Department of Corrections to contract for up to 3,800 private prison beds.

B. Localities and Types of Businesses Particularly Affected. The standards set forth in the regulation do not affect particular localities. These standards do specifically affect providers of private correctional services.

C. Projected Number of Persons and Employment Positions Affected. The standards set forth in the regulation are not anticipated to have an effect on employment as they do not mandate any specific change in employment levels.

D. Projected Costs to Affected Businesses or Entities. The standards set forth in the regulation impose no extra contractual costs on providers of private correctional services and are anticipated to have no fiscal impact on the Commonwealth.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Corrections has reviewed with the Office of Public Safety the economic impact statement submitted on the above regulations by the Department of Planning and Budget.

We concur that the regulations themselves will have no economic impact.

In accordance with subsection H of § 9-6.14:7 of the Code of Virginia, I am submitting this response to you and to the Virginia Register for inclusion in the proposal package.

/s/ Ron Angelone

Summary:

Section 53.1-266 of the Code of Virginia directs the Board of Corrections to promulgate regulations governing certain aspects of private management and operation of prison facilities. In compliance with the statute this regulation establishes minimum standards governing administration and operational issues within private prisons.

The key provisions of the regulation comply with statutory requirements to govern certain aspects of private prisons. The substance of these regulations is derived largely from the Board of Corrections Standards for State Correctional Facilities (230-20-001:1) so that basic services, programs, and conditions in private facilities may be comparable to those available in state facilities.

Administrative matters addressed in the regulation include contingency plans for termination of contract, access to the facility, organizational requirements, submission of reports, financial management and personnel, training, and records management.

Operational requirements are outlined for physical plant, to include program and service areas and maintenance; safety and emergency procedures; security management; procedures for special housing assignments and the disciplinary process; food service; and sanitation and hygiene.

Programmatic issues addressed in the regulation include health care services; legal and programmatic rights of inmates; inmate rules and discipline; mail, telephone, visiting, and personal property; classification; work programs; educational services; recreation; religious programs and services; counseling and program services; release preparation; and citizen involvement.

VR 230-01-006. Regulations for Private Management and Operation of Prison Facilities.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Appropriate heating" means temperatures appropriate to the summer and winter comfort zones.

"Appropriate lighting" means at least 20 foot-candles at desk level and in personal grooming area.

"Automatic smoke detection system" means a hard wired smoke alarm.

"Classification" means the process for determining inmate housing, custody, and program assignments.

"Communication system" means a mechanical audio transmission such as telephone, intercom, walkie talkie or TV monitor.

"Contraband" means any unauthorized item determined to be in the possession of an inmate or within a correctional facility and accessible to an inmate which is not acquired through approved channels or in prescribed amounts.

"Contractor" means any entity entering into or proposing to enter into a legal agreement to provide any correctional services to the Department of Corrections with respect to inmates under the custody of the Commonwealth.

"Control center" means a manned secure post which has responsibility for monitoring various security systems within the facility.

"Core programs" means services to fit the inmate's needs. Such services may include life skills, substance abuse programs, counseling services, sex offender counseling, and mental health programs.

"Daily log" means a written record for the recording of daily activities or unusual incidents.

"Deadly force" means the use of methods or means which are reasonably calculated to cause death or serious bodily injury.

"Department of Corrections" means the Virginia Department of Corrections.

"Facility" means any institution operated by or under the authority of the Department of Corrections.

"Facility perimeter" means the physical barrier separating the facility from the public and may include detection systems, guard towers, and lights.

"Foot-candle" means a unit for measuring the intensity of illumination defined as the amount of light thrown on a surface one foot away from the light source.

"Furnishings in inmate living areas" means items such as furniture, curtains, and trash receptacles.

"Grievance procedure" means the method by which inmates may formally address complaints to the facility administration.

"Hazardous material" means a chemical substance that will cause death, severe illness, or injury if used in an unsafe manner.

"Indigent inmate" means an inmate who has no financial means to purchase personal hygiene items or postage for mailing letters.

"Inmate living area" means cells, rooms, dormitories and day rooms.

"Inmate records" means written information concerning the individual's personal, criminal and medical history, behavior, and activities while in custody.

"Isolation" means a type of special housing assignment which, under the proper administrative process, is utilized for the disciplinary management of inmates.

"Medical screening" means an observation and interview process within the intake procedure designed to obtain pertinent information regarding an individual's health condition.

"Noncustodial staff" means individuals employed in non-security positions.

"Nondeadly force" means the use of methods or means which are reasonably calculated to cause neither death nor serious bodily injury.

"Organized system of information storage" means a method for the storage and retrieval of information.

"Permanent log" means a written record of a facility's activities which cannot be altered or destroyed subject to state law.

"Pharmaceuticals" means prescription and non-prescription drugs.

"Post order" means a list of specific job functions and responsibilities for security positions.

"Recreational activities" means any out-of-cell activity ranging from scheduled outside or inside recreation to informal table top games.

"Qualified mental health professional" means a psychiatrist, psychologist, social worker, or nurse who is qualified, by virtue of appropriate training and experience, to render mental health services within their discipline.

"Serious incident" means a significant, unusual occurrence which demands the attention of facility staff. Such occurrence may be, but is not limited to, death/suicide, riot, escape, hostage taking, demonstration, discharge of firearm, sabotage, felonies committed by inmates, assault, sexual assault, self-mutilation, use of force, attempted suicide, and fires resulting in injury or property damage.

"Special housing" means bed assignments which are utilized for the purposes of disciplinary, protective or custodial management and secure confinement of inmates when a general population assignment is inappropriate or inadequate.

"Volunteer" means an individual who provides services to the facility without compensation.

§ 1.2. Applicability.

These standards shall apply to any entity entering into or proposing to enter into a contractual agreement to provide correctional services which consist in whole or in part of secure confinement of inmates under the custody of the Commonwealth.

§ 1.3. Legal standard.

Nothing contained in these regulations shall be construed as setting a legal standard for the management or operation of any facility for purposes of litigation.

§ 1.4. Responsibility.

The contractor shall be responsible for ensuring that the requirements described in these standards are implemented.

§ 1.5. Enforcement.

These regulations shall be enforced through the Board of Corrections regulation, VR 230-01-003:1 Rules and Regulations Governing the Certification Process.

PART II.
ADMINISTRATION.

§ 2.1. Contingency plans for termination of contract.

Contingency plans for state operation, or other continued operation, of a contractor-operated facility in the event of a termination of contract shall be outlined in the contract itself.

§ 2.2. Access to facility.

The Department of Corrections and the Board of Corrections shall have 24-hour access to the facility for the purposes of contract monitoring and standards monitoring.

§ 2.3. Mission of facility.

The mission of the facility shall be established in writing. The facility administrator shall develop facility goals and long term objectives that are reviewed annually.

§ 2.4. Facility administrator.

The facility shall be headed by a facility administrator who is responsible for and has the authority to manage and direct all activities of the facility established by law and these standards.

§ 2.5. Written agreement with other entities.

There shall be a written agreement which defines the roles and functions of other public and private agencies operating programs within the facility, including their relationship to the facility administrator and the rules and regulations of the facility.

§ 2.6. Organizational chart.

The facility shall have an organizational chart showing the formal, as well as the functional, organizational structure of the facility.

§ 2.7. Meetings and communication.

Meetings shall be held at least monthly between the facility administrator and all department heads, and between department heads and their key staff members. There shall be a system of two-way communication between all levels of staff and inmates.

§ 2.8. Policies and procedures manual.

The policies and procedures for operating and maintaining the facility shall be maintained in a manual, shall be reviewed at least annually, and shall be available to all employees.

§ 2.9. Relationship with public, media, and other agencies.

Written policy and procedure shall define the facility's relationship with the public, media, and other agencies.

§ 2.10. Submission of reports.

Reports required by the Department of Corrections shall be submitted within time limits set by the contract or other Department of Corrections requirements.

§ 2.11. Reporting criminal activity.

Allegations of criminal activity by inmates or contract staff shall be reported to the Department of Corrections and subject to review and investigation by the Department of Corrections.

PART III.
FINANCIAL MANAGEMENT.

§ 3.1. Program functions and costs.

The contractor shall have a budget which links program functions and activities to the cost necessary for their support.

§ 3.2. Fiscal procedures.

Written fiscal procedures shall provide for accounting for all income and expenditures and shall be in accordance with generally accepted accounting principles and fiscal management standards. Such written procedures shall include at a minimum:

1. *Internal controls.*
2. *Petty cash.*
3. *Bonding.*
4. *Signature control on checks.*
5. *Inmate funds.*
6. *Employee expense reimbursement.*
7. *Vendor selection.*

§ 3.3. Inmate funds.

Written procedure shall govern the handling and use of any inmate funds. Inmates may deposit personal funds in interest-bearing accounts, and that interest shall accrue to the inmates. Revenue-producing activities utilizing inmate labor or other inmate-generated revenue shall be reported to the Department of Corrections.

§ 3.4. Inmate compensation.

Compensation for inmate jobs/labor shall be in accordance with the Department of Corrections inmate pay schedule.

§ 3.5. Financial audit.

An annual independent financial audit shall be performed by a certified public accounting firm or a governmental agency. Such audit shall be at cost to the contractor.

§ 3.6. Financial documents.

The contractor shall prepare and distribute the following documents to the Department of Corrections upon request. (The level of detail shall be established by the Department of Corrections):

1. *Annual budget.*
2. *Income and expenditure statements.*
3. *Funding source financial reports.*
4. *Independent audit report.*
5. *Profit statements.*

§ 3.7. Insurance coverage.

The contractor shall have insurance coverage of an amount and type as stipulated in the contract.

PART IV.
PERSONNEL.

§ 4.1. Equal opportunity.

The contractor shall prohibit discrimination on the basis of race, sex, color, national origin, religion, age, or political affiliation, or against otherwise qualified persons with disabilities.

§ 4.2. Availability of personnel policies and procedures.

The contractor shall make available to all facility employees a copy of all personnel policies and procedures. The contractor shall make available a copy of all personnel policies and procedures to the Department of Corrections if requested.

§ 4.3. Job descriptions.

The contractor shall maintain written job descriptions and job qualifications for all positions in the facility.

§ 4.4. Employment and personnel practices.

The contractor shall comply with all legal requirements related to employment and personnel practices.

§ 4.5. Criminal records checks.

Criminal records checks shall be performed on all facility employees prior to hiring, and shall be considered in employment decisions.

PART V.
TRAINING.

§ 5.1. Training program.

Written policy, procedure, and practice shall ensure that the facility's training programs are overseen by a qualified supervisory employee. All training programs shall meet standards set by the Department of Criminal Justice Services (DCJS), and the qualified supervisory employee shall be a certified DCJS instructor.

§ 5.2. Trainer.

The employee who oversees the training programs shall have specialized training. If the facility has full-time training personnel, these personnel shall have completed at least a 40-hour train-the-trainer course approved by DCJS.

§ 5.3. Evaluation of training programs.

The facility shall provide for ongoing evaluation of all orientation, in-service, and specialized training programs and shall provide for documentation of such assessments.

§ 5.4. Reference services.

Library and other reference services shall be available to complement the training program.

§ 5.5. Outside resources.

The training program shall utilize outside resources, such as public and private agencies, private industry, universities, and libraries to the extent that the contractor's own training resources are not self-sufficient.

§ 5.6. Space and equipment.

There shall be space and equipment necessary for training and staff development.

§ 5.7. Orientation requirements.

Written policy, procedure and practice shall provide that all new full-time employees receive necessary orientation before assuming responsibility for their positions. Orientation shall include at a minimum:

1. *An overview of the mission, objectives, policies and procedures of the facility.*
2. *Working conditions and regulations.*
3. *Employee rights and responsibilities.*
4. *An overview of the correctional field.*
5. *If necessary, preparatory instruction.*

§ 5.8. Administrative staff.

Written policy, procedure, and practice shall ensure that all administrative and managerial staff receive necessary training according to Department of Corrections procedures.

§ 5.9. Correctional officer training.

Written policy, procedure, and practice shall provide that all new corrections officers receive training in accordance with Department of Corrections procedures.

§ 5.10. Training for firearms, chemical agents, and deadly force.

Written policy, procedure, and practice shall ensure that all personnel authorized to use firearms, chemical agents, and deadly force receive appropriate training before being assigned to a post involving the possible use of such weapons.

§ 5.11. Noncustodial firearm training.

All employees designated by the director to carry a firearm in an emergency situation shall satisfactorily complete noncustodial firearm training before carrying the weapon.

§ 5.12. Training for employees who have regular contact with inmates.

Written policy, procedure, and practice shall ensure that all support employees who have regular or daily contact with inmates receive necessary training in accordance with Department of Corrections requirements.

§ 5.13. Training for correctional officers assigned to an emergency team.

Written policy, procedure, and practice shall ensure that correctional officers assigned to an emergency team have

necessary training according to Department of Corrections requirements.

PART VI.
RECORDS MANAGEMENT.

§ 6.1. Records maintenance.

Records shall be maintained in accordance with Library of Virginia guidelines. Microfilm records shall be sent to the Department of Corrections.

§ 6.2. Correctional status information.

The contractor shall collect and maintain correctional status information as required by the Department of Corrections.

§ 6.3. Information storage, retrieval, and review.

The facility shall utilize an organized system of information storage, retrieval, and review.

§ 6.4. Training for information management staff.

Staff having access to management information shall be trained in and responsive to the security and confidentiality requirements of this system.

§ 6.5. Research.

No research shall be conducted at the facility unless the research is reviewed and approved by Department of Corrections.

§ 6.6. Facility records.

Facility operating procedures governing the establishment, utilization, content, privacy, security, retention, and accuracy of the facility criminal record folders, facility health folders, and facility treatment folders shall be in conformance with Department of Corrections procedures.

§ 6.7. Transfer of records.

When an inmate is permanently transferred from one facility to another, the facility criminal records folder and facility health folder shall be simultaneously transferred to the receiving facility.

§ 6.8. Master index; daily written report.

There shall be at least one master index identifying the housing, bed, program, and work assignments of all inmates. The facility shall maintain a daily written report or inmate population movement as required by Department of Corrections procedures.

PART VII.
PHYSICAL PLANT.

Article 1.
Program and Service Areas.

§ 7.1. General inmate housing areas.

Inmates assigned to general inmate housing areas shall have access to the following (special housing requirements may be altered to ensure inmate staff safety and security):

1. A toilet above floor level which is available for use without staff assistance twenty-four hours a day.

2. A wash basin with potable, hot and cold water.

3. A bed above floor level.

4. Closet space or locker.

5. Natural lighting.

6. Special use housing requirements may be altered to ensure inmate staff safety and security.

§ 7.2. Exercise and recreation space.

Space outside the cell or room shall be provided for inmate exercises and leisure time activities.

§ 7.3. Visiting space.

Space shall be provided for a visiting room or area for contact visiting and, if required, non-contact visiting. There shall be a designated space to permit screening and searching of both inmates and visitors.

§ 7.4. Accommodations for the disabled.

Disabled inmates shall be housed in a manner that provides for their safety and security. Rooms, cells, or housing units used by the disabled shall be designed for their use and provide for integration with the general population. Appropriate facility programs and activities shall be accessible to disabled inmates confined in the facility.

§ 7.5. Storage space for bedding, clothing, supplies.

Space shall be provided at the facility to store and issue clothing, bedding, cleaning supplies, inmates' property, and other items required for daily operations.

§ 7.6. Space for administrative use.

Adequate space shall be provided for administrative, security, professional, and clerical staff; this space shall include conference rooms, storage room for records, public lobby, and toilet facilities. Adequate space shall be provided for janitorial closets accessible to the living and activity areas.

§ 7.7. Space for mechanical and electrical equipment.

Separate and adequate space shall be provided for mechanical and electrical equipment.

Article 2.
Maintenance.

§ 7.8. Preventive maintenance program.

Written policy, procedure, and practice shall specify a preventive maintenance program for the physical plant. The program shall include documentation of work performed, provisions for emergency repairs or replacement in life-threatening situations, and provisions for capital repairs.

§ 7.9. Lighting and circulation.

Lighting in inmate room/cells shall be at least 20 foot-candles at desk level in living areas and in personal grooming areas, as documented by qualified personnel. Circulation shall be at least seven cubic feet per minute of outside air or

recirculated air containing no less than 25% outside air per minute per occupant. Air circulation/recirculation equipment by qualified personnel shall be documented.

PART VIII.
SAFETY AND EMERGENCY PROCEDURES.

Article 1.
Emergency Plans.

§ 8.1. Emergency plans.

There shall be written emergency plans which outline duties of staff, procedures, and evacuation routes. Emergency plans shall include responses in the event of fire, chemical release, power, water, heat loss, natural disaster, taking of hostages, riots and disturbances, escape, bomb threats, civil defense, and adverse job actions. There shall be a posted floor plan showing evacuation routes. The fire plan shall be reviewed annually by the State Fire Marshal.

§ 8.2. Fire drills.

Fire drills shall be performed in accordance with the emergency plan and include evacuation of inmates (except where security would be jeopardized). Fire drills shall be held, documented, and evaluated for effectiveness, at least quarterly.

§ 8.3. Fire department site visits.

There shall be documentation that, through annual site visits, the local fire department is familiar with the available equipment, physical layout, and emergency procedures of the facility. Additional site visits shall be required in case(s) of structural changes or additions to the facility.

§ 8.4. Emergency equipment.

The facility shall have the equipment necessary to maintain essential lights, power, and communications in an emergency. Testing shall be performed weekly.

Article 2.
Safety.

§ 8.5. State inspections.

The facility shall be inspected at least annually by the Office of the State Fire Marshal. Action plans shall be written and submitted to the Department of Corrections.

§ 8.6. Monthly and weekly inspections.

Written policy, procedure, and practice shall provide for a comprehensive and thorough monthly inspection of the facility by the individual responsible for facility safety for compliance with safety and fire prevention standards. There shall be a weekly fire and safety inspection of the facility. This policy and procedure shall be reviewed every 12 months and updated as needed. The contractor shall ensure that corrective actions shall be taken.

§ 8.7. Fire alarm.

The facility shall have a manual fire alarm or an automatic smoke detection system or an automatic fire suppression system in all industrial, sleeping and living areas, and action plans shall be written and submitted for all areas of deficiencies. Other areas of the facility shall also have fire detection and suppression equipment as required by the State Fire Marshal.

§ 8.8. Fire protection equipment type and testing.

Written policy, procedure, and practice shall specify the facility's fire protection equipment type, use and testing to include:

1. Availability of equipment at appropriate locations throughout the facility.

2. Training on the use of the equipment.

3. Inspection of extinguishers annually.

4. Inspection and steam cleaning of range hoods semiannually.

5. Inspection of detection and suppression systems quarterly.

6. Quarterly testing of fire alarms for function. Inspections shall be performed by trained and qualified personnel.

§ 8.9. Safe furnishings.

Furnishings in inmate living areas, including cleanable, nontoxic and flame-retardant mattresses and pillows, shall be selected based on known fire safety performance characteristics and in conformance with Department of Corrections procedures. Furnishings which no longer meet fire safety performance specifications shall be repaired or removed from service.

§ 8.10. Risk management.

Written policy, procedure, and practice shall provide for a safety awareness program and self inspection which is to be coordinated, designed, implemented and documented by the individual responsible for facility safety.

PART IX.
SECURITY MANAGEMENT.

Article 1.
Manuals and Procedures.

§ 9.1. Security manual.

There shall be a manual containing all procedures for facility security and control, with detailed instructions for implementing these procedures. The manual shall be available to all staff and procedures are reviewed at least annually and updated if necessary.

§ 9.2. Written post orders.

There shall be a written post order for each security post and a requirement for officers to read and be familiar with the order each time they assume a new post. The immediate supervisor shall document that the post order has been discussed with the officer. Post orders shall be reviewed annually.

§ 9.3. Permanent log and shift reports.

Written policy, procedure, and practice require that correctional staff maintain a permanent log and supervisors prepare shift reports that record routine information, emergency situations, and unusual incidents. A post log is maintained at each permanent post and other areas deemed necessary by the contractor

§ 9.4. Written record of security equipment.

Written policy, procedure, and practice shall provide that the facility maintains a written record of all security equipment issued. The security equipment shall be approved by the Department of Corrections.

Article 2.
Security and Control.

§ 9.5. Controlled perimeter.

The facility's perimeter shall be controlled by appropriate means to ensure that inmates remain within the perimeter and to prevent unauthorized access by the general public.

§ 9.6. Control center.

Written policy, procedure, and practice shall ensure that the facility maintains a control center which is staffed 24 hours a day.

§ 9.7. Communication system.

The facility shall have a communication system between the control center and inmate living areas.

§ 9.8. Inmate count.

The facility shall have a system for physically counting inmates. The system shall include strict accountability for inmates assigned to work and educational release, furloughs, and other approved temporary absences.

§ 9.9. Inmate movement.

Written policy, procedure, and practice shall provide that staff regulate inmate movement.

§ 9.10. Searches.

Written policy, procedure, and practice shall provide for searches of facilities, staff, inmates and visitors to control contraband and provide for disposition of the contraband pursuant to applicable law.

§ 9.11. Use of nondeadly force.

Written policy, procedure, and practice shall govern the use of force, firearms, chemical agents, and security equipment. The contractor shall be authorized to use nondeadly force only where it is reasonable to do so. Physical force shall be limited to the amount of force that the officer reasonably believes is necessary in the given situation:

1. Reasonably required to prevent an escape, the commission of a felony, or a misdemeanor;
2. To defend himself or others against physical assault;
3. To prevent serious damage to property;
4. To enforce facility regulations and order;
5. To prevent or quell a riot; and
6. To prevent serious self-injury to the inmate.

§ 9.12. Use of deadly force.

Properly authorized employees may exercise their authority and use deadly force only as a last resort, and then only to prevent an act that could result in death or serious bodily injury to oneself or to another, or to prevent escape from confinement.

§ 9.13. Inspections of security systems.

Written policy, procedure, and practice shall require that at least weekly inspections be conducted of all security systems. The results of inspections shall be reported in writing to the contractor, and documentation of corrective action shall be required.

§ 9.14. Serious incident report.

Written policy, procedure, and practice shall require notification and reporting of serious incidents to the Department of Corrections in accordance with Department of Corrections procedures.

Article 3.
Keys and Equipment.

§ 9.15. Key control.

The distribution, use, and control of keys within the facility shall be in accordance with Department of Corrections procedures. Any departure from these procedures shall be subject to Department of Corrections review and approval.

§ 9.16. Security and equipment control.

The use and storage of all tools, culinary equipment and hazardous materials, including flammable, toxic, caustic materials, weapons, and security equipment shall be in accordance with Department of Corrections procedures. Any departure from these procedures shall be subject to Department of Corrections review and approval.

PART X.
SPECIAL HOUSING ASSIGNMENTS AND THE DISCIPLINARY PROCESS.

§ 10.1. Placement in special housing assignments.

Written policy, procedure, and practice shall provide that Department of Corrections procedures be utilized for the disciplinary process and for assignments to special housing. The contractor shall facilitate the application of this process, but the Department of Corrections shall make all decisions in these areas.

§ 10.2. Number of inmates per cell.

Except in emergencies, the number of inmates confined to each cell or room shall not exceed the number for which it is designed. Should an emergency create an excess in occupancy, the contractor shall immediately proceed to alleviate the situation as promptly as possible by making other arrangements for the inmates so confined. The

contractor shall provide written approval for emergency situations where the number of occupants exceeds design capacity.

§ 10.3. Cell conditions.

Special housing cells or units shall be well ventilated, adequately lighted, and appropriately heated and maintained in sanitary conditions at all times. A general log shall be kept and the temperature shall be recorded at least once each shift. Inmates shall be housed in an environment in which the temperature does not fall below 65°F, and when the temperature exceeds 85°F, mechanical air circulation shall be provided.

§ 10.4. Clothing and bedding.

Inmates in special housing shall dress in appropriate clothing, and shall be furnished underwear, shower shoes, one mattress, one pillow, one pillow case, two sheets, blankets as needed, one towel, and washcloth. For removing items from cells and for using stripped cells, Department of Corrections procedures shall be utilized.

§ 10.5. Meals.

Inmates assigned to special housing shall receive the same meals as those in the general population, except in those circumstances noted in Department of Corrections procedures.

§ 10.6. Shower and shaving privileges.

Written policy, procedure, and practice shall provide that inmates in special housing assignments will be permitted to shower and shave not less than twice per week. Clothing and underwear shall be changed at shower time.

§ 10.7. Mail.

Written policy, procedure, and practice shall provide that inmates in special housing assignments can write and receive letters on the same basis as inmates in the general population, except inmates in isolation may not receive the contents of packages until approved by the contractor.

§ 10.8. Legal access.

Written policy, procedure, and practice shall provide that inmates in special housing assignments have access to legal materials and the courts.

§ 10.9. Visitation.

Inmates in isolation shall forfeit the privileges of receiving visits from family, relatives, or friends; however, under exceptional circumstances, permission may be obtained from the contractor for such visits. Attorney visits to an inmate in isolation may not be restricted by the contractor, and attorneys shall be allowed access to the inmate during normal work hours.

§ 10.10. Personal property.

Written policy, procedure, and practice shall provide that inmates in isolation will be allowed to keep only the following:

1. Legal materials.

2. Religious materials.

3. Personal hygiene items, defined exactly as:

a. Toothbrush;

b. Toothpaste;

c. Soap; and

d. Plastic comb.

If the inmate does not have the items above, and is indigent, the facility shall furnish them. All other items of inmate personal property shall be stored upon assignment to isolation. Inmate personal property shall be inventoried by either an officer and the inmate, or by two correctional officers. The inmate shall be given a receipt for all personal property upon assignment to isolation. Inmates in isolation shall be limited to the purchase of postage stamps.

§ 10.11. Inmates in isolation.

Inmates held in isolation for periods exceeding 30 days shall be provided the same privileges as inmates in special housing assignments.

§ 10.12. Visitation for inmates in special housing assignments.

Written policy, procedure, and practice shall provide that the visitation schedule for special housing inmates (other than isolation) shall be established by the contractor.

§ 10.13. Exercise for inmates in special housing assignments.

Written policy, procedure, and practice shall provide that inmates in special housing assignments (other than isolation) be allowed a minimum of one hour of exercise three separate days per week in an out-of-doors supervised area, weather permitting.

§ 10.14. Access to commissary.

Written policy, procedure, and practice shall provide inmates (other than in isolation) access to the commissary. Commissary purchases may be restricted only for security reasons. No items of a hazardous nature shall be allowed.

§ 10.15. Permanent log on each inmate.

A permanent individual log shall be maintained in the special housing unit for each inmate. This log shall contain:

1. Date of admission;

2. Weight of the inmate upon entering and leaving and the name, date and time of the correctional officer making the required hourly check;

3. Medical requests and visits;

4. Medications administered or refused;

5. Meals refused; and

6. Other pertinent information.

§ 10.16. Access to medical, dental, and mental health care.

Written policy, procedure, and practice shall provide for reasonable access to medical, dental, and mental health services while in special housing status.

§ 10.17. Supervision.

In addition to supervision provided by the unit officers, the special housing unit shall be visited daily by the shift supervisor or higher authority. Each inmate in special housing shall be checked no less than once per hour at staggered times by a correctional officer.

PART XI.
FOOD SERVICE.

Article 1.
Food Service Management.

§ 11.1. Food service program supervision.

Food service operations shall be supervised by a full-time staff member who is experienced in food service management.

§ 11.2. Dietary allowances.

All meals shall meet or exceed the dietary allowances stated in the Recommended Dietary Allowances, National Academy of Sciences.

§ 11.3. Records.

Written policy, procedure, and practice shall require that accurate records are maintained of all meals served and that meals are planned in advance to assure proper food flavor, temperature, and appearance.

§ 11.4. Special diets.

Written policy, procedure, and practice shall provide for special diets as prescribed by appropriate medical or dental personnel.

§ 11.5. Religious diets.

Written policy, procedure, and practice shall provide for reasonable accommodation for inmates whose religious beliefs require adherence to religious dietary laws.

§ 11.6. Meal supervision.

Written policy, procedure, and practice shall provide that meals are served under conditions that minimize regimentation, except when security or safety conditions dictate otherwise. All meals shall be served under direct supervision of staff members.

§ 11.7. Meal times.

Written policy, procedure, and practice shall require that at least three meals (including two hot meals) are provided at regular meal times during each 24-hour period, with no more than 14 hours between the beginning of the evening meal and the beginning of breakfast. Variations may be allowed based on weekend and holiday food service demands and security needs, provided basic nutritional goals are met.

Article 2.
Health and Safety.

§ 11.8. Food service safety.

The contractor shall ensure that food service safety is in compliance with the Department of Corrections Food Service Manual. Any departure from this manual shall be subject to Department of Corrections review and approval.

PART XII.
SANITATION AND HYGIENE.

Article 1.
Sanitation.

§ 12.1. Sanitation.

The facility shall comply with the requirements of appropriate regulatory agencies with regard to the potable water supply, control of vermin and pests, emissions and waste disposal systems.

Article 2.
Housekeeping.

§ 12.2. Housekeeping plan.

A written housekeeping plan for all areas of the facility's physical plant shall provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities to staff and inmates.

§ 12.3. Inspections.

Written policy, procedure, and practice shall provide weekly internal fire, safety and sanitation inspections of the facility by designated administrative staff members. The contractor shall ensure that appropriate corrective actions are taken.

§ 12.4. Toilet, shower, and bathing facilities.

Toilet, shower, and bathing facilities shall be operational and sufficient to ensure health and hygiene. The opportunity for at least three showers per week shall be made available to general population inmates.

Article 3.
Clothing and Bedding Supplies.

§ 12.5. Clothing.

Written policy, procedure, and practice shall provide for the issue of clean clothing to inmates. Special clothing shall be provided to inmates assigned to food service, hospital, sanitation, and other special work details. Protective clothing and safety equipment shall be provided when appropriate.

§ 12.6. Bedding and blankets.

Written policy, procedure, and practice shall provide clean bedding, towels, washcloths, and blankets to all inmates.

§ 12.7. Laundering.

Written policy, procedure, and practice shall provide for the weekly laundering of all bedding and clothing.

Article 4.
Personal Hygiene.

§ 12.8. Hair care.

Written policy, procedure, and practice shall provide that hair care services comply with applicable health laws and regulations and are available to all inmates.

§ 12.9. Personal hygiene items.

Written policy, procedure, and practice shall require that articles necessary for maintaining proper personal hygiene are available to all inmates. Indigent inmates shall be issued necessary personal hygiene articles.

PART XIII.
HEALTH CARE SERVICES.

Article 1.
General Policies.

§ 13.1. Medical unit operated in accordance with applicable laws.

Written policy, procedure, and practice shall ensure inmates are provided with health care services and that the facility's medical unit is operated in accordance with applicable laws and the Department of Corrections Office of Health Services policies and procedures. Any departure from these policies and procedures shall be subject to Department of Corrections review and approval.

§ 13.2. Access to health care.

Written policy, procedure, and practice shall provide access to basic health care, and for a system for processing complaints about health care, and that these policies are communicated orally and in writing to inmates upon arrival at the facility in language which can be clearly understood by inmates.

§ 13.3. Continuity of health care.

Written policy, procedure, and practice shall provide for continuity of health care from admission to discharge or transfer.

§ 13.4. Health care evaluation.

Written policy, procedure, and practice shall require that, in order to ensure quality assurance, the facility shall have documentation that a health care evaluation by the Department of Corrections Office of Health Services has been performed at least once every other year, and that action plans are written and implemented for all areas of deficiency.

§ 13.5. Use of restraints.

Written policy, procedure, and practice shall govern the use of restraints for medical and psychiatric purposes; identifying the authorization needed; and when, where and how restraints may be used and for how long.

Article 2.
Responsible Health Authority.

§ 13.6. Responsibility of medical authority.

Written policy, procedure, and practice shall require that a designated medical authority, who may be a physician or a health administrator, is responsible for the health care of the inmates pursuant to a written agreement or contract or job description.

§ 13.7. Physician, dentist, and nurse responsibilities.

Written policy, procedure, and practice shall require that all medical, psychiatric, dental, and nursing matters involving medical judgment are the sole province of the responsible physician, psychiatrist, dentist, and nurse, respectively.

§ 13.8. Morbidity and mortality reports.

Written policy, procedure, and practice shall provide that the medical authority submits monthly morbidity and mortality reports and annual summaries to the Department of Corrections.

§ 13.9. Reporting of threatening conditions.

Written policy, procedure, and practice shall provide that the medical authority reports immediately to the contractor conditions that pose a serious health threat to staff and inmate health and safety. The contractor shall immediately report such conditions to the Department of Corrections.

§ 13.10. Review of health care program.

Written policy, procedure, and practice shall provide that the medical authority review each health care policy, procedure and program at least every 12 months, and revise them as needed. Each review and revision shall bear the date and signature of the reviewer.

Article 3.
Facilities and Equipment.

§ 13.11. Space for health care delivery.

Written policy, procedure, and practice shall ensure that the contractor provide adequate space, equipment, supplies, and materials for the delivery of health care as determined by the medical authority in accordance with the level of care provided by the facility.

§ 13.12. First aid kits and emergency medical supplies.

Written policy, procedure, and practice shall provide that first aid kits and emergency medical supplies are available in areas determined by the medical authority in conjunction with the contractor.

§ 13.13. Checking and testing of medical equipment.

Written policy, procedure, and practice shall require that medical staff are responsible for checking and testing all medical equipment according to manufacturer's recommendations and that the equipment is safeguarded from inmate access.

§ 13.14. Ambulances.

Written policy, procedure, and practice shall provide that ambulances utilized by the facility are certified by the Department of Emergency Medical Services, operated by certified drivers, and that a certified emergency medical technician accompanies an inmate being transported for medical reasons.

Article 4.
Personnel.

§ 13.15. Licensure, certification, and registration requirements.

Written policy, procedure, and practice shall require that all medical personnel who provide health care services to inmates meet applicable licensure, certification, and registration requirements and that verification of current credentials are on file in the facility.

§ 13.16. Job descriptions.

Written policy, procedure, and practice shall require that the duties and responsibilities of medical personnel are governed by written job descriptions approved by the medical authority, kept on file at the facility, and a copy be given to the employee.

§ 13.17. Written protocols.

Written policy, procedure, and practice shall provide that all health care shall be performed pursuant to written protocols by personnel authorized by law to give such orders.

§ 13.18. Nursing practices.

Written policy, procedure, and practice shall provide that nurses, nurse practitioners, and physician's assistants practice within the limits of applicable laws and regulations.

§ 13.19. Distribution of medications.

Written policy, procedure, and practice shall provide that nonmedical personnel involved in the distribution, administration, or both, of non-over-the-counter medications or in providing other medical services are trained according to Department of Corrections, Office of Health Services' procedures.

§ 13.20. First aid and crisis intervention.

Written policy, procedure, and practice shall provide for on-site emergency first aid, CPR and crisis intervention. In addition, direct care and custodial staff shall be trained to recognize signs and symptoms of mental disorder, suicidality, and chemical dependency.

§ 13.21. Inmate jobs.

Written policy, procedure, and practice shall provide that inmates are not used for the following duties:

1. Performing direct patient care services.

2. Scheduling health care appointments.

3. Determining access of other inmates to health care services.

4. Handling or having access to surgical instruments, needles, medications, and medical records.

5. Operating diagnostic and therapeutic instruments.

§ 13.22. Training of health care personnel.

Written policy, procedure, and practice shall provide that health care personnel are provided opportunities for orientation and training.

Article 5.
Health Screenings and Examinations.

§ 13.23. Transfers.

Written policy, procedure, and practice shall provide that all inmates undergoing transfers undergo a health screening by health-trained or qualified personnel upon arrival at the facility and no later than one working day thereafter if the facility does not have 24-hour medical coverage.

§ 13.24. Communicable diseases.

Written policy, procedure, and practice shall provide for the identification and management of tuberculosis and other communicable diseases and that these policies and procedures are updated as new information becomes available.

Article 6.
Mental Health Services.

§ 13.25. Provision of mental health services.

Written policy, procedure, and practice shall specify the provision of mental health services for inmates. These services include, but are not limited to, those provided by qualified mental health professionals who meet the educational and licensure/certification criteria specified by their respective professional discipline (i.e. psychiatry, psychology, psychiatric nursing, and social work).

§ 13.26. Access to mental health services.

Written policy, procedure, and practice shall provide that all inmates have access to mental health services. These services shall include a system for mental health screening and mental health evaluation of inmates, a system of referral to the services of qualified mental health professionals, a system for transfer or commitment of inmates in need of mental health services beyond the facility resources, and a system for continuity of care and follow-up procedures.

§ 13.27. Mental health status information.

Written policy, procedure, and practice shall provide for the initial and ongoing assessment and determination of the mental health status and needs of inmates.

§ 13.28. Special needs inmates.

Written policy, procedure, and practice shall provide for identification of special needs inmates. Special needs inmates shall include, but are not limited to, inmates who are mentally ill, emotionally or behaviorally disturbed, or mentally retarded. Programs shall be instituted for these inmates' appropriate management and treatment.

§ 13.29. Inmates with acute mental health needs.

Inmates who are acutely mentally ill, severely emotionally or behaviorally disturbed, or severely mentally retarded shall be referred for placement in units appropriate for their treatment and management needs.

§ 13.30. Suicide and intervention plan.

There shall be a written suicide prevention and intervention plan that is reviewed and approved by a qualified mental health professional. Staff with responsibility for inmate supervision shall be familiar with the plan.

§ 13.31. Mental health training program.

There shall be a written mental health training program which is provided to employees whose duties require direct contact with special needs inmates. This training program shall be developed and reviewed by qualified mental health professionals.

Article 7.
Levels of Care.

§ 13.32. Treatment of health problems.

Written policy, procedure, and practice shall provide that treatment of an inmate's health problems are not limited by the resources available within the facility and that hospital care is available for acute illness or surgery at a facility outside the facility.

§ 13.33. Provision of all levels of health care.

Written policy, procedure, and practice shall provide that the contractor, in conjunction with the medical authority, makes available all levels of health care to include self-care, first aid, 24-hour emergency care, 24-hour infirmary care, hospital care, and chronic and convalescent care, as required by the contract.

§ 13.34. Sick call.

Written policy, procedure, and practice shall require that regularly scheduled sick call is conducted by qualified health care personnel and is available to all inmates.

§ 13.35. Contracted health services.

Written policy, procedure, and practice shall provide for the contractor to contract the services of medical, dental, or mental health specialists.

§ 13.36. Access to health care by nongeneral population inmates.

Written policy, procedure, and practice shall require that inmates in categories of custody other than general population have access to regularly scheduled sick call and emergency medical care. The care shall be provided on-site or in the medical area depending on security and medical considerations.

§ 13.37. Refusal to accept treatment.

Written policy, procedure, and practice shall prohibit inmates from choosing their own health care provider, and require procedures for documentation of refusal to accept treatment.

Article 8.
Informed Consent and Medical Research.

§ 13.38. Informed consent.

Written policy, procedure, and practice shall provide that written informed consent for inmate health care is obtained where required and documented. When health care is rendered against the patient's will, it shall be in accord with applicable laws and regulations.

§ 13.39. Medical research.

Written policy, procedure, and practice shall prohibit the use of inmates for medical, pharmaceutical, or cosmetic experiments. This policy does not preclude individual treatment of an inmate based on his need for a specific medical procedure that is not generally available.

Article 9.
Specialized Programs.

§ 13.40. Health education program.

Written policy, procedure, and practice shall provide that a program of health education is available to all inmates of a facility.

§ 13.41. Special treatment programs.

Written policy, procedure, and practice shall provide for special treatment programs for inmates requiring close medical supervision as determined by the responsible physician, dentist or qualified mental health professional, and as required by the contract.

§ 13.42. Chemically dependent inmates.

Written policy, procedure, and practice shall guide the management of chemically dependent inmates under the supervision of a qualified health care practitioner.

§ 13.43. Medical and dental prostheses.

Written policy, procedure, and practice shall provide that medical and dental prostheses are provided when the health of the inmate would otherwise be affected, as determined by the responsible physician or dentist.

§ 13.44. Pregnant inmates.

Written policy, procedure, and practice shall provide for a system whereby pregnant inmates may obtain obstetrical medical and social services, and as required by the contract.

§ 13.45. Special diets.

Written policy, procedure, and practice shall provide that special diets are prescribed as needed and monitored by the responsible physician or dentist.

Article 10.
Health Records.

§ 13.46. Transfer of health records.

Written policy, procedure, and practice shall provide that copies of the medical records of all inmates transferred are

transferred to the custody of medical personnel at the receiving facility and that the confidentiality of the records shall be preserved during the transfer.

§ 13.47. Complete health record.

Written policy, procedure, and practice shall govern the creation, organization, maintenance, and storage of a complete health record for each inmate, which documents all the health services rendered during the entire period of incarceration, as required by applicable Department of Corrections procedures.

§ 13.48. Confidentiality.

Written policy, procedure, and practice shall uphold the principle of confidentiality of the health record and support the following requirements:

1. The health record shall be maintained separately from the facility record.

2. Access to the health record shall be controlled by the medical authority and is granted only to those who require it under departmental policy.

3. The medical authority shall share with the contractor information regarding security and the inmates' medical management, transfer, and ability to participate in programs.

§ 13.49. Health record for transfers and consultations.

Written policy, procedure, and practice shall provide that the health record accompanies the inmate to all Department of Corrections facilities whether for transfers or for medical consultations and that the confidentiality of the health record is strictly maintained during such transfer.

§ 13.50. Inactive health record files.

Written policy, procedure, and practice shall require that inactive health record files are sent to the Department of Corrections. Records shall be maintained in accordance with Library of Virginia guidelines. Microfilm records shall be sent to the Department of Corrections.

Article 11.
Pharmacy Services.

§ 13.51. Pharmaceutical services.

Written policy, procedure, and practice shall require that pharmaceutical services at the facility are in strict compliance with state and federal laws and applicable pharmaceutical regulations.

Article 12.
Serious Illness and Death.

§ 13.52. Notification of inmate death, injury, or illness.

Written policy, procedure, and practice shall specify and govern the process by which those individuals designated by the inmate are notified in case of serious illness, injury, or death.

PART XIV.
LEGAL AND PROGRAMMATIC RIGHTS OF INMATES.

Article 1.
Access to Courts.

§ 14.1. Access to courts.

Written policy, procedure, and practice shall ensure inmates access to federal and state courts, private attorneys or their representatives, a legal library or a court-appointed attorney, and provisions for photocopying of legal documents.

Article 2.
Programs and Services.

§ 14.2. Access to programs and services.

Written policy, procedure, and practice shall provide that program access, work assignments, and administrative decisions are made without regard to inmates' race, religion, national origin, sex, handicap, or political views. Written policy, procedure, and practice shall protect inmates from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. Written policy, procedure, and practice shall allow freedom in personal grooming except when a valid security interest justifies otherwise.

§ 14.3. Access to media.

Written policy, procedure, and practice shall provide for reasonable access between inmates and the media, subject only to the limitations necessary to maintain order and security and protect inmates' privacy. Media requests for interviews and the inmate's consent shall be in writing. Prior to granting media interviews with inmates, the Department of Corrections shall be notified.

§ 14.4. Inmate grievance procedure.

Written policy, procedure, and practice shall provide for an inmate grievance procedure that is available to all inmates and includes at least one level of appeal and specific time limits. This procedure shall be reviewed and approved by the Department of Corrections.

PART XV.
INMATE RULES AND DISCIPLINE.

§ 15.1. Rules, disciplinary procedures, and penalties.

The contractor shall subscribe to and comply with Department of Corrections rules, disciplinary procedures, and penalties and shall have them available to all inmates and employees. The Department of Corrections shall approve the administration of any disciplinary measure. Signed acknowledgment of receipt of the rulebook shall be maintained in the inmate's file.

PART XVI.
MAIL, TELEPHONE, VISITING, AND PERSONAL PROPERTY.

Article 1.
Inmate Mail.

§ 16.1. Inmate correspondence.

Written policy and procedure shall govern inmate correspondence; the policies and procedures shall be reviewed annually and updated as necessary.

§ 16.2. Indigent inmates.

Written policy, procedure, and practice shall provide that indigent inmates receive a specified postage allowance of at least one first class letter per week.

§ 16.3. Publications.

Written policy and procedure shall govern inmate access to publications, in accordance with Department of Corrections procedures.

§ 16.4. Reading of inmate mail.

Procedures shall ensure that inmate mail shall not be read except where there is a reasonable belief that there is a threat to facility order and security, and then only in accordance with written policy and procedure.

§ 16.5. Sealed letters.

Inmates shall be permitted to send sealed letters to persons and organizations specified in Department of Corrections procedures.

§ 16.6. Holding of letters and packages.

Written policy, procedure, and practice shall require that, excluding Saturdays, Sundays and holidays, incoming and outgoing letters are held for no more than 24 hours and packages are held for no more than 48 hours.

§ 16.7. Contraband.

Written policy, procedure, and practice shall govern inspection for and disposition of contraband.

Article 2.
Telephone, Visiting, and Personal Property.

§ 16.8. Telephone privileges.

Written policy, procedure, and practice shall provide and govern access to telephone privileges for inmates.

§ 16.9. Visiting privileges.

The contractor shall comply with Department of Corrections procedures regarding visiting privileges for inmates concerning time, screening, frequency, and number of visitors, and making provisions for special visits.

§ 16.10. Personal property.

Written policy, procedure, and practice shall govern access to inmate personal property.

PART XVII.
RECEPTION AND ORIENTATION.

Article 1.
Admission and Orientation.

§ 17.1. Admission of new inmates and parole violators.

If the facility is to house newly incarcerated inmates, written policies and procedures shall govern the admission of new inmates and parole violators to the system.

§ 17.2. Summary admission report.

If the facility is to house newly incarcerated inmates, written policy, procedure, and practice shall require the preparation of a summary admission report for all new admissions. The report shall include the following information:

1. *Legal aspects of the case.*
2. *Summary of criminal history, if any.*
3. *Social history.*
4. *Medical, dental, and mental health history.*
5. *Occupational experience and interests.*
6. *Educational status and interests.*
7. *Vocational programming.*
8. *Recreational preference and needs assessment.*
9. *Psychological evaluation; staff recommendations.*
10. *Pre-facility assessment information.*

§ 17.3. Inmate orientation.

Written policy, procedure, and practice shall provide that new inmates receive written orientation materials. When a literacy or language problem exists, a staff member shall assist the inmate in understanding the material. Completion of orientation shall be documented by a statement signed and dated by the inmate. Inmates transferred from other facilities shall receive an orientation to the new facility.

§ 17.4. Medical and mental health screening.

Written policy, procedure, and practice shall provide that all newly incarcerated inmates undergo medical, dental, and mental health screening by health-trained or qualified personnel, to include a complete medical history, physical examination, screening laboratory tests, and other tests as ordered by the responsible physician or dentist. All findings shall be recorded on forms approved by the medical authority and a medical classification code is assigned to each inmate.

PART XVIII.
CLASSIFICATION.

§ 18.1. Classification program.

Written policy, procedure, and practice shall provide that the Department of Corrections classification program be utilized. The contractor shall facilitate the application of the Department of Corrections classification process, but the

Department of Corrections will make all classification decisions.

§ 18.2. Housing assignments.

Written policy, procedure, and practice shall provide for screening of inmates double celled in a room or cell.

PART XIX.
WORK PROGRAMS.

§ 19.1. Inmate participation in work programs.

Written policy, procedure, and practice shall provide for full-time work or programmatic participation of general population inmates, as required by the contract, which take into account the inmate's level of risk to staff, the general public, and facility needs. Policy and procedure shall provide that work performance is evaluated, and that the results are considered in recommending appropriate sentence credits and other incentives to the Department of Corrections.

§ 19.2. Training of employees.

Employees shall be trained in inmate work supervision and other areas specifically related to that inmate work assignment prior to independent functioning as work supervisors.

PART XX.
EDUCATIONAL SERVICES.

§ 20.1. Educational services.

The facility shall provide space, maintain facilities, and provide services for academic, vocational education, and library programs, as required by the contract.

PART XXI.
INMATE RECREATION AND ACTIVITIES.

§ 21.1. Recreational program.

Written policy, procedure, and practice shall provide for a recreational program that includes leisure time activities and outdoor exercise.

§ 21.2. Opportunity for exercise.

Every inmate (excluding isolation) who is not employed in outdoor work shall have the opportunity for at least one hour of exercise three separate days per week in an out-of-door area, weather permitting.

§ 21.3. Adequate facilities and equipment.

Adequate facilities and equipment for the planned recreation or exercise activities shall be available to the inmate population and shall be maintained in good condition.

§ 21.4. Staff supervision.

All recreational activities shall be under staff supervision and approved by the contractor.

§ 21.5. Commissary services.

Inmates shall have access to commissary services.

PART XXII.
RELIGIOUS PROGRAMS AND SERVICES.

§ 22.1. Access to religious programs.

Written policy, procedure, and practice shall provide for access to religious programs for all inmates on a voluntary basis. No preference may be given to any activity of one religious denomination, faith, or sect over another.

§ 22.2. Chaplains.

Chaplains, clergy, or other religious leaders shall have access to the facility to attend to the religious needs of the inmates.

§ 22.3. Confidential counseling.

Counseling by chaplains and clergy shall be confidential.

§ 22.4. Space for worship.

Adequate and appropriate space for worship shall be made available by the facility.

PART XXIII.
COUNSELING AND PROGRAM SERVICES.

§ 23.1. Core programs.

Written policy, procedure, and practice shall provide for a system of core programs at each facility appropriate to the needs of inmates.

§ 23.2. Program standards and guidelines.

Core programs required by the contract shall meet program standards and guidelines established by the Department of Corrections.

§ 23.3. Assignment of counselor.

Written policy, procedure, and practice shall provide that each inmate is assigned a counselor. Staff shall be available to counsel inmates and provisions shall be made for counseling and crisis intervention services as needed.

§ 23.4. Counseling services.

Counseling shall be provided by persons qualified by either formal education or training.

§ 23.5. Licensure and certification of clinical treatment providers.

Written policy, procedure, and practice shall provide that persons providing clinical treatment and professional services are certified or licensed as required by law or regulations.

§ 23.6. Identifying needs of population.

Written policy, procedure, and practice shall provide that facility staff conduct an evaluation of the needs of the inmate population at least every 12 months in order to identify necessary programs and services, or to identify changes needed to existing programs and services.

PART XXIV.
RELEASE PREPARATION.

§ 24.1. Release preparation.

Written policy, procedure, and practice shall provide that all inmates have access to a program of release preparation prior to their release to the community.

PART XXV.
CITIZEN INVOLVEMENT AND VOLUNTEERS.

§ 25.1. Policies and procedures for citizen and volunteer programs.

Written policy and procedure shall specify the lines of authority, responsibility, and accountability for the facility's citizen involvement and volunteer services program.

§ 25.2. Volunteer orientation.

Written policy, procedure, and practice shall provide that each volunteer completes an appropriate, documented orientation or training program prior to assignment.

§ 25.3. Volunteers to abide by rules.

Volunteers shall agree in writing to abide by all facility policies, particularly those relating to the security and confidentiality of information.

§ 25.4. Qualified volunteers.

Volunteer services shall be provided by persons qualified by formal and applicable education, training, or experience.

VA.R. Doc. No. R95-571; Filed June 21, 1995, 10:59 a.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-0064. Regulations Governing Guidance and Counseling Programs in the Public Schools of Virginia.**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: August 8, 1995 - 7 p.m.
Public comments may be submitted until September 15, 1995.
(See Calendar of Events section for additional information)

Basis: The legal basis of the proposed regulation is § 22.1-16 of the Code of Virginia. This Code section gives the State Board of Education general authority to promulgate the subject regulation.

Purpose: The purpose of the proposed regulation is to establish standards and procedures that will regulate the notification and consent rights of parents for their children's involvement in school guidance and counseling programs and confidential communication between students and counselors.

Substance: Major elements of the proposed regulation would require each local school division to:

- Annually notify parents about the school guidance and counseling program.
- Involve parents in determining the specific guidance and counseling needs of each school and in reviewing and selecting guidance and counseling materials.
- Require informed written parental consent before the initiation of any individual student counseling involving personal, emotional and sensitive issues.
- Require informed written parental consent for their children to participate in group counseling activities.
- Establish necessary safeguards for making exceptions to informed written parental consent for students participating in school guidance and counseling programs.

The Attorney General's office, however, notes that "...the regulations are quite general in nature and could possibly benefit from greater specificity in certain areas. For example, the regulations contain no reference to specific federal requirements which may be implicated by counseling programs." The Attorney General's Office specifically refers to the protection of pupil rights under Section 1232 h of the federal Family Educational Rights and Privacy Act.

Issues: The proposed regulation will contain standards, procedures and safeguards that will satisfy some of the parental concerns that their children have been asked to provide personal and sensitive information in school guidance and counseling sessions without their consent.

Advantages for the public: The advantage for the public of the proposed regulations is that parents will be afforded procedural safeguards relating to school guidance and counseling programs. Specifically these safeguards provide for a mechanism by which parents may remove their children from certain components of the guidance and counseling program and for written informed consent before children may participate in specified elements of the program.

Advantages for the agency: The advantage for the agency is that there will be consistency among the local school divisions in the procedural safeguards available to parents.

Disadvantages for the public: There are no anticipated disadvantages for the public.

Disadvantages for the agency: There are no anticipated disadvantages for the agency.

Impact:

Number of persons impacted: The regulations potentially impact all students enrolled in Virginia public schools and their families.

Localities particularly affected by the regulation: None.

Projected cost to the agency: There are no anticipated costs to the agency.

Projected cost for compliance with the regulations: Some local school divisions may incur some costs for the development and printing of information necessary to provide annual notice to parents about the program. Other divisions may incur only minimal costs because the informational materials are already developed. Likewise, the cost of distributing the information to parents will vary, depending

upon the method used. Data on the actual cost of compliance is not available; however, costs could range from $1,000 to $10,000.

Five hearings have been scheduled to receive public comment about the proposed regulations. Further information could emerge from these hearings.

Summary:

The proposed regulations address public school guidance and counseling programs. The regulations require that annual notice about the program be given to parents and specify the content of the notice. The regulations further require written parental consent, under specified conditions, for students to participate in group and individual counseling. They also contain a provision that parents may remove their children from classroom guidance activities.

VR 270-01-0064. Regulations Governing Guidance and Counseling Programs in the Public Schools of Virginia.

§ 1. Parental notification and involvement.

A. Each local school division shall ensure that notification is provided annually to parents about the guidance and counseling program. Notification shall include the following:

1. Purpose and general description of the school guidance and counseling program, including a description of the classroom guidance program and of individual and group counseling services as well as academic/educational or career counseling;

2. Qualifications of school counselors and, if applicable, school psychologists, social workers and visiting teachers involved in the delivery of counseling services;

3. A general description of the guidance lessons for each grade level and a description of the instructional materials and supplemental media to be used;

4. A general description of the group counseling opportunities planned for the year and a description of the materials to be used;

5. A general description of the academic/educational or career counseling program and activities planned for the year and a description of the materials to be used;

6. A full description of the counseling techniques used in each of the various guidance and counseling programs;

7. Information regarding ways parents or guardians can review materials to be used in each of the various programs at individual schools;

8. Information about the procedure for opting a child out of the classroom guidance program and information about the procedure for giving informed parental consent for individual or group counseling; and

9. Information explaining that academic/educational or career guidance is not optional, but an integral part of the curriculum.

B. Each local school division shall include parents in determining the specific guidance and counseling needs of each school.

C. Each local school division shall include parents in the review and selection of guidance and counseling materials.

§ 2. Classroom guidance.

A. No counseling techniques shall be used in the classroom guidance program that are not described in the annual notification provided to parents.

B. No counseling techniques shall be used in the classroom guidance program that require children to disclose sensitive or personal information.

§ 3. Individual counseling.

A. Each local school division shall require informed written parental consent before a structured course of individual counseling involving personal, emotional, and sensitive issues is initiated. Notification shall include the following:

1. Purpose and goals of the individual counseling;

2. Expected frequency of sessions and duration; and

3. A description of the counseling techniques to be used.

B. Without written parental consent, counselors are able to meet with students to discuss incidental or normal developmental concerns, for follow up, and to assess a situation for possible referral to counseling. If however, a counselor determines that a structured course of individual counseling is indicated, the counselor will obtain informed written parental consent before proceeding with personal, social, or sensitive issue counseling.

C. It is understood that counselors should respond to crisis situations by immediately dealing with the student and by providing a follow-up contact if necessary. Parental consent must be obtained for any additional counseling.

D. Once informed written parental consent for individual counseling is received, an expectation of privacy will apply wherein information obtained during counseling sessions shall be kept confidential between the student and the counselor except in cases of child abuse or neglect; in cases where the health or safety, or both, of the child or others is involved; and as otherwise prescribed by law.

E. A parent may withdraw consent for individual counseling at any time in writing.

§ 4. Group counseling.

Each local school division shall require informed written parental consent prior to a student participating in group counseling activities. Notification shall include the following:

1. Purpose and goals of the group counseling;

2. Expected frequency of sessions and duration;

3. A statement that all materials and supplemental media used in whole or in part shall be available for review by parents; and

4. A description of the counseling techniques to be used.

§ 5. Confidentiality of counseling notes; counselor training.

A. Counseling notes, if maintained by a counselor or other school professional rendering counseling services, shall not be part of the student's education record and should be kept separate and confidential by the counselor. Such records are not to be shared with others unless prior written parental consent is obtained, or as otherwise prescribed by law.

B. No counseling technique shall be used for which the counselor is not trained.

§ 6. Definitions and interpretation of terms; availability of regulations.

A. As used in these regulations, "parents" mean the person or persons having legal custody of the student, such as either one of the parents if both have such custody, or the legal guardian of the student, if not a parent.

B. Terms used in these regulations such as "school guidance and counseling program," "academic/educational or career guidance," and "normal developmental concerns" shall be interpreted based on common professional education usage. Where appropriate, local school divisions can offer further clarification in their notification to parents.

C. A copy of these regulations shall be available for review during regular school hours in each school office.

§ 7. Exception to informed written parental consent.

Each local school division may authorize, as a local school division option, that a child may be included in individual or group counseling without parental consent where the guidance counselor and the principal of the school each certify in writing:

1. That a good faith effort has been made to contact the child's parents and that no response has been received; and

2. That, in the judgment of the principal and guidance counselor, the best interest of the child would be served by including that child in an individual or group counseling program.

VA.R. Doc. No. R95-575; Filed June 21, 1995, 11:19 a.m.

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University 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 340-01-05. Policy Prohibiting Weapons.**

Statutory Authority: § 23-91.29(a) of the Code of Virginia.

Summary:

The proposed regulation is designed to outline the proper prohibition of weapons policies and procedures for faculty, staff and students.

VR 340-01-05. Policy Prohibiting Weapons.

§ 1. Scope.

The policies and procedures provided herein apply to all George Mason University faculty, staff, students, visitors and contracted services. This regulation applies to all George Mason University locations, owned and leased including, but not limited to, the Fairfax Campus, Arlington Campus (inclusive of GMU at Quincy Street Station), Prince William Institute, and GMU at the Center for Innovative Technology.

§ 2. Policy statement.

To protect the George Mason University community from the threat of violent acts, all weapons concealed or otherwise are prohibited on all owned or leased properties of George Mason University with the exception of law-enforcement officials appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1 and Chapter 17 (§ 23-232 et seq.) of Title 23 of the Code of Virginia.

§ 3. Responsibilities and reporting; prohibition; prop weapons.

A. The carrying of any weapon about the person of any individual with the exception of law-enforcement officials as cited in the policy portion of this procedure is prohibited. Weapons are defined as follows:

Any pistol, revolver, or other weapon designed or intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, blackjack, or any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as nun chahka, nun chuck, nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as throwing star or oriental dart.

B. Due to the risk of being identified as a real weapon, any item which looks like a weapon in appearance and which is utilized for any purpose on all properties of George Mason University as defined in § 1 must be reported to and approved by the University Police prior to being used in any activity. Examples of these activities include but are not limited to plays, class presentations, ROTC military exercises and intercollegiate athletic events.

§ 4. Amendments and additions.

A. All amendments and additions to this regulation are to be reviewed and approved by the Office of the Executive Vice President for Administration, the Office of the Executive Vice President for Finance and Planning and the Office of the Provost.

B. This policy shall be reviewed and revised, if necessary, annually.

VA.R. Doc. No. R95-553; Filed June 9, 1995, 4:29 p.m.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: **VR 385-01-8. Subdivision Street Requirements.**

Statutory Authority: §§ 33.1-12(3) and 33.1-229 of the Code of Virginia.

Public Hearing Dates:
July 18, 1995 - 10 a.m. (Fairfax)
July 19, 1995 - 10 a.m. (James City County)
July 25, 1995 - 10 a.m. (Abingdon)
July 26, 1995 - 10 a.m. (Salem)
July 31, 1995 - 10 a.m. (Richmond)
Public comments may be submitted until September 8, 1995.
(See Calendar of Events section for additional information)

Basis: The Code of Virginia provides authority for the Commonwealth Transportation Board (CTB) or the Commissioner to promulgate regulations pertaining to the development of subdivision streets intended for addition to the secondary system of state highways. Specifically, they are:

1. § 33.1-12 authorizes the CTB to (i) locate and establish roads comprising the systems of state highways; (ii) let all contracts for construction of the roads; and (iii) make rules and regulations for the protection of, governing traffic on, and the use of, highway systems.

2. § 33.1-69 grants to the department, the Commissioner and the CTB "the control, supervision, management, and jurisdiction over the secondary system of state highways."

3. § 33.1-198 requires persons desiring commercial entrances onto state highways to obtain a permit from the department. Subdivision streets, where they intersect with existing roads in the state systems, are considered commercial entrances.

4. § 33.1-229 allocates to the Commissioner the discretion to approve expenditures of state funds on roads in the secondary system.

Purpose: The purpose of the regulations is to prescribe the design and construction requirements for new streets, which result from land development activities that are intended for acceptance into the secondary system of state highways, together with the administrative procedures for their addition. Revisions to the regulation have been made based on input from municipalities, developers, and other stakeholders to ensure the amendments reflect, to the fullest practicable extent, both the department's interests and their needs.

The geometric standards and specifications incorporated into this revision to the Subdivision Street Requirements are generally consistent with the department's criteria for the design and construction of its roadway facilities. However, certain provisions have been included that recognize the uniqueness of street development as an integral part of the overall subdivision of land. These permit the inventive design of such streets, provided the safety features, structural integrity, or traffic capacity of the streets involved are not sacrificed.

It is the overall intent of this regulation to guide the development of new streets so as to provide for the safe and effective transportation of the public, and to ensure that this development occurs in a manner compatible with the overall process for desirable land development, without undue cost to the Commonwealth for subsequent maintenance or improvements.

Substance: The substance of the revised Subdivision Street Requirements deal with changes made to the regulation based on input from the original study directed by SJR 61 and the stakeholder meetings. As a result, significant changes have been made to the regulation. In the geometric design standards, the design speeds, pavement widths, and right of way requirements have been reduced. The department proposes to double the amount of sidewalk that will be accepted for maintenance. Finally, the proposed revisions clarify several issues, such as the definition of types of terrain, the joint use of the right of way for utility placement, and the extent of the local Resident Engineer's authority ("flexibility") to approving subdivision plans.

Issues: The issues of the Subdivision Street Requirements involve identifying the advantages and disadvantages to the public, localities, VDOT, and the Commonwealth in promulgating a land development regulation. The paramount issue in development of the original regulation, and subsequent revisions, is determining the format and range of requirements that, to the greatest extent possible, do not conflict with current practices for the reasonable and orderly development of land.

The department anticipates that the adoption of the proposed amendments outlined previously under Substance will accomplish this goal to the advantage of all concerned. As such, the development industry will be in an improved position to provide its clientele with more desirable communities at a lower cost than previously possible. At the same time, the new roadway facilities added to the secondary system should remain adequate for the safe and efficient movement of its users without increased liability to the Commonwealth for future maintenance or construction.

Because the revisions are based on widespread input from municipalities, developers, and others, with additional opportunities for comment through public hearings and written means under the APA process, the department sees no disadvantages to the Commonwealth, the public, or localities from promulgating the revised standards.

Estimated Impact: The estimated impact of the Subdivision Street Requirements can be quantified as follows: presently, over 200 miles of new subdivision streets are added annually to the secondary system of highways. This figure includes approximately 1,000 segments of such streets throughout the Commonwealth. It is estimated that these requirements will affect about 100 developers and approximately 60,000 homeowners, and over 1,000 commercial operations, as well as other motorists who will utilize these streets.

In light of the reduction in the geometric design standards proposed in the amendments to the regulation, the

department anticipates that a real overall reduction in the cost (estimated at 3.0% to 5.0%) to design and construct new subdivision streets proposed for additions to the secondary system. Furthermore, the department does not envision any increased costs to its operations to administer these amendments. Due to the lessened pavement widths the revised criteria require, some as yet unquantifiable reduction in future maintenance costs should result.

Costs to implement and enforce the revised regulation should be minimal. These include: costs to publish new manuals, plus minimal training for VDOT staff, the combined total of which are estimated at approximately $1,000. No additional personnel or facilities will be needed, because existing personnel and facilities used for the current regulations will be administering the revised standards. The department's operations are financed from the Transportation Trust Fund.

Regulated entities will incur no administrative cost (permits, user fees, etc.) to follow the revised standards. Based on the reduction in design standards referenced above, actual savings to both the regulated entities and the department should result from the revisions.

The localities potentially affected by the Subdivision Street Requirements involve all counties in the Commonwealth, with the exception of Arlington and Henrico counties, and parts of the City of Suffolk.

Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number Thirteen (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected costs to affected businesses or entities to implement or comply with the regulation; and the projected number of persons and employment positions to be affected. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation: The Subdivision Street Requirements were originally adopted in 1949 to establish requirements and administrative procedures for the addition of subdivision streets into the secondary system of Virginia's highways. The proposed regulation revises the Subdivision Street Requirements in light of findings from a Virginia Department of Transportation (VDOT) study conducted in response to Senate Joint Resolution 61, enacted by the 1994 General Assembly. This resolution directed VDOT to look at the need for establishing more flexible standards that would reflect the special needs of historical districts and address the need for conservation and protection of environmentally sensitive areas.

The revisions contained in this proposed regulation principally concern: (i) geometric design standards, design speeds, pavement widths, and right of way requirements for subdivision streets designated as "local"; (ii) the amount of sidewalk that will be accepted by the Commonwealth for maintenance; and (iii) clarification of certain issues such as the definition of terrain types, the joint use of right of way for utility placement, and the extent of the local Resident Engineer's flexibility in approving subdivision plans.

Estimated Economic Impact: It is the opinion of DPB that the proposed regulation will have two primary economic impacts. First, it will reduce by approximately three to five percent the costs incurred by developers for the design and construction of new subdivision streets in Virginia. DPB anticipates that, although some proportion of this reduction will likely be passed on to consumers in the form of lower housing costs, the overall effect on consumer housing costs will be nominal. As a result, the reduction in developers' costs induced by the proposed regulation is not likely to have a measurable impact on private sector employment or other indices of economic activity. Second, the proposed regulation will cause a net increase in the fiscal costs incurred by the Commonwealth in maintaining subdivision streets.

A. Projected Number of Businesses or Other Entities to Whom the Regulation will Apply. Based on information provided by VDOT from interviews with local resident engineers, local officials, and industry representatives it is estimated that the proposed regulation will affect approximately 100 developers, 60,000 homeowners, 1,000 commercial operations, as well as other motorists who will use these streets.[1]

B. Localities and Types of Businesses Particularly Affected. No localities are particularly affected by this proposed regulation. The regulation potentially affects all counties within the Commonwealth, with the exception of Arlington and Henrico counties, and parts of the city of Suffolk.[2]

The proposed regulation does specifically affect businesses engaged in subdivision design and construction.

C. Projected Costs to Affected Businesses or Entities. The cost estimates presented below are based on the following assumptions.

- Approximately 195 miles of new subdivision streets will be added to the Commonwealth's secondary system of highways each year.[3]
- Of the 195 miles of subdivision streets, 35%, or approximately 68 miles, will be constructed with curb and gutter.[4]
- Of the 68 miles of subdivision streets constructed with curb and gutter, 98%, or approximately 67 miles, will have pavement widths that are reduced by two feet from

[1] Although estimates based on survey data and expert opinion can be prone to error, DPB is satisfied that, in this instance, the estimates provided are reasonably accurate, as are all other estimates presented in this analysis that were derived using such methods.

[2] Pursuant to § 33.1-23.5:1 of the Virginia Code these localities have exercised their option under Section 11 of Chapter 415 of the Acts of Assembly of 1932 to withdraw from the secondary system of highways and are not covered by the provisions of this proposed regulation.

[3] This figure represents the average number of miles of new subdivision streets added to the Commonwealth's secondary system of highways over the five year period from 1990 to 1994.

[4] This estimate is provided by VDOT and is based on the past experience of the department.

the current standard because of revisions contained in the proposed regulation.[5]

• The average cost to developers of constructing one square foot of pavement on subdivision streets is $1.15.[6]

• The average cost to the Commonwealth of maintaining one square foot of pavement on subdivision streets is $0.126 per year.[7]

• Of the 68 miles of subdivision streets constructed with curb and gutter, 80%, or approximately 54 miles, will have sidewalk. Fifty percent of these 54 miles of sidewalk, or approximately 27 miles, will qualify for acceptance by the Commonwealth for maintenance. Because of revisions contained in the proposed regulation, 80% of these 27 miles of sidewalk, or approximately 22 miles, will qualify for acceptance of sidewalk on both sides of the street, as opposed to the current practice of accepting sidewalk on only one side of the street.[8]

• The life-expectancy of sidewalk is 15 years and the average cost to the Commonwealth of replacing one square foot of sidewalk is $3.00.[9]

• A discount rate of 6%.[10]

Projected costs to developers: DPB anticipates that the proposed regulation will reduce the costs incurred by developers for the design and construction of new subdivision streets in Virginia. This reduction in costs is due to revisions in the regulation that: (i) decrease in some instances the width of the right of way developers must cede to the Commonwealth for subdivision streets accepted into the secondary system of highways; and (ii) decrease in some instances the pavement width required of developers for subdivision streets accepted into the secondary system of highways.

The reduction in development costs attributable to reduced right of ways is not currently quantifiable. As a result, no estimate of this cost reduction is included in this economic impact analysis.

The reduction in development costs attributable to decreased pavement width is estimated to be $813,648 per year in current dollars, or $11,199,727 when discounted over a 30-year period.[11] Based on information obtained from developers, and their own estimates, VDOT believes that these figures represent an approximately three to five percent reduction in the costs incurred by developers for the design and construction of new subdivision streets.

Projected fiscal costs to the Commonwealth: DPB anticipates that the proposed regulation will cause a net increase in the fiscal costs incurred by the Commonwealth for the maintenance of subdivision streets. This net increase in fiscal costs is due to the effect of revisions in the regulation that: (i) decrease in some instances the pavement width of subdivision streets accepted into the secondary system of highways; and (ii) increase in some instances the amount of sidewalk that will be accepted by the Commonwealth for maintenance.

It is anticipated that the decrease in pavement width will reduce the costs incurred by the Commonwealth to maintain subdivision streets by $89,148 per year in current dollars, or $1,227,107 when discounted over a 30-year period.[12]

It is anticipated that the increase in the amount of sidewalk accepted by the Commonwealth for maintenance will, in the 15th year after the proposed regulation takes effect, increase the costs incurred by the Commonwealth for the maintenance of subdivision streets by $1,393,920 per year in current dollars, or $6,230,609 when discounted over a 30-year period.[13] Sidewalk replacement is accomplished by VDOT through outside contract with private vendors. As a result, no additional state personnel are required to perform these tasks.

In the opinion of DPB, the net effect of these two fiscal impacts will be to increase the fiscal costs incurred by the Commonwealth in maintaining subdivision streets by $5,003,502 when discounted over a 30-year period.[14]

D. Projected Number of Persons and Employment Positions Affected. Although some proportion of the three to five percent reduction in developers' costs effected by revisions in the proposed regulation will likely be passed on to consumers in the form of lower housing costs, it is the opinion of DPB that the overall effect on housing costs will be nominal. As a

[5] This estimate is provided by VDOT and is based on the past experience of the department.

[6] This estimate is provided by VDOT and is based on a survey of developers and a review of past VDOT construction contracts.

[7] This estimate is provided by VDOT and is based on the amounts authorized per moving-lane-mile by Section 33.1-41.1 of the Virginia Code for payment to localities for the maintenance of local streets outside of the state system of highways (*i.e.* $6,660 per moving-lane-mile, divided by a ten foot lane, divided by 5,280 feet per mile).. Because this figure is based on actual state maintenance costs, it represents a reasonable estimate for the maintenance costs of local streets within the state system of highways.

[8] These estimates are provided by VDOT and are based on the past experience of the department.

[9] These estimates are provided by VDOT and are based on the past experience of the department and a review of past contracts for maintenance replacement of sidewalks by private contractors.

[10] This discount rate comports with federal standards employed by the Office of Management and Budget.

[11] The estimate of $813,648 per year in current dollars is based on an expected cost to developers of $1.15 per square foot of pavement, times a two foot reduction in pavement width, times 353,760 feet of subdivision streets per year (67 miles times 5,280 feet per mile).

Discounted present value is used to facilitate comparison of unequal costs and benefits arising at different points in time. The formula used to perform this calculation for a 30 year period is: (Discounted Present Value) = ((Benefit or Cost in Year 1) + ((Benefit or Cost in Year 2)/(1 + Discount Rate)^{1}) + ((Benefit or Cost in Year 3)/(1 + Discount Rate)^{2}) ... + ... ((Benefit or Cost in Year 30)/(1 + Discount Rate)^{29})).

[12] The estimate of $89,148 in current dollars is based on a $0.126 maintenance cost per square foot of pavement on subdivision streets, times a two foot reduction in pavement width, times 353,760 feet of subdivision streets per year (67 miles times 5,280 feet per mile).

[13] The estimate of $1,393,920 in current dollars is based on a $3.00 per square foot replacement cost for sidewalk, times a four foot width, time 116,160 feet of sidewalk (22 miles times 5,280 feet per mile).

[14] This figure is calculated as the net of the $1,227,107 decrease in maintenance costs (when discounted over a 30 year period) effected by the reduction in pavement width, less the $6,230,609 increase in sidewalk maintenance costs (when discounted over a 30 year period) effected by the increase in sidewalk accepted for maintenance.

result, the regulation is not anticipated to have a measurable impact on private sector employment or other indices of economic activity in Virginia.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis: The Department of Transportation concurs with the analysis performed by the Department of Planning and Budget.

Summary:

The Subdivision Street Requirements were originally adopted in 1949 to establish the requirements and administrative procedures for the addition of subdivision streets into the secondary system of Virginia's highways. The geometric standards and specifications listed or referenced in the manual are consistent with the department's criteria for the design and construction of roadway facilities which are adequate to serve the traffic projected to travel over the streets involved. The regulation does make allowances to recognize unique situations concerning street development which arise during the process of subdividing land.

The proposed amendments to the Subdivision Street Requirements reflect the findings of the department documented in response to Senate Joint Resolution 61, enacted by the 1994 General Assembly. This resolution directed the department to study the need for establishing more flexible design standards to ensure these standards reflect the special needs of historical districts, and to address the need for conservation and protection of environmentally sensitive areas. As a result of this effort, the department solicited comments from municipalities, developers, and other stakeholders before securing formal permission to revise the Subdivision Street Requirements.

The proposed amendments provide a number of benefits for participants in the subdivision/development processes: updated nomenclature, references, and titles; additional definitions to reflect new conditions or design specifications; the establishment of new or expanded responsibilities of the participants; and clarifying language to resolve procedural issues. These amendments are intended to produce a document which is easier to understand; provides additional flexibility to the overall addition process; and addresses economic and environmental concerns fairly.

VR 385-01-8. Subdivision Street Requirements.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"AASHTO" means the American Association of State Highway and Transportation Officials.

"Access street" means a subdivision street which provides access to abutting property and serves a traffic volume of not more than 400 vehicles per day, none of which is through traffic. It may also serve similar, lower classification streets of fixed traffic generation. The adjacent property shall be platted in a manner to preclude its subsequent resubdivision or future land development that will generate unanticipated additional traffic volumes.

"ADT" means average daily traffic count (see "Projected Traffic").

"Board" means the Commonwealth Transportation Board.

"Chief engineer" means the employee of the department who~~, pursuant to Chapter 1 (§ 33.1-8) of Title 33.1 of the Code of Virginia,~~ is responsible for the design, construction and maintenance of the systems of state highways *as prescribed under § 33.1-8 of the Code of Virginia.*

"Commissioner" means the ~~Chairman~~ *chief executive officer of the Virginia Department of Transportation and the Vice-Chairman* of the Commonwealth Transportation Board for the Commonwealth of Virginia.

"Complete development" (land) means the utilization of the available areas in such a manner as to realize its highest density for the best potential use based on current zoning, pending rezoning, the adopted comprehensive plan of the governing body, or the customary use of similar parcels of land.

"Complete development" (streets) means the development of a subdivision street in full compliance with all applicable provisions of these regulations.

"County official" means the representative of the governing body appointed to serve as its agent in matters relating to subdivisions.

"Cul-de-sac" means a street with only one outlet and having an appropriate turnaround for a safe and convenient reverse traffic movement.

"Dam" means an embankment or structure intended or used to impound, retain, or store water, either as a permanent pond or as a temporary storage facility.

"Department" means the Virginia Department of Transportation.

"Developer" means an individual, corporation, or registered partnership engaged in the subdivision of land.

"Design manual" means the department's current Road Design Manual, Location and Design Division.

"Design speed" means a speed selected for purposes of design and correlation of those features of a street such as curvature, super elevation, and sight distance, upon which the safe operation of vehicles is dependent.

"District administrator" means the employee of the department assigned the overall supervision of the departmental operations in each of the Commonwealth's nine construction districts.

"Drainage manual" means the department's current Drainage Manual, Location and Design Division.

"Easement" means a grant of a right to use property of an owner for specific, limited use or purpose.

"Extrinsic structure" means any structure whose primary mission is not essential for the intended purpose of the dedicated street. Customarily, an extrinsic structure is intended to separate the movement of people or products (e.g., utilities, nonlicensed motor vehicles, golf carts, pedestrians, etc.) from those using the street.

"Functional classification" means the process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide.

"Governing body" means the board of supervisors of the county.

"ITE Trip Generation" means the current edition of Trip Generation, an informational report of the Institute of Transportation Engineers.

"Level of service" means a qualitative measure describing operational conditions within a traffic stream, and their perception by motorists and passengers. For the purposes of these requirements, the applicable provisions of the current Highway Capacity Manual, Transportation Research Board, shall serve as the basis for determining "levels of service."

"Level terrain" means that condition where highway sight distances, as governed by both horizontal and vertical restrictions, are generally long or could be made so without construction difficulty or major expense.

"Loop street" means a street whose two outlets are to the same street.

"Minimum entrance standards" means the department's current Minimum Standards of Entrances to State Highways, Traffic Engineering Division.

"Mountainous terrain" means that condition where longitudinal and traverse changes in the elevation of the ground with respect to the road or street are abrupt and where benching and side hill excavation are frequently required to obtain acceptable horizontal and vertical alignment.

"Nonresidential street" means a subdivision street adjacent to property that is anticipated to develop for purposes other than residential use.

"Pavement design guide" means the current edition of the Pavement Design Guide for Subdivision and Secondary Roads in Virginia, Materials Division and Transportation Research Council.

"Permit manual" means the department's current Land Use Permit Manual Maintenance Division.

"Phased development" (streets) means the method whereby the acceptance of certain subdivision streets into the secondary system of state highways may be considered prior to their complete development in accordance with all applicable requirements.

"Plans" means the standard drawings, including profile and roadway typical section, which show the location, character, dimensions and details for the proposed construction of the subdivision street.

"Plat" means the schematic representation of the land divided or to be divided.

"Private streets" means subdivision streets which are not intended to be accepted into the secondary system of state highways.

"Projected traffic" means the number of vehicles, normally expressed in average daily traffic (ADT), forecast to travel over the segment of the subdivision street involved.

"PUD" means planned unit development which is a form of development characterized by unified site design for a variety of types and densities of development and as more specifically defined in § 15.1-430(s) of the Code of Virginia.

"Requirements" means the design, construction, and related administrative considerations herein prescribed for the acceptance of a subdivision street into the secondary system of state highways pursuant to ~~Chapter 2 (§ 33.1-229) of Title 33.1~~ *§ 33.1-229* of the Code of Virginia.

"Resident engineer" means the employee of the department assigned to supervise departmental operations within a specified geographical portion of the Commonwealth, consisting of one to four counties.

"Residential street" means a subdivision street adjacent to property that is anticipated to develop as detached single family residential units or qualifying townhouses, condominiums, and apartments as outlined in § 3.6.

"Right-of-way" means the land, property, or interest therein, usually in a strip, acquired for or devoted to a public street or road.

"Roadway" means the portion of the road or street within the limits of construction and all structures, ditches, channels, etc. necessary for the correct drainage thereof.

"Rolling terrain" means that condition where the natural slopes consistently rise above and fall below the road or street grade and where occasional steep slopes offer some restriction to normal horizontal and vertical roadway alignment.

"Secondary system of state highways" means those public roads, streets, bridges, etc., as established by ~~Chapter 1 (§ 33.1-67 et seq.) of Title 33.1~~ *§§ 33.1-67 and 33.1-68* of the Code of Virginia, that are under the supervision of and maintained by the department.

"Specifications" means the department's current Road and Bridge Specifications, including related supplemental specifications and special provisions.

"Standard crown" means the cross slope of the roadway pavement and shall be 1/4 inch per foot, unless otherwise approved by the resident engineer.

"Standards" means the applicable drawings and related criteria contained in the department's current Road and Bridge Standards.

"State secondary roads engineer" means the employee of the department assigned to manage and administer the operations of the Secondary Roads Division to carry out the statewide secondary roads program.

"Subdivision" means the division of a lot, tract, or parcel into two or more lots, plats, sites, or other division of land for the purpose, whether immediate or future, of sale or of building development. Any resubdivision of a previously subdivided tract or parcel of land shall also be interpreted as a "subdivision." The division of a lot or parcel permitted by ~~Chapter 11 (§ 15.1-466 A (k)) of Title 15.1~~ *§§ 15.1-466 A 12 and 15.1-466 A 13* of the Code of Virginia will not be considered a "subdivision" under this definition, provided no new road or street is thereby established. However, any further division of such parcels shall be considered a "subdivision."

"Subdivision street" means a public way for purposes of vehicular travel, including the entire area within the right-of-way, that results from the subdivision of land. Such streets developed in accordance with these requirements shall be eligible for addition to the secondary system of state highways pursuant to ~~Chapter 2 (§ 33.1 229) of Title 33.1~~ *§ 33.1-229* of the Code of Virginia.

"Swale" means a broad depression within which storm water may drain during inclement weather, but which does not have a defined bed or banks.

"Tertiary subdivision street" means a lower classification of local street which, by design, is generally a cul-de-sac or loop street *and intended to serve not more than 400 vehicles per day*. The adjacent property shall be platted in a manner to preclude its subsequent resubdivision or future land development that will generate unanticipated additional traffic volumes. ~~(See Table I A)~~ *Such streets are often referred to as "access" streets. (See § 4.5)*

"Through street" means a street which provides access between two other streets.

"Traveled way" means the portion of the subdivision street designated for the movement of vehicles, exclusive of shoulders, parking areas, turn lanes, etc.

"VDOT" means the Virginia Department of Transportation.

"Watercourse" means a definite channel with bed and banks within which water flows, either continuously or in season.

§ 1.2. Applicability.

These requirements ~~are applicable~~ *apply* to all subdivision streets designated to become part of the secondary system of state highways. ~~Conversely,~~ The department's review and approval shall ~~be applicable~~ *apply* only to streets proposed ~~to be added ultimately~~ *for ultimate addition* to the secondary system. Due to the eventual problems normally associated with private streets, the department does not ~~subscribe to the concept of~~ *advocate* their use in subdivision development. Any plans submitted for review which contain only private streets shall be returned marked "unapproved," with a notation as to the reason.

This regulation is not intended to be a comprehensive manual for the design and construction of subdivision streets. Its purpose is to govern the aspects of subdivision street development that set them apart from those considerations customarily applied to highway projects. However, in all other matters regarding the design and construction of these streets, the relevant requirements of the standards, design manual, specifications, pavement design guide and associated instructions shall govern.

§ 1.3. Continuity of public street system.

The continuity of a publicly maintained street system is a prerequisite to the addition of any subdivision street into the secondary system of state highways. Therefore, no street will be accepted for state maintenance unless it is the continuation of the network of public streets whose maintenance has been officially accepted by the department or, if appropriate, a city, town or county.

§ 1.4. Large-lot-size subdivision.

In the application of these requirements, the department does not recognize any provision of an ordinance adopted by the governing body that ~~excepts~~ *exempts* certain large-lot-size subdivisions from its definition of subdivision. Therefore, any street proposed for addition to the secondary system of state highways shall comply with applicable requirements as herein provided.

§ 1.5. Service requirements.

A. No street or road will be accepted into the secondary system of state highways unless it renders sufficient public service to justify the expenditure of public funds for its subsequent maintenance. Therefore, sufficiently varied proprietorship of the land served is required. For the purpose of these requirements, public service may include, but is not necessarily limited to, one or more of the following situations:

1. Serves three or more occupied units of varied proprietorship with a unit being a house, townhouse, condominium, apartment, mobile home park, or other similar facility. *However, cul-de-sac streets should provide service to at least three of these units not served by another street that is either publicly maintained or will qualify for addition to the secondary system of state highways.*

2. Constitutes a connecting link between other streets which qualify from the point of public service.

3. Provides an extension of a street to the subdivision boundary to facilitate the continuity of possible adjacent development, if required by local ordinance.

4. Serves as access to schools, churches, public sanitary landfills, public recreational facilities, or similar facilities open to public use.

B. Entrances to shopping centers or rental apartment buildings do not normally qualify for addition to the system. ~~This is~~ because the primary service they provide is to the owner, who stands to profit rather than the tenant or customer. However, when a street serves as the principal access to apartment buildings or condominiums, ~~containing either rental or individually owned units,~~ it may be considered ~~as providing~~ *to provide* public service if unrestricted public use is permitted and maintenance continuity is practical. Entrances to shopping centers do not qualify unless the streets leading thereto are through streets and are included

in the comprehensive plan approved by the local governing body.

C. There may be other sets of circumstances that could constitute public service. Consequently, any question regarding unclear situations should be referred ~~to~~ *through* the resident engineer *to the state secondary roads engineer* for resolution.

§ 1.6. Administrative procedure.

A. Conceptual subdivision sketch. Prior to preparation of plats or plans, or both, the developer shall prepare a conceptual subdivision plan to determine functional classification, projected traffic, and terrain. (See § 2.1 A, B, and C.)

B. Plan submission. Plats or plans, or both, together with other pertinent data as herein prescribed, shall be submitted to the responsible resident engineer for all proposed subdivisions whose streets are intended to be added to the secondary system of state highways. ~~Appendix B contains~~ A listing of the locations and jurisdictions of the ~~residency offices~~ *department offices is shown in § 4.2.*

C. Plan review. Upon receipt of the plats or plans, or both, the resident engineer will arrange for the appropriate review to determine compliance with all applicable requirements. The general procedure for this review is prescribed in ~~Appendix A~~ *§ 4.1.*

D. Plan approval. The resident engineer will advise the appropriate county official and the developer, if applicable, as to the results of the review.

1. If the street development proposed by the plats or plans, or both, is determined to be in compliance with these requirements, the resident engineer will provide written confirmation of this finding. This action signifies the resident engineer's recommendation for VDOT approval of the street design shown on the plats or plans, as submitted. Any subsequent revision, additions, or deletions thereto shall require specific written approval of the resident engineer for each such change.

2. Where the revision of the submitted plats or plans is determined necessary, the resident engineer will list the required changes in a written response to the county official and the developer, if applicable. Upon completion of the specified revisions, the plats or plans will be resubmitted for review and approval by the resident engineer as prescribed in ~~Appendix A~~ *§ 4.1.*

E. Street acceptance. Upon completion of the subdivision street construction, the resident engineer will initiate its acceptance into the secondary system of state highways provided:

1. The developer dedicates the prescribed right-of-way to public use.

2. The street has been constructed in accordance with the applicable specifications, standards and the plats or plans approved by the resident engineer.

3. The street renders a public service as prescribed in § 1.5 of these requirements.

4. The resident engineer determines development activities that cause heavy commercial and construction vehicles to use the street are substantially completed.

~~4.~~ *5.* The street has been properly maintained since its completion.

~~5.~~ *6.* The developer furnishes the surety and maintenance fee, if applicable, in accordance with ~~Table III~~ *§ 2.4.*

~~6.~~ *7.* The governing body requests, by proper resolution which includes the guarantee of an unrestricted and unencumbered right-of-way as dedicated, the department's acceptance of the street into the secondary system. *This resolution shall serve as the governing body's acknowledgment that all transportation related proffers, if any, have been satisfactorily implemented.*

Upon the department's determination that the requested addition is in compliance with the applicable provisions of these requirements, the governing body will be officially advised of the street's acceptance into the secondary system of state highways and the effective date of such action. This notification serves as the resident engineer's authority to begin maintenance thereon.

§ 1.7. Variances.

The department's field engineers are authorized considerable discretionary authority in the application of the geometric standards relative to alignment and grade for streets functionally classified as "local." Such judgments should take into consideration the individual situation, but in no instance are the safety features, structural integrity, or traffic capacities prescribed by these requirements to be sacrificed. Meandering alignment and rolling grades are satisfactory, provided adequate stopping sight distances and reasonable alignment and gradients are provided to safely accommodate the projected traffic at the design speed. Other variances may only be granted as designated by the chief engineer.

§ 1.8. Effect of legislation.

If subsequent legislation is enacted that conflicts with any provision of these requirements, the legislative provisions shall govern. As of its effective date such legislation shall take precedence over any conflicting interpretations or decisions rendered by department personnel prior to the enactment of the legislation. However, such action shall not affect the validity of these requirements as a whole, or any part thereof, other than the specific provision involved. *(See § 9-6.14:5.1. of the Code of Virginia.)*

§ 1.9. Entrance permits.

An entrance permit is required by the general rules and regulations of the Commonwealth Transportation Board for any form of access to state maintained roads, including the connection of a subdivision street. Such a connection shall comply with applicable commercial entrance requirements of the department's Permit Manual and Minimum Entrance Standards.

Due to the wide variation in prevailing conditions, each location shall be evaluated individually to determine exact

requirements. Therefore, it is incumbent upon the developer or his designee to apply for any required entrance permit at the appropriate time to insure the desired completion of the development. Such application shall be made to the resident engineer and commensurate with the approved plats or plans for the subdivision.

§ 1.10. Appeal to district administrator.

The district administrator is authorized to consider and render a ruling on unresolved differences of opinion between the developer and the resident engineer that pertain to the interpretation and application of these requirements.

To obtain this review, the developer shall provide the district administrator, with a copy to the county official, a written request for such action, including a brief description of any unresolved issue. After reviewing all pertinent information, the district administrator will advise the developer in writing, with a copy to the county official, as to the decision relative to the appeal. The developer may further appeal the district administrator's decision to the chief engineer for review and disposition as he deems appropriate. A final appeal may be made to the commissioner.

§ 1.11. Precedent of local subdivision ordinance.

Where the requirements of the subdivision ordinance adopted by the governing body equal or exceed the requirements herein prescribed, they shall become the department's requirements in that area and govern.

§ 1.12. Applicable requirements of other regulatory agencies.

Should a subdivision street proposed for acceptance into the secondary system of state highways be subject to provisions of any regulatory agency pertaining to the maintenance, control, and operation of the completed street, the developer shall provide the resident engineer with a copy of such requirements at the time its addition is requested.

PART II.
SPECIFIC PROVISIONS.

§ 2.1. Design requirements.

A. Functional classification.

1. Policy. The characteristics and magnitude of the service to be provided, as herein defined, shall be the basis for the department's determination of the functional classification for each subdivision street intended for acceptance into the secondary system.

2. Criteria. Urban and rural areas have fundamentally different characteristics. Consequently, urban and rural functional systems are classified separately.

a. Urban areas. This designation shall apply to the urbanized areas of Virginia so identified by the U.S. Bureau of the Census (e.g., Northern Virginia, Richmond, ~~Peninsula, Southeastern,~~ *Hampton Roads,* Tri-Cities, Roanoke, Lynchburg, Danville, Charlottesville, Bristol, and Kingsport).

b. Rural areas. Those areas outside the boundaries of urban areas.

3. Functional systems.

a. Rural.

(1) Principal arterial. The most significant streets in the area which serve long distance travel demands such as statewide and interstate travel. Provide service to major centers of activities, constitute the highest traffic volume corridors, carry the major portion of the area's through traffic, and provide continuity between other arterials.

(2) Minor arterial. Streets which interconnect and supplement the principal arterial system with a greater emphasis on land access and a lower level of traffic mobility. They are intended as routes that generally have minimum interference to through traffic and provide intracommunity service.

(3) Major collector. These streets provide service to large communities or other major traffic generators not served by the arterial system. They provide links to higher classified routes and serve as important intracounty travel corridors.

(4) Minor collector. Streets that collect traffic from local streets and distribute it to the arterial system. These streets provide land access service and traffic circulation within residential, commercial, and industrial areas.

(5) Local. These streets provide direct access to adjacent land and serve travel of short distances as compared to the higher systems. Service to through traffic is discouraged.

b. Urban areas.

(1) Principal arterial. These highways are the most significant streets in the urban area that serve the major centers of activity, constitute the highest traffic volume corridors, serve the longest trip desires, carry the major portion of through traffic in the urban area, and provide continuity between rural arterials.

(2) Minor arterial. Streets which interconnect and supplement the principal arterial system with a greater emphasis on land access and a lower level of traffic mobility. They provide intracommunity service as well as connecting rural collectors to the urban highway system.

(3) Urban collector. These streets provide land access service and traffic circulation within residential, commercial, and industrial areas. They collect local traffic and distribute it to the arterial system.

(4) Local. These streets provide direct access to adjacent land and provide access to the higher systems. Service to through traffic is discouraged.

4. Procedures. The department's determination of the functional classification for each street within a subdivision shall be made prior to the resident engineer's approval of its plats or plans. To facilitate the effective development of the plats or plans and permit their expeditious review, it is recommended that this

determination be completed prior to the developer's initiation of detail design for the subdivision. To originate the functional classification process, the developer shall submit the following information:

a. A sketch accurately depicting the general concept for the proposed development of the subdivision, in conformance with the applicable provisions of the governing body's zoning and subdivision regulations. This sketch shall include:

(1) The general location and configuration, including the terminus, of each street proposed within the subdivision.

(2) The location and area of each type of permitted land use within the subdivision.

(3) The location of any proposed transportation facility, within the subdivision's boundaries, included in the current comprehensive plan of the governing body.

(4) Where the governing body's zoning or subdivision regulations, or both, require submission of a conceptual plan in general conformance with the aforenoted submission, such may be acceptable for review by the resident engineer.

b. Other available information pertinent to the intended development of the subdivision.

5. Approval. The resident engineer shall provide written notification to the appropriate county official and the developer, if applicable, regarding the approved functional classification for each street in the subdivision. This approval shall be valid as long as the basic concept for the subdivision's development, as submitted pursuant to the previous paragraph, remains unchanged.

B. Projected traffic/capacity analysis.

1. For the purposes of these requirements, "projected traffic" shall include the traffic resulting from the complete development of all land to be served by the subject roadway facility. This shall include traffic ~~forecasted~~ *that is forecast* to be generated by development, both internal and external, to the subdivision under consideration. The basis for this forecast will be the governing body's current comprehensive plan or other available information pertinent to the permitted land use and transportation planning for the subdivision and adjacent properties. Traffic projections shall be based on each single-family detached residential dwelling unit generating 10 vehicle trips per day. The trip generation rates in the ITE Trip Generation Report ~~shall~~ *may* be utilized in determining the projection of traffic resulting from development other than *PUD and* single-family detached residential. The use of other bonafide traffic studies in determining projected traffic for all types of land development may be considered, subject to their submission for review and approval by the department. *In PUD developments, trip generation rates shall be developed for each type of land use and combined to determine projected traffic for each of the subdivision streets.*

2. As an alternative to the application of the projected traffic to the applicable geometric design criteria of these requirements, the department will consider subdivision street design based on a capacity analysis concept provided:

a. The governing body permits the utilization of this concept in the design of subdivision streets in the county.

b. The developer furnishes full rationale, from an engineer licensed by the Commonwealth to perform such studies, to support the recommendations of this analysis. The submission shall include all pertinent traffic data and computations affecting the design proposal for the subdivision streets involved.

c. A minimum level of service "C" shall be accommodated in the street design proposed under the capacity analysis concept.

C. Terrain classification. The applicable provisions of the current Policy on Geometric Design of Highways and Streets, AASHTO, *1990,* shall be used *as a guide* in the determination of the appropriate classification of terrain for *a* subdivision ~~streets.~~ *street. (See § 1.1 for the definitions of the terrain classifications.) The following table may be used to clarify the application of those classifications.*

Terrain Classification	*Range of topography slopes*
Level	*0% to 8%*
Rolling	*8.1% to 15%*
Mountainous	*Greater than 15%*

D. Roadway geometric design criteria. Except as ~~may be~~ permitted under ~~the provisions of subdivision 2, subsection B of this section,~~ *§ 2.1 B 2,* the following criteria shall apply in the design of subdivision streets intended for addition to the secondary system *of state highways*:

1. Any street functionally classified as "local" pursuant to subsection A of this section shall ~~be designed in accordance with the~~ *have a minimum design based on § 4.5 and other* applicable provisions of ~~Tables 1 and 1-A of these requirements~~ *this regulation.*

2. Streets functionally classified as a "collector" and "arterial" shall be designed in accordance with applicable provisions of the ~~department's~~ *design manual and* standards for the appropriate functional and terrain classification.

3. The following criteria shall apply to the design of all subdivision streets functionally classified as "local":

a. Individual street design shall be based on projected traffic, design speed, and terrain classification.

b. Street designs shall be based on a sustained minimum level of service "C" for the projected traffic that assumes complete development of the land. To maintain this level of service, additional travel lanes, channelized roadways, etc., may be required.

c. The typical section for each street should be uniform throughout its length, allowing modifications only as justified to accommodate changes in projected traffic, i.e., at an intersecting street.

d. Sight distances shall be based on a height of eye of 3.5 feet and an object height of 0.5 feet, except at intersections where an object height of 4.25 feet shall be used.

e. The curve data shown in § 4.5 establishes the minimum horizontal control criteria used for the design of subdivision streets. Horizontally curved roadways shall be superelevated as required in § 4.5 with transitions developed in accordance with department standard TC-5ULS transition requirements.

f. Roadway designs shall be broadly based on two categories:

(1) Shoulder and Ditch Design

(2) Curb and Gutter Design, further defined by the land use served by the street — residential or nonresidential.

g. The minimum pavement widths shall be as shown in § 4.5 and the following table. For traffic counts not shown in this table and for shoulder and ditch roadway sections, the pavement widths shown in § 4.5 shall be used.

For the purposes of the following table, "Length" shall mean the travel distance from the most distant point of trip origin to an intersecting nonaccess or nontertiary street, "c-c" shall mean the minimum face to face of curb width, and "ROW" shall mean the minimum right-of-way width.

	Residential Subdivision Streets		
Length	*Up to 0.5 miles*		*Over 0.5 miles*
On Street Parking	*Not Allowed*	*Allowed*	*Allowed*
ADT Up to 250	*c-c = 22 ft. ROW = 30 ft.*	*c-c = 28 ft. ROW = 40 ft.*	*c-c = 30 ft. ROW = 40 ft.*
ADT 251 - 400	*c-c = 24 ft. ROW = 30 ft.*	*c-c = 28 ft. ROW = 40 ft.*	*c-c = 30 ft. ROW = 40 ft.*

	Nonresidential Subdivision Streets	
Length	*Not a Factor*	
On Street Parking	*Not Allowed*	*Allowed*
ADT Up to 250	*c-c = 24 ft. ROW = 40 ft.*	*c-c = 30 ft. ROW = 40 ft.*
ADT 251 - 400	*c-c = 24 ft. ROW = 40 ft.*	*c-c = 30 ft. ROW = 40 ft.*

Note: For all other applicable roadway design criteria refer to § 4.5.

h. Shoulder designs shall be in accordance with Standard GS-12.

i. Curb and gutter designs shall be in accordance with the designs depicted in § 4.4 with the following restrictions:

(1) Curb and gutter standards CG-7 and Roll Top may not be used adjacent to sidewalk installations.

(2) Roll top curb and gutter shall be constructed with approved slip form type equipment, designed for that type of installation.

(3) On any segment of a street, only one curb and gutter design may be used.

(4) If sidewalk is not used, a relatively flat, graded area, at least 2.5 feet in width, shall be provided behind the back of curb.

E. Bridge and culvert design criteria.

1. Capacity. All bridges and culverts shall be of HS 20-44 loading or alternate military loading, or both, in accordance with the current AASHTO bridge design specifications and VDOT modifications. To facilitate the department's review, all pertinent calculations for the structure's design shall be submitted with each bridge plan.

2. Width. Clear roadway widths ~~shall be provided on~~ *of* all structures *shall be* in accordance with the department's ~~standards~~ *design manual.*

F. Drainage.

1. Policy and procedures. All drainage facilities shall be designed in accordance with the department's current drainage manual and supplemental directives.

2. Criteria. Standards appropriate to the functional classification of the street and the potential impact on adjacent property shall apply.

3. Design. Specific reference is made to the following design requirements:

a. VDOT Drainage Manual.

~~(1) Hydrology - Chapter 1~~

~~(2) Open Channels and Ditches - Chapter 2~~

~~(3) Culverts - Chapter 3~~

~~(4) Storm Sewer Systems - Chapter 4~~

~~(5) Bridges - Chapter 5~~

~~(6) Storm Water Management - Chapter 10~~

~~b. Division of Soil and Water Conservation Erosion and Sediment Control Handbook~~

~~(1) Erosion and Sediment Control~~

b. VDOT Location and Design Division Instructional Memorandum for Pipe Criteria and Drainage Instructions.

c. Virginia Erosion and Sediment Control Handbook.

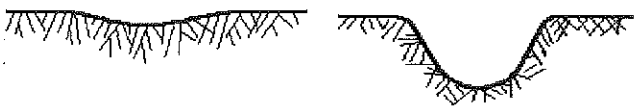
4. Storm water ~~detention~~ *management.*

The department does not require ~~detention~~ *storm water management in the construction of subdivision streets.* However, ~~it does recognize it~~ *storm water management, including the construction of detention or retention facilities, or both, is recognized* as an available design alternative. Where the developer is required by regulations ~~of the local government or elects to utilize detention~~ *promulgated by an agency or governmental subdivision other than the department, or the developer chooses to use storm water management* facilities in the design of a subdivision, ~~an acceptable agreement from the local government is required which absolves~~ *the governing body shall, by formal agreement, acknowledge that* the department ~~from any responsibility or liability~~ *is neither responsible nor liable* for the *storm water* detention facility.

~~VDOT does adhere to~~ *In the development of VDOT projects, storm water management controls are based on criteria outlined in* the state Stormwater Management Criteria for Controlling Off-Site ~~Erosion, Division of Soil and Water Conservation, GC 7.~~ *Erosion (Minimum Standard #19 - Adequate Receiving Channels).*

5. Easements.

a. An acceptable easement shall be provided from all drainage outfalls to a natural ~~watercourse, i.e., "A defined natural channel with bed and banks within which water flows either continuously or intermittently." A swale is a broad depression without defined bed and banks and is not a natural~~ watercourse *as opposed to a swale.*



Swale Watercourse

(See VDOT Drainage Manual~~, Chapter 7~~)

b. The department normally accepts and maintains only that portion of a drainage easement that falls within the limits of the dedicated right of way for a street. However, the department may enter drainage easements outside of the dedicated right of way to undertake corrective measures to alleviate drainage problems within the dedicated right of way.

~~b.~~ *c.* An acceptable agreement from the ~~local government,~~ *governing body* which absolves the department from any future responsibility or liability may be considered as an alternative to providing an easement.

~~c.~~ *d.* Where development activity results in increased runoff to the extent that adjustment of an outfall facility is required, such adjustment shall be at the developer's expense and contained within an appropriate easement.

6. Documentation. All drainage design computation shall be complete, properly documented and presented to the resident engineer for review.

G. Pavement structure design. The design of the pavement structure for subdivision streets shall be in accordance with ~~Table II of these requirements~~ *the pavement design guide, including any prescribed underdrains.*

§ 2.2. Phased development of subdivision streets.

A. Policy. Certain subdivision streets may be considered for addition to the secondary system of state highways prior to their complete development in accordance with applicable provisions of these requirements.

B. Criteria.

1. The street shall be functionally classified as a "collector" or "arterial" pursuant to § 2.1 of these requirements.

2. The traveled way of the street, upon complete development pursuant to applicable provision of these requirements, shall provide four or more lanes for motor vehicles, exclusive of turn lanes, parking lanes, etc.

3. Except as may be expressly authorized by the state secondary roads engineer, only two phases of the street's development, i.e., initial and complete, shall be permitted.

4. The governing body, by resolution, recommends the street's acceptance into the secondary system of state highways prior to its complete development.

5. The governing body elects to enter into an agreement, acceptable to the department, to assure the street's subsequent completion in full compliance with these requirements. It shall specifically include suitable provisions for each of the following issues:

a. All cost incurred in the street's complete development, including construction, right-of-way, engineering, utility adjustment, etc., shall be provided from funds other than those derived from state revenue sources administered by VDOT, except as may be expressly authorized by the state secondary roads engineer.

b. The governing body's assurance for the completion of the street's full development pursuant to the applicable provisions of these requirements.

c. The governing body shall have the sole responsibility to collect and maintain any funds provided, either voluntarily or pursuant to its requirements, for the required subsequent development of the street.

d. The determination relative to the timing of the street's complete development shall be exclusively

that of the department and will be based on whichever of the following situations occurs first:

(1) The street's actual traffic volume, as determined by the department, exceeds 8,000 ADT.

(2) The department determines the initial phase of the street's development is incapable of permitting a minimum level of service of "D" to be maintained.

e. Consideration for the acceptance of any street under the provisions of this section shall be limited to the phased development of only the street's roadway. All other applicable requirements, e.g., public service, drainage easements, and administrative procedures shall apply.

C. Procedures.

1. Plats or plans, or both, for the street's complete development, in accordance with all applicable provisions of these requirements, shall be submitted for approval.

2. The plats or plans shall also delineate the street's initial development as proposed pursuant to this section. In no case shall this design provide less than one-half of the roadway typical section required by the applicable requirements for the street's complete development.

3. A capacity analysis, as prescribed in subsection B of § 2.1 of these requirements, shall be submitted to document that a minimum level of service of "C" will be maintained by the initial roadway phase throughout its intended duration.

4. Concurrent with the submissions prescribed in subdivisions 1, 2, and 3 of this subsection, the developer shall request the governing body to advise the resident engineer of its recommendation for the street's phase development and of its intent to enter into the agreement prescribed in subsection B, subdivision 5 of this section.

5. Upon the resident engineer's determination that the proposal is in compliance with the applicable provisions of this section, he may approve the plans accordingly.

6. Upon completion of the street's initial phase in accordance with approved plans, its compliance with all other applicable provisions of subsection D of § 1.6 of these requirements and the governing body's execution of the prescribed agreement, the street may be accepted into the secondary system of state highways.

§ 2.3. Right-of-way.

A. Width. A clear and unencumbered right-of-way shall be dedicated to public use for any subdivision street proposed for addition to the secondary system of state highways. ~~The width of such dedication shall be in accordance with Tables I and I-A for those streets functionally classified as "local."~~ *For streets functionally classified as "local," the width of such dedication shall be as specified in this section.* For *"local" streets based on a design speed greater than that shown in § 4.5 and for* streets functionally classified as "collector" or "arterial" the dedicated width shall be in accordance with applicable provisions of the department's standards *and design manual.* ~~Where sidewalk is to be provided which qualifies for maintenance by the department, additional right-of-way shall be dedicated to the extent necessary to accommodate the sidewalk and facilitate its future maintenance.~~

Except as specified under this section, the widths shown in § 4.5 and § 2.1 D 3 g, are the minimum widths normally expected to accommodate all roadway elements, including cut and fill slopes. Unless otherwise indicated, these widths assume lawful on street parking is allowed. For other required elements of a subdivision street, e.g., turn lanes ~~and~~ , cul-de-sacs, *and median or mall type roadway separators,* additional right-of-way shall also be provided as necessary *to include those elements within the extremities of the right-of-way.*

1. For curb and gutter sections, the limits of right-of-way shall be not less than 2.5 feet behind the back of curbs. If sidewalks are used, the limits of right-of-way shall be not less than one foot beyond the back of sidewalk.

2. For shoulder and ditch sections, additional right-of-way width may be required, in increments of 10 feet, as necessary to accommodate necessary roadway within the dedicated right of way. Where sidewalk which qualifies for maintenance by the department is to be provided, additional right-of-way shall be dedicated as necessary to accommodate and facilitate its future maintenance, extending not less than one foot beyond the edge of the sidewalk.

B. Utilities. To assure the unencumbered dedication of the right-of-way for subdivision street additions, easements or other interests within the platted right-of-way shall be quit-claimed of any prior rights therein. In exchange, a permit may be issued by the department for a utility to occupy the area involved. This permit will be processed by the resident engineer upon acceptance of the street into the secondary system of state highways. No inspection fee is required for permits so issued. However, the approval of the permit shall be contingent upon the utility's compliance with applicable provisions of the Permit Manual.

~~Insofar as is practical, longitudinal~~ *Underground utilities may be located within the dedicated right of way of streets. Longitudinal* underground utilities ~~shall~~ *should* be located outside of the *normal travel lanes of a street and preferably beyond the* street's pavement. *Installations within the parking area and the shoulders along the roadway are normally acceptable.*

However, where the governing body has established adequate requirements for the design, location, and construction of underground utilities within the right-of-way for subdivision streets, they shall become the department's requirements in that area and govern, provided they are not in conflict with any applicable requirements of the department. Departmental regulations prohibit the open-cutting of hardsurfaced roads except in extenuating circumstances. Therefore, all underground utilities within the right-of-way, as determined necessary by good engineering practice to serve the complete development of adjacent properties, shall be installed during the street's initial construction and prior to the application of its final pavement surface course.

All above ground utilities shall be installed behind the sidewalk or as close as possible to the limits of the street's right-of-way.

C. "Spite strips." Plans that include a reserved or "spite" strip which prohibits otherwise lawful vehicular access to a street from the adjacent properties, whether within or outside the subdivision, will not be approved.

§ 2.4. Surety and fees.

A. Except as otherwise provided in this section, the developer shall provide surety and fees as determined in subsection D of this section.

~~A.~~ *B.* Surety.

1. Bond or cash deposit. The developer shall furnish an acceptable surety, in accordance with ~~Table III~~ *subsection D of this section*, to guarantee the satisfactory performance of the street for a period of one year from the date of its acceptance into the secondary system of state highways. The surety may be a performance bond, cash deposit, certified check or other form mutually satisfactory to the department and the developer.

2. Alternatives to surety.

a. In jurisdictions where the staff of the governing body administers a comprehensive subdivision construction inspection program which has been approved by the department, the surety may be waived upon certification by the governing body that the proposed addition has been constructed in accordance with approved plans and specifications.

b. If requested by the developer and subject to availability of departmental personnel, the VDOT may perform the construction inspection of subdivision streets proposed to be added to the secondary system of state highways. In such cases, the developer shall bear all costs incurred by the department.

~~B.~~ *C.* Maintenance fee. A maintenance fee, in accordance with ~~Table III~~ *subsection D of this section*, will be required for the acceptance of a subdivision street into the secondary system at any time other than July 1. Any fraction of a month shall be computed as a whole month in arriving at the amount of fee involved.

The official acceptance date of any addition will not be made retroactive. However, where it is demonstrated that extenuating circumstances beyond the control of the developer prevented the addition's acceptance on July 1, the department may waive the maintenance fee. Administrative delays by the governing body or the department may be considered an extenuating circumstance. However, failure of the developer to comply with all applicable requirements, including the provision for the dedication of an unencumbered right-of-way, will not be considered extenuating.

D. Surety and maintenance fee schedule.

	2 - Lane Streets		*4 - Lane Streets*	
Mileage	*Surety*	*Maintenance Fee*	*Surety*	*Maintenance Fee*
Minimum (up to 0.25 mi.)	*$3,750*	*$375/year*	*$7,500*	*$750/year*
From 0.25 mi. To 0.50 mi.	*$7,500*	*$750/year*	*$15,000*	*$1,500/year*
Over 0.50 mi.	*$1,500 per tenth mile and fraction thereof*	*$150 per tenth mile and fraction thereof per year*	*$3,000 per tenth mile and fraction thereof*	*$300 per tenth mile and fraction thereof per year*

Examples

1. A two lane street, 0.35 miles long, is processed for addition effective September 18. Therefore, surety is required for four-tenths mile and maintenance fee is required for ten months.

Surety required: *$7,500*

Maintenance fee required: *$750 x 10/12 = $625*

2. A four lane street, 0.78 mile long, is processed for addition effective February 4. Therefore, surety is required for eight-tenths mile and maintenance fee is required for five months.

Surety required: *8 x $3,000 = $24,000*

Maintenance fee required: *8 x $300 x 5/12 = $1,000*

PART III.
MISCELLANEOUS PROVISIONS.

§ 3.1. Sidewalk.

A. The installation of sidewalk is not a requisite for the department's acceptance of a subdivision street. However, ~~board policy permits~~ sidewalk located within the dedicated right-of-way, whose construction is either voluntary or a requirement of the governing body, ~~to~~ *may* be accepted for maintenance subject to its compliance with the following guidelines and criteria.

~~A. Guidelines.~~

Sidewalks may be accepted on (i) streets adjacent to and in the immediate vicinity of multiple businesses or public buildings, or (ii) on subdivision streets within the specified range of the governing body's policy regarding pedestrian transportation between home and school.

B. Criteria.

1. Sidewalk on one ~~side~~ *or both sides* of streets within one mile of all existing elementary schools, and one and one-half miles of all existing intermediate and high schools, will be eligible for maintenance. This criteria shall also apply to streets in the vicinity of proposed schools, the construction of which is included in a county's five-year capital improvement budget.

~~2. Sidewalk on both sides of a school access street described in subdivision 1 of this subsection will be eligible for maintenance when the existing or projected traffic exceeds 3,000 ADT.~~

~~3. No sidewalks will be eligible for maintenance on permanent deadend street, loop streets or cross streets which do not serve as access to a high density residential area.~~

~~4.~~ 2. Sidewalks on streets adjacent to and in the immediate vicinity of multiple commercial businesses or public facilities will be eligible for maintenance. Immediate vicinity shall mean 1,000 feet beyond zoning line.

3. Sidewalks along any permanent cul-de-sac, loop, or cross street will be eligible for acceptance only if the street provides the route of principle pedestrian access to a residential area having a land use density of four or more units per acre and the provisions of either subdivision 1 or 2 of this subsection are satisfied.

~~5.~~ *4.* In situations not herein addressed, sidewalks may be approved for maintenance eligibility after individual study and joint concurrence by the resident engineer and the governing body.

C. Standards.

1. Sidewalk ~~constructed adjacent to a curb and gutter typical section street~~ *may not be constructed adjacent to curb and gutter designs other than standard CG-6. When used with curb and gutter, sidewalk* shall be constructed ~~at least~~ *not less than* four feet wide by four inches deep, *on a compacted subgrade,* and in accordance with the department's specifications for *hydraulic* cement concrete sidewalk.

On ~~rural~~ *shoulder and ditch* typical sections, asphalt concrete sidewalk may be acceptable when located behind the ditch line in cut sections and behind the guardrail in fill sections. Such sidewalks shall be at least four feet wide by four inches deep and at a grade and elevation compatible with the adjacent roadway element. Cement concrete sidewalk on typical sections will be acceptable only when constructed on an alignment and grade to be compatible with the eventual conversion of the street to a curb and gutter section. ~~Construction of sidewalk within the prescribed shoulder area of the roadway will not be permitted.~~

On shoulder and ditch sections, construction of sidewalk within the prescribed shoulder area of the roadway will not be permitted.

2. Sidewalk underdrain shall be provided in accordance with the department's Standard UD-3.

D. Auxiliary sidewalk. Sidewalk that is deemed ineligible for department acceptance under the provisions of subsections A and B of this section shall be considered an auxiliary pedestrian facility and may occupy the dedicated right-of-way of a subdivision street provided:

1. The auxiliary sidewalk is constructed to standards prescribed under subsection C of this section.

2. The liability for the auxiliary sidewalk is accepted by the governing body and the responsibility for its future maintenance is assured under terms of a permit, agreement, or other legal instrument satisfactory to the department under which:

a. The governing body accepts the responsibility to administer the future repair and replacement of the auxiliary sidewalk; or

b. The department may accept the responsibility to administer the future repair, maintenance, or replacement of the auxiliary sidewalk upon the official request of the governing body provided it agrees to reimburse the department for all costs incurred in the associated activities.

~~D.~~ *E.* Nonstandard sidewalks. Nonstandard sidewalks that meander horizontally or vertically, or both, relative to the roadway may be permitted. However, the department will not accept responsibility for their maintenance. A permit which clearly specifies the applicant's responsibility for the sidewalk's maintenance and related activities shall be obtained from the department to the extent it will encroach upon the street's right-of-way. The permit applicant shall be a county, incorporated town, or other agency which has perpetual maintenance capability. These sidewalks may be constructed of asphalt, concrete, gravel, or other stabilizer convenient to the applicant.

§ 3.2. Intersections.

The legs of intersecting streets that will operate under a STOP or YIELD condition preferably should be at right angles. *The resident engineer may require the developer to provide and install traffic control signs, in accordance with the Manual for Uniform Traffic Control Devices.* Also, a relatively flat landing, of sufficient length to properly accommodate the projected traffic volume, shall be provided. *(See the design manual.)* Where turning volumes are significant, appropriate channelization of intersection may be required.

§ 3.3. Guardrail.

Guardrail shall be provided *and installed by the developer* as necessary for the safety of the traveling public as well as protection for adjacent properties. The use of guardrail types that are aesthetically compatible with the surrounding areas should be considered. One acceptable type is "Corten" or weathering steel rail with treated timber post. Alternate types may be considered provided they conform to applicable VDOT standards or the criteria prescribed in the National Cooperative Highway Research Program Report 230, blend in with the surrounding and do not create an undue maintenance problem.

§ 3.4. Curb and gutter.

For the purpose of these requirements, the use of a curb and gutter is an acceptable alternative, rather than a requisite, for the acceptance of subdivision streets. However, where its use is required by the governing body or *is* otherwise desired, ~~"local" streets utilizing a curb and gutter typical section shall be designed in accordance with Tables I and I-A. The appropriate standard for curb and gutter, as prescribed in Table IV, shall be utilized.~~ *the curb and gutter design shall be as shown in § 4.4 of these requirements.*

Curb-cut ramps shall be provided in accordance with ~~Chapter 10 (§ 15.1-381) of Title 15.1~~ *§ 15.1-381* of the Code

of Virginia and constructed in accordance with the department's Standard CG-12.

§ 3.5. Turn lanes.

Left or right turn lanes shall be provided at intersections when the department determines that projected turning movements warrant their installation. These facilities shall be designed in accordance with the appropriate provisions of the department's Minimum Entrance Standards. Where necessary, additional width of right-of-way shall be provided to accommodate these facilities.

§ 3.6. ~~Townhouses and condominiums~~ *Townhouses, condominiums, and neotraditional developments.*

The density of units normally associated with ~~the development of townhouses and condominiums~~ *these developments* presents several unique situations that must be considered in the design of the adjacent subdivision streets.

~~Primarily,~~ *With regard to townhouse and condominium developments,* these *situations primarily* relate to parking and the frequency of desired entrances. In the absence of local regulations which are deemed acceptable by the department, the following criteria shall apply for the design of subdivision streets serving these developments:

1. A minimum of two parking spaces for each unit shall be provided. On street parking, if available and in the proximity of the unit it is intended to serve, may be combined with "on-site" parking to satisfy this provision.

2. ~~In the event~~ *If* parking bays are provided, they shall be located off the street's right-of-way and designed to prevent vehicles from backing into the adjacent subdivision street.

3. Entrances to parking bays or individual units shall be separated by at least 50 feet and designed in accordance with the appropriate provisions of the Standards or Permit Manual.

Neotraditional developments may include a variety of buildings and land use densities along the same street. These developments may be defined as "villages" or "hamlets" in the ordinance of the governing body. The design of these streets may be accommodated in accordance with Part II of this regulation and subject to a review and specific approval by the resident engineer.

§ 3.7. Concentric design.

The design of the subdivision street's principal roadway elements shall, except in extenuating circumstances, be concentric to the center of the right-of-way. No variance from the appropriate typical section will be permitted except as necessary to provide for vehicular safety and traffic channelization features, e.g., turn lanes, intersection radius, etc.

§ 3.8. Turnaround/cul-de-sac.

An adequate turnaround facility shall be provided at the end of each cul-de-sac street to permit the safe and convenient maneuvering by service vehicles. ~~Where a circular turnaround is used, a minimum 30-foot radius from its center to the outer edge of pavement shall be provided in residential subdivisions and a minimum 45-foot radius in all other types of subdivision. Additional right-of-way, as necessitated by the turnaround, shall be provided.~~ *To afford the greatest flexibility in design, various types of turnaround designs may be approved. Additional right-of-way shall be provided as required by the turnaround design. Nontraffic areas included within turnarounds, such as islands, shall be included in the dedicated right-of-way of the facility.*

For circular turnarounds, a well-defined, identifiable street segment shall extend from the intersected street to the beginning of the radial portion of the turnaround. The length of this segment shall equal the normal lot width along the intersected street which serves the cul-de-sac. A minimum radius of 30 feet shall be used for circular turnarounds on residential cul-de-sac streets planned to serve 10 or fewer units. For all other circular turnarounds on residential cul-de-sac streets, as well as nonresidential cul-de-sac streets, a minimum radius of 45 feet shall be used.

§ 3.9. Dams.

Subdivision streets which cross a dam may be eligible for acceptance into the secondary system of state highways subject to the following criteria:

1. The right of way across the dam is recorded as either an easement for public road purposes or is dedicated to the county. Right of way that includes a dam and which is dedicated in the name of the Commonwealth or any of its agencies is not acceptable and roads through such right of way will not be accepted as a part of the secondary system of state highways.

~~1.~~ 2. An appropriate alternate roadway facility for public ingress and egress, with suitable provisions to assure its perpetual maintenance, is provided.

~~2.~~ *3.* ~~The~~ *An engineer, licensed to practice in the Commonwealth of Virginia, certifies that the* dam's hydraulic and structural design ~~shall be~~ *is* in accordance with current national engineering practice. ~~Flow of water over the roadway is not acceptable as an emergency spillway.~~

~~3.~~ *4.* Applicable federal and state permits must be secured prior to VDOT acceptance of the street.

~~4.~~ *5.* Protection of *the* roadway from inundation shall be provided as herein prescribed by these requirements. *Flow of water over the roadway is not acceptable as an emergency spillway.*

~~5.~~ *6.* VDOT maintenance responsibilities shall be limited to *the* roadway surface and related elements. The maintenance of the dam shall be ~~that~~ *the responsibility* of the owner, other than VDOT, as established by ~~Chapter 1 (§ 33.1-176 et seq.) of Title 33.1~~ *§ 33.1-176* of the Code of Virginia.

~~6.~~ *7.* ~~An acceptable agreement is entered into with the governing body and other parties as may be appropriate, which absolves the department of any future liability due to the dam's existence.~~ *The governing body shall provide the department with an acceptable agreement, which acknowledges the department's liability is limited to the maintenance of the roadway and its related elements and that the department has no responsibility or liability due to the presence of the dam.*

§ 3.10. Railroad crossing.

Short-arm gates ~~or~~ *with* flashing signals, *flashing signals alone,* or other protective devices as deemed appropriate by VDOT, shall be provided by any at-grade crossing of an active railroad by a subdivision street. Prior to the execution of the agreement between the railroad and the developer or the governing body, regarding the construction or maintenance of any at-grade crossing, bridge, or signal device, it shall be reviewed and approved ~~in~~ by the *department, which will coordinate a concurrent review with the* Department of Rail and Public Transportation. This agreement shall be fully executed prior to the street's acceptance into the secondary system.

§ 3.11. Private entrances.

All private entrances shall be designed and constructed in accordance with the applicable standard. For ~~rural~~ *shoulder and ditch* typical section streets, the department's Standard PE-1 shall be utilized. *All entrance pipe culverts shall be sized to accommodate the run off expected from a 10-year frequency storm.* On streets with curb and gutter, the appropriate entrance gutter, as prescribed by the standards, shall be provided.

§ 3.12. Parking.

Perpendicular and angle parking along subdivision streets shall be prohibited. On streets with curb and gutter, parallel parking may be permitted where appropriate parking lanes are provided.

Street designs which anticipate no on street parking shall only be allowed with the consent of the county official and the resident engineer. Further, the provisions of § 2.1 D 3 g shall be satisfied with adequate off street parking provided. Designs anticipating the prohibition of parking will only be allowed in situations where no direct access to the abutting property is allowed or when the type of development of all adjacent property is anticipated in accordance with § 3.6.

§ 3.13. Landscaping.

All disturbed areas within the dedicated right-of-way and easements of any subdivision street shall be restored with a vegetation compatible with the surrounding area. No street will be accepted into the secondary system of state highways where there is visual evidence of erosion or siltation unless appropriate protective measures, in accordance with VDOT's construction practices, have been taken. Any planting of trees or shrubs shall be in accordance with the department's current Guidelines for Planting Along Virginia's Roadways, Environmental Division.

§ 3.14. Encroachments *and extrinsic structures.*

Posts, walls, signs, or similar ornamental structures ~~that do not enhance~~ *shall not be permitted within the right-of-way of a subdivision street, unless such encroachment enhances* a roadway's capacity or traffic safety~~, shall not be permitted within the right-of-way of a subdivision street~~. Only those structures specifically authorized by permit issued by the department may be located within the street's right-of-way.

No street that includes an extrinsic structure within the right-of-way will be accepted as part of the secondary system of state highways unless the local governing body provides the department with an acceptable agreement that assures the costs of inspection, maintenance, and future improvements to the structure are provided from sources other than those administered by the department.

§ 3.15. Lighting.

Where roadway, security, or pedestrian lighting is required by the governing body or desired by the developer, it shall be installed in accordance with the department's Guidelines for Lighting by Permit on State Right of Way (No. M-245-87), Maintenance Division.

§ 3.16. Noise abatement.

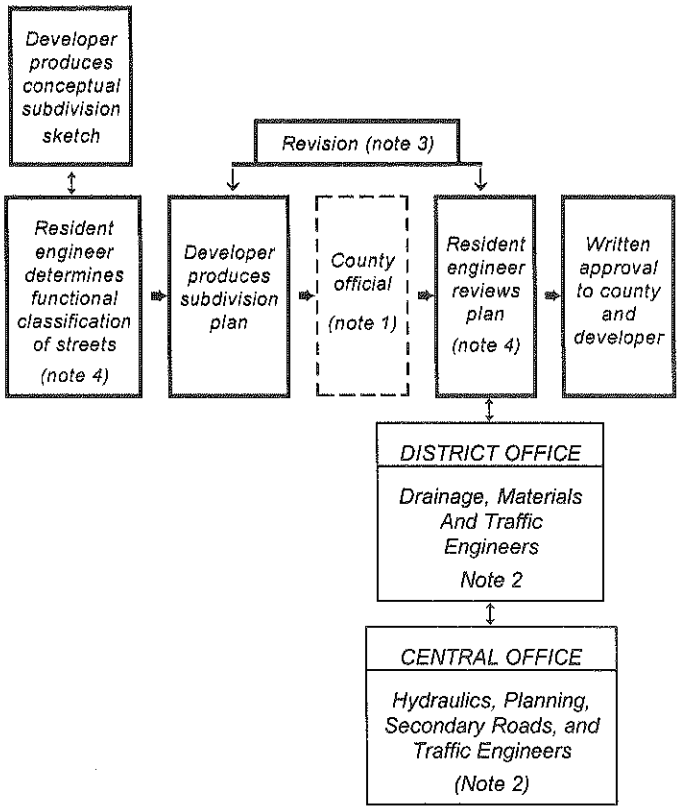
Where applicable, the governing body and the developer are reminded of the board's adoption, on August 18, 1988, of the State Noise Abatement Policy which applies to nonfederal-aid highway construction and improvement projects.

§ 3.17. Effective date and transition.

These requirements are effective as of January 1, ~~1990~~ *1996*; provided, however, that during the period of January 1, ~~1990~~ *1996*, through March 31, ~~1990~~ *1996*, the department will consider approval of streets designed in accordance with either the former requirements ~~(1980)~~ *(1990)* or with these requirements. Any street design initially submitted for approval by the department after March 31, ~~1990~~ *1996*, shall be in accordance with these requirements.

PART IV.
REFERENCE SECTION.

§ 4.1. Subdivision street plan review procedure.



NOTES

1. *Depending on the individual county's ordinance, plan may be submitted to county official or directly to resident engineer.*
2. *Referral to district and central offices will occur only if the complexity of the subdivision plan requires such review.*
3. *Plan will be returned to the developer if revision is required (for minor revisions, the revised plan will receive priority review when resubmitted).*
4. *Plan review for subdivision development in counties of Fairfax, Loudoun, and Prince William is performed in the Northern Virginia District Office.*

§ 4.2. Offices of the Virginia Department of Transportation.

Residency and district offices are located in or near the localities or cities shown.

County Served	Residency	District
Accomack	Accomack	Suffolk
Albemarle	Charlottesville	Culpeper
Alleghany	Lexington	Staunton
Amelia	Amelia	Richmond
Amherst	Amherst	Lynchburg
Appomattox	Appomattox	Lynchburg
Augusta	Staunton	Staunton
Bath	Lexington	Staunton
Bedford	Bedford	Salem
Bland	Tazewell	Bristol
Botetourt	Salem	Salem
Brunswick	South Hill	Richmond
Buchanan	Lebanon	Bristol
Buckingham	Dillwyn	Lynchburg
Campbell	Appomattox	Lynchburg
Caroline	Bowling Green	Fredericksburg
Carroll	Hillsville	Salem
Charles City	Sandston	Richmond
Charlotte	Halifax	Lynchburg
Chesterfield	Chesterfield	Richmond
City of Suffolk	Suffolk	Suffolk
Clarke	Luray	Staunton
Craig	Salem	Salem
Culpeper	Culpeper	Culpeper
Cumberland	Dillwyn	Lynchburg
Dickenson	Wise	Bristol
Dinwiddie	Petersburg	Richmond
Essex	Bowling Green	Fredericksburg
Fairfax	Fairfax	Northern Virginia
Fauquier	Warrenton	Culpeper
Floyd	Hillsville	Salem
Fluvanna	Louisa	Culpeper
Franklin	Rocky Mount	Salem
Frederick	Edinburg	Staunton
Giles	Christiansburg	Salem
Gloucester	Saluda	Fredericksburg
Goochland	Ashland	Richmond
Grayson	Wytheville	Bristol
Greene	Charlottesville	Culpeper
Greensville	Franklin	Suffolk
Halifax	Halifax	Lynchburg
Hanover	Ashland	Richmond
Henry	Martinsville	Salem
Highland	Staunton	Staunton
Isle of Wight	Suffolk	Suffolk
James City	Williamsburg	Suffolk
King & Queen	Saluda	Fredericksburg
King George	Fredericksburg	Fredericksburg
King William	Bowling Green	Fredericksburg
Lancaster	Warsaw	Fredericksburg
Lee	Jonesville	Bristol
Loudoun	Leesburg	Northern Virginia
Louisa	Louisa	Culpeper
Lunenburg	Amelia	Richmond
Madison	Culpeper	Culpeper
Mathews	Saluda	Fredericksburg
Mecklenburg	South Hill	Richmond
Middlesex	Saluda	Fredericksburg
Montgomery	Christiansburg	Salem
Nelson	Amherst	Lynchburg
New Kent	Sandston	Richmond
Northampton	Accomac	Suffolk
Northumberland	Warsaw	Fredericksburg
Nottoway	Amelia	Richmond
Orange	Culpeper	Culpeper
Page	Luray	Staunton
Patrick	Martinsville	Salem
Pittsylvania	Chatham	Lynchburg
Powhatan	Chesterfield	Richmond
Prince Edward	Dillwyn	Lynchburg
Prince George	Petersburg	Richmond
Prince William	Manassas	Northern Virginia
Pulaski	Christiansburg	Salem
Rappahannock	Warrenton	Culpeper
Richmond	Warsaw	Fredericksburg
Roanoke	Salem	Salem
Rockbridge	Lexington	Staunton
Rockingham	Harrisonburg	Staunton
Russell	Lebanon	Bristol
Scott	Jonesville	Bristol
Shenandoah	Edinburg	Staunton
Smyth	Abingdon	Bristol
Southampton	Franklin	Suffolk
Spotsylvania	Fredericksburg	Fredericksburg
Stafford	Fredericksburg	Fredericksburg
Surry	Waverly	Suffolk
Sussex	Waverly	Suffolk
Tazewell	Tazewell	Bristol
Warren	Luray	Staunton
Washington	Abingdon	Bristol
Westmoreland	Warsaw	Fredericksburg
Wise	Wise	Bristol
Wythe	Wytheville	Bristol
York	Williamsburg	Suffolk

§ 4.3. Listing of documents (publications) incorporated by reference.

Information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from the department, indicated as "(VDOT)," may be obtained from the department's division and representative indicated, by writing to:

Virginia Department of Transportation, 1401 East Broad Street
Richmond, Virginia 23219.

1. Drainage Manual (January 1, 1980), Location and Design Division (VDOT)

Location and Design Engineer

2. Guidelines for Lighting by Permit on State Right of Way (October 15, 1987)

Maintenance Division (VDOT)
Maintenance Engineer

3. Guidelines for Planting Along Virginia's Roadways (1986)

Environmental Division (VDOT)
Environmental Engineer

4. "ITE Trip Generation," (5th edition, 1991) Information Report of the Institute of Transportation Engineers

Institute of Transportation Engineers
525 School Street, S.W., Suite 410
Washington, DC 20024-2729

5. Highway Capacity Manual (1985), Transportation Research Board, Special Report 209

Transportation Research Board
2107 Constitution Avenue, N.W.
Washington, DC 20418

6. Land Use Permit Manual (1985), Maintenance Division (VDOT)

Maintenance Engineer

7. Manual on Uniform Traffic Control Devices for Streets and Highways (1988 edition)

United State Department of Transportation
Superintendent of Documents
U. S. Government Printing Office,
Washington, DC 20402

The Virginia Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways, (November, 1980) Traffic Engineering Division (VDOT)

State Traffic Engineer

Minimum Entrance Standards (March 29, 1989), Traffic Engineering Division (VDOT)

State Traffic Engineer

8. National Cooperative Highway Research Program Report 230 (1981), Transportation Research Board

Transportation Research Board
2107 Constitution Avenue, N.W.
Washington, DC 20418

9. Policy on Geometric Design of Highways and Streets (1990), AASHTO

American Association of State Highway and Transportation Officials
444 North Capital Street, Suite 225
Washington, DC 20001

10. Road and Bridge Specifications (January, 1994), Construction Division (VDOT)

Construction Engineer

11. Road Design Manual (May 1, 1990) and Road and Bridge Standards (January 1, 1993)

Location and Design Division (VDOT)
Location and Design Engineer

12. Standard Specifications for Highway Bridges (14th edition, 1989), AASHTO

American Association of State Highway and Transportation Officials
444 North Capital Street, Suite 225
Washington, DC 20001

VDOT Modifications, Bridge and Structure Division (VDOT)

Structure and Bridge Engineer

13. Virginia Erosion and Sediment Control Handbook (3rd edition - 1992), Division of Soil and Water Conservation with The Virginia Erosion and Sediment Control Law and Regulations (September 13, 1990)

Division of Soil and Water Conservation
203 Governor Street, Suite 206
Richmond, Virginia 23219

§ 4.4. Acceptable curb and gutter designs.

The bottom of the curb and gutter may be constructed parallel to the slope of subsurface courses, provided a minimum depth of seven inches is maintained.

Curb having a radius of 300 feet or less, along face of curb, shall be considered radial curb.

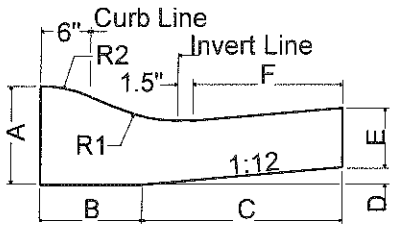
Where the roll top curb and gutter section is used, drop inlets must be spaced so that the 10-year frequency gutter flow does not exceed four inches. Roll top curb and gutter shall be constructed with approved slip form type of equipment, designed for that type of installation.

On curb and gutter sections adjacent to sidewalk, Standard CG-6 shall be used.

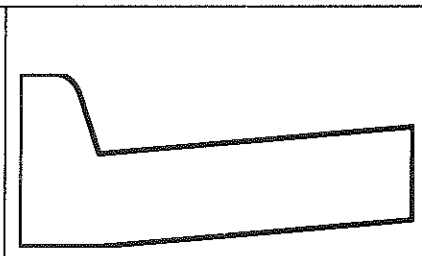
Standard Curb CG-6 may be used for design speeds of 40 mph or less.

Standard Curb CG-7 shall be used when the design speed is greater than 40 mph.

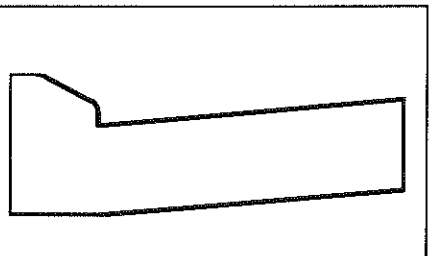
Roll Top Curb may not be used adjacent to sidewalk or on streets other than tertiary or access streets.



ROLL TOP



STD. CG-6



STD. CG-7

Dimensions	
A	11.5 IN
B	1 FT 0 IN
C	2 FT 0 IN
D	2 IN
E	7 IN
F	1 FT 6 IN
R1	1 FT 6 IN
R2	1 FT 3 IN

For dimensions of curbs CG-6 and CG-7, see the design manual

§ 4.5. Table 1 - Geometric Design Guide for Subdivision Streets Functionally Classified as Local.

ENGLISH MEASUREMENTS ALL UNITS IN FEET, MPH, OR DEGREES			HORIZONTAL & VERITICAL CONTROL Maximum Cut or Fill Slope = 2:1						ROADWAY SECTION CRITERIA									
									SHOULDER & DITCH ROADWAY SECTIONS						CURB AND GUTTER ROADWAY SECTIONS			
															RESIDENTIAL		NON-RESIDENTIAL	
PROJECTED TRAFFIC	TERRAIN	DESIGN (MPH)	CURVE DATA			SUGGESTED MAXIMUM	SIGHT DISTANCE MINIMUM		PAVEMENT WIDTH	SHOULDER WIDTH (MINIMUM)			DITCH WIDTH	RIGHT OF WAY WIDTH	WIDTH FACE TO FACE OF CURB	RIGHT OF WAY WIDTH	WIDTH FACE TO FACE OF CURB	RIGHT OF WAY WIDTH
		SPEED	RADIUS	DEG.	SUPER-	% GRADE	STOPPING	@ INTER-		FILL	FILL	CUT	& SLOPE					
(ADT)		(MIN.)	(MIN.)	MAX	ELEVATION			SECTIONS	(MINIMUM)	W GR	W/O GR		(W)_(V:H)	(MIN.)	(MIN)	(MIN)	(MIN)	(MIN)
TERTIARY / ACCESS STREETS																		
UP TO 250	LEVEL	20	120	48°	NONE	7	125	200	18	7	4	4	4_1:3	40	See § 2.1 D. 3 g for this data.			
	ROLLING	20	120	48°		10	125	200										
	MOUNTAINOUS	20	95	60°		16	125	200										
251-400	LEVEL	25	180	32°	NONE	7	150	250	20	7	4	4	4_1:3	50				
	ROLLING	25	180	32°		10	150	250										
	MOUNTAINOUS	20	95	60°		16	125	200										
OTHER LOCAL SUBDIVISION STREETS																		
401-1000	LEVEL	30	250	23°	RATE =	7	200	300	22	7	4	4	4_1:3	50	36	44	38	46
	ROLLING	30	250	23°	STD.	10	200	300	22									
	MOUNTAINOUS	30	250	23°	CROWN	14	200	300	20									
1001-2000	LEVEL	30	250	23°	RATE =	7	200	300	22	9	6	6	4_1:3	50	36	44	38	46
	ROLLING	30	250	23°	STD.	10	200	300	22									
	MOUNTAINOUS	30	250	23°	CROWN	14	200	300	20									
2001-4000	LEVEL	40	535	10.5°	RATE =	7	275	400	22	9	6	6	4_1:3	50	38	46	40	48
	ROLLING	40	535	10.5°	STD.	9	275	400										
	MOUNTAINOUS	30	250	23°	CROWN	14	200	300										
OVER 4000	LEVEL	40	535	10.5°	RATE =	7	275	400	24	9	6	6	4_1:3	50	40	48	40	48
	ROLLING	40	535	10.5°	STD.	9	275	400										
	MOUNTAINOUS	30	250	23°	CROWN	14	200	300										

TABLE 1

GEOMETRIC DESIGN GUIDES FOR MAJOR SUBDIVISION STREETS FUNCTIONALLY CLASSIFIED AS LOCAL ROADS (1)

(NUMBERS SHOWN IN PARENTHESES DESIGNATE APPLICABLE FOOTNOTES)

PROJECTED TRAFFIC (ADT)	TERRAIN	MINIMUM DESIGN SPEED	MAXIMUM DEGREE OF CURVATURE	SUGGESTED MAXIMUM % GRADE	MIN. STOPPING SIGHT DIST. (2)	MINIMUM INTERSECTION SIGHT DISTANCE (3)	MINIMUM PAVEMENT DESIGN CLASS (SEE TABLE III)	SLOPES CUT & FILL	MINIMUM PAVEMENT WIDTH (4)	MINIMUM SHOULDER WIDTH (5) FILL W/GR	FILL W/OUT GR	CUT	WIDTH OF DITCH (6)	MINIMUM RIGHT OF WAY WIDTH (7)	MIN. DISTANCE FACE TO FACE OF CURB (8)	MINIMUM HEIGHT OF WIDTH (9)
251 - 400	LEVEL	40	7° 30'	7	275'	400'	II		20'	6'	4'	4'	4'	50'	36'	46'
	ROLLING	30	12°	9	200'	300'	II		20'	6'	4'	4'	4'	50'	36'	46'
	MOUNTAINOUS	20	22°	14	125'	200'	II		20'	6'	4'	4'	4'	50'	36'	46'
401-1000	LEVEL	50	7° 30'	6	400'	500'	III & IV		22'	6'	4'	4'	4'	50'	38'	48'
	ROLLING	40	12°	9	275'	400'	III & IV		22'	6'	4'	4'	4'	50'	38'	48'
	MOUNTAINOUS	30	22°	14	200'	300'	III & IV		20'	6'	4'	4'	4'	50'	36'	46'
1001-2000	LEVEL	50	7° 30'	6	400'	500'	IV & V	MAX = 2:1	22'	9'	6'	6'	6'	60'	38'	48'
	ROLLING	40	12°	9	275'	400'	IV & V		22'	9'	6'	6'	6'	60'	38'	48'
	MOUNTAINOUS	30	22°	14	200'	300'	IV		20'	9'	6'	6'	6'	60'	38'	48'
2001-4000	LEVEL	50	7° 30'	6	400'	500'	V		24'	11'	8'	8'	6'	60'	40'	48'
	ROLLING	40	12°	9	275'	400'	V & VII		22'	11'	8'	8'	6'	60'	38'	48'
	MOUNTAINOUS	30	22°	14	200'	300'	V		22'	11'	8'	8'	6'	60'	38'	48'
OVER 4000	LEVEL	50	7° 30'	6	400'	500'	VI & VII		24'	11'	8'	8'	6'	60'	40'	48'
	ROLLING	40	12°	9	275'	400'	VI & VII		24'	11'	8'	8'	6'	60'	40'	48'
	MOUNTAINOUS	30	22°	14	200'	300'	VI & VII		24'	11'	8'	8'	6'	60'	40'	48'

FOOTNOTES:

1. ROADS FUNCTIONALLY CLASSIFIED OTHER THAN LOCAL ARE TO BE IN ACCORDANCE WITH THE GEOMETRIC DESIGN REQUIREMENTS OF THE CURRENT ISSUE OF THE VDOT ROAD AND BRIDGE STANDARDS FOR THE APPLICABLE ROAD FUNCTIONAL CLASSIFICATION.
2. DISTANCES ARE BASED ON A 3.5' HEIGHT OF EYE AND A 0.5' HEIGHT OF OBJECT.
3. DISTANCES ARE BASED ON A 3.5' HEIGHT OF EYE AND A 4.25' HEIGHT OF OBJECT.
4. A MINIMUM LEVEL OF SERVICE C IS TO BE MAINTAINED. ADDITIONAL LANES AND/OR CHANNELIZED INTERSECTIONS MAY BE REQUIRED.
5. SHOULDER DESIGNS ARE TO BE IN ACCORDANCE WITH STANDARD GS-12.
6. DITCH SLOPES (FROM EDGE OF SHOULDER TO BOTTOM OF DITCH) ARE TO BE 1' VERTICAL FOR EACH 4' HORIZONTAL FOR 6' WIDE DITCHES, AND 1' VERTICAL FOR 3' HORIZONTAL FOR 4' WIDE DITCHES.
7. A MINIMUM 50' OF RIGHT-OF-WAY IS REQUIRED. ADDITIONAL WIDTHS IN INCREMENTS OF 10' AS NECESSARY TO ACCOMMODATE THE ROADWAY ELEMENTS INCLUDING CUT AND FILL SLOPES AND SIDEWALKS WHERE APPLICABLE, ARE REQUIRED.
8. DIMENSIONS SHOWN TAKE INTO CONSIDERATION THAT PARKING MAY BE PERMITTED.
9. WHERE SIDEWALKS ARE TO BE PROVIDED, ADDITIONAL RIGHT OF WAY WIDTH TO ACCOMMODATE THEM IS REQUIRED.

GENERAL NOTES: EACH STREET SHOULD HAVE CONTINUITY OF DESIGN THROUGHOUT. THEREFORE, MULTIPLE OR "STEP DOWN" TYPICAL DESIGNS WILL NOT BE ACCEPTABLE EXCEPT WHERE A MAJOR TRAFFIC GENERATOR SUCH AS AN INTERSECTION WOULD DELINEATE A CLEAR LINE OF DEMARCATION.

DUE TO THE NORMAL DENSITY OF DEVELOPMENT ADJACENT TO RESIDENTIAL SUBDIVISION STREETS, STANDARD CURVE SUPERELEVATION IS NOT PRACTICAL ON LOCAL STREETS WHERE THE DESIGN SPEED IS 45 MPH OR LESS AND NO SUPERELEVATION IS REQUIRED. STREETS WITH DESIGN SPEEDS EXCEEDING 25 MPH BUT NO MORE THAN 40 MPH ARE TO BE SUPERELEVATED BY AN AMOUNT EQUAL TO THE STANDARD PAVEMENT CROWN. FOR ALL SPEEDS EXCEEDING 40 MPH, SUPERELEVATION SHOULD BE PROVIDED IN ACCORDANCE WITH STANDARD GS-1 (ROADWAY) OF THE DEPARTMENT'S ROAD AND BRIDGE STANDARDS.

AN ADEQUATE TURNAROUND SHALL BE PROVIDED AT THE END OF DEAD END OR CUL-DE-SAC STREETS TO ALLOW SAFE MANEUVERING BY SERVICE VEHICLES, SCHOOL BUSES, AND HIGHWAY EQUIPMENT. FOR RESIDENTIAL SUBDIVISIONS WHERE CIRCULAR TURNAROUNDS ARE USED, A MINIMUM 30 FOOT RADIUS IS REQUIRED, AND FOR STREETS INTENDED TO SERVE MORE THAN 10 RESIDENCES, A 45 FOOT RADIUS IS RECOMMENDED.

FOR NON-RESIDENTIAL SUBDIVISIONS WHERE CIRCULAR TURNAROUNDS ARE USED, A MINIMUM RADIUS OF 45 FEET IS REQUIRED.

1 BASED ON TRAFFIC VOLUME RESULTING FROM "COMPLETE DEVELOPMENT" (LAND).

TABLE I-A

GEOMETRIC DESIGN GUIDES FOR TERTIARY SUBDIVISION STREETS

CUL-DE-SACS, LOOPS, AND OTHER STREETS OF FIXED VEHICULAR GENERATION

(NUMBERS SHOWN IN PARENTHESES DESIGNATE APPLICABLE FOOTNOTES)

PROJECTED TRAFFIC (ADT)	TERRAIN	MINIMUM DESIGN SPEED	MIN. STOPPING SIGHT DIST.	MINIMUM INTERSECTION SIGHT DISTANCE (3)	MINIMUM PAVEMENT DESIGN CLASS (SEE TABLE II)	SLOPES CUT & FILL	WITHOUT CURB AND GUTTER					WITH CURB AND GUTTER	
							MINIMUM PAVEMENT WIDTH	MINIMUM SHOULDER WIDTH (4)		WIDTH OF DITCH (5)	MINIMUM RIGHT OF WAY WIDTH	MIN. DISTANCE FACE TO FACE OF CURBS (6)	MINIMUM RIGHT OF WAY WIDTH (8)
								FILL W/GR	FILL NO/GR CUT				
UP TO 250	LEVEL	30	200'	300'	I		18'	6'	4' 6'	4'	40'	30'(7)	40'
	ROLLING	30	200'	300'	I		18'	6'	4' 6'	4'	40'	30'(7)	40'
	MOUNTAINOUS	20	125'	200'	I		18'	6'	4' 6'	4'	40'	30'(7)	40'
251 - 400	LEVEL	30	200'	300'	II		20'	6'	4' 6'	4'	50'	36'	48'
	ROLLING	30	200'	300'	II	MAX = 2:1	20'	6'	4' 6'	4'	50'	36'	48'
	MOUNTAINOUS	20	125'	200'	II		20'	6'	4' 6'	4'	50'	36'	48'
401 - 1000	LEVEL	30	200'	300'	III		22'	6'	4' 6'	4'	50'	38'	48'
	ROLLING	30	200'	300'	III		22'	6'	4' 6'	4'	50'	38'	48'
	MOUNTAINOUS	20	125'	200'	III & IV		22'	6'	4' 6'	4'	50'	36'	48'

FOOTNOTES:
1. WHEN A 110' RADIUS CANNOT BE OBTAINED IN MOUNTAINOUS TERRAINS, A MINIMUM 90' RADIUS MAY BE USED WITH A SUPERELEVATION RATE (E) of -0.02.
2. DISTANCES ARE BASED ON A 3.5' HEIGHT OF EYE AND A 0.5' HEIGHT OF OBJECT.
3. DISTANCES ARE BASED ON A 3.5' HEIGHT OF EYE AND A 4.25' HEIGHT OF OBJECT.
4. SHOULDER DESIGNS ARE TO BE IN ACCORDANCE WITH STANDARD SS-2.
5. DITCH SLOPES (FROM EDGE OF SHOULDER TO BOTTOM OF DITCH) ARE TO BE 1' VERTICAL FOR EACH 3' HORIZONTAL.
6. DIMENSIONS SHOWN TAKE INTO CONSIDERATION THAT PARKING MAY BE PERMITTED EXCEPT AS PROVIDED FOR IN FOOTNOTE 7.
7. IF PARKING IS PROHIBITED, FACE TO FACE WIDTHS MAY BE REDUCED TO 24' ON A MINIMUM 30' RIGHT-OF-WAY.
8. WHERE SIDEWALKS ARE TO BE PROVIDED, ADDITIONAL RIGHT OF WAY TO ACCOMMODATE THEM WILL BE REQUIRED.

GENERAL NOTES: EACH STREET SHOULD HAVE CONTINUITY OF DESIGN THROUGHOUT. THEREFORE, MULTIPLE OR "STEP DOWN" TYPICAL DESIGNS WILL NOT BE ACCEPTABLE EXCEPT WHERE A [illegible] GENERATOR SUCH AS AN INTERSECTION PROVIDES A CLEAR LINE OF DEMARCATION.

DUE TO THE NATURE OF TERTIARY STREETS AND THEIR LOW DESIGN SPEED, CURVE SUPERELEVATION IS NOT REQUIRED.

AN APPROPRIATE TURNAROUND SHALL BE PROVIDED AT THE END OF DEAD END OR CUL-DE-SAC STREETS TO ALLOW SAFE MANEUVERING BY SERVICE VEHICLES, SCHOOL BUSES, AND HIGHWAY EQUIPMENT.

FOR RESIDENTIAL SUBDIVISIONS WHERE CIRCULAR TURNAROUNDS ARE USED, A MINIMUM 30 FOOT RADIUS IS REQUIRED, AND FOR STREETS INTENDED TO SERVE MORE THAN 10 RESIDENCES, A 45 FOOT RADIUS IS RECOMMENDED.

FOR NON-RESIDENTIAL SUBDIVISIONS WHERE CIRCULAR TURNAROUNDS ARE USED, A MINIMUM RADIUS OF 45 FEET IS REQUIRED.

BASED ON TRAFFIC VOLUME RESULTING FROM "COMPLETE DEVELOPMENT" (LAND).

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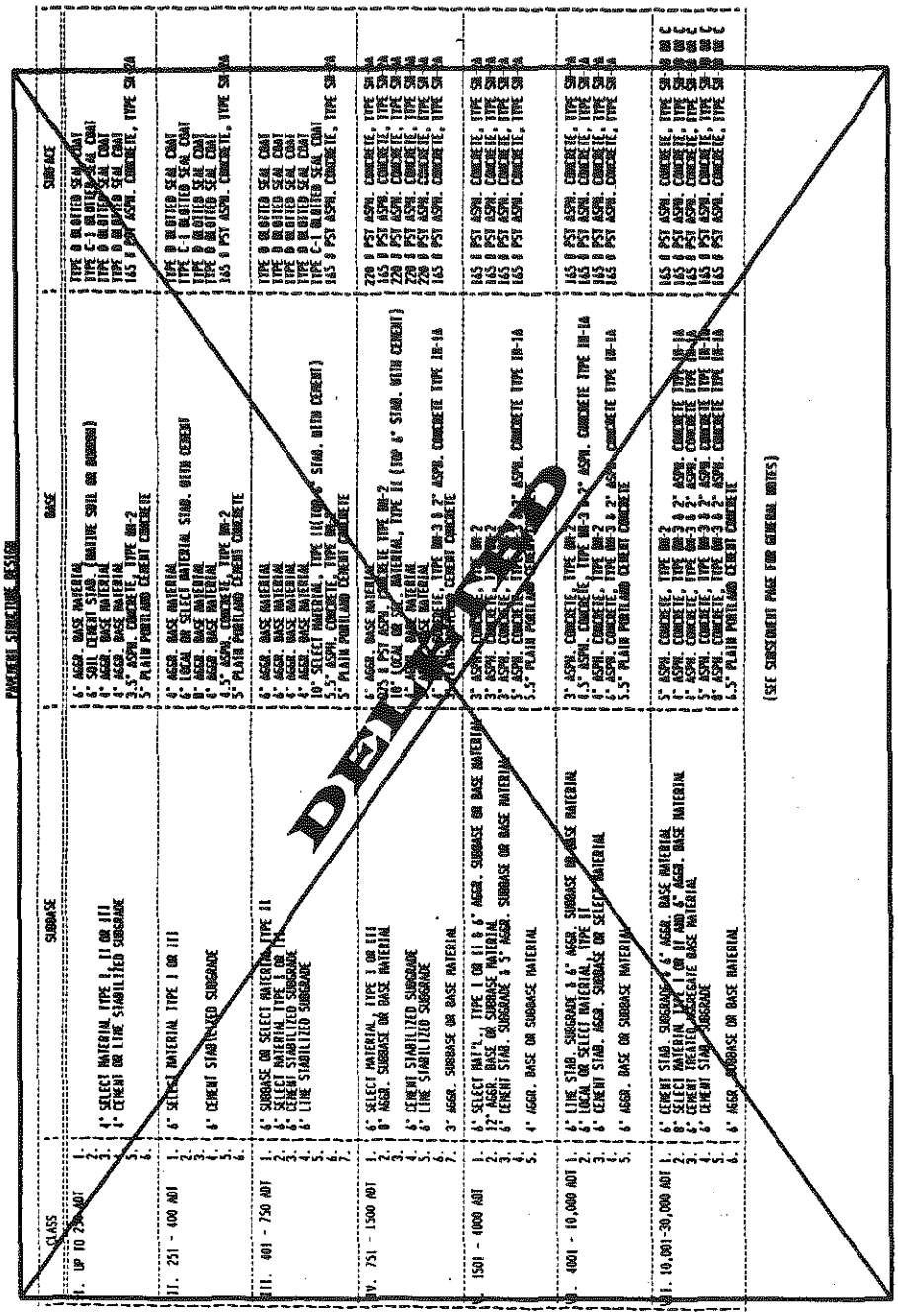

TABLE II

PAVEMENT STRUCTURE, MC5100

CLASS	SUBBASE	BASE	SURFACE
I. UP TO 250 ADT	1.	6" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	2.	8" SOIL CEMENT STAB. (WHERE SOILS OR RAINFALL)	TYPE C-1 BLOTTED SEAL COAT
	3. 4" SELECT MATERIAL TYPE I, II OR III	4" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	4. 4" CEMENT OR LIME STABILIZED SUBGRADE	4" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	5.	3.5" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	6.	5" PLAIN PORTLAND CEMENT CONCRETE	
II. 251 - 400 ADT	1. 6" SELECT MATERIAL TYPE I OR III	4" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	2.	6" LOCAL OR SELECT MATERIAL STAB. WITH CEMENT	TYPE C-1 BLOTTED SEAL COAT
	3.	8" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	4. 6" CEMENT STABILIZED SUBGRADE	6" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	5.	4.5" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	6.	5" PLAIN PORTLAND CEMENT CONCRETE	
III. 401 - 750 ADT	1. 6" SUBGRADE OR SELECT MATERIAL TYPE II	4" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	2. 6" SELECT MATERIAL TYPE I OR III	4" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	3. 6" CEMENT STABILIZED SUBGRADE	6" AGGR. BASE MATERIAL	TYPE B BLOTTED SEAL COAT
	4. 6" LIME STABILIZED SUBGRADE	10" SELECT MATERIAL, TYPE I,II OR III (TOP 6" STAB. WITH CEMENT)	TYPE C-1 BLOTTED SEAL COAT
	5.	5.5" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	6.	5" PLAIN PORTLAND CEMENT CONCRETE	
IV. 751 - 1500 ADT	1. 6" SELECT MATERIAL, TYPE I OR III	6" AGGR. BASE MATERIAL	220 @ PST ASPH. CONCRETE, TYPE SP-A
	2. 6" AGGR. SUBBASE OR BASE MATERIAL	6" @ PST ASPH. CONCRETE TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	3.	10" LOCAL OR SELECT MATERIAL, TYPE II (TOP 6" STAB. WITH CEMENT)	220 @ PST ASPH. CONCRETE, TYPE SP-A
	4. 6" CEMENT STABILIZED SUBGRADE	6" AGGR. BASE MATERIAL	220 @ PST ASPH. CONCRETE, TYPE SP-A
	5. 6" LIME STABILIZED SUBGRADE	6" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	6.	6" PLAIN PORTLAND CEMENT CONCRETE	
	7. 3" AGGR. SUBBASE OR BASE MATERIAL		
V. 1501 - 4000 ADT	1. 6" SELECT MAT'L, TYPE I OR II & 6" AGGR. SUBBASE OR BASE MATERIAL	3" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	2. 12" AGGR. BASE OR SUBBASE MATERIAL	3" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	3. 6" CEMENT STAB. SUBGRADE & 5" AGGR. SUBBASE OR BASE MATERIAL	3" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	4.	5" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	5. 4" AGGR. BASE OR SUBBASE MATERIAL	5.5" PLAIN PORTLAND CEMENT CONCRETE	
VI. 4001 - 10,000 ADT	1. 6" LIME STAB. SUBGRADE & 6" AGGR. SUBBASE OR BASE MATERIAL	3" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	2. 6" LOCAL OR SELECT MATERIAL, TYPE II	4" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	3. 6" CEMENT STAB. AGGR. SUBBASE OR SELECT MATERIAL	4" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	4.	6" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	5. 6" AGGR. BASE OR SUBBASE MATERIAL	5.5" PLAIN PORTLAND CEMENT CONCRETE	
VII. 10,001-30,000 ADT	1. 6" CEMENT STAB. SUBGRADE & 6" AGGR. BASE MATERIAL	5" ASPH. CONCRETE, TYPE HM-2	165 @ PST ASPH. CONCRETE, TYPE SP-A
	2. 8" SELECT MATERIAL TYPE I OR II AND 6" AGGR. BASE MATERIAL	2" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	3. 6" CEMENT TREATED AGGREGATE BASE MATERIAL	4" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	4. 6" CEMENT STAB. SUBGRADE	5" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	5.	8" ASPH. CONCRETE, TYPE HM-3 @ 2" ASPH. CONCRETE TYPE HB-1@	165 @ PST ASPH. CONCRETE, TYPE SP-A
	6. 6" AGGR. SUBBASE OR BASE MATERIAL	6.5" PLAIN PORTLAND CEMENT CONCRETE	

(SEE SUBSEQUENT PAGE FOR GENERAL NOTES)

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TABLE II (Continued)
PAVEMENT STRUCTURE DESIGN

GENERAL NOTES:

(1) THESE DESIGNS ARE BASED ON THE ASSUMPTION THAT THE NUMBER OF HEAVY COMMERCIAL VEHICLES (HCV), CONSISTING OF TRUCKS, BUSES, ETC., WITH 6 TIRES OR GREATER, WILL NOT EXCEED 5% OF THE TOTAL PROJECTED TRAFFIC. IF THE TOTAL PROJECTED TRAFFIC INCLUDES MORE THAN 5% OF SUCH VEHICLES, AN EQUIVALENT PROJECTED TRAFFIC SHALL BE UTILIZED IN DETERMINING THE APPROPRIATE PAVEMENT STRUCTURE DESIGN. THIS EQUIVALENT PROJECTED TRAFFIC, EXPRESSED IN ADT, SHALL BE CALCULATED IN THE FOLLOWING MANNER:

AVERAGE DAILY TRAFFIC EQUALS 20 TIMES THE NUMBER OF HEAVY COMMERCIAL VEHICLES (ADT = 20 X HCV).

(2) PAVEMENT DESIGN IN ACCORDANCE WITH "A DESIGN GUIDE FOR SUBDIVISION ROADS PAVEMENTS IN VIRGINIA" BY DR. N.K. VASHANI IS AN ACCEPTABLE ALTERNATE TO THESE DESIGNS. INCREASE THE THICKNESS EQUIVALENCY VALUE OF THE ASPHALT CONCRETE FROM 1.67 TO 2.25 WHERE ITS TOTAL THICKNESS IS 4.50 INCHES OR MORE AS REQUIRED BY VASHANI'S METHOD. THE NOMOGRAPH OF THE THICKNESS INDEX (T-I-), AND SOIL SUPPORT VALUE (SSV) ARE FOUND IN THE AFOREMENTIONED DESIGN GUIDE, WHICH IS AVAILABLE FROM VDOT'S DISTRICT MATERIALS ENGINEER.

IN ADDITION, PAVEMENTS MAY BE DESIGNED UTILIZING THE AASHTO "PAVEMENT DESIGN GUIDELINES" OR THE PCA COMPUTER PROGRAM.

(3) WHEN THE PROJECTED TRAFFIC REQUIRES A CBR LANE FACILITY, 80% OF THE PROJECTED TRAFFIC (ADT) SHALL BE THE BASIS FOR DETERMINING THE APPLICABLE CLASS FOR THE PAVEMENT STRUCTURE DESIGN.

(4) THESE DESIGNS ARE BASED ON THE SUBGRADE SOILS, THROUGHOUT THE PAVEMENT STRUCTURE, HAVING A SOIL SUPPORT VALUE (SSV) OF 10. IF DIFFERENT THAN 10: ADD 1/2" ASPHALT CONCRETE OR 1" AGGREGATE BASE MATERIAL FOR EACH 5 SSV BELOW, AND SAME FOR EACH 10 SSV ABOVE. (SOIL SUPPORT VALUE EQUALS THE CALIFORNIA BEARING RATIO TIMES THE RESILIENCY FACTOR (SSV = CBR x RF)).

(5) REPRESENTATIVE CALIFORNIA BEARING RATIO (CBR) SAMPLES, TAKEN AT SUBGRADE ELEVATION, SHOULD BE USED AS THE BASIS FOR EVALUATING THE SOIL SUPPORT VALUE (SSV). GUIDANCE MAY BE OBTAINED FROM VDOT'S DISTRICT MATERIALS ENGINEER TO DETERMINE THE NUMBER OF SAMPLES AND THE NUMBER OF SAMPLES REQUIRED TO OBTAIN REPRESENTATIVE CBR VALUES.

(6) EACH STREET SHOULD HAVE CONTINUITY OF DESIGN THROUGHOUT. THEREFORE, MULTIPLE [illegible] PAVEMENT STRUCTURE DESIGNS WILL NOT BE ACCEPTABLE EXCEPT IN UNUSUAL SITUATIONS.

(7) ALTERNATE DESIGNS WITHIN A SPECIFIC TRAFFIC CLASS MAY NOT BE STRUCTURALLY EQUAL BECAUSE OF DIFFERENCES IN THE MATERIALS' FLEXURAL STRENGTHS AND PRACTICAL CONSTRUCTION CONSIDERATION.

(8) CEMENT TREATED AGGREGATE (CTA) OR FULL DEPTH ASPHALT CONCRETE MAY BE SUBSTITUTED FOR ANY AGGREGATE SUBBASE, STABILIZATION, OR SELECT MATERIAL ON BASIS OF 1 INCH OF CTA OR ASPHALT CONCRETE FOR 2 INCHES OF THE OTHER MATERIALS. HOWEVER CTA NOR ASPHALT CONCRETE SHOULD BE PLACED DIRECTLY ON A RESILIENT SOIL (AS DEFINED IN VASHANI'S DESIGN GUIDE) UNLESS THE SOIL IS STABILIZED WITH CEMENT OR OTHER APPROVED STABILIZING AGENT. CEMENT TREATED AGGREGATE (CTA) SHOULD HAVE A MINIMUM OF 4 INCHES OF AGGREGATE BASE MATERIAL UNDER IT WHEN LESS THAN 4 INCHES OF ASPHALT CONCRETE IS TO BE APPLIED OVER THE CTA.

(9) COLUMN HEADINGS IN THIS TABLE REFER TO ENTER LOCATION (SUBBASE-BASE-SURFACE) OF THE MATERIAL WITHIN THE PAVEMENT STRUCTURE, AND THE ROWS REFER TO THE MATERIALS' TYPES AND CLASSIFICATION IN ACCORDANCE WITH DIVISION II OF VDOT ROAD AND BRIDGE SPECIFICATIONS.

(10) WHEN THE APPLICATION OF ASPHALT CONCRETE IS SPECIFIED IN POUNDS PER SQUARE YARD (#PSY), ITS DEPTH MAY BE DETERMINED FROM THE FOLLOWING AVERAGE WEIGHT/DEPTH FACTOR:

BASE - 115 # PSY = 1 INCH.
SURFACE - 110 # PSY = 1 INCH.

(11) ALL UNTREATED AGGREGATE BASE OR SUBBASE MATERIAL SHALL BE 21B GRADATION. IF AGGREGATE IS CEMENT STABILIZED, USE 21A GRADATION.

(12) ALL MATERIALS AND CONSTRUCTION CONTROLS SHALL BE IN ACCORDANCE WITH CURRENT VDOT SPECIFICATIONS AND SPECIAL PROVISIONS.

(13) IF TYPE II SELECT MATERIAL IS USED AS SUBBASE, THE ENTIRE LAYER SHALL BE CEMENT STABILIZED. IF USED AS BASE, THE TYPE II SELECT MATERIAL SHALL BE CEMENT STABILIZED AS INDICATED.

(14) ASPHALT CONCRETE WITH A TOTAL THICKNESS GREATER THAN 4 1/2" IS CONSIDERED BASE AND SURFACE. ALL AGGREGATE MATERIALS UNDER SAME ARE CONSIDERED SUBBASE. APPROPRIATE STRUCTURAL VALUES SHOULD BE ASSIGNED THESE MATERIALS WHEN USING THE VASHANI METHOD OF DESIGN.

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TABLE III

FEES AND SURETY SCHEDULE

SUBDIVISION STREETS

2-Lane Street	Surety	Maintenance Fee
Minimum (up to 0.25 mi.)	$ 3,750	$ [illegible]/year
From 0.25 to 0.50 mile	7,500	75[illegible]/year
Over 0.50 mile	1,500/tenth of mile and fraction thereof	1[illegible]/tenth of mile and fraction thereof/year
4-Lane Street		
Minimum (up to 0.25 mi.)	7,500	750/year
From 0.25 to 0.50 mile	15,000	1,500/year
Over 0.50 mile	3,000/tenth of mile and fraction thereof	300/tenth of mile and fraction thereof/year

Examples

A two lane street, 0.35 mile long, is processed for addition effective September 18. Therefore, surety is required for four-tenths mile and maintenance fee is required for ten months.

Surety required: $7,500

Maintenance fee required: [illegible] x 10/12 = $625

A four lane street, 0.78 mile long, is processed for addition effective February 4. Therefore, surety required for eight-tenths mile and maintenance fee is required for five months.

Surety required: 8 [illegible],000 = $24,000

Maintenance fee required: 8 x $300 x 5/12 = $1,000

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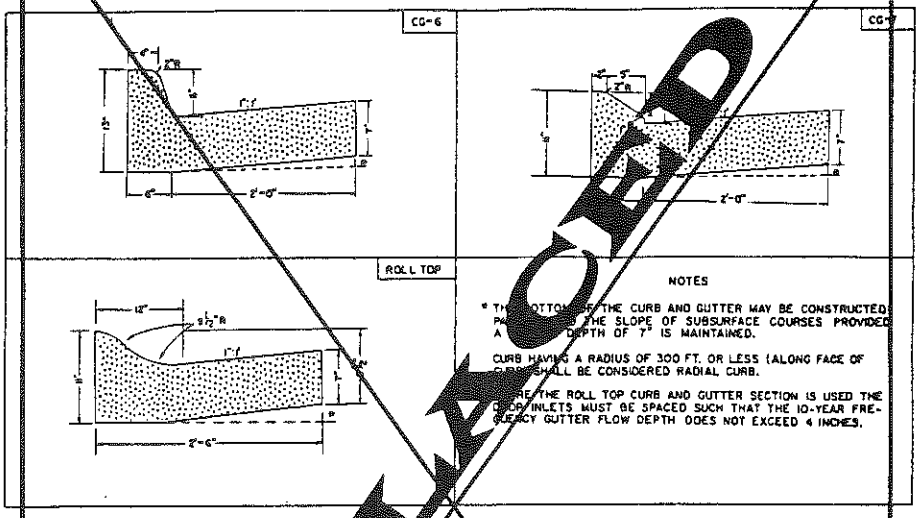
TABLE IV



ACCEPTABLE CURB & GUTTER DESIGNS FOR VARIOUS STREET CLASSIFICATIONS

DESIGN SPEED	STANDARD			
	MAJOR ARTERIALS	COLLECTOR	LOCAL	TERTIARY
40 MPH OR LESS	CG-6	CG-6	CG-6	CG-6, CG-7 OR ROLL TOP
GREATER THAN 40 MPH	CG-7	CG-7	CG-7	NOT APPLICABLE

ACCEPTABLE CURB & GUTTER DESIGNS

VIRGINIA DEPARTMENT OF TRANSPORTATION

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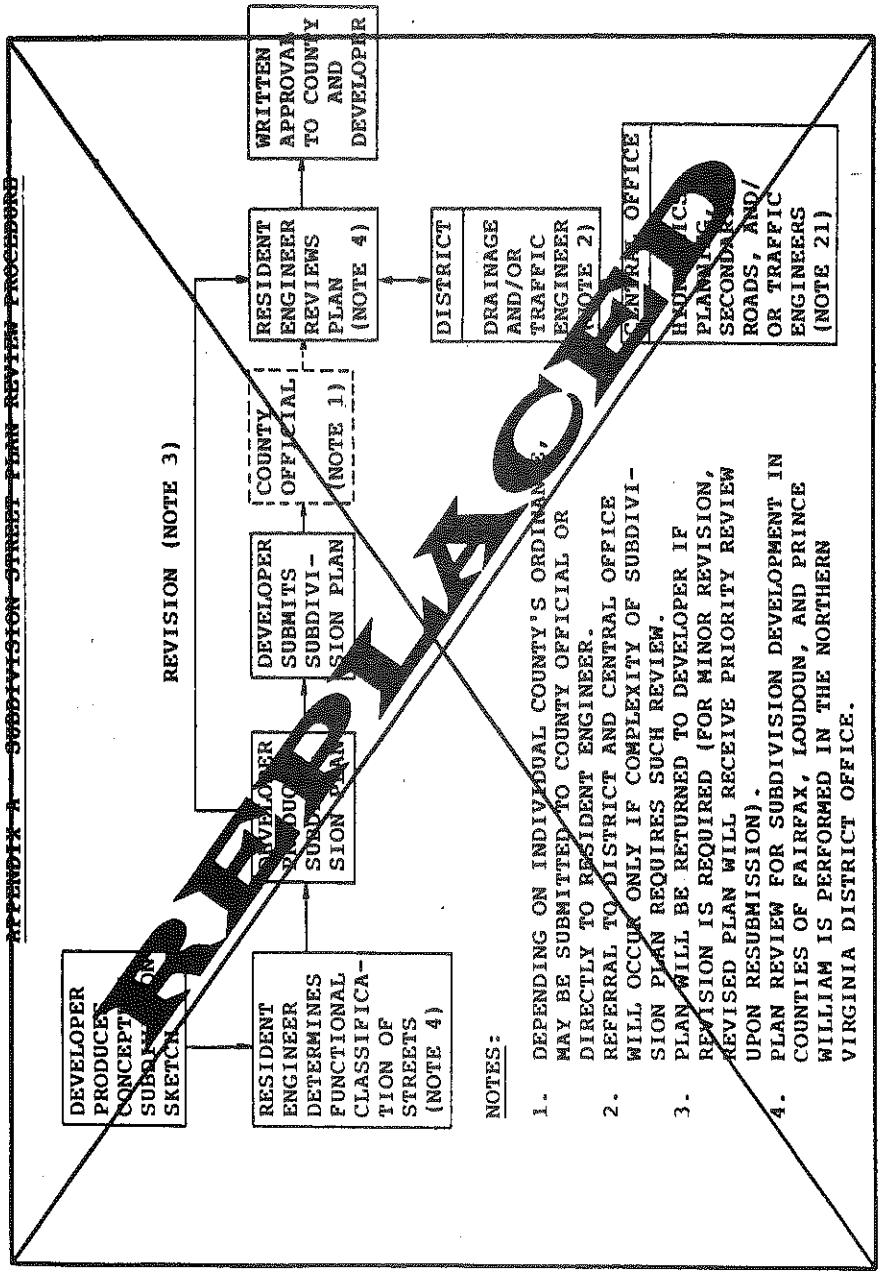
~~APPENDIX A SUBDIVISION STREET PLAN REVIEW PROCEDURE~~



NOTES:

1. DEPENDING ON INDIVIDUAL COUNTY'S ORDINANCE, MAY BE SUBMITTED TO COUNTY OFFICIAL OR DIRECTLY TO RESIDENT ENGINEER.
2. REFERRAL TO DISTRICT AND CENTRAL OFFICE WILL OCCUR ONLY IF COMPLEXITY OF SUBDIVISION PLAN REQUIRES SUCH REVIEW.
3. PLAN WILL BE RETURNED TO DEVELOPER IF REVISION IS REQUIRED (FOR MINOR REVISION, REVISED PLAN WILL RECEIVE PRIORITY REVIEW UPON RESUBMISSION).
4. PLAN REVIEW FOR SUBDIVISION DEVELOPMENT IN COUNTIES OF FAIRFAX, LOUDOUN, AND PRINCE WILLIAM IS PERFORMED IN THE NORTHERN VIRGINIA DISTRICT OFFICE.

APPENDIX B

~~Residency Offices are listed below. District Offices are located in or near the cities bearing the District name.~~

Bristol District (Residency Office)	(Counties Served)
Wise	Wise & Dickenson
Abingdon	Washington & Smyth
Lebanon	Russell & Buchanan
Tazewell	Tazewell & Bland
Wytheville	Wythe & Grayson
Jonesville	Lee & Scott
Culpeper District	
Louisa	Fluvanna & Louisa
Charlottesville	Albemarle & Greene
Culpeper	Culpeper, Orange & Madison
Warrenton	Fauquier & Rappahannock
Fredericksburg District	
Saluda	King & Queen, Gloucester
	Middlesex & Mathews
Warsaw	Richmond, Lancaster,
	Northumberland & Westmoreland
Fredericksburg	Spotsylvania, Stafford &
	King George
Bowling Green	Caroline & Essex & King William
Lynchburg District	
Chatham	Pittsylvania
Halifax	Halifax & Charlotte
Dillwyn	Buckingham, Cumberland &
	Prince Edward
Appomattox	Appomattox & Campbell
Amherst	Amherst & Nelson
Northern Virginia	
Fairfax	Fairfax & Arlington
Manassas	Prince William
Leesburg	Loudoun
Richmond District	
South Hill	Brunswick & Mecklenburg
Amelia	Amelia, Nottoway & Lunenburg
Petersburg	Dinwiddie & Prince George
Chesterfield	Chesterfield & Powhatan
Sandston	Charles City, Henrico &
	New Kent
Ashland	Goochland & Hanover

REPLACED

APPENDIX B (continued)

~~(Residency Office)~~	~~(Counties Served)~~
Salem District	
Hillsville	Carroll & Floyd
Christiansburg	Montgomery, Giles & Pulaski
Martinsville	Henry & Patrick
Rocky Mount	Franklin
Salem	Craig, Roanoke & Botetourt
Bedford	Bedford
Staunton District	
Lexington	Alleghany, Rockbridge & Bath
Staunton	Augusta & Highland
Harrisonburg	Rockingham
Edinburg	Frederick & Shenandoah
Luray	Clarke, Page & Warren
Suffolk District	
Franklin	Greensville & Southampton
Waverly	Surry & Sussex
Norfolk	Cities: Norfolk, Virginia Beach, Chesapeake & Portsmouth
Williamsburg	James City & York
Suffolk	Isle of Wight & City of Suffolk
Accomac	Accomack & Northampton

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APPENDIX C

~~Listing of Documents (Publications) Incorporated by Reference~~
- VDOT Subdivision Street Requirements -

Note: Information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document.

1. Drainage Manual, Location and Design Division (VDOT)

Location and Design Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

2. "TTE Trip Generation", Information Report of the Institute of Transportation Engineers

Institute of Transportation Engineers
525 School Street, S.W., Suite 410
Washington, D.C. 20024-2729

3. Highway Capacity Manual, Transportation Research Board Special Report 209

Transportation Research Board
2107 Constitution Avenue, N.W.
Washington, D.C. 20418

4. Minimum Entrance Standards, Traffic Engineering Division (VDOT)

State Traffic Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

5. Land Use Permit Manual, Maintenance Division (VDOT)

Maintenance Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

6. Road and Bridge Specifications, Construction Division (VDOT)

Construction Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

REPLACED

APPENDIX C (continued)

7. Road and Bridge Standards, Location and Design Division (VDOT)

Location and Design Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

8. Policy on Geometric Design of Highways and Streets, AAS

American Association of State Highway and Transport[illegible] Officials
444 North Capital Street, N.W., Suite 225
Washington, D.C. 20001

9. Standard Specifications for Highway Bridges, A[illegible]

American Association of State Highway Transport[illegible]on Officials
444 North Capital Street, Suite 225
Washington, D.C. 20001

VDOT Modifications, Bridge and Structu[illegible]vision (VDOT)

Structure and Bridge Engineer
Virginia Department of Transport[illegible]
1401 East Broad Street
Richmond, Virginia 23219

10. Virginia Erosion and Sedim[illegible]t C[illegible]rol Handbook, Division of Soil and Water Conservation, with The V[illegible] Erosion and Sediment Control Law and General Criteria

Division of Soil and [illegible]ater Conservation
203 Governor Stre[illegible]uite 206
Richmond, Virginia [illegible]19

11. National Coo[illegible]ive Highway Research Program Report 230, Transportat[illegible]n Research Board

Transportation Research Board
2101 C[illegible]titution Avenue, N.W.
Washing[illegible]D.C. 20418

12. Gu[illegible]s for Planting Along Virginia's Roadways, Environmental Division (VDOT)

Environmental Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

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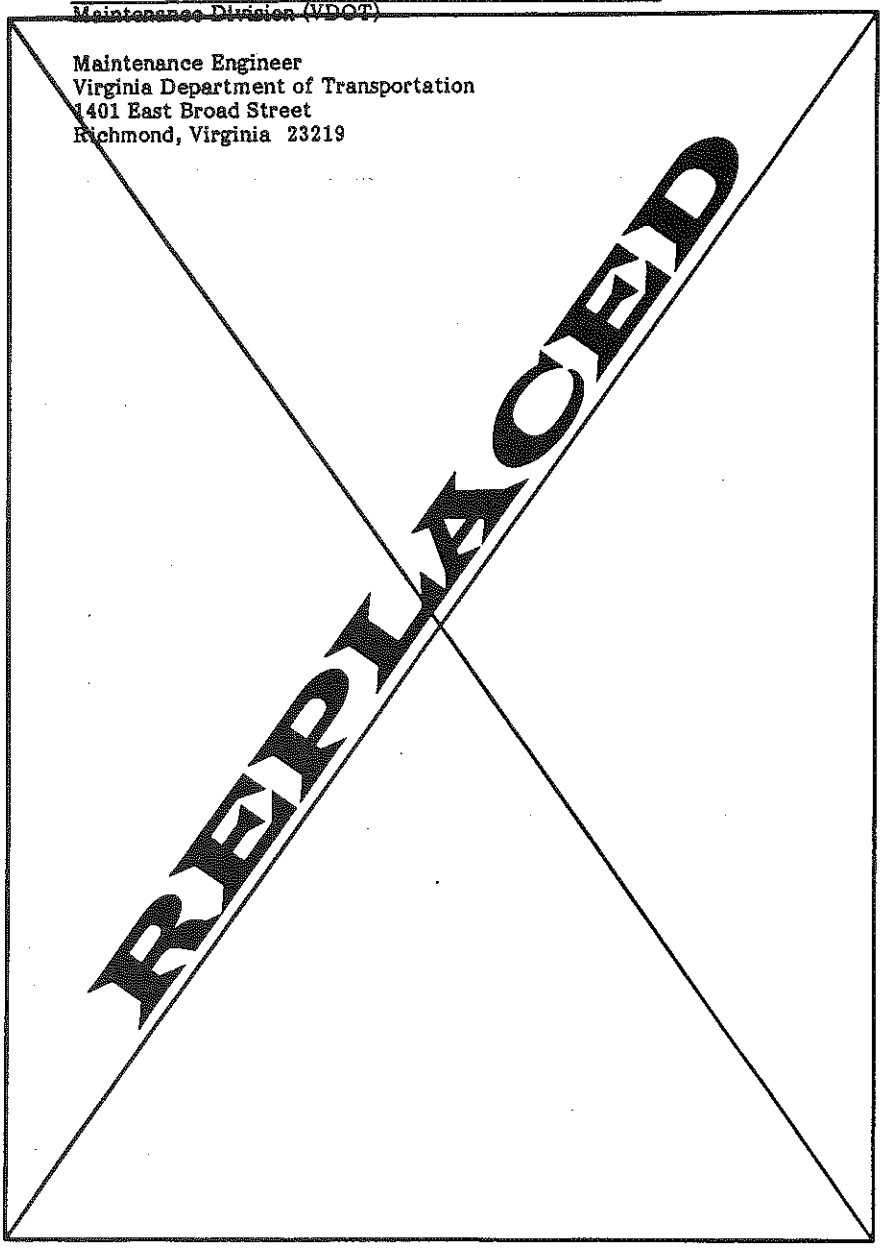
APPENDIX C (continued)

13. Guidelines for Lighting by Permit on State Right of Way, ~~Maintenance Division (VDOT)~~

Maintenance Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219



VA.R. Doc. No. R95-566; Filed June 21, 1995, 10:52 a.m.

DEPARTMENT OF CORRECTIONS (BOARD OF)

Title of Regulations: **VR 230-30-001. Minimum Standards for Jails and Lockups.**

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-131 and 53.1-133.01 of the Code of Virginia.

Effective Date: August 10, 1995.

Summary:

The amendments to the Minimum Standards for Jails and Lockups alter the requirements for administration and programs in jails and lockups, and are based on a board committee review of the implementation and application of the standards. The changes are directed toward offering more flexibility in terms of population management; strengthening requirements where inmate supervision and general safety is a concern; rearranging portions of the standards to enhance clarity, organization, and consistency among standards; responding to Code changes from the 1994 General Assembly; and incorporating recommendations from a recent Joint Legislative Audit and Review Commission study.

Changes since the proposed version include revision to the definition of "state offender" to comply with Code of Virginia requirements and the reinsertion of standards concerning juvenile confinement, as oversight of jails for purposes of holding juveniles has been transferred back to the Department of Corrections from the Department of Youth and Family Services through legislation, effective July 1, 1995.

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 Lou Ann White, Certification Supervisor, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237.

VR 230-30-001. Minimum Standards for Jails and Lockups.

PART I.
INTRODUCTION.

~~Article 1.~~
~~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:

"Administrative segregation" means a form of ~~segregation~~ *separation* from the general population when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution. Inmates pending investigation for trial on a criminal act or pending transfer can also be included.

"Annually" means an action performed each calendar year.

"Appeal" means the procedure for review of an action by a higher authority.

"Appropriate heating" means temperatures appropriate to the summer and winter comfort zones. [~~Heat shall be evenly distributed in all rooms so that a temperature no less than 65°F is maintained. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided when the temperature exceeds 85°F.~~]

[~~*"Appropriate lighting"* means at least 20 footcandles at desk level and in personal grooming area.~~]

"Audit" means the determination of facility compliance with standards through an examination of records and operations by a team of qualified professionals.

"Certification" means an official approval by the Board of Corrections which allows a facility to operate.

"Chief executive" means the elected or appointed individual who by law or position has the overall responsibility for the facility's administration and operation.

"Classification" means the process for determining inmate housing, custody and program assignments.

"Communication system" means a mechanical audio transmission such as telephone, intercom, walkie talkie or T.V. monitor.

"Contraband" means any item possessed by inmates or found within the jail or lockup which is illegal by law or not specifically approved for inmate possession by the administrator of the facility.

"Daily log" means a written record for the recording of daily activities or unusual incidents.

"Department" means the Department of Corrections.

"Detainee" means any person confined but not serving a sentence.

"Director" means the Director of the Department of Corrections.

"Disciplinary detention" means the separation of an inmate from the general population for major violations of conduct or regulations.

"Facility" means the actual physical setting in which a program or agency functions.

"Fire prevention practices" means the activities and written procedures utilized and rehearsed to ensure the safety of staff, inmates and public.

"Fire safety inspection" means an inspection conducted by the Office of State Fire Marshal or local fire department.

"Grievance procedure" means the method by which inmates may formally address complaints to the facility administration.

"Health care personnel" means individuals whose primary duties are to provide health services to inmates.

"Health inspection" means an inspection conducted by the local or state Department of Health.

"Impartial officer or committee" means individual(s) who are unbiased and are not directly involved in the particular incident or situation being reviewed.

[~~*"Indigent inmate"* means an inmate who has no financial means to purchase personal hygiene items or postage for mailing letters.~~]

"Inmate handbook" means a manual, pamphlet or handout which contains information describing inmate activities and conduct.

"Inmate records" means written information concerning the individual's personal, criminal and medical history, behavior and activities while in custody.

~~"Impartial officer or committee" means individual(s) who are unbiased and are not directly involved in the particular incident or situation being reviewed.~~

"Juvenile" means a person less than 18 years of age.

"Legal mail" means mail addressed to or received from an attorney or court.

"Local offender" means an individual who has a conviction but who is not a state offender in accordance with § 53.1-20 of the Code of Virginia.

"Lockup" means a temporary detention facility where detainees are held for not more than 12 hours.

"Major violations" means those institutional violations for which an inmate may be punished either by being placed in disciplinary detention or by losing statutory good time.

"Medical screening" means an observation and interview process within the booking procedure designed to obtain pertinent information regarding an individual's medical or mental health condition.

~~"Major violations" means those institutional violations for which an inmate may be punished either by being placed in disciplinary detention or by losing statutory good time.~~

"Minor violations" means those institutional violations punishable by less severe sanctions such as reprimand or loss of privileges.

"Permanent log" means a written record of a [~~facilities'~~ *facility's*] activities which cannot be altered or destroyed subject to state law.

"Pharmaceuticals" means prescription and nonprescription drugs.

"Policy and procedures manual" means a written record containing all policies and procedures needed for the operation of the facility in accordance with the law and the minimum standards for local jails and lockups.

"Post order" means a list of specific job functions and responsibilities required of each duty position.

"Program" means the plan or system through which a correctional agency works to meet its goals; often the program requires a distinct physical setting.

"Protective custody" means a form of separation from the general population for inmates requesting or requiring protection from other inmates.

"Quarterly" means an action which occurs once every three months within a calendar year.

"Recreational activities" means any out-of-cell activity ranging from scheduled outside or inside recreation to informal table top games.

~~"Semi-annual" means an action occurring once every six months within a calendar year.~~

"State offender" means an individual sentenced to a term of incarceration [~~in~~] ~~a state correctional facility~~ [~~*excess of two years*~~] in accordance with § 53.1-20 of the Code of Virginia. *For the purpose of §§ 4.10 and 4.11 relative to work release, educational release or rehabilitative release, a state offender shall be defined in terms of the intake schedule pursuant to § 53.1-20 of the Code of Virginia.*

"Volunteer" means an individual who provides services to the detention facility without compensation.

~~Article 2.~~
~~Legal Base.~~

~~§ 1.2. The Code of Virginia is the foundation for the development of Minimum Standards for Local Jails and Lockups. Section 53.1-68 of the Code of Virginia directs the State Board of Corrections to establish minimum standards for the construction, equipment, administration and operation of local correctional facilities. This Code section also authorizes the Board of Corrections to establish minimum standards for the construction, equipment and operation of lockups.~~

~~§ 1.3. Section 53.1-131 of the Code of Virginia directs the State Board of Corrections to prescribe regulations governing work release, educational and other rehabilitative programs.~~

~~§ 1.4. The State Board of Corrections is authorized to monitor the activities of the department and its effectiveness in implementing the standards and goals of the board as specified by § 53.1-5 of the Code of Virginia.~~

~~Article 3.~~
~~Administration.~~

~~§ 1.5.~~ *§ 1.2. Responsibility.*

The primary responsibility for application of these standards shall be with the sheriff or chief executive officer of the jail or lockup.

PART II.
JAIL ADMINISTRATION.

Article 1.
Philosophy, Goals and Objectives.

§ 2.1. *Requirement for written statement.*

The facility shall have a written statement discussing its philosophy, goals and objectives.

Article 2.
Policies and Procedures.

§ 2.2. *Policy and procedures manual.*

Written policy and procedures shall be maintained in a manual and shall be available 24 hours a day to all staff. *The facility's policy and procedures manual shall be reviewed every 12 months by the administration and updated to keep current with changes.*

§ 2.3. *Chief executive officer.*

Written policy shall provide that each facility shall be headed by a single chief executive officer to whom all employees and functional units are responsible.

§ 2.4. *Annual report.*

A written annual report of the availability of services and programs to inmates in a facility shall be reviewed and provided to the sentencing courts and may be provided to relevant community agencies.

PART III.
MANAGEMENT INFORMATION.

Article 1.
Release of Information.

§ 3.1. *Release of information.*

Written policies and procedures covering the release of information shall be developed in accordance with the ~~rules and~~ *Regulations Relating to Criminal History Record Information Use and Security (VR 240-02-01), as* promulgated by the Criminal Justice Services Board ~~and the Virginia Plan for the Privacy and Security of Criminal History Record Identification~~ .

Article 2.
Inmate Records.

§ 3.2. *Current and accurate inmate records.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that inmate records are current and accurate.

§ 3.3. *Content of personal inmate records.*

Personal records shall be maintained on all inmates committed or assigned to the facility. These records shall contain, but not be limited to~~, the~~:

1. ~~Inmates~~ *Inmate* data form;

2. Commitment form ~~and~~ *or* court order , *or both* ;

3. Records developed as a result of classification;

4. All medical orders issued by the ~~facilities~~ *facility's* [~~physician~~ *medical authority*] ;

5. All disciplinary actions, or unusual incidents;

6. Work record and program involvement; and

7. Copies of inmates' property expenditure records and receipts.

Article 3.
Facility Logs and Reports.

§ 3.4. *Daily logs.*

The facility shall maintain a daily log(s) which records the following information:

1. Inmate count and location;

2. Intake and release of inmates;

3. Entries and exits of physicians, attorneys, ministers, and other nonfacility personnel; ~~and~~

4. Any unusual incidents such as those that result in physical harm to or threaten the safety of any person, or the security of the facility.

§ 3.5. Serious incident report.

A report setting forth in detail the pertinent facts of deaths, escapes, [*and*] *discharging firearms* [~~, or similar serious incidents~~] *shall be reported to the appropriate regional administrator, Department of Corrections, or designee. The initial report should be made within 24 hours with a full report submitted at the end of the investigation.*

Article 4.
Classification.

~~§ 3.5.~~ *§ 3.6.* Classification.

Written policy ~~and procedures~~ , *procedure and practice* shall ensure the following:

1. Classification of inmates as to level of housing assignment and participation in correctional programs;

2. Separate living quarters for males, females, and juveniles;

3. ~~Prohibition of segregation of inmates~~ *Inmates are not segregated* by race, color, creed or national origin;

4. Security permitting, equal access to all programs and activities, through separate scheduling, or other utilization of combined programs under supervision; *and*

~~5. The proper release of inmates; and~~

5. Any exception to the above to be documented in writing.

Article 5.
Grievance Procedure.

~~§ 3.6.~~ *§ 3.7.* Written grievance procedure.

A written grievance procedure shall be developed and made available to all inmates with the following elements:

1. Grievance shall be responded to within ~~a prescribed reasonable time limit~~ *nine calendar days of receipt*;

2. Written responses including the reason for the decision shall be made to all grievances;

3. A review shall be made by someone not directly involved in the grievance; ~~and~~

4. All inmates shall have access to the procedures with guaranty against reprisal ~~.~~ *; and*

5. All inmates ~~must~~ *shall* be afforded the opportunity to appeal the decision.

PART IV.
JAIL PROGRAMS AND SERVICES.

Article 1.
Inmate Participation.

§ 4.1. *Awareness of programs.*

The facility administrator *or designee* shall make each inmate aware of available programs.

§ 4.2. *Inmate participation.*

Written policy ~~and procedures~~, *procedure and practice* shall:

1. Provide inmates access to recreational activities consistent with health and security regulations;

2. Provide all inmates access to regular physical exercise;

3. Specify eligibility for work assignments; *and*

4. Govern the administration of local work programs ~~;~~ .

~~5. Govern the administration of local work or education release programs if applicable.~~

Any exception to the above shall be documented in writing.

Article 2.
Work Release, Educational Release and Other Rehabilitative Release Programs.

§ 4.3. Written procedures for eligibility criteria.

Written procedures outlining the eligibility criteria for participation in a work release, educational release or rehabilitation release program shall be developed by each facility with a work release, educational or rehabilitation program. Offenders shall meet the established eligibility requirements prior to being released to participate in the program.

§ 4.4. Written procedures for accountability of participants.

Written procedures shall ensure the accountability of participants and provide for supervision in the community. Such procedures shall include at a minimum:

1. Provisions for a daily inmate count;

2. Methods for determining and identifying inmates who are authorized to leave the facility;

3. Provisions for a controlled sign-out and sign-in process; and

4. Methods of verifying the inmate's location within the community, both by telephone and random field visits.

§ 4.5. Conditions for offender participation in a work release program.

Offender participation in a work release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court.

1. Participation by the inmate shall be on a voluntary basis.

2. The following conditions shall be met where the employer has a federal contract.

a. Representatives of local union central bodies or similar labor union organizations shall have been consulted;

b. Employment shall not result in the displacement of employed workers, or be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

c. Rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

§ 4.6. Conditions for offender participation in educational release or rehabilitative release program.

Offender participation in an educational release or rehabilitative release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court.

1. Participation by the inmate may be voluntary or court ordered;

2. Meetings or classes shall be on a regularly scheduled basis; and

3. Other conditions shall not be more restrictive on the offender than those required by other participants.

§ 4.7. Furlough.

Participants in the work release, educational release or rehabilitative release programs may be considered for furlough. Written procedures shall govern the granting of furloughs [,] in accordance with the provisions of §§ 53.1-37 and 53.1-132 of the Code of Virginia.

§ 4.8. Earnings.

Written procedures shall be developed to ensure the accountability of all earnings received, disbursed, to whom and reason on behalf of the participant. Procedures shall be in accordance with § 53.1-131 of the Code of Virginia.

§ 4.9. Removing participants from program.

Written procedures shall establish the criteria and process for removing a participant from the program.

1. Procedures shall include provisions for an impartial hearing for the participant.

2. Procedures shall include provisions for the appeal of the removal.

3. Documentation shall reflect that this information was explained to all participants when they were assigned to the program.

§ 4.10. Written agreement with director.

Each facility having a work release, educational release or rehabilitation release program that includes state offenders as defined in § 53.1-20 of the Code of Virginia shall have a written agreement with the director.

§ 4.11. Offender participation in compliance with appropriate criteria and approval.

State offenders assigned to a work release, educational release or rehabilitation release program shall meet the Department of Corrections work release criteria and be approved by the department's Central Classification Board and the department's management review process pursuant to a written agreement as provided for in accordance with § 53.1-131 of the Code of Virginia.

Article ~~2.~~ *3.*
Religious, Social and Volunteer Services.

~~§ 4.3.~~ *§ 4.12.* Participation in religious services or counseling.

Written policy ~~and procedures~~, *procedure and practice* shall allow inmates to participate voluntarily in available religious services or counseling of their choice during scheduled hours within the facility.

~~§ 4.4.~~ *§ 4.13.* Social services and volunteer programs.

~~The facility shall secure and support social services and volunteer programs from the community.~~ Where volunteers provide direct services to inmates in the facility ~~there shall be~~ written policies and procedures *shall describe each available service or program. The facility shall secure and support* [*available*] *social services and volunteer programs from the community.*

~~§ 4.5.~~ *§ 4.14. Coordination of volunteer program.*

The volunteer program shall be coordinated and administered in accordance with written policies and procedures. Each volunteer shall sign a statement agreeing to abide by facility rules and regulations.

Article ~~3.~~ *4.*
Education and Library Services.

~~§ 4.6.~~ *§ 4.15. Availability and administration of educational services.*

Written policy ~~and procedures~~, *procedure and practice* shall govern the availability and administration of educational services for inmates. The facility administrator shall coordinate and cooperate with local authorities for the provision of local community services and resources utilized for this purpose where they are available.

~~§ 4.7.~~ *§ 4.16. Provisions of reading materials.*

The facility shall provide reading materials which include current periodicals (not more than one year old).

~~§ 4.8.~~ *§ 4.17. Permission of reading materials.*

Reading materials, including newspapers, magazines and books, shall be permitted in the jail unless the material poses a threat to security *or is not in compliance with other jail restrictions or guidelines* .

Article ~~4.~~ *5.*
Commissary.

§ ~~4.9.~~ *4.18. Commissary services.*

The facility shall make available to inmates commissary services where they may purchase from an approved list of items *at a minimum of one time per week. Written policy and procedure shall describe the circumstances and duration under which inmates may be restricted from this privilege* .

Article ~~5.~~ *6.*
Medical Services.

§ ~~4.10.~~ *4.19. Licensed physician.*

A licensed physician shall supervise the facility's medical and health care services.

§ ~~4.11.~~ *4.20. Restrictions on physician.*

No restrictions shall be imposed on the physician by the facility in the practice of medicine; however, administrative and security regulations applicable to facility personnel shall apply to medical personnel as well.

~~§ 4.12.~~ *4.21. Licensing and certification of health care personnel.*

Health care personnel shall meet appropriate and current licensing or certification requirements.

§ ~~4.13.~~ *4.22. Private examination and treatment of inmates.*

Where in-house medical and health care services are provided there shall be space for the private examination and treatment of inmates.

§ ~~4.14.~~ *4.23. Twenty-four-hour emergency medical care.*

Written policy shall provide 24-hour emergency medical care availability.

§ ~~4.15.~~ *4.24. Receiving and medical screening of inmates.*

Written policy ~~and~~, procedure *and practice* shall provide that receiving and medical screening be performed on all inmates upon admission to the facility. *The medical screening shall:*

1. Specify assessment of current illnesses, health problems and conditions, and past history of infections or communicable diseases;

2. Specify assessment of current symptoms regarding the inmate's mental health, dental problems, allergies, present medications, special dietary requirements, and symptoms of venereal disease;

3. Include inquiry into past and present drug and alcohol abuse, mental health status, depression, suicidal tendencies, and skin condition; and

4. For female inmates, include inquiry into possible pregnancy or gynecological problems.

§ ~~4.16.~~ *4.25. Inmate access to medical services.*

Written procedures shall be developed whereby inmates can be informed, at the time of admission to the facility, of the procedures for gaining access to medical services. *To ensure communicable disease control, the facility shall:*

1. Develop communicable disease screening items for inclusion on medical screening forms;

2. Review, by the facility's medical authority, communicable disease screening procedures and subsequent documentation at least every 12 months;

3. Develop procedures for communicable disease testing in jails; and

4. Train jail staff in the identification and transmission of communicable diseases and in identification of hazardous conditions that may facilitate the spread of disease.

§ ~~4.17.~~ *4.26. Training and competency of staff.*

All staff involved in security shall be trained and competent in rendering basic first aid equivalent to that defined by the American Red Cross in its use in emergency care procedures. Further, there shall be at least one person per shift who is competent in administering basic life support cardiopulmonary resuscitation (CPR).

§ ~~4.18.~~ *4.27. Management of pharmaceuticals.*

Written standard operating procedures for the management of pharmaceuticals shall be established and approved by the facility's physician or pharmacist. *Written policy, procedure and practice shall provide for the proper management of pharmaceuticals, including receipt, storage, dispensing and distribution of drugs. Such procedures shall be reviewed every 12 months* [*by the facility administrator. Such reviews shall be documented*] .

§ ~~4.19.~~ *4.28. Inmate medical record.*

The medical record for each inmate shall include:

1. The completed receiving screening form; and

2. All findings, diagnoses, treatment, dispositions, prescriptions, and administration of medication.

§ ~~4.20.~~ *4.29. Transfer of summaries of medical record.*

Summaries of the medical record file shall be forwarded to the facility to which the inmate is transferred.

§ ~~4.21.~~ *4.30. Medical or pharmaceutical testing for experimental or research purposes.*

Written policy *and practice* shall prohibit medical or pharmaceutical testing for experimental or research purposes.

§ ~~4.22.~~ *4.31. Medical care provided by personnel other than physician.*

Medical care performed by personnel other than a physician shall be pursuant to a written protocol or order.

§ 4.32. Suicide prevention and intervention plan.

There shall be a written suicide prevention and intervention plan. These procedures shall be reviewed and documented by an appropriate medical or mental health authority prior to implementation and reviewed every six months by all staff. The six-month reviews shall be documented.

Article 7.
Medical Treatment Programs in which Prisoners Pay a Portion of the Costs.

§ 4.33. Applicability of medical treatment program standards.

[~~*Sections 4.34, 4.35 and 4.36*~~ *The standards in this article*] *apply only to those facilities which have established a medical treatment program in which prisoners pay a portion of the costs per § 53.1-133.01 of the Code of Virginia.*

§ 4.34. Written policy and procedure required [~~*; fees; minimum requirements*~~] .

[~~*A.*~~] *Jail medical treatment programs wherein inmates pay a portion of the costs for medical services shall be governed by written policy and procedure.*

[*§ 4.35. Set fees required.*]

[~~*B.*~~] *Inmate payment for medical services shall be in accordance with set fees based upon only a portion of the costs of these services.*

[~~*C.*~~ *§ 4.36. Policy and procedure information.*]

Written policy and procedure shall specify, at a minimum, the following information:

1. Medical services which are subject to fees;

2. Fee amounts;

3. Payment procedures;

4. Medical services which are provided at no cost;

5. Fee application to medical emergencies, chronic care and pre-existing conditions; and

6. Written notification to inmates of proposed fee changes.

[~~§ 4.35. Payment~~ § 4.37. *Inmates advised of procedures.*]

[~~A.~~] *Inmates shall be advised of medical service fees and payment procedures at the time of admission/orientation.*

[§ 4.38. *Ability to pay.*]

[~~B.~~] *Written policy, procedure and practice shall provide that no inmate will be denied access to* [~~medical~~ *medically necessary*] *services based upon ability to pay.*

[§ 4.39. *Acknowledgment in writing.*]

[~~C.~~] *Medical service fee debits to inmate accounts shall be acknowledged by the inmate in writing.*

§ [~~4.36.~~ 4.40.] *Accounting process.*

A separate bank account, or accounting process, shall be established and used exclusively for the deposit and disbursal of medical service fees. Fee collections and disbursements shall be governed by generally accepted accounting principles.

Article ~~6.~~ 8.
Food Services.

~~§ 4.23.~~ [~~4.37.~~ 4.41.] *Standards for food service equipment and personnel.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that the facility's food service equipment and personnel meet the established safety and protection standards and requirements as set forth by the State Board of Health's rules and regulations governing restaurants and the requirements by the Virginia Department of Corrections.

§ ~~4.24.~~ [~~4.38.~~ 4.42.] *Food service program.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure a food service program that meets the requirements as set forth by the Virginia Department of Corrections which shall ensure that:

1. The menu meets the dietary allowances as stated in the Recommended Dietary Allowances, National Academy of Sciences;

2. There is at least a one-week advance menu preparation; and

3. Modifications in menus are based on inmates' medical or reasonable religious requirements. *Medical or dental diets shall be prescribed by* [~~an appropriate physician~~ *the facility's medical authority*] .

§ ~~4.25.~~ [~~4.39.~~ 4.43.] *Meals served under direct supervision of staff.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure a food service program that meets the requirements as set forth by the Virginia Department of Corrections which shall ensure meals are served under the direct supervision of staff.

§ ~~4.26.~~ [~~4.40.~~ 4.44.] *Records of meals served.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure a food service program that meets the requirements as set forth by the Virginia Department of Corrections which shall ensure that records of meals served are kept for a minimum of three years.

§ ~~4.27.~~ [~~4.41.~~ 4.45.] *Food service program not a disciplinary measure.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure a food service program that is not used as a disciplinary measure and meets the requirements as set forth by the Virginia Department of Corrections.

§ ~~4.28.~~ [~~4.42.~~ 4.46.] *Number and spacing of meals.*

Written policy ~~and procedures~~, *procedure and practice* shall provide for at least three meals daily with no more than 14 hours between evening meal and breakfast, and a minimum of two hot meals within every 24 hours.

Article ~~7.~~ 9.
Mail.

§ ~~4.29.~~ [~~4.43.~~ 4.47.] *Correspondence privileges.*

Written policy ~~and procedures governing inmate correspondence~~, *procedure and practice* shall ensure that all inmates, regardless of their jail status, shall be afforded the same correspondence privileges; correspondence privileges shall not be withdrawn as punishment.

§ ~~4.30.~~ [~~4.44.~~ 4.48.] *Volume and content of inmate mail.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that there is no limit on the volume of letter mail an inmate may send or receive, or on the length, language, content or source of such letter mail, except where there is clear and convincing evidence to justify such limitations.

§ ~~4.31.~~ [~~4.45.~~ 4.49.] *Postage allowance.*

Written policy ~~and procedures~~, *procedure and practice* shall make available, when requested by an indigent inmate *(as defined by local jail policy)*, a postage allowance of not more than five first-class rate (one ounce) letters per week, ~~not counting~~ *including* legal mail.

§ ~~4.32.~~ [~~4.46.~~ 4.50.] *Outgoing and incoming letters.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that outgoing letters shall be collected and sent daily except Saturdays, Sundays, and holidays. Incoming letters to inmates shall be delivered no later than 24 hours after arrival at the facility or shall be ~~promptly~~ forwarded or returned to sender.

§ ~~4.33.~~ [~~4.47.~~ 4.51.] *Reading of inmate mail.*

Inmate mail shall not be read except where there is reasonable suspicion that a particular item of correspondence threatens the safety or security of the institution, ~~or~~ the safety of any person, or is being used for furtherance of illegal activities. [*All legal mail shall be opened with the inmate present.*]

§ ~~4.34~~ [~~4.48.~~ 4.52.] *Notice of seizures of mail contraband.*

Written policy ~~and procedures~~, *procedure and practice* shall assure that notice of the seizures of mailed contraband be given to the inmate and the sender together with the written reason for the seizure. The sender shall be allowed

the opportunity to appeal and challenge the seizure before the facility administrator or a designee empowered to reverse seizure. Unless it is needed for a criminal investigation or prosecution, property which can legally be possessed outside the facility shall be stored, returned to sender or destroyed, as the inmate desires.

Article ~~8.~~ *10.*
Telephone.

§ ~~4.35~~ [~~4.49.~~ *4.53.*] *Access and expense of telephone facilities.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure inmates reasonable access to telephone facilities.

~~§ 4.36.~~ [~~4.50.~~ *4.54.*] *Delivery of emergency messages to inmates.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that emergency messages to inmates are delivered promptly and recorded. When possible, the jail chaplain shall be notified of an immediate family member's death or serious illness.

Article ~~9.~~ *11.*
Visiting.

§ ~~4.37.~~ [~~4.51.~~ *4.55.*] *Visiting opportunities.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure maximum visiting opportunities limited only by facility schedules, space ~~and~~, personnel constraints *and inmate disciplinary status. Attorneys shall be permitted to have confidential visits with their clients.*

§ ~~4.38.~~ [~~4.52.~~ *4.56.*] *Approved items which visitors may bring into facility.*

The facility shall have a list of approved items which visitors may bring into the facility. Items brought into the facility by visitors for inmates shall be subject to inspections and approval.

§ ~~4.39.~~ [~~4.53.~~ *4.57.*] *Requirements of visitor registration and visitor searches.*

Written policy ~~and procedures~~, *procedure and practice* shall specify requirements for visitor registration and the circumstances and methods under which visitors may be searched.

PART V.
JAIL OPERATIONS.

Article 1.
Reception and Orientation.

§ 5.1. *Admitting individuals into jail.*

Written policy ~~and procedures~~, *procedure and practice* for admitting individuals into the jail shall address the following:

1. Verification of commitment;
2. Complete search of the individual and his possessions;
3. Disposition of clothing and personal possessions;
4. Interview for obtaining identifying data;
5. Photograph; and
6. Telephone calls.

§ 5.2. *Inmates confined to jail.*

Written policy ~~and procedures~~, *procedure and practice* for those inmates to be confined in the jail shall address the following:

1. Shower/search;
2. Issue of clean clothing/hygiene items/linen;
3. Classification and housing assignment; and
4. Orientation.

§ 5.3. *Telephone calls during the booking process.*

Written policy ~~and procedures~~, *procedure and practice* shall specify that newly admitted inmates who are physically capable are permitted to complete at least two local or ~~collect~~ long-distance telephone calls during the ~~admissions~~ *booking* process.

Article 2.
Linen and Clothing.

§ 5.4. *Requirements for linens and towels.*

Written policy ~~and~~, procedure *and practice* shall provide that a record be kept to show that clean linen and towels be supplied once a week, a clean change of clothing be provided twice a week and inmates shall be held accountable for their use.

§ 5.5. *Issuance of special and protective clothing.*

The facility shall provide for the issuance of special and protective clothing to inmates assigned to food services, farm, sanitation, mechanical services, and other special work functions.

Article 3.
Bathing and Hygiene.

§ 5.6. *Bathing.*

There shall be sufficient hot and cold water for bathing. Each inmate shall be required to bathe twice a week.

§ 5.7. *Provision of hygiene articles.*

The facility shall provide soap, a toothbrush, and toothpaste or toothpowder to each inmate upon admission to the general population. Notwithstanding security considerations, shaving equipment, including a mirror, and haircuts shall be made available, and hygiene needs of all inmates shall be met.

Article 4.
Inmate Money and Property Control.

§ 5.8. *Items inmates may retain.*

Written policy and procedures shall state what items the inmate may retain in his possession.

§ 5.9. *Inventory of cash and personal property.*

A written itemized inventory of cash and personal property of each inmate shall be made at the time of initial booking. A [~~signed~~] copy [*signed by both staff and inmate*] shall be furnished the inmate.

§ 5.10. *Accounting of inmate expenditures and receipts of money.*

An itemized account shall be maintained of each inmate's expenditures and receipts of money while in the facility and acknowledged by the inmate in writing.

§ 5.11. *Return of inmate property and funds.*

Inmate's property and funds shall be returned to him upon his release or transfer and ~~acknowledged~~ *receipted* for by the inmate in writing.

Article 5.
Inmate Conduct and Discipline.

§ 5.12. *Conduct.*

Written policy and procedures shall govern inmate conduct and shall include:

1. Rules of conduct;

2. Definition of major and minor violations; and

3. Prohibition of the use of food as a disciplinary measure.

4. Upon assignment to general inmate housing, inmates shall *be informed of,* receive, *and sign for* a copy of inmate conduct rules and policy and procedures governing inmate conduct.

§ 5.13. *Discipline.*

Written policy ~~and procedures~~, *procedure and practice* shall govern the reporting and disposition of disciplinary infractions by inmates and shall include:

1. Procedures and provisions for pre- and post-disciplinary detention of inmates; and

2. Procedures for handling minor violations:

a. The accused inmate ~~is~~ *shall be* given written notice of the charge and the factual basis for it;

b. The accused inmate shall have an opportunity to explain or deny the charge;

c. The accused inmate shall be given a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action;

d. The accused inmate shall have an opportunity to appeal any finding of guilt to the facility administrator *or designee* ; and

3. Procedures for handling major violations:

a. The accused inmate ~~is~~ *shall be* given written notice of the charge and the factual basis for it at least 24 hours prior to the hearing of the charge;

b. The charge ~~is~~ *shall be* heard in the inmate's presence by an impartial officer or committee, *unless that right is waived in writing by the inmate or through the inmate's behavior. The accused inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion shall be documented;*

c. The accused inmate ~~is~~ *shall be* given an opportunity to have the assistance of a staff member or fellow inmate in defending the charge;

d. Witness statements and documentary evidence ~~will~~ *shall* be permitted in his defense;

e. The accused inmate shall be given a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action; and

f. The accused inmate ~~is~~ *shall be* permitted to appeal any finding of guilt to the facility administrator *or designee.*

Article 6.
Security.

§ 5.14. *Post to control security of jail.*

The facility shall maintain a designated post, manned 24 hours a day, that controls activities and flow of people in and out of the secure area of the jail.

§ 5.15. *Security of outside recreation.*

The facility's outside recreation area shall be secure so that inmates shall not have physical access to the general public without authorization.

§ 5.16. *Security of entrances and doors.*

Written policy ~~and procedures~~, *procedure and practice* shall require that all security perimeter entrances, control center doors, cell block doors and all doors opening into a corridor are kept locked except when used for admission or exit of employees, inmates or visitors, or in emergencies.

§ 5.17. *Security and storage of security devices.*

Written policy ~~and procedures~~, *procedure and practice* shall govern the security, storage and use of firearms, ammunition, chemical agents, and related security devices to ensure that:

[*1. The facility shall provide secure storage for firearms, ammunition, chemical agents, and related security equipment accessible to authorized personnel only and located outside the security perimeter or the inmate housing and activity areas.*]

[~~1.~~ 2.] Personnel who carry firearms *and ammunition* are assigned positions that are inaccessible to inmates (with the exception of emergencies) ~~;~~ .

[~~2.~~ *3.*] Personnel who discharge firearms or use chemical agents submit written reports to the administrator or designated subordinate no later than the conclusion of the shift during which same are discharged or used.

§ 5.18. *Officer entry.*

Written policy and procedures shall specify the conditions under which an officer can enter a security cell or cell block.

§ 5.19. *Mechanical audio communications system.*

The facility shall provide a *mechanical audio* communications system allowing staff to communicate with each other to facilitate staff supervision.

§ 5.20. *Examination and maintenance of security devices.*

Written policy ~~and procedures~~, *procedure and practice* shall specify that, at least once daily, a careful examination be made of all security devices and that maintenance be routinely performed to ensure their proper operation.

§ 5.21. *Searches of facility and inmates.*

Written policy and procedures shall specify the process for conducting and documenting searches of the facility and inmates.

§ 5.22. *Policy for searches of contraband.*

The facility shall post the policy regarding searches for the control of contraband or otherwise make it available to staff and inmates. Further, the policy shall be reviewed [*by administrative staff*] at least ~~annually~~ *every 12 months* and updated as needed.

§ 5.23. *Key and door control.*

Written policy ~~and procedures~~, *procedure and practice* shall govern key and door control.

§ 5.24. *Tools, culinary items and cleaning equipment.*

Written policy ~~and procedures~~, *procedure and practice* shall govern the control and use of tools, culinary items and cleaning equipment.

§ 5.25. *Flammable, toxic and caustic materials.*

Written policy ~~and procedures~~, *procedure and practice* shall specify the control, storage and use of all flammables, toxic and caustic materials.

§ 5.26. *Functions of duty post.*

Written post orders shall clearly describe the functions of each duty post in the facility and include copies in the policy and procedures manual.

§ 5.27. *Restriction of physical force.*

Written policy ~~and procedures~~, *procedure and practice* shall specify ~~and restrict~~ the use of physical force which is necessary for instances of self-protection, protection of others, protection of property and prevention of escapes. Such physical force shall be restricted to that necessary only to overcome such force as is being exerted. A written report shall be prepared following all such incidents described above and shall be submitted to the administrator for review and justification.

§ 5.28. *Restraint equipment.*

Written policy [~~and procedures~~, *procedure and practice*] shall govern the use of restraint equipment.

§ 5.29. *Administrative segregation.*

Written policy ~~and procedures~~, *procedure and practice* shall provide for administrative segregation of inmates who pose a security threat to the facility or other inmates and for inmates requiring protective custody.

§ 5.30. *Physical living conditions for disciplinary detention and administrative segregation.*

Written ~~policies and procedures~~ *policy, procedure and practice* shall ensure that, inmate behavior permitting, the disciplinary detention and administrative segregation units provide physical living conditions that approximate those offered the general inmate population.

§ 5.31. *Mental health inmates.*

Written policy ~~and procedures~~, *procedure and practice* shall specify the handling of mental health inmates to include an agreement to utilize mental health services from either a private contractor or the community services board.

§ 5.32. *Record of activities in disciplinary detention and administrative segregation units.*

Written policy ~~and procedures~~, *procedure and practice* shall ensure that a log be kept to record all activities in disciplinary detention and administrative segregation units.

§ 5.33. *Assessment of inmate in administrative segregation or disciplinary detention.*

Written policy ~~and procedures~~, *procedure and practice* shall require that an assessment, including a personal interview and medical evaluation, is conducted when an inmate remains in administrative segregation or disciplinary detention beyond 15 days and every 15 days thereafter.

§ 5.34. *Supervision of inmates.*

The facility shall provide for around-the-clock supervision of all inmates by trained personnel. All inmate housing areas shall be inspected a minimum *of* twice per hour *at random intervals between inspections.* All inspections and unusual incidents shall be documented. *No obstructions shall be placed in the bars or windows that would* [~~*interfere with*~~ *prevent*] *the ability of jail staff to view inmates or the entire housing area.*

§ 5.35. *Institution inspection.*

Supervisory staff shall inspect the institution daily. *Such inspections shall be documented.* Unusual findings shall be indicated in writing and submitted to ~~an administrative official~~ *the senior supervisor on duty* for review.

§ 5.36. *Movement of inmates.*

Written ~~policies and procedures~~ *policy, procedure and practice* shall regulate the movement of inmates within the facility.

§ 5.37. *Prohibition of inmate control over other inmates.*

Written policy shall prohibit inmates from supervising, controlling or exerting any authority over other inmates.

§ 5.38. *Emergency situations.*

Written policy and procedures shall specify the process to be followed in emergency situations ~~,~~ *:* mass arrest, ~~fire,~~ disturbance, taking of hostages, escapes, ~~attempted suicides,~~ loss of utilities and natural disasters. All personnel shall be trained in the implementation of emergency plans. Plans shall be reviewed ~~annually~~ *every six months by all staff. The six-month reviews shall be documented.*

Article 7.
Release.

§ 5.39. *Release of inmate.*

Written policy ~~and procedures~~, *procedure and practice* shall require that, prior to an inmate's release, positive identification is made of the releasee, authority for release is verified and a check for holds in other jurisdictions is completed.

PART VI.
JAIL PHYSICAL PLANT.

Article 1.
Fire and Health Inspection.

§ 6.1. *Food service and fire safety inspection.*

The facility shall have ~~an annual~~ state or local health food service and fire safety ~~inspection~~ *inspections conducted every 12 months* . Localities that do not enforce the Virginia Statewide Fire Prevention Code (VSFPC) shall have the inspections performed by the Office of the State Fire Marshal. Written reports of the fire safety and health food service inspection shall be on file with the facility administrator.

Article 2.
Fire Prevention and Safety.

§ 6.2. *Fire prevention practices.*

Written policy ~~and procedures~~, *procedure and practice* shall specify the facility's fire prevention practices to ensure the safety of staff, inmates, and the public. ~~They shall be reviewed annually.~~ *Fire prevention practices shall be reviewed every six months by all staff. The six-month reviews shall be documented.*

§ 6.3. *Mattresses, pillows and trash receptacles.*

Mattresses, pillows and trash receptacles present in the secured housing shall be of ~~nontoxic and~~ fire retardant materials.

§ 6.4. *Master plan for safe and orderly evacuation.*

The facility shall have a written master plan for the safe and orderly evacuation of all persons in the event of a fire or an emergency. Such a plan shall be reviewed ~~by all staff quarterly~~ *every six months by all staff.* The ~~quarterly review~~ *six-month reviews* shall be documented.

Article 3.
Facility Cleanliness.

§ 6.5. *Cleanliness.*

Facility floors, halls, corridors, and other walkway areas shall be maintained in a clean, dry, hazard-free manner.

§ 6.6. *Vermin and pest control.*

The facility shall control vermin and pests and shall be serviced at least quarterly by professional pest control personnel *or personnel certified by the Virginia Pesticide Control Board.*

Article 4.
Housing Areas.

§ 6.7. *Appropriate lighting and heating.*

[*A.*] All housing and activity areas shall provide for appropriate lighting and heating.

[*B. Appropriate lighting shall be at least 20 footcandles at desk level and in personal grooming area.*

C. Heat shall be evenly distributed in all rooms so that a temperature no less than 65°F is maintained. Air conditioning or mechanical ventilation systems, such as electric fans, shall be provided when the temperature exceeds 85°F.]

§ 6.8. *Water utilities.*

All housing areas shall have toilets, showers, drinking water and washbasins with hot and cold running water accessible to inmates.

Article 5.
Special Purpose Area.

§ 6.9. *Special purpose area.*

The facility shall have a special purpose area to provide for the temporary detention and care of persons under the influence of alcohol or narcotics or for persons who are uncontrollably violent or self-destructive and those requiring medical supervision.

~~[Article 6.~~
~~Security Equipment Storage.~~

~~§ 6.10. *Security equipment storage.*~~

~~The facility shall provide secure storage for firearms, *ammunition,* chemical agents, and related security equipment accessible to authorized personnel only and located outside the security perimeter or the inmate housing and activity areas.~~]

~~[PART VII.~~
~~JUVENILES.~~

~~Article 1.~~
~~Housing.~~

~~§ 7.1. Those facilities which, on occasion, house juveniles shall be certified by the Board of Corrections for the express purpose of holding juveniles.~~

~~§ 7.2. Juveniles shall be so housed as to be separated by a wall or other barrier which would result in preventing visual contact and normal verbal communication with adult prisoners except in instances of casual contact under supervision.~~

~~§ 7.3. The facility shall have one or more persons on duty at all times responsible for auditory and visual contact with each~~

~~juvenile at least every 30 minutes. Contact shall be at least every 15 minutes when juveniles exhibit self destructive or violent behavior.~~

~~Article 2.~~
~~Isolation or Segregation.~~

~~§ 7.4. Isolation cells or segregation within a cellblock shall be utilized only as a protective or disciplinary measure.~~

PART VII.
JUVENILES.

§ 7.1. Housing.

A. Those facilities which, on occasion, house juveniles shall be certified by the Board of Corrections for the express purpose of holding juveniles.

B. Juveniles shall be so housed as to be separated by a wall or other barrier which would result in preventing visual contact and normal verbal communication with adult prisoners.

C. The facility shall have one or more persons on duty at all times responsible for auditory and visual contact with each juvenile at least every 30 minutes. Contact shall be at least every 15 minutes when juveniles exhibit self-destructive or violent behavior.

§ 7.2. Isolation and segregation.

Isolation cells or segregation within a cellblock shall be utilized only as a protective or disciplinary measure.]

PART ~~VIII.~~ [~~*VII.*~~ *VIII.*]
LOCKUPS.

~~Article 1.~~
~~Responsibility.~~

~~§ 8.1.~~ [~~*7.1.*~~ *8.1.*] *Responsibility.*

The chief of police, town sergeant, or, in case of a county's operating a lockup, the sheriff shall be responsible for seeing that the lockup is operated in full conformity with these regulations.

~~Article 2.~~
~~Coverage.~~

§ ~~8.2.~~ [~~*7.2.*~~ *8.2.*] *Coverage.*

When the lockup is occupied at least one employee shall be on duty at the lockup at all times.

~~Article 3.~~
~~Search and Inspection.~~

~~§ 8.3.~~ [~~*7.3.*~~ *8.3.*] *Search requirements* [~~*; inspection requirements*~~].

[~~A.~~] The facility shall comply with the search requirements included in § 19.2-59.1 of the Code of Virginia.

~~§ 8.4.~~ [*§ 8.4. Inspection requirements.*]

~~Quarterly~~ [~~*B.*~~] *Weekly* inspections shall be made and recorded of bars, locks and all security devices. *Weekly inspections shall be documented.*

~~Article 4.~~
~~Commitment and Release.~~

§ ~~8.5.~~ [~~*7.5.*~~ *8.5.*] *Commitment and release.*

A written record shall be maintained to include name, date, and time of commitment and release of all detainees confined in the lockup.

~~Article 5.~~
~~Property.~~

§ ~~8.6.~~ [~~*7.6.*~~ *8.6.*] *Property.*

Written policy ~~and procedures~~, *procedure and practice* shall govern the inventory and control of detainee property. The detainee shall sign for all property taken upon admission and returned to him upon release. If the detainee refuses to sign this shall be witnessed and documented.

~~Article 6.~~
~~Telephone.~~

§ ~~8.7.~~ [~~*7.7.*~~ *8.7.*] *Telephone.*

Written policy ~~and procedures~~, *procedure and practice* shall specify that newly admitted inmates who are physically capable are permitted the opportunity to complete at least two local or ~~collect~~ long distance telephone calls during the admissions process.

~~Article 7.~~
~~Separation of Inmates.~~

[§ 8.8. *Juvenile detention.*]

[A lockup shall detain juveniles in strict compliance with § 16.1-249 of the Code of Virginia.]

§ ~~8.9.~~ [~~*7.7.*~~ *8.9.*] *Separate housing* [~~*; protection of inmates*~~].

[~~A.~~] Males, *females and juveniles* shall be housed separately ~~from females~~.

~~§ 8.10.~~ [~~*B.*~~ *§ 8.10. Protection of inmates.*]

There shall be written policy for the protection of inmates appearing to be vulnerable to physical or sexual attack.

~~Article 8.~~
~~Medical.~~

§ ~~8.11.~~ [~~*7.8.*~~ *8.11.*] *Emergency medical and mental health care* [~~*; log of medical activities*~~].

[~~*A.*~~] Written policy and procedures shall provide for 24-hour emergency medical and mental health care availability.

~~§ 8.12.~~ [~~*B.*~~ *§ 8.12. Log of medical activities.*]

A permanent log shall be maintained on all medical findings, diagnoses, treatment, dispositions, prescriptions and administration of medications, *as disclosable by the Code of Virginia.*

~~Article 9.~~
~~Visiting.~~

§ ~~8.13.~~ [~~*7.9.*~~ *8.13.*] *Visiting.*

Written policy and procedures shall ensure that:

1. There be visiting opportunities limited only by facility schedules, security, space and personnel constraints;

2. Visitors register upon entry into the facility;

3. Circumstances and methods under which visitors may be searched are delineated;

4. Attorneys be permitted to have confidential visits with their clients; and

5. Any exception to the above ~~shall~~ be documented in writing.

~~Article 10.~~
~~Inmate Control.~~

§ ~~8.14.~~ [~~7.10.~~ *8.14.*] *Inmate control.*

Written policies and procedures shall ensure that punishment shall not be utilized as a means of control or discipline in lockups. Tear gas, chemical mace, or similar devices shall not be used as punishment and may only be used to control detainees where there is an imminent threat of physical injury.

~~Article 11.~~
~~Incident Report.~~

§ ~~8.15.~~ [~~7.11.~~ *8.15.*] *Incident report.*

A report setting forth in detail the pertinent facts of deaths, escapes, [*and*] discharging firearms [,] ~~using chemical agents, or any other serious occurrences~~ [~~*or similar serious incidents*~~] shall be reported to the *appropriate* regional ~~Manager~~ *administrator* , Department of Corrections, or ~~his~~ designee. *The initial report should be made within 24 hours with a full report submitted at the end of the investigation.*

~~Article 12.~~
~~Facility and Inmate Cleanliness.~~

§ ~~8.16.~~ [~~7.12. Facility and~~ *8.16.*] *Inmate cleanliness.*

[~~A.~~] A detainee shall have access to a wash basin and toilet facility.

§ ~~8.17.~~ [~~B.~~ *§ 8.17. Facility cleanliness.*]

The detention area shall be maintained in a clean, dry, hazard-free manner.

~~PART IX.~~
~~WORK RELEASE, EDUCATIONAL AND OTHER REHABILITATIVE PROGRAMS.~~

~~§ 9.1. Written procedures outlining the eligibility criteria for participation in a work release, educational or rehabilitation program shall be developed by each facility with a work release, educational or rehabilitation program. Offenders shall meet the established eligibility requirements prior to being released.~~

~~§ 9.2. Written procedures shall ensure the accountability of participants at all times and provide for supervision in the community. Such procedures shall include at a minimum:~~

~~1. Provisions for a periodic inmate count;~~

~~2. Methods for determining and identifying inmates who are authorized to leave the facility;~~

~~3. Provisions for a controlled sign-out and sign-in process; and~~

~~4. Methods of verifying the inmate's location within the community, both by telephone and random field visits.~~

~~§ 9.3. Offender participation in a work release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:~~

~~1. Participation by the inmate shall be on a voluntary basis;~~

~~2. The following conditions must be met where the employer has a federal contract:~~

~~a. Representatives of local union central bodies or similar labor union organizations shall have been consulted;~~

~~b. Employment will not result in the displacement of employed workers, or be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and~~

~~c. Rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.~~

~~§ 9.4. Offender participation in an educational or rehabilitative program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:~~

~~1. Participation by the inmate may be voluntary or court ordered;~~

~~2. The program must be approved or accepted in the community;~~

~~3. Meetings or classes must be on a regularly scheduled basis; and~~

~~4. Other conditions will not be more restrictive on the offender than those required by other participants.~~

~~§ 9.5. Written procedures governing the granting of furloughs shall include at a minimum provisions that a participant in the work release, educational or rehabilitative program may be considered for one furlough per month. A furlough shall not exceed three days.~~

~~§ 9.6. Written procedures shall be developed to ensure the accountability of all earnings received, disbursed, to whom and reason on behalf of the participant. Procedures shall be in accordance with § 53.1-131 of the Code of Virginia.~~

~~§ 9.7. Written procedures shall establish the criteria and process for removing a participant from the program as follows:~~

~~1. Procedures shall include provisions for an impartial hearing for the participant.~~

~~2. Procedures shall include provisions for the appeal of the removal.~~

~~3. Documentation shall reflect that this information was explained to all participants when they were assigned to the program.~~

~~§ 9.8. Each facility having a work release, educational or rehabilitation program that includes state offenders shall have a written agreement with the director.~~

~~§ 9.9. State offenders assigned to a work release, educational or rehabilitation program shall meet the Department of Corrections' work release criteria and be approved by the department's Central Classification Board and the department's management review process pursuant to a written agreement as provided for in accordance with § 53.1-131 of the Code of Virginia.~~

VA.R. Doc. No. R95-574; Filed June 21, 1995, 11 a.m.

* * * * * * * *

Title of Regulation: **VR 230-30-006. Jail Work/Study Release Program Standards (REPEALED).**

Statutory Authority: §§ 53.1-5 and 53.1-131 of the Code of Virginia.

Effective Date: August 10, 1995.

Summary:

The Board of Corrections has repealed the Jail Work/Study Release Program Standards. The provisions of these regulations are included in VR 230-30-001, Minimum Standards for Jails and Lockups.

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

Agency Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3119.

VA.R. Doc. No. R95-573; Filed June 21, 1995, 10:57 a.m.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Suspension of Certain Provisions Contained in § 3.11 C and D and Table 8

Title of Regulation: **VR 355-17-200. Biosolids Use Regulations.**

Statutory Authority: §§ 32.1-164, 32.1-164.5 and 62.1-44.19 of the Code of Virginia.

Registrar's Notice: The final Biosolids Use Regulations (VR 355-17-200) were published in *The Virginia Register of Regulations* on December 26, 1994 (11:7 VA.R. 1021-1082 12/26/94) and became effective January 25, 1995. As a result of an appeal filed by the City of Danville on April 7, 1995, and specified by final order issued by the Danville Circuit Court, the Board of Health is suspending certain provisions of the regulations. Specifically, under the authority of §§ 9-6.14:7.1 and 9-6.14:18 of the Code of Virginia the Board of Health, through the Acting Commissioner of Health, suspends the following provisions for an additional 30-day public comment period:

- The limitations of Class I biosolids use and recordkeeping requirements for Class I biosolids use set forth in § 3.11 C and D. (See 11:7 VA.R. 1055-1056 12/26/94.)
- Metals concentrations for selenium, cadmium, and molybdenum found in Table 8. (See 11:7 VA.R. 1064 12/26/94.)

The suspension of these provisions of the regulations shall expire upon action by the board to readopt or modify them.

Following the public comment period, a summary of public comments, together with comments and recommendations of staff, shall be presented to the Board of Health for consideration and such action as the board deems appropriate in accordance with applicable requirements of the Administrative Process Act.

Comments may be submitted until August 9, 1995, to C. M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

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Title of Regulation: **VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia (§ ~~2.22~~ *2.28* D, Neonatal Services).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: August 10, 1995.

Summary:

Pursuant to the Commonwealth's commitment to reduce infant mortality, the regulation establishes a service level distinction based upon national standards to ensure treatment of a range of neonates from normal newborns to the sickest, high-risk newborns. The regulations are the minimum quality assurance standards that must be uniformly met if hospitals want to provide neonatal services in the Commonwealth.

Two modifications made to the regulation after it was published in the proposed version further clarify the intent of the collaborative agreement required between a birth hospital and a referral hospital. A sentence added to § 2.28 D 2 d establishes the responsibility for the management and care of a newborn with the attending physician at the birth hospital. A sentence added to § 2.28 D 6 b (3) further defines the requirements for the collaborative agreement between a birth hospital and a referral hospital. In addition, editorial and stylistic changes have been made to conform with the journalistic style of the Virginia Register.

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 Nancy Hofheimer, Department of Health, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.

VR 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.

PART I.
DEFINITIONS AND GENERAL INFORMATION AND PROCEDURES.

Article 1.
Definitions.

§ 1.1. Definitions.

As used in these regulations, the words and terms, shall have meanings, respectively set forth unless the context clearly requires a different meaning.

"Board" means the State Board of Health.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act in its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Commissioner" means the State Health Commissioner.

"Consultant" means one who provides services or advice upon request.

"Department" means an organized section of the hospital.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Facilities" means building(s), equipment, and supplies necessary for implementation of services by personnel.

"Full-time" means a 37½ to 40 hour work week.

"General hospital" means institutions as defined by § 32.1-123(1) of the Code of Virginia with an organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services, dentist services and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical and dental conditions which may require various types of care, such as medical, surgical, and maternity.

"Home health care department/service/program" means a formally structured organizational unit of the hospital which is designed to provide health services to patients in their place of residence and meets Part II of the regulations adopted by the board for the licensure of home health agencies in Virginia.

"Licensing agency" means the State Department of Health.

"Medical" means pertaining to, or dealing with the healing art and the science of medicine.

"Nursing care unit" means an organized jurisdiction of nursing service in which nursing services are provided on a continuous basis.

"Nursing home" means an institution or any identifiable component of any institution as defined by § 32.1-123(2) of the Code of Virginia with permanent facilities that include inpatient beds and whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of patients who may require various types of long term care, such as skilled care and intermediate care.

"Nursing services" means patient care services pertaining to the curative, palliative, restorative, or preventive aspects of nursing that are prepared or supervised by a registered nurse.

"Office" means the Office of Health Facilities Regulation of the Department of Health.

"Organized" means administratively and functionally structured.

"Organized medical staff" means a formal organization of physicians and dentists with the delegated responsibility and authority to maintain proper standards of medical care and to plan for continued betterment of that care.

"Outpatient hospital" means institutions, as defined by § 32.1-123(1) of the Code of Virginia, which primarily provide facilities for the performance of surgical procedures on outpatients. Such patients may require treatment in a medical environment exceeding the normal capability found in a physician's office, but do not require inpatient hospitalization. Outpatient abortion clinics are deemed a category of outpatient hospitals.

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity which owns or controls the physical facilities and/or manages or operates a hospital.

"Service" means a functional division of the hospital. Also used to indicate the delivery of care.

"Special hospital" means institutions, as defined by § 32.1-123(1) of the Code of Virginia, which provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).

"Special care unit" means an appropriately equipped area of the hospital where there is a concentration of physicians, nurses, and others who have special skills and experience to provide optimal medical care for patients assigned to the unit.

"Staff privileges" means authority to render medical care in the granting institution within well-defined limits, based on the individual's professional license and the individual's experience, competence, ability and judgment.

"Unit" means a functional division or facility of the hospital.

Article 2.
General Information.

§ 1.2. Exceptions; variances.

A. In accordance with the § 32.1-124 of the Code of Virginia the provisions of these regulations shall not be applicable to:

1. A dispensary or first aid facility maintained by any commercial or industrial plant, educational institution or convent;

2. An institution licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board;

3. An institution or portion thereof licensed by the State Board of Social Services;

4. A hospital owned or operated by an agency of the Commonwealth or of the United States government; or

5. An office of one or more physicians or surgeons unless such office is used principally for performing surgery as defined in § 1.1 of these regulations.

B. In accordance with § 32.1-128 of the Code of Virginia nothing in these rules and regulations shall be construed to authorize or require the interference with the supervision, regulation, or treatment of residents, patients, or personnel of any institution operated by and for the adherents of any well-recognized church or denomination who rely upon treatment by mental or spiritual means without the use of any drug or material remedy, provided such institution complies with applicable statutes and regulations on sanitation, life safety and construction design.

§ 1.3. Allowable variances.

A. Upon the finding that the enforcement of one or more of these regulations would be clearly impractical, the commissioner shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations, provided safety and patient care and services are not adversely affected.

B. Modification of any individual standard herein, for experimental or demonstrative purposes, or any other purposes, shall require advance written approval from the licensing agency.

Article 3.
Procedures for Licensure or License Renewal.

§ 1.4. General.

No person, as defined in § 1.1 of these regulations, shall establish, conduct, maintain, or operate in this State any hospital as defined and included within provisions of these regulations without having obtained a license. Any person establishing, conducting, maintaining, or operating a hospital without a license shall be guilty of a Class 6 felony.

§ 1.5. Classification.

Hospitals to be licensed shall be classified as general hospitals, special hospitals or outpatient hospitals defined by § 1.1 of these regulations.

§ 1.6. Separate license.

A. A separate license shall be required by hospitals maintained on separate premises even though they are operated under the same management. Separate license is not required for separate buildings on the same grounds or within the same complex of buildings.

B. Hospitals which have separate organized sections; units, or buildings to provide services of a classification covered by provisions of other state statutes or regulations may be required to have an additional applicable license for that type or classification of service (e.g., psychiatric, nursing home, home health services, outpatient surgery, outpatient abortions).

§ 1.7. Request for issuance.

Hospital licenses shall be issued by the commissioner, but all requests for licensing shall be submitted initially to the office. The procedure for obtaining the license shall include the following steps:

1. Request for application forms shall be made in writing to the office;

2. Application for license or license renewal to establish or maintain a hospital shall be made and submitted to the office;

3. All categories of inpatient beds shall be included on the hospital application for licensure in order for the licensing agency to have an accurate and complete record of the total bed capacity of the facility;

4. Application for initial license, change in license, or license renewal shall be accompanied by a check or money order for the service charge, payable to the licensing agency; and

5. Application for initial license of a hospital or for additions to an existing licensed hospital must be accompanied by evidence of approval from a representative of the State Fire Marshal and a copy of the occupancy permit issued by the local building official.

§ 1.8. Service charge.

A. In accordance with § 32.1-130 of the Code of Virginia, the following service charge shall be made:

0 to 50 beds - $75

51 to 333 beds - $1.50 per bed

334 or more - $500

B. The hospital shall not be required to pay a service charge on hospital beds in a category which requires separate license by this licensing agency or another state agency (i.e. psychiatric, nursing home).

§ 1.9. License expiration.

Licenses shall expire as specified or at midnight December 31 following date of issue, whichever is first, and shall be renewable annually, upon filing of application and payment of service charge, unless cause appears to the contrary.

§ 1.10. Name.

Every hospital shall be designated by a permanent and appropriate name which shall appear on the application for license. Any change of name shall be reported to the licensing agency within 30 days.

§ 1.11. Bed capacity.

A. Each license issued by the commissioner shall specify the maximum allowable number of beds. The number of beds allowed shall be determined by the office and shall so appear on the license issued by the licensing agency.

B. Request for licensed bed increase or decrease shall be made in writing to the office. No increase will be granted without an approved Certificate of Public Need.

§ 1.12. Posting of license.

The hospital license issued by the commissioner shall be framed and posted conspicuously on the premises either in the main entrance to the hospital or in a place visible from that main entrance.

§ 1.13. Return of license.

The licensing agency shall be notified in writing at least within 30 working days in advance of any proposed change in location or ownership of the facility. A license shall not be transferred from one owner to another or from one location to another. The license issued by the commissioner shall be returned to the office for correction or reissuance when any of the following changes occur during the licensing year:

1. Revocation;
2. Change of location;
3. Change of ownership;
4. Change of name;
5. Change of bed capacity; or
6. Voluntary closure.

§ 1.14. Inspection procedure.

A. The licensing agency may presume that a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and certified for participation in Title XVIII of the Social Security Act (Medicare) generally meets the requirements of Part II of these regulations provided the following conditions are met:

1. The hospital provides to the licensing agency, upon request, a copy of the most current accreditation survey findings made by the Joint Commission on Accreditation of Healthcare Organizations; and

2. The hospital notifies the licensing agency within 10 days after receipt of any notice of revocation or denial of accreditation by the Joint Commission on Accreditation of Healthcare Organizations.

B. The licensing agency may presume that a unit or part of a hospital licensed or certified by another state agency, or another section, bureau or division of the licensing agency meets the requirements of Part II of these regulations for that specific unit or part provided the following conditions are met:

1. The hospital provides the licensing agency, upon request, a copy of the most current inspection report made by the other state agency; and

2. The hospital notifies the licensing agency within 10 days after receipt of any notice of revocation or suspension by the other state agency.

C. Notwithstanding any other provision of this regulations to the contrary, if the licensing agency finds, after inspection, violations pertaining to environmental health or life safety, the hospital shall receive a written licensing report of such findings. The hospital shall be required to submit a plan of correction in accordance with provisions of § 1.15.

§ 1.15. Plan of correction.

A. Upon receipt of a written licensing report each hospital shall prepare a plan for correcting any licensing violations cited at the time of inspection. The plan of correction shall be to the office within the specified time limit set forth in the licensing report. The plan of correction shall contain at least the following information:

1. The methods implemented to correct any violations of these regulations; and

2. The date on which such corrections are expected to be completed.

B. The licensing agency shall notify the hospital, in writing, whenever any item in the plan of correction is determined to be unacceptable.

§ 1.16. Revocation of license.

The commissioner may revoke or suspend the license to operate a hospital in accordance with § 32.1-135 of the Code of Virginia for the following reasons:

1. Violation of any provision of these rules and regulations. Violations which in the judgment of the commissioner jeopardize the health or safety of patients shall be sufficient cause for immediate revocation or suspension; or

2. Willfully permitting, aiding, or abetting the commission of any illegal act in the hospital.

PART II.
ORGANIZATION AND OPERATION OF GENERAL AND SPECIAL HOSPITALS.

Article 1.
Organization and Management.

§ 2.1. Ownership.

A. There shall be disclosure of hospital ownership. In the case of corporations, all individuals or entities holding 5.0% or more of the total ownership shall be identified by name and address.

B. When the owner delegates the operation of a hospital to an individual, corporation or other legal entity by management contract or lease agreement, subsection A shall also be applicable to the operator.

§ 2.2. Governing body.

A. Each hospital shall have an organized governing body or other legal entity responsible for the management and control of the operation. The governing body or other legal entity may be an individual, group, corporation or governmental agency.

B. The governing body shall be responsible for insuring compliance with these rules and regulations.

C. The governing body shall provide facilities, personnel and other resources necessary to meet patient and program needs.

D. The governing body shall adopt and maintain written bylaws, rules and regulations in accordance with legal requirements. A copy of said bylaws, rules and regulations including amendments or revisions thereto, shall be made available to the licensing agency on request.

E. The bylaws, rules and regulations shall include:

1. A statement of purpose;

2. A statement of qualifications for membership and method of selecting members of the governing body;

3. Provisions for the establishment, selection, term of office of committee members and officers;

4. Description of the functions and duties of the governing body, officers, and committees;

5. Specifications for the frequency of meetings, attendance requirements, provision for the order of business and the maintenance of written minutes;

6. A statement of the authority and responsibility delegated to the chief executive officer and to the medical staff;

7. Provision for the selection and appointment of medical staff and the granting of clinical privileges including the provision for current license to practice in Virginia.

8. Provision for the adoption of the medical staff bylaws, rules and regulations;

9. Provision of guidelines for the relationships among the governing body, the chief executive officers, and the medical staff.

10. A policy statement concerning the development and implementation of short and long-range plans in accordance with Part III of these regulations.

11. A policy statement relating to conflict of interest on the part of members of the governing body, medical staff and employees who may influence corporate decisions.

§ 2.3. Chief executive officer.

A. The chief executive officer shall be directly responsible to the governing body for the management and operation of the hospital and shall provide liaison between the governing body and the medical staff.

B. The chief executive officer, or his designee, shall ensure that families of patients who are potential donors are informed of the option of organ, tissue, and eye donation.

§ 2.4. Organization.

A. The internal hospital organization shall be structured to include appropriate departments and services consonant with its statement of purpose.

B. Each hospital shall maintain clearly written definitions of its organization, authority, responsibility, and relationships.

C. Each hospital department and service shall maintain:

1. Clearly written definitions of its organization, authority, responsibility, and relationships; and

2. Written policies and procedures including patient care where applicable.

§ 2.5. Medical staff.

A. Each hospital shall have an organized medical staff responsible to the governing body of the hospital for its own organized governance and all medical care provided to patients.

B. The medical staff shall be responsible to hospital governing board, maintain appropriate standards of professional performance through staff appointment criteria, delineation of staff privileges, continuing peer review and other appropriate mechanisms.

C. The medical staff, subject to approval by the governing body, shall develop bylaws incorporating details of the medical staff organization and governance, giving effect to its general powers, duties, and responsibilities including:

1. Methods of selection, election, or appointment of all officers and other executive committee members and officers;

2. Provisions for the selection and appointment of officers of departments or services specifying required qualifications;

3. The type, purpose, composition and organization of standing committees;

4. Frequency and requirements for attendance at staff and departmental meetings;

5. An appeal mechanism for denial, revocation, or limitation of staff appointments, reappointments and privileges.

6. Delineation of clinical privileges in accordance with the requirements of § 32.1-134.2 of the Code of Virginia.

7. Requirements regarding medical records;

8. A mechanism for utilization and medical care review; and

9. Such other provisions as shall be required by hospital or governmental rules and regulations.

D. A copy of approved medical staff bylaws and regulations and revisions thereto, shall be made available to the licensing agency on request.

§ 2.6. Organ donation.

Each hospital shall develop and implement a routine contact protocol for organ, tissue and eye donation. The protocol shall:

1. Ensure that the family of each patient who is a potential donor is made aware of the option of organ, tissue, and eye donation as well as the option to decline to donate;

2. Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the family members;

3. Recite provisions of § 32.1-290.1 of the Code of Virginia specifying family members who are authorized to make an anatomical gift of all or part of the decedent's body for an authorized purpose and the order of priority of those family members who may make such gift; and

4. Include written procedures for organ, tissue, and eye donation. The procedures shall include:

a. Training of staff in organ, tissue, or eye donation;

b. A mechanism for informing the next of kin of the organ, tissue, and eye donation option;

c. Procedures to be employed when the hospital, consistent with the authority granted by § 32.1-292.1 of the Code of Virginia, deems it appropriate to conduct a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift.

d. Provisions for the procurement and maintenance of donated organs, tissues, and eyes;

e. The name and telephone number of the local organ procurement agency, tissue or eye bank to be notified of potential donors; and

f. Documentation of the donation request in the patient's medical record.

Article 2.
Patient Care Services.

§ 2.7. Patient care management.

A. All patients shall be under the care of a member of the medical staff.

B. Each hospital shall have a plan that includes effective mechanisms for the periodic review and revision of patient care policies and procedures.

C. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state statutes. Emergency telephone and other verbal orders shall be signed within 24 hours.

D. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

§ 2.8. Anesthesia service.

A. Each hospital which provides surgical or obstetrical services shall have an organized anesthesia department/service. The anesthesia department/service shall be directed by a physician member of the medical staff.

B. The anesthesia department/service shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, the maintenance of safety controls and qualifications, and supervision of anesthetists and trainees.

C. Policies shall include provisions in addition to the above, for at least:

1. Pre-anesthesia evaluation by a medical staff member;

2. Safety of the patient during the anesthesia period;

3. Review of patient's condition prior to induction of anesthesia and post anesthetic evaluation; and

4. Recording of all events related to each phase of anesthesia care.

§ 2.9. Sterile supply service.

A. Each hospital shall operate a sterile supply service or provide for the processing, sterilizing, storing, and dispensing of clean and sterile supplies and equipment.

B. Facilities shall be provided for the cleaning, preparation, sterilizing, aeration, storage and dispensing of supplies and equipment for patient care.

C. Areas for the processing of clean and soiled supplies and equipment shall be separated by physical barriers.

D. Written procedures shall be established subject to the approval of the Infection Control Committee for all sterile supply service functions including:

1. Procedures for all sterilizing and for the disposal of wastes and contaminated supplies; and

2. Procedures for the safety of personnel and patients.

§ 2.10. Dietary service.

A. Each hospital shall maintain a dietary service directed by a full-time person, qualified by training and experience in organization and administration of food service.

B. Each hospital shall have at least one dietitian employed on either a full-time, part-time or on a consultative basis, to direct nutritional aspects of patient care and to advise on food preparation and service. The dietician shall be:

1. A professional dietician who meets the American Dietetic Association qualification standards; or

2. An individual who is a graduate of an accredited college or university with a baccalaureate degree program with major studies in food and nutrition and at least two years of experience in a health care food or nutrition service.

C. Space, equipment and supplies shall be provided for the efficient, safe and sanitary receiving, storage, refrigeration, preparation and serving of food.

D. The hospital food service operation shall comply with applicable standards in Appendix A, Reference 1.

E. Policies and procedures shall be established for dietary services, including but not limited to the following:

1. Responsibilities and functions of personnel;

2. Standards for nutritional care in accordance with Appendix A, Reference 2;

3. Safety and sanitation relative to personnel and equipment;

4. Precise delivery of patient's dietary order;

5. Alterations or modifications to diet orders or schedules;

6. Ancillary dietary services, including food storage and preparation in satellite kitchens, and vending operations;

7. Food purchasing, storage, preparation and service; and

8. Ice making in accordance with Appendix A, Reference 1.

F. A diet manual, approved by the medical staff shall be maintained by the dietary service. Diets served to patients shall comply with the principles set forth in the diet manual.

G. All patient diets shall be ordered in writing by a member of the medical staff.

H. Pertinent observations and information relative to the special diets and to dietetic treatment shall be recorded in the patient's medical record. A hospital contracting for food service shall require, as part of the contract, that the contractor comply with the provisions of this section.

§ 2.11. Disaster and mass casualty programs.

A. Each hospital shall develop and maintain a written disaster plan which shall include provisions for complete evacuation of the facility and care of mass casualties in accordance with Appendix A, Reference 10.

B. The plan shall provide for widespread disasters as well as for disaster occurring within the local community and hospital facility.

C. The disaster plan shall be rehearsed at least twice a year preferably as part of a coordinated drill in which other community emergency service agencies participate. Written reports and evaluation of all drills shall be maintained for at least two years.

D. A copy of the plan and any revision thereto shall be made available to the licensing agency upon request.

§ 2.12. Emergency service.

A. Hospitals with an emergency department/service shall have 24-hour staff coverage and shall have at least one physician on call at all times. Hospitals without emergency service shall have written policies governing the handling of emergencies.

B. No less than one registered nurse shall be assigned to the emergency service on each shift. Such assignment need not be exclusive of other duties, but must have priority over all other assignments.

C. Those hospitals which make provisions for Mobile Intensive Care manned by technical personnel shall comply with the requirements of Appendix A, Reference 3.

D. The hospital shall provide equipment, drugs, supplies, and ancillary services commensurate with the scope of anticipated needs, including radiology and laboratory services and facilities for handling and administering of blood and blood products. Emergency drugs and equipment shall remain accessible in the emergency department at all times.

E. Current roster of medical staff members on emergency call, including alternates and medical specialists or consultants shall be posted in the emergency department.

F. Hospitals shall make special training available, as required, for emergency department personnel.

G. Toxicology reference material and poison antidote information shall be available along with telephone numbers of the nearest poison control centers.

§ 2.13. Laboratory service; general.

A. The director of laboratory service shall be a physician member of the medical staff. If the physician director of laboratory service is not a pathologist, a pathologist shall be retained on a consultant basis. When the pathologist provides services only on a consultative basis, these services shall be provided at least on a monthly basis. A written evaluation report with recommendations to the medical staff and administration shall be provided by the consultant pathologist on a monthly basis.

B. Laboratories shall have adequate space, equipment, and supplies, and shall be operated in accordance with Appendix A, Reference 4.

C. Provisions shall be made to assure continuous availability of emergency laboratory services.

§ 2.14. Clinical laboratory services.

Examination in the fields of hematology, chemistry, microbiology, seroimmunology, clinical microscopy and other services necessary to meet patient care needs shall be provided directly or shall be provided through a contractual arrangement with a reference laboratory.

§ 2.15. Tissue pathology.

A. Tissue pathology services shall be provided either by the hospital or pursuant to contractual arrangements with a laboratory. In the latter instance, written policies and procedures shall be established governing prompt transportation of specimens and submission of reports.

B. In accordance with medical staff bylaws, surgically removed tissues shall be examined by a pathologist and findings shall be included in the patient's medical record.

§ 2.16. Quality control.

There shall be a quality control program designed to ensure reliability of the laboratory data and shall include provisions for no less than:

1. Frequency and method of work performance evaluation;

2. Frequency and method of performance testing of instruments and equipment;

3. A preventive and corrective maintenance program;

4. Participation in appropriate external proficiency testing programs for the services provided.

5. Maintenance for at least two years of records documenting quality control activities.

§ 2.17. Autopsy service.

An autopsy service shall be provided either directly by the hospital or written contractual agreement with another institution.

§ 2.18. Blood banks and transfusion services.

A. If the hospital provides facilities for the procurement, extraction and collection of blood and blood products, written policies and procedures for all phases of operation of blood banks and transfusion services shall be established and periodically revised to comply with standards of Appendix A, Reference 5.

B. Each hospital shall provide appropriate facilities and equipment for the storage and administration of whole blood and blood products.

C. For emergency situations, the hospital shall:

1. Make arrangements by which blood can be quickly obtained from community blood sources, or maintain an up-to-date list of available donors, as well as provide the equipment and personnel and obtain blood from the donor.

2. Maintain a minimum supply of O negative blood, if the hospital provides obstetrical services.

§ 2.19. Isolation of special microorganisms.

When a hospital diagnostic laboratory isolates from clinical, pathological or environmental specimens, any one of the special micro-organisms listed in Appendix A, Reference 12, the original culture or a subculture shall be submitted to the State Laboratory for confirmation and further specific identification, accompanied by data identifying the patient and attending physician.

§ 2.20. Nuclear medicine.

Every hospital which maintains a nuclear medicine service within the institution or through contractual arrangements shall ensure that it is under the medical supervision of a physician who meets the educational and experience qualifications required by the medical staff bylaws.

1. There shall be quality control procedures governing nuclear medicine services to ensure diagnostic reliability and therapeutic effectiveness.

2. Records of diagnostic or therapeutic services shall be incorporated in the patient's medical record.

§ 2.21. Medical records.

A. The medical record department shall be staffed and equipped to facilitate the accurate processing, checking, indexing, filing and retrieval of all medical records.

B. A medical record shall be established and maintained for every person treated on an inpatient, outpatient (ambulatory) or emergency basis, in any unit of the hospital. The record shall be available to all other units.

A separate medical record shall be maintained for each newborn infant. Entered on the chart of the newborn shall be notes of gestational history, including any pathology and information regarding complications of delivery and mother's medication during labor and delivery.

C. Written policies and procedures shall be established regarding content and completion of medical records.

D. Entries in the medical record shall be made by the responsible person in accordance with hospital policies and procedures.

E. The content of all medical records (inpatient, outpatient, ambulatory, and emergency) shall conform with applicable standards of Appendix A, Reference 6.

F. Medical records shall be kept confidential and:

1. Only authorized personnel shall have access to the records;

2. The hospital shall release copies of a patient's medical record only with the written consent of:

a. The patient; or

b. The legal representative; or

c. If a minor, parent, guardian, or legal representative; or

d. Duly authorized state or federal health authorities or others as specifically authorized by the Code of Virginia or federal statutes.

3. The hospital's permanent records may be removed from the hospital's jurisdiction only in accordance with a court order, subpoena or statute.

G. Provisions shall be made for the safe storage of medical records or accurate and legible reproductions thereof in accordance with Appendix A, Reference 7.

H. All medical records either original or accurate reproductions shall be preserved for a minimum of five years following discharge of the patient.

1. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

2. Birth and death information shall be retained for 10 years in accordance with § 32.1-274 of the Code of Virginia.

§ 2.22. Nursing service.

A. Each hospital shall have an organized nursing department. A registered nurse qualified on the basis of

education, experience and clinical ability shall be responsible for the direction of nursing care provided the patients.

B. The number and type of nursing personnel on all shifts shall be based upon the needs of the patients and the capabilities of the nursing staff assigned to the patient care unit. All registered nurses and licensed practical nurses shall be currently registered or licensed by the Virginia Board of Nursing.

C. Nursing personnel shall be assigned to patient care units in a manner that minimizes the risk of cross infection and accidental contamination.

§ 2.23. Pharmaceutical service.

A. Each hospital shall provide pharmaceutical services under the direction of a pharmacist licensed in Virginia in accordance with the regulations of the Virginia Board of Pharmacy. There shall be evidence of a current pharmacy license in compliance with the standards of Appendix A, Reference 9.

B. A program for the control of all drugs throughout the hospital shall be established under the supervision of the director of pharmaceutical services and shall contain policies and procedures pertaining to no less than the following:

1. The authority, responsibilities and duties of the director of pharmaceutical services;

2. Compliance with federal and state laws for the storage, dispensing, administration and disposal of all drugs;

3. The selection, distribution, administration, and storage of drugs;

4. Maintenance of records of all transactions; and

5. Inspection of all drug storage and medication areas and documented evidence of findings.

C. In addition to the above, the medical staff in cooperation with the pharmacist and other disciplines shall develop policies and procedures relating to:

1. An approved drug list or formulary and exceptions thereto;

2. Emergency access to drugs in the pharmacist's absence;

3. Control of patient medication from any source; and

4. Monitoring program to identify adverse drug reactions.

§ 2.24. Radiology service.

A. Each hospital shall maintain radiology services which are under the medical supervision of a physician who meets the qualifications of the medical staff bylaws.

B. Hospitals maintaining radiotherapy services shall provide for their safe and effective operation under a director qualified by training and experience in therapeutic radiology.

C. Sufficient technical personnel shall be available, consistent with the scope of services provided.

D. Space and equipment shall be provided for radiographic and fluoroscopic X-ray services including facilities for processing and storage of radiographic films and records.

E. Reports of radiological interpretations, consultations and therapy shall be part of the patient's medical record.

F. Reports shall be preserved in accordance with § 2.21 H of these regulations.

§ 2.25. Social service.

A. Every hospital shall have a plan for the provision of social services to the patient and the patient's family.

B. An employee of the hospital with knowledge of community agencies and other social service resources shall be designated to assume responsibility for said service.

C. Appropriate records shall be maintained.

§ 2.26. Surgical service.

A. The surgical department/service shall have a defined organization and shall be governed by written policies and procedures.

B. The surgical department/service shall be under the medical supervision of a physician who meets the requirements of the medical staff bylaws.

C. The operating suite shall be:

1. Under the supervision of a registered professional nurse.

2. Designed to include operating and recovery rooms, proper scrubbing, sterilizing and dressing room facilities, storage for anesthetic agents and shall be equipped as required by the scope and complexity of the services.

3. Provided with prominently posted safety policies and procedures.

D. A roster of current surgical privileges of every surgical staff member shall be maintained on file in the operating suite.

E. An operating room register shall be maintained which shall include as a minimum:

1. Patient's name and hospital number;

2. Pre- and post-operative diagnosis;

3. Complications, if any;

4. Name of surgeon, first assistant, anesthesiologist or anesthetist, scrub nurse and circulating nurse;

5. Operation performed; and

6. Type of anesthesia.

F. Policies and procedures governing infection control and reporting techniques shall be established in accordance with § 2.31 of these regulations.

G. The patient's medical chart shall be available in the surgical suite at time of surgery and shall contain no less than the following information:

1. A medical history and physical examination;

2. Evidence of appropriate informed consent; and

3. A pre-operative diagnosis.

H. An accurate and complete description of operative procedure shall be recorded by the operating surgeon within 48 hours following completion of surgery and made part of the patient's clinical record.

Article 3.
Special Services.

§ 2.27. Applicability.

If a hospital provides any of the services in this article, the requirements of the specific service shall apply.

§ 2.28. Obstetric and newborn services.

A. Hospitals with licensed obstetric and newborn services in operation prior to the effective date of these regulations or revisions to thereof shall comply with all of the requirements of this section within 12 months of the effective date of these regulations, with the exception of specified sections of subdivision C 5 of this section. Hospitals that establish and organize obstetric and newborn services after the effective date of these regulations shall comply with all requirements of this section before licensure approval is granted.

B. A hospital with organized obstetric and newborn services shall comply with the following general requirements:

1. Administrative management. The governing body of the hospital or the chief executive officer shall appoint an administrative manager for the obstetric and newborn services. The administrative manager may serve as an administrator of another hospital service but must be available to the obstetric and newborn services. The chief executive officer shall designate, in writing, an individual to act in the administrative manager's behalf during a temporary absence of the administrative manager.

2. Services plan. The hospital is responsible for the development, periodic review and revision of a service management plan. The plan must include provisions to assure that the hospital complies with all state and federal regulations and guidelines applicable to obstetric and neonatal care as well as the policies and procedures for obstetric and newborn care adopted by the hospital's governing body and medical staff. The plan is to be developed and maintained as follows:

a. The plan shall be developed in cooperation with the medical directors and nursing staffs assigned to each of the services.

b. The plan shall include the protocol, required by § 32.1-127 of the Code of Virginia, for the admission or transfer of any pregnant woman who presents in labor.

c. The plan shall be the responsibility of the administrative manager who is to assure that the plan is developed, that it complies with state and federal requirements and the hospital's policies and procedures, and that it is periodically reviewed and revised.

d. A copy of the plan shall be readily available at each nursing station within the obstetric and newborn services for staff reference.

e. A copy of the plan shall be made available, upon request, to the hospital state licensing inspector for review.

3. Support services. The hospital shall provide the following services in support of the obstetric and newborn services units:

a. Clinical laboratory services and blood bank services shall be available in the hospital on a 24-hour basis. Laboratory and blood bank personnel shall be available on-site or on-call on a 24-hour basis. The blood bank shall have group O Rh negative blood available at all times and be able to provide correctly matched blood in 45 minutes from request. The hospital's laboratory and blood bank personnel must be capable of performing the following tests with less than 1.0 ml of blood within one hour of request or less if specified:

(1) Blood group and Rh type determination/cross matching

(2) Arterial blood gases within 20 minutes

(3) Blood glucose within 20 minutes

(4) Complete Blood Count

(5) Total protein

(6) Total bilirubin

(7) Direct Coombs test

(8) Electrolytes

(9) Blood Urea Nitrogen

(10) Clotting profile (may require more than one cc of blood)

b. Portable radiological services for basic radiologic studies in each labor room, delivery room, and nursery shall be available on call on a 24-hour basis.

c. In addition to the requirements specified in § 2.8 of these regulations, anesthesia service personnel shall be available on-site or on-call to begin anesthesia within 30 minutes of notification.

C. Obstetric service requirements are as follows:

1. Medical direction.

a. The governing body shall appoint a physician as medical director of the organized obstetric service who meets the qualifications specified in the medical staff bylaws.

b. If the medical director is not a board certified obstetrician or board eligible in obstetrics, the hospital shall have a written agreement with one or more board-certified or board-eligible obstetricians to

provide consultation on a 24-hour basis. Consultation may be by telephone.

c. The duties and responsibilities of the medical director of obstetric services shall include but not be limited to:

(1) The general supervision of the quality of care provided patients admitted to the service;

(2) The establishment of criteria for admission to the service;

(3) The adherence to standards of professional practices and policies and procedures adopted by the medical staff and governing body;

(4) The development of recommendations to the medical staff on standards of professional practice and staff privileges;

(5) The identification of clinical conditions and medical or surgical procedures that require physician consultation;

(6) Arranging conferences, at least quarterly, to review obstetrical surgical procedures, complications and infant and maternal mortality and morbidity. Infant mortality and morbidity shall be discussed jointly between the obstetric and newborn service staffs.

2. Physician consultation and coverage.

a. A physician with obstetrical privileges capable of arriving on-site within 30 minutes of notification shall be on a 24-hour on-call duty roster.

b. A physician with obstetrical privileges shall be accessible for patient treatment within 10 minutes during the administration of an oxytocic agent to an antepartum patient.

c. A physician or a certified nurse-midwife, under the supervision of a physician with obstetrical privileges, shall be in attendance for each delivery. Physician supervision of the nurse-midwife shall be in compliance with the regulations of the Boards of Nursing and Medicine.

d. A physician shall be in attendance during all high-risk deliveries. High-risk deliveries shall be defined by the obstetric service medical staff.

e. A physician or a nurse skilled in neonatal cardiopulmonary resuscitation (CPR) shall be available in the hospital at all times.

f. A current roster of physicians, with a delineation of their obstetrical, newborn, pediatric, medical and surgical staff privileges, shall be posted at each nurses' station in the obstetric suite and in the emergency room.

g. A copy of the 24-hour on-call duty schedule, including the list of on-call consulting physicians, shall be posted at each nurses' station in the obstetric suite and in the emergency room.

3. Nursing staff and coverage.

a. An occupied unit of the obstetrics service shall be supervised by a registered nurse 24 hours a day.

b. If the postpartum unit is organized as a separate nursing unit, staffing shall be based on a formula of one nursing personnel for every six to eight obstetric patients. Staffing shall include at least one registered nurse for the unit for each duty shift.

c. If the postpartum and general care newborn units are organized as combined rooming-in or modified rooming-in units, staffing shall be based on a formula of one nursing personnel for every four mother-baby units. The rooming-in units shall be staffed at all times with no less than two nursing personnel each shift. At least one of the two nursing personnel on each shift shall be a registered nurse.

d. A registered nurse shall be in attendance at all deliveries. The nurse shall be available on-site to monitor the mother's general condition and that of the fetus during labor, at least one hour after delivery, and longer if complications occur.

e. Nurse staffing of the labor and delivery unit shall be scheduled to ensure that the total number of nursing personnel available on each shift is equal to one half of the average number of deliveries in the hospital during a 24-hour period.

f. At least one of the personnel assigned to each shift on the obstetrics unit shall be a registered nurse. At no time when the unit is occupied shall the nursing staff on any shift be less than two staff members.

g. Patients placed under analgesia or anesthesia during labor or delivery shall be under continuous observation by a registered nurse or a licensed practical nurse for at least one hour after delivery.

h. To ensure adequate nursing staff for labor, delivery, and postpartum units during busy or crisis periods, duty schedules shall be developed in accordance with the following nurse/patient ratios:

(1) 1:1 to 2 Antepartum testing

(2) 1:2 Laboring patients

(3) 1:1 Patients in second stage of labor

(4) 1:1 Ill patients with complications

(5) 1:2 Oxytocin induction or augmentation of labor

(6) 1:2 Coverage of epidural anesthesia

(7) 1:1 Circulation for cesarean delivery

(8) 1:6 to 8 Antepartum/postpartum patients without complications

(9) 1:2 Postoperative recovery

(10) 1:3 Patients with complications, but in stable condition

(11) 1:4 Mother-newborn care

i. Student nurses, licensed practical nurses and nursing aides who assist in the nursing care of obstetric patients shall be under the supervision of a registered nurse.

j. At least one registered nurse trained in obstetric and neonatal care shall be assigned to the care of mothers and infants at all times.

k. At least one member of the nursing staff on each shift who is skilled in cardiopulmonary resuscitation of the newborn must be immediately available to the delivery suite.

l. All nursing personnel assigned to the obstetric service shall have orientation to the obstetrical unit.

4. Policies and procedures.

a. General policies and procedures. The governing body shall adopt written policies and procedures for the management of obstetric patients approved by the medical and nursing staff assigned to the service. The policies and procedures shall include, but not be limited to, the following:

(1) Criteria for the identification and referral of high-risk obstetric patients;

(2) The types of birthing alternatives, if offered, by the hospital;

(3) The monitoring of patients during antepartum, labor, delivery, recovery and postpartum periods with or without the use of electronic equipment;

(4) The use of equipment and personnel required for high-risk deliveries, including multiple births;

(5) The presence of family members or chosen companions during labor, delivery, recovery, and postpartum periods;

(6) The reporting, to the Department of Health, of all congenital defects;

(7) The care of patients during labor and delivery to include the administration of Rh O(D) immunoglobulin to Rh negative mothers who have met eligibility criteria. Administration of RH O(D) immunoglobulin shall be documented in the patient's medical record;

(8) The provision of family planning information, to each obstetric patient at time of discharge, in accordance with § 32.1-134 of the Code of Virginia;

(9) The use of specially trained paramedical and nursing personnel by the obstetrics and newborn service units;

(10) A protocol for hospital personnel to use to assist them in obtaining public health, nutrition, genetic and social services for patients who need those services;

(11) The use of anesthesia with obstetric patients;

(12) The use of radiological and electronic services, including safety precautions, for obstetric patients;

(13) The management of mothers who utilize breast milk with their newborns. Breast milk shall be collected in sterile containers, dated, stored under refrigeration and consumed or disposed of within 24 hours of collection if the breast milk has not been frozen. This policy pertains to breast milk collected while in the hospital or at home for hospital use;

(14) Staff capability to perform cesarean sections within 30 minutes of notice;

(15) Emergency resuscitation procedures for mothers and infants;

(16) The treatment of volume shock in mothers;

(17) Training of hospital staff in discharge planning for identified substance abusing, postpartum women and their infants;

(18) Written discharge planning for identified substance abusing, postpartum women and their infants. The discharge plans shall include appropriate referral sources available in the community or locality for mother and infant such as:

(a) Substance abuse treatment services; and

(b) Comprehensive early intervention services for infants and toddlers with disabilities and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 USC § 1471 et seq.

The discharge planning process shall be coordinated by a health care professional and shall include, to the extent possible:

(a) The father of the infant; and

(b) Any family members who may participate in the follow-up care of the mother or infant.

The discharge plan shall be discussed with the mother and documented in the medical record.

b. Policies and procedures for the use of the labor, delivery and recovery rooms/labor, delivery, recovery and postpartum rooms. The obstetric service shall adopt written policies and procedures for the use of the labor, delivery and recovery rooms (LDR)/Labor, delivery, recovery and postpartum rooms (LDRP) that include, but are not limited to the following:

(1) The philosophy, goals and objectives for the use of the LDR/LDRP rooms;

(2) Criteria for patient eligibility to use the LDR/LDRP rooms;

(3) Identification of high-risk conditions which disqualify patients from use of the LDR/LDRP rooms;

(4) Patient care in LDR/LDRP rooms, including but not limited to, the following:

(a) Defining vital signs, the intervals at which they shall be taken, and requirements for documentation; and

(b) Observing, monitoring, and assessing the patient by a registered nurse, certified nurse midwife, or physician;

(5) The types of analgesia and anesthesia to be used in LDR/LDRP rooms;

(6) Specifications of conditions of labor or delivery requiring transfer of the patient from LDR/LDRP rooms to the delivery room;

(7) Specification of conditions requiring the transfer of the mother to the postpartum unit or the newborn to the nursery;

(8) Criteria for early or routine discharge of the mother and newborn;

(9) The completion of medical records;

(10) The presence of family members or chosen companions in the delivery room or operating room in the event that the patient is transferred to the delivery room or operating room;

(11) The number of visitors allowed in the LDR/LDRP room, and their relationship to the mother;

(12) Infection control, including, but not limited to, gowning and attire to be worn by persons in the LDR/LDRP room, upon leaving it, and upon returning.

5. Obstetric service design criteria. In addition to complying with Article 5 of this part, a hospital shall comply with the following requirements of this section for the physical design of obstetric service facilities. Existing hospitals with licensed obstetric and newborn services in operation prior to the effective date of the regulations or revisions thereof, shall comply with all of the regulations of this section with the exception of the minimum dimension and square footage requirements for labor rooms and LDR/LDRP rooms provided for in subdivisions e, f, and i of this subdivision. Existing hospitals with an obstetric service may not decrease the dimensions of the labor rooms and the LDR/LDRP rooms from what was granted approval at the time the service was licensed. Labor rooms and LDR/LDRP rooms that are renovated or constructed after the effective date of these regulations shall conform with all of the room dimensions specified in this section of the regulations.

a. The space and arrangement of a hospital building or a section of the hospital designated as the obstetric unit (antepartum and postpartum) shall be designed to assure the separation of obstetric patients from other patients with the exception of clean gynecological patients. Clean gynecological patients shall be defined in approved written hospital policy.

b. The hospital shall identify specific rooms and beds as obstetric rooms and beds. Adjacent rooms and beds may be used for clean gynecological cases.

c. Labor, delivery, recovery and labor, delivery, recovery and postpartum rooms shall be physically separate from emergency and operating rooms.

d. The obstetric nursing unit shall meet the requirements of § 3.11 A of these regulations, except for the following:

(1) A handwashing lavatory must be provided in each patient room;

(2) The soiled workroom and janitors' closet in the obstetric nursing unit shall only be shared with the newborn services unit;

(3) All bathing facilities shall be showers or tub units with showers.

e. Labor rooms shall be single-bed or two bed rooms with a minimum clear area of 180 square feet for each bed.

f. In hospitals having only one delivery room, two labor rooms shall be provided. One labor room shall be large enough to function as an emergency delivery room with a minimum of 300 square feet (27.87 sq m). Each room shall have at least two oxygen and two wall-mount suction outlets. Hospitals must equip a labor room with the same equipment as a delivery room if it is to be used as a delivery room. Each labor room shall contain a handwashing lavatory. Each labor room shall have access to a toilet room. One toilet room may serve two labor rooms. At least one shower shall be provided for labor room patients. A water closet shall be accessible to the shower without patients having to enter a corridor or general area.

g. The delivery room shall have a minimum clear area of 300 square feet (27.87. sq m) exclusive of fixed and movable cabinets and shelves. The minimum dimensions shall be 16'0" (4.88 m) in any direction between two walls. Separate resuscitation facilities (electrical outlets, oxygen, suction, and compressed air) shall be provided for newborn infants.

h. The recovery room shall contain a minimum of two beds, charting facilities located to permit staff to have visual control of all beds, facilities for medicine dispensing, handwashing facilities, a clinical sink with a bedpan flushing device, and storage for supplies and equipment.

i. Hospitals that include birthing LDR/LDRP rooms in their obstetrical program shall designate room(s) within the labor suite for this purpose. Birthing LDR/LDRP rooms shall be designed to prohibit unrelated traffic through the labor and delivery suite and to be readily accessible to delivery rooms and operating rooms. Birthing LDR/LDRP rooms shall meet the requirements of labor rooms which may be used as emergency delivery rooms as specified in § 3.19 D of these regulations. The minimum dimensions shall be 16'0" (4.88 m) clear between walls or fixed cabinets or shelving and shall have a clear area of 300 square feet (27.87 sq m). Each LDR/LDRP room shall

have a private water closet, shower, and handwashing lavatory.

j. When specified in this subsection, service areas shall be located in individual rooms. Alcoves or other open spaces that do not interfere with traffic may be used unless individual rooms are specified. Service areas, except the soiled workroom and the janitors' closet, may be shared within the obstetrical unit. If shared, service areas shall be arranged to avoid direct traffic between the delivery and operating rooms. The following service areas shall be provided:

(1) A control station that is located to permit visual surveillance of all traffic that enters the labor and delivery suite;

(2) A supervisor's office or station;

(3) Sterilizing facilities with high speed autoclaves conveniently located to serve all delivery rooms. If provisions have been made for the replacement of sterile instruments during a delivery, sterilizing facilities will not be required;

(4) A drug distribution station equipped for storage, preparation, and dispensing of medication;

(5) At least two scrub stations located near the entrance to each delivery room. Two scrub stations may serve two delivery rooms if the stations are located adjacent to the entrance to each delivery room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts;

(6) A soiled workroom for the exclusive use of the labor and delivery room personnel. The workroom shall contain a clinical sink or equivalent flushing type fixture, a work counter, a handwashing lavatory, a waste receptacle and a linen receptacle;

(7) Fluid waste disposal facilities conveniently located to the delivery rooms. A clinical sink or equivalent equipment in a soiled workroom or soiled holding room may meet this requirement;

(8) A clean workroom that contains a work counter, handwashing lavatory, and space for clean and sterile supplies;

(9) Anesthesia storage facilities. Unless official hospital board action, in writing, prohibits use of flammable anesthetics, a separate room shall be provided for storage of flammable gases in accordance with the requirements detailed in NFPA 99 and NFPA 70;

(10) An anesthesia workroom for cleaning, testing, and storing anesthesia equipment. The workroom shall contain a work counter and sink;

(11) A space for reserve storage of nitrous oxide and oxygen cylinders;

(12) Equipment storage rooms for equipment and supplies used in the labor and delivery suite;

(13) Staff's clothing change areas. Clothing change areas shall be provided for personnel working within the labor and delivery suite. The areas shall contain lockers, showers, toilets, handwashing lavatories, and space for donning scrub suits and boots;

(14) Lounge and toilet facilities for obstetrical staff. A nurses' toilet room shall be provided near the labor rooms and recovery room(s);

(15) A janitors' closet. A closet containing a floor receptor or service sink and storage for housekeeping supplies and equipment shall be provided for the labor and delivery suite to be shared only with the newborn services unit;

(16) A stretcher storage area. This area shall be out of direct line of traffic.

6. Equipment requirements.

a. Delivery rooms, LDR/LDRP rooms, and nurseries shall be equipped to provide emergency resuscitation for mothers and infants.

b. Equipment and supplies shall be assigned for exclusive use in the obstetric and newborn units.

c. The same equipment and supplies required for the labor room and delivery room shall be available for use in the LDR/LDRP rooms during periods of labor, delivery, and recovery.

d. Sterilizing equipment shall be available in the obstetric unit or in a central sterilizing department. Flash sterilizing equipment or sterile supplies and instruments shall be provided in the obstetric unit.

e. Daily monitoring is required of the stock of necessary equipment in the labor, delivery, and recovery rooms (LDR) and labor, delivery, recovery and postpartum (LDRP) rooms and nursery.

f. The hospital shall provide the following equipment in the labor, delivery and recovery rooms and, except where noted, in the LDR/LDRP rooms:

(1) Labor rooms.

(a) A labor or birthing bed with adjustable side rails

(b) Adjustable lighting adequate for the examination of patients

(c) An emergency signal and intercommunication system

(d) A sphygmomanometer, stethoscope and fetoscope or doppler

(e) Fetal monitoring equipment with internal and external attachments

(f) Mechanical infusion equipment

(g) Wall-mounted oxygen and suction outlets

(h) Storage equipment

(i) Sterile equipment for emergency delivery to include at least one clamp and suction bulb.

(j) Neonatal resuscitation cart.

(2) Delivery rooms.

(a) A delivery room table that allows variation in positions for delivery. This equipment is not required for the LDR/LDRP rooms.

(b) Adequate lighting for vaginal deliveries or cesarean deliveries

(c) Sterile instruments, equipment, and supplies to include sterile uterine packs for vaginal deliveries or cesarean deliveries, episiotomies or laceration repairs, postpartum sterilizations and cesarean hysterectomies

(d) Continuous in-wall oxygen source and suction outlets for both mother and infant

(e) Equipment for inhalation and regional anesthesia. This equipment is not required for LDR/LDRP rooms.

(f) A heated, temperature-controlled infant examination and resuscitation unit

(g) An emergency call system

(h) Plastic pharyngeal airways (adult and newborn size)

(i) Laryngoscope and endotracheal tubes (adult and newborn size)

(j) A self-inflating bag with manometer and adult and newborn masks that can deliver 100% oxygen

(k) Separate cardiopulmonary crash carts for mothers and infants

(l) Sphygmomanometer

(m) Cardiac monitor. This equipment is not required for the LDR/LDRP rooms.

(n) Gavage tubes

(o) Umbilical vessel catheterization trays. This equipment is not required for LDR/LDRP rooms.

(p) Equipment that provides a source of continuous suction for aspiration of the pharynx and stomach

(q) Stethoscope

(r) Fetoscope

(s) Intravenous solutions and equipment

(t) Wall clock with a second hand

(u) Heated bassinets equipped with oxygen and transport incubator

(v) Neonatal resuscitation cart.

(3) Recovery rooms.

(a) Beds with side rails

(b) Adequate lighting

(c) Bedside stands, overbed tables, or fixed shelving

(d) An emergency call signal

(e) Equipment necessary for a complete physical examination

(f) Accessible oxygen and suction equipment

D. Newborn service requirements are as follows:

1. Designation of newborn service levels.

a. If a hospital intends to provide newborn services, it shall make application to the department requesting approval for a level of newborn service as specified in subdivision 2 of this subsection.

Application shall be made at least 60 days prior to the desired date of approval. Approval is required to be renewed annually. Newborn service level approval shall be based upon the hospital's certification and the department's verification that the hospital meets the requirements of these regulations for the level requested.

b. No approval for a general level newborn service designation will be granted without a Certificate of Public Need (COPN) or without documentation by the applicant that it provided general level newborn services prior to July 1, 1992, or that the provision of general level newborn services was found to be exempt from Certificate of Public Need review pursuant to § 32.1-102.11 of the Code of Virginia.

c. No approval for a newborn service level designation higher than general level will be granted without a Certificate of Public Need or without documentation by the applicant that it provided a newborn service level higher than general level prior to July 1, 1992, or that the provision of a newborn service level higher than general level was found to be exempt from Certificate of Public Need review pursuant to § 32.1-102.11 of the Code of Virginia.

2. Service levels.

a. A hospital's newborn service shall be designated as a general level, intermediate level, specialty level, or subspecialty level newborn service. The newborn service levels are designated as follows:

(1) A general level newborn service shall provide care to newborns of low risk as specified within the service's medical protocol. A general level newborn nursery shall have the capability to care for newborns who weigh at least 2000 grams at birth or who have completed 34 weeks gestation. Risk assessment shall be provided to identify all high-risk neonates and ensure appropriate consultation. A general level newborn nursery shall have the equipment and staff capabilities to immediately stabilize a sick newborn prior to transporting the

newborn to an appropriate higher level nursery. The equipment and staff to receive convalescing neonates from higher level nurseries shall also be provided.

(2) An intermediate level newborn service shall provide care as specified within the service's medical protocol to moderately ill neonates or stable-growing low birthweight neonates who require only a weight increase to be ready for discharge. In addition to the capabilities required of the general level newborn nursery, the intermediate level nursery shall have the equipment and staff capabilities to provide controlled temperature environments for each neonate, the insertion and maintenance of umbilical arterial lines, hood oxygen to 40%, continuous monitoring of blood oxygen, and assisted ventilation of a neonate in preparation for transport utilizing a mechanical ventilator or an ambu bag.

(3) A specialty level newborn service shall provide intensive care to high-risk neonates with neonatal illnesses as specified in the service's medical protocol. In addition to the capabilities required of the lower level nurseries, the specialty level nursery shall have the equipment and staff capabilities to provide the following: maintenance of central arterial umbilical catheters or peripheral arterial lines with constant pressure monitoring, insertion and maintenance of chest tubes for drainage, administration of total parenteral nutrition (TPN), the maintenance of pressor medications, the administration of surfactant and respiratory support to include the maintenance of hood oxygen, continuous positive airway pressure (CPAP), and neonatal mechanical ventilation beyond the immediate stabilization period.

(4) A subspecialty level newborn service shall provide intensive care for high-risk, critically ill neonates with complex neonatal illnesses. The subspecialty level newborn service shall provide, in-house, a full range of pediatric medical and surgical subspecialists to care for critically ill neonates. The pediatric subspecialists required as members of the hospital's staff are those subspecialists required of a Subspecialty Perinatal Center as referenced within the 1993 edition of Toward Improving the Outcome of Pregnancy, March of Dimes Birth Defects Foundation, Appendix 6, Pages 114 and 115. Rarely, the availability of highly technical expertise and specialized physicians at another subspecialty center will indicate consultation and possibly transfer. The subspecialty level nursery shall have the capability to care for neonates born in its facility as well as those referred from lower level nurseries. The subspecialty level nursery shall have all of the technical capabilities required of the lower level nurseries as well [as] the equipment and staff capabilities to maintain a neonate on prostaglandin E1 (PgE1) and the ability to perform echocardiography evaluations.

b. The hospital shall establish a written medical protocol, approved by the governing body, that specifies all neonatal conditions routinely managed by the newborn service as well as protocols for those medical conditions which require consultation and may necessitate transfer to a higher level of newborn service.

c. Physician consultation shall occur between physicians at the birth hospital and [~~a~~ at the] referral hospital [~~with~~ to] which the [~~birth hospital has a newborn service level collaboration agreement~~ newborn may be referred].

d. The physician at the birth hospital shall document in the newborn's medical record [~~the physicians'~~ ~~mutual~~ any physician's consultation and any] agreement to manage the newborn at the birth hospital or to stabilize and then transfer the newborn according to the [~~hospitals'~~ hospital's] collaboration agreement. [In the event of disagreement, the attending physician at the birth hospital shall be responsible for the management and care of the newborn and shall document the consultation and results of consultation in the newborn's medical record.]

~~1.~~ *3.* Medical direction.

a. The governing body shall appoint a physician as medical director of the organized newborn service who meets the qualifications specified in the medical staff bylaws. *In addition, the medical director must meet the qualifications specified in these regulations for the medical direction of the highest level of newborn service provided by the hospital.*

~~b. If the medical director is not a board certified pediatrician or board eligible in pediatrics, the hospital shall have a written agreement with one or more board certified or board eligible pediatricians to be available to providing consultation on a 24 hour basis. Consultation may be by telephone.~~

b. If a hospital offers only general level newborn services, the medical director shall be a physician qualified to provide normal newborn care, including the ability to immediately resuscitate and stabilize a sick newborn for transfer to a higher level of service.

c. If a hospital offers intermediate level newborn services, the medical director shall be a board-certified or board-eligible pediatrician with training and experience in the care of preterm neonates, including stabilization and ventilation management.

d. If a hospital offers specialty level newborn services, the medical director shall be a board-certified or board-eligible neonatologist.

e. If a hospital offers subspecialty level newborn services, the medical director shall be a board-certified or board-eligible neonatologist.

~~c.~~*f.* The duties and responsibilities of the medical ~~director~~ *directors* of ~~the~~ *all levels of* newborn service shall include, but not be limited to *the*:

(1) ~~The~~ General supervision of the quality of care provided patients admitted to the service;

(2) ~~The~~ Establishment of criteria for admission to the service;

(3) ~~The~~ Adherence *of the service* to standards of professional practices ~~and~~, policies and procedures, *the medical protocol, and the hospital's collaboration agreements* adopted by the medical staff and governing body *applicable to the service*;

(4) ~~The~~ Development of recommendations to the medical staff on standards of professional practice and staff privileges *applicable to the service*;

(5) ~~The~~ Identification of clinical conditions and medical and surgical procedures that require physician consultation;

(6) ~~Arranging~~ *Conducting* conferences, at least quarterly, to review routine and emergency surgical procedures, complications and infant and maternal mortality and morbidity. Infant mortality and morbidity shall be discussed with the obstetric service staff~~.~~*;*

(7) Active participation in the service's quality assurance program.

~~2.~~ *4.* Physician consultation and coverage.

~~a. The hospital shall have a written agreement with one or more board-certified or board-eligible neonatologists to be available to provide consultation, at least by telephone, on a 24-hour basis. The consultant shall be available to advise on the development of a protocol for the care and transport of sick newborns.~~

a. The hospital shall provide the following physician consultation and coverage in the general level newborn nursery service and all higher level nursery services unless unique requirements are specifically imposed within these regulations for the higher level nursery services:

~~b.~~*(1)* A physician with pediatric privileges capable of arriving on-site within 30 minutes of notification shall be on the 24-hour on-call duty roster [~~,~~*;*]

~~c.~~*(2)* A physician or nurse skilled in neonatal cardiopulmonary resuscitation (CPR) shall be available in the hospital at all times [~~,~~*;* .]

~~d.~~*(3)* A current roster of physicians, with a delineation of their ~~obstetrical,~~ newborn, pediatric, medical and surgical privileges shall be posted at each nurses' station in the newborn service ~~units.~~ *unit* [~~,~~*and* .]

~~e.~~*(4)* A copy of the 24-hour on-call duty schedule, including a list of on-call consulting physicians, shall be posted at each nurses' station in the newborn service ~~units~~ *unit*.

(5) If the medical director is not a board-certified or board-eligible pediatrician, the hospital shall have a written agreement with one or more board-certified or board-eligible pediatricians to be available to provide consultation on a 24-hour basis. Consultation may be by telephone.

(6) If a hospital does not have a neonatologist on staff who is available on a 24-hour basis, it shall have a written agreement with another hospital to provide consultation, at least by telephone, on a 24-hour basis, by a board-certified or board-eligible neonatologist. The consultant shall be available to advise on the development of a protocol for the care and transport of sick newborns.

b. The physician consultation and coverage for the intermediate level newborn nursery service shall be the same as the general level newborn service with the following exception:

(1) Subdivision 4 a (1) of this subsection shall not apply.

(2) Physician coverage shall be provided on a 24-hour on-call basis by a board-certified or board-eligible [~~*pediatrician(s)*~~ *pediatrician or pediatricians*] *capable of arriving on-site within 30 minutes of notification.*

c. The physician consultation and coverage for the specialty level and the subspecialty level newborn services shall be the same as for the lower level newborn services with the following exceptions:

(1) Subdivision 4 a (1) of this subsection shall not apply.

(2) In-house physician consultation and coverage shall be provided 24 hours a day by (i) a board-certified or board-eligible neonatologist; or (ii) a board-certified or board-eligible pediatrician; or (iii) a second year or higher level pediatric resident; or (iv) a neonatal nurse practitioner.

(3) Whenever in-house coverage is provided in clause ii, iii, or iv of subdivision (2) above, a board-certified or board-eligible neonatologist shall be on-call and available to be on-site within 20 minutes of request.

~~3.~~*5.* Nursing *direction*, staff and coverage.

a. The nursing direction, staff and coverage required for the general level newborn service shall be as follows:

(1) The neonatal nursing program shall be under the direction of a registered nurse.

(2) The nursing director's responsibilities shall include, but not be limited to:

(a) Directing neonatal nursing services;

(b) Guiding the development and implementation of neonatal nursing policies and procedures;

(c) Collaborating with the medical staff; and

(d) Consulting with referral hospitals with which a hospital has transfer agreements applicable to the [~~*service(s)*~~ *service or services*] .

~~a.~~*(3)* Each occupied unit of the newborn service shall be under the *direct* supervision of a registered nurse 24 hours a day. *The registered nurse shall have documented competence in neonatal nursing appropriate to the level of service provided.*

~~b.~~*(4)* If ~~the general care~~ *a general level* newborn ~~unit~~ *nursery* is organized as *a* separate nursing unit, staffing shall be based on a formula of *a minimum of* one nursing personnel ~~for~~ *to* every ~~six to~~ eight newborns. Staffing shall include at least one registered nurse for the unit for each duty shift *to provide direct supervision for nursing care.*

~~c.~~*(5)* If the postpartum and general ~~care~~ *level* newborn units are organized as combined rooming-in or modified rooming-in units, staffing shall be based on a formula of one nursing personnel for every four mother-baby units. The rooming-in units shall always be staffed with no less than two nursing personnel assigned to each shift. One of the two nursing personnel shall be a registered nurse *to provide direct supervision of nursing care.*

~~d.~~*(6)* When infants are present in the nursery, at least one nursing ~~staff person~~ *personnel* trained in the care of newborn infants, with duties restricted to the care of the infants, shall be assigned to the nursery at all times. *This nursing personnel is in addition to the registered nurse who is required to provide supervision.*

~~e.~~*(7)* To ensure adequate nursing staff for the nursery ~~during busy or crises periods~~ *for normal newborns*, duty schedules shall be developed ~~in accordance with~~ *and actual shift staffing shall occur according to* the following *minimum* nurse~~:~~ *to* patient ratios:

~~(1)~~*(a)* 1:4 Recently born infants and those needing close observation

~~(2) 1:6 to~~ *(b) 1:8* Newborns needing only routine care

~~(3)~~*(c)* 1:4 Mother-newborn *routine* care

~~(4) 1:1 Newborns requiring multisystem support~~

~~(5) 1:3 to 4 Newborns requiring intermediate care~~

~~(6) 1:1 to 2 Newborns needing intensive care~~

~~f.~~*(8)* Student nurses, licensed practical nurses and nursing aides who assist in the nursing care of newborn infants shall be under the *direct* supervision of a registered nurse.

~~g.~~*(9)* At least one ~~member of the nursing staff~~ *nurse* on each shift who is skilled in *neonatal* cardiopulmonary resuscitation ~~of the newborn~~ must be immediately available to the ~~newborn~~ nursery ~~area~~.

~~h.~~*(10)* All nursing personnel assigned to the newborn service shall have orientation to the ~~neonatal unit~~ *nursery which includes orientation to patient care appropriate for the service level provided.*

b. The nursing direction, staff and coverage required of the intermediate level newborn service shall be the same as required of the general level newborn service with the following exceptions:

(1) To ensure adequate nursing staff for the nursery, duty schedules shall be developed and actual shift staffing shall occur according to a ratio of at least one nurse to four neonates.

(2) All registered nurses assigned to the newborn service shall be trained in neonatal cardiopulmonary resuscitation (CPR).

c. The nursing direction, staff and coverage for the specialty level newborn service shall be the same as the lower level newborn service levels with the following exceptions:

(1) The newborn nursery service shall have a nurse manager. The nurse manager shall be a registered nurse with advanced training and experience in the nursing management of high-risk neonates and their families. The responsibilities of the nurse manager shall include, but not be limited to:

(a) Daily management of the nursery;

(b) Supervision and evaluation of nursing personnel assigned to the nursery;

(c) Assuring nursing coverage 24 hours a day; and

(d) Implementing nursing policies and procedures at the service level.

(2) All registered nurses shall have advanced training and experience in the management of neonatal patients, including specialized care technology and ventilator care for neonates. Only registered nurses with this advanced training and experience shall be assigned to care for neonates on ventilators.

(3) To ensure adequate nursing staff for the nursery, duty schedules shall be developed and actual shift staffing shall occur according to a ratio of at least one nurse to three patients for neonates requiring specialty level care. For those neonates who have been assessed as no longer needing specialty level care, nurse to patient ratios shall be according to the neonate's appropriate level of service.

d. The nursing direction, staff and coverage for the subspecialty level newborn service shall be the same as all lower levels of newborn services with the following exceptions:

(1) A neonatal clinical nurse specialist shall be assigned to the nursery; duties and responsibilities

shall include staff consultation, collaboration, and teaching.

(2) All registered nurses shall have advanced training and experience, beyond what is required of nurses in the lower level nurseries, in the management of high-risk neonates, including the care of unstable neonates with multisystem problems.

(3) To ensure adequate nursing staff for the nursery, duty schedules shall be developed and actual shift staffing shall occur according to the following minimum nurse to patient ratios for neonates requiring subspecialty level care:

(a) 1:2 Neonates requiring subspecialty level care; and

(b) 1:1 Neonates requiring multisystem support.

For those neonates who have been assessed as no longer needing subspecialty level care, nurse to patient ratios shall be according to the neonate's appropriate level of service.

(4) All nursing patient care shall be provided by registered nurses assigned to the subspecialty level nursery.

~~4.~~6. Policies and procedures.

a. The governing body shall adopt written policies and procedures ~~for the medical care of newborns~~, approved by the medical and nursing staff of the service, *for the medical care of newborns*.

b. The policies and procedures *for the general level nursery and all higher levels of newborn services* shall include, but not be limited to~~, the following~~:

~~a.~~*(1) Medical* criteria for the identification of high-risk neonatal patients~~;~~.

~~b. The development of a system of communication, consultation, and written agreements for secondary and tertiary newborn services.~~

~~c. The hospital's provisions for the care of newborns transferred back from secondary and tertiary care services;~~

(2) Protocols for the management of all neonatal medical conditions that are routinely managed by the service as well as protocols for the stabilization and transfer of neonates that require a higher level of newborn service. These protocols shall be maintained in the nursery in addition to the telephone numbers of each nursery and the names of each referral newborn service medical director.

(3) Hospital written collaboration agreements with other hospitals that provide higher levels of newborn services not available in the referring hospital. A hospital may enter into more than one collaboration agreement. The collaboration agreements shall specifically identify those medical conditions which require consultation and may necessitate a neonatal transfer as well as the interim treatment required prior to transfer. [Nothing in the regulation shall require a birth hospital to enter into a collaboration agreement with a referral hospital that disagrees with the medical, consultation and transfer protocols adopted by the birth hospital.] All neonatal transfers shall conform with Section 1867 of the Social Security Act, its amendments in force to date and implementing regulations. At the time of any transfer, the medical treatment at the referral hospital shall outweigh the risks to the neonate from effecting the transfer. The collaboration agreements shall include, but not be limited to:

(a) Criteria for neonatal transfer to the referral nursery;

(b) Procedures for neonatal transport;

(c) Back transfer criteria which provides for the return of the neonate to the referring hospital when medically appropriate;

(d) Annual review by both parties of all cases of neonatal transfer;

(e) Annual review by both parties of the collaboration agreements; and

(f) Annual evaluation by both parties of the collaboration agreement and modification of the agreement, as necessary, as indicated by the evaluation results.

(4) Establishment and maintenance of an ongoing, documented quality assurance program by the service which utilizes a multidisciplinary team of health practitioners and administrators for review and is integrated with the hospital's overall quality assurance program.

(a) The quality assurance program shall include:

[~~(1)~~ (i)] Problem identification;

[~~(2)~~ (ii)] Action plans;

[~~(3)~~ (iii)] Evaluation; and

[~~(4)~~ (iv)] Follow-up.

(b) The quality assurance program shall include an annual review of the following:

[~~(1)~~ (i)] Neonatal transfer cases;

[~~(2)~~ (ii)] Management of in-house neonatal cases; [and]

[~~(3)~~ (iii)] Staff in-house inservice programs.

(c) Outcome statistics, including morbidity, mortality, and the appropriateness of neonatal transfers, shall be compiled in a standardized manner and reviewed quarterly by a multidisciplinary committee.

(5) Immediate resuscitation and stabilization of the sick neonate in accordance with current

cardiopulmonary resuscitation (CPR) standards of the American Heart Association and the American Academy of Pediatrics.

~~d. The~~ *(6)* Care of newborns after delivery to include the following:

~~(1)~~*(a)* Care of eyes, skin and umbilical cord and the provision of a single parenteral dose of Vitamin K-1, water soluble ~~0.5 mgm~~, as a prophylaxis against hemorrhagic disorder;

~~(2)~~*(b)* Maintenance of the newborn's airway, respiration, and body temperature; *and*

~~(3)~~*(c)* Assessment of the newborn and recording of the one-minute and five-minute Apgar scores~~;~~.

~~e.~~*(7)* Performance of prophylaxis against ophthalmia neonatorum by the administration of a 1.0% solution of silver nitrate aqueous solution, erythromycin, or tetracycline ointment or solution. This process is to be performed within one hour of delivery with documentation entered in the newborn's medical record. The process may be performed in the nursery~~;~~.

~~f.~~*(8)* Clamping or tying of the umbilical cord and, when indicated, collecting a sample of cord blood~~;~~.

~~g.~~*(9)* Performance of Rh type and Coombs' test for every newborn born to a Rh negative mother and performing major blood grouping and Coombs' tests when indicated for every newborn born to an O blood group mother or a mother with a family history of blood incompatibility. If such qualitative tests are performed, the results shall be documented in the newborn's medical record~~;~~.

~~h.~~*(10)* Identification and treatment of hyperbilirubinemia and hypoglycemia~~;~~.

~~i.~~*(11)* Identification of each newborn, prior to leaving the delivery room, with two identification bands fastened on the newborn and one identification band fastened on the mother. *The newborn's medical record shall accompany the infant from the delivery room.*

~~j.~~*(12)* Newborn transport ~~to include but not limited to, the transport of the newborn~~, *within the hospital, of all newborns who are either premature or compromised by* using a heated bassinet equipped with oxygen, *a* transport incubator or *other* similar ~~device. The newborn's medical record shall accompany the infant from the delivery room~~ *equipment.*

~~k.~~*(13)* Registered nurse or physician assessment of a newborn within one hour after delivery and documentation of the assessment in the newborn's medical record. Assessment in the delivery area is permitted if the hospital permits a newborn and its mother to remain together during the immediate post-delivery period~~;~~.

~~l.~~*(14)* Delineation of how infants are to be monitored during stays with their mothers and under what circumstances infants must be taken to the nursery immediately after delivery and not allowed to remain with their mothers~~;~~.

~~m.~~*(15)* Physician examination of the newborn consistent with guidelines of the American Academy of Pediatrics. A high-risk newborn shall be examined upon admission to the nursery~~;~~.

~~n.~~*(16)* Ensuring that every bassinet and incubator in the nursery bears the identification of the newborn's last name, sex, date and time of birth, the mother's last name, and the attending physician's name~~;~~.

(17) The management of mothers who utilize breast milk with their newborns. Breast milk shall be collected in sterile containers, dated, stored under refrigeration and consumed or disposed of within 24 hours of collection if the breast milk has not been frozen. This policy pertains to breast milk collected while in the hospital or at home for hospital use.

~~o. The~~ *(18)* Preparation and use of formula [~~;~~] including, but not limited to ~~the following~~:

~~(1)~~*(a)* The distribution of feeding units immediately after assembly;

~~(2)~~*(b)* The use of prepared formula only within the time period designated on the package; and

~~(3)~~*(c)* The use of presterilized formula only, except in the case of facility-defined emergencies.

~~p.~~*(19)* Screening newborns for risk factors associated with hearing impairment as required in §§ 32.1-64.1 and 32.1-64.2 of the Code of Virginia and in accordance with the regulations of the Board of Health governing the Virginia Hearing Impairment Identification and Monitoring System ~~;~~ *(VR 355-12-01).*

~~q.~~*(20)* Screening and treatment of genetic, metabolic, and other diseases identifiable in the newborn period as specified in [~~the~~] § 32.1-65 of the Code of Virginia and in accordance with the ~~Rules and~~ Regulations ~~of the Board of Health~~ Governing the Newborn Screening and Treatment Program~~;~~ *(VR 355-11-200).*

~~r.~~*(21)* Reporting to the Department of Health all *required reportable* congenital defects~~;~~.

~~s.~~*(22)* Visitor contact with the newborn, including newborns delivered by cesarean section, and premature, sick, congenitally malformed, and dying newborns~~;~~.

~~t.~~*(23)* Completion of birth certificates~~;~~.

(24) Discharge planning appropriate for the needs of the patient for at-risk infants. The Virginia High Priority Infant Tracking Program Enrollment Form should be used as part of the discharge planning.

~~u. Protocols for the management of certain infant disease states. Consultation and referral shall be developed by the newborn service medical director in conjunction with the director of the intensive care unit to which referrals are sent. The protocols shall spell out the details for the local management of disease states, and specific transfer criteria. These protocols shall be maintained in the nursery.~~

~~v. The designation of an intensive care nursery to which a general newborn nursery refers patients and from which it seeks consultation and advice. The telephone number of the intensive care nursery and the name of the newborn service medical director shall be maintained by the head nurse of the general care nursery.~~

c. The additional policies and procedures required for the [~~immediate~~ intermediate] level newborn service shall include, but not be limited to:

(1) Insertion and maintenance of peripheral intravenous lines and use of pediatric infusion pumps that are accurate to plus or minus one milliliter an hour;

(2) Insertion and maintenance of umbilical arterial lines and the use of pediatric infusion pumps accurate to plus or minus one milliliter an hour;

(3) Use of heated, humidified, and blended supplemental oxygen by hood with a recording of oxygen levels every hour using a calibrated constant oxygen analyzer. The policy shall address consultation with a higher level nursery identified in the collaboration agreement when oxygen levels exceed 40% and remain at 40% or greater for a period of four hours or more;

(4) Administration of nasogastric or orogastric feedings;

(5) Use of saturation monitor (pulse oximeter or equivalent) for any newborn requiring supplemental oxygen;

(6) Use of assisted ventilation in preparation for transport;

(7) Initiation of PgE1 prior to transport; and

(8) Administration of blood components and a policy for provision of partial and total exchange transfusions.

d. The additional policies and procedures required for the specialty level newborn service shall include, but not be limited to:

(1) Provision of ongoing assisted ventilation;

(2) Administration of surfactant;

(3) Preparation and administration of total parenteral nutrition (TPN);

(4) Initiation and maintenance of pressor medications;

(5) Provision for developmental follow up;

(6) Insertion and maintenance of central umbilical arterial catheters or peripheral arterial lines with constant pressure monitoring;

(7) Placement of chest tubes with water seal on an emergency basis;

(8) Use of heated, humidified, and blended supplemental oxygen by hood with a recording of oxygen levels every hour using a calibrated constant oxygen analyzer;

(9) Administration and maintenance of CPAP including the requirement for in-house physician coverage;

(10) Daily availability of appropriate drug peak and trough assays on one milliliter or less of blood;

(11) Cardioversion capability specific for newborns; and

(12) Provision for ophthalmology consult and requirements regarding the examination of high-risk newborns.

e. The additional policies and procedures required for the subspecialty level newborn service shall include, but not be limited to:

(1) Provision for returning patients to the operating room within 30 minutes, if indicated;

(2) Provision for echocardiography evaluation;

(3) Provision for patient treatment on an extracorporeal membrane oxygenator (ECMO) or a written collaboration agreement with a hospital with this capability;

(4) Provision for maintenance of central venous pressure monitoring; and

(5) Provision for the maintenance of neonates on prostaglandin E1 (PgE1).

~~5.~~*7.* Newborn service design criteria. In addition to complying with §§ 2.27 *and 3.15* of these regulations, a hospital shall comply with the following ~~requirements for the physical design of the newborn nursery~~ *physical design criteria for its newborn services:*

a. The design criteria required for the general level nursery are:

~~a.~~*(1)* The newborn nursery shall be located adjacent to the obstetric nursing unit. The nursery must have adequate lighting and ventilation *and be equipped to prevent direct drafts on infants.* The temperature and humidity in the nursery shall be maintained at a level best suited for the protection of newborns as determined by the medical and nursing staff of the newborn service and as recommended by the American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists (ACOG) in the most current edition of Guidelines for Perinatal Care.

~~b.~~*(2)* The nursery shall be designed to preclude unrelated traffic. Connecting nurseries shall have the capability to close the doors for infection control purposes.

~~c.~~*(3)* Each nursery shall contain the following:

~~(1)~~*(a)* One handwashing lavatory for [*every*] eight bassinets. Lavatories shall be equipped with wrist, knee or foot controls, soap dispenser and paper towel dispenser;

~~(2)~~*(b)* A nurses' emergency calling system that meets the requirements of § 3.49 D of these regulations; and

~~(3)~~*(c)* Glazed observation windows to permit infants to be viewed from public areas, from workrooms, and between adjacent nurseries.

~~d.~~*(4)* There shall be a minimum of 24 square feet of floor area for each bassinet, exclusive of nonpatient areas, and a minimum of three feet *(91 cm)* between bassinets in the ~~general~~ newborn nursery. ~~The nursery must be equipped to prevent direct drafts on infants.~~

~~e. The~~ *(5) Each* nursery shall contain no more than 16 infant stations in open bassinets, self-contained incubators, open radiant heat infant care systems, or combination thereof. *When a rooming-in program is used, the total number of bassinets provided in the general level nursery may be appropriately reduced but the nursery may not be omitted.* A hospital designed for 16 infant stations or less shall provide two rooms with eight infant stations so that a room is available to permit cohorting in the case of infection.

~~f.~~*(6)* A special care area for infants requiring close observation or stabilization, such as those with low birth weight, is required in hospitals having 25 or more postpartum beds *that do not have higher level nurseries*. The minimum floor area for each infant station shall be 40 square feet (3.72 sq. m).

~~g.~~*(7)* Each nursery shall be served by a connecting workroom. The workroom shall contain gowning facilities at the entrance for staff and personnel, work space with counter, refrigerator, storage space and handwashing lavatory which meets the requirements of § 3.45 of these regulations. One workroom may serve more than one nursery.

~~h.~~*(8)* The examination and treatment room shall contain a work counter, storage, handwashing lavatory and charting facilities. This may be part of the workroom.

~~i.~~*(9)* A closet for the use of the housekeeping staff in maintaining the nurseries shall be provided. It shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

~~j.~~*(10)* Lighting and wall finishes shall be sufficient to permit easy detection of jaundice and cyanosis. Shadow-free illumination with at least 100 foot candle intensity at the infant's level using fluorescent lamps with proper diffusers to prevent glare is required.

~~k.~~*(11)* All incubators and electrical appliances used in nurseries shall be free from electrical hazards and approved by Underwriters Laboratories.

~~l.~~*(12)* One grounded duplex electrical outlet shall be provided for every bassinet.

~~m.~~*(13)* Task illumination and selected electrical outlets shall be on the hospital's emergency electrical system. In new construction, one outlet for each bassinet shall be on the hospital's emergency electrical system. Emergency electrical outlets shall be clearly marked. Outlets shall be checked at least monthly for safety and grounding.

~~n.~~*(14)* An incubator shall be available and maintained for every 10, or fraction thereof, bassinets.

~~o.~~*(15)* Bassinets shall be equipped to allow for medical examinations of newborn infants and for storing necessary supplies and equipment. Bassinets shall be provided in a number to exceed obstetric beds by ~~20%~~ *25%* at the minimum, to accommodate multiple births, extended stays, and fluctuating patient loads. Bassinets are to be separated by a minimum of three feet measuring from the edge of one bassinet to the edge of the adjacent bassinet~~.~~ [*~~, and~~* .]

~~p.~~*(16)* The hospital shall provide isolation facilities which follow universal precautions in accordance with its approved policies and procedures and the *most recent editions of the* Guidelines for Perinatal Care (AAP/ACOG) and the Control of Communicable Diseases in Man (American Public Health Association).

b. The design criteria required for the intermediate level nursery are:

(1) There shall be efficient and controlled access to the nursery from the labor and delivery area, the emergency room or other referral entry areas. The nursery shall be designed to preclude unrelated traffic.

(2) Lighting and wall finishes shall be sufficient to permit easy detection of jaundice and cyanosis. Shadow-free illumination with at least 100 foot candle intensity at the infant's level using fluorescent lamps with proper diffusers to prevent glare is required. The level of general lighting shall be adjustable to simulate day-night patterns and to satisfy diagnostic and procedural requirements.

(3) The temperature, humidity, and ventilation in the nursery shall be maintained at levels best suited for the protection of newborns as determined by the medical and nursing staff of the newborn service and as recommended by the American Academy of Pediatrics (AAP) and American College of Obstetricians and Gynecologists (ACOG) in the

most current edition of Guidelines for Perinatal Care. The nursery must be equipped to prevent direct drafts on neonates.

(4) Each nursery shall contain the following:

(a) One handwashing lavatory for at least every four patient stations. Lavatories shall be equipped with wrist, knee or foot controls, soap dispenser and paper towel dispenser; [*and*]

(b) A nurses' emergency calling system that meets the requirements of § 3.49 D of these regulations.

(5) Each nursery shall be served by a connecting workroom. The workroom shall contain gowning facilities at the entrance for staff and personnel, work space with counter, refrigerator, storage space and handwashing lavatory which meets the requirements of § 3.45 B of these regulations. One workroom may serve more than one nursery.

(6) A closet for the use of the housekeeping staff in maintaining the nursery shall be provided. It shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(7) All incubators and electrical appliances used in nurseries shall be free from electrical hazards and approved by Underwriters Laboratories.

(8) Outlets shall be checked at least monthly for safety and grounding.

(9) The hospital shall provide isolation facilities which follow universal precautions in accordance with its approved policies and procedures and the most recent editions of the Guidelines for Perinatal Care (AAP/ACOG) and the Control of Communicable Diseases in Man (American Public Health Association). Connecting nurseries shall have the capability to close the doors for infection control purposes.

(10) All electrical outlets shall be connected to both regular and auxiliary power.

(11) An additional outlet wired to accommodate a portable x-ray machine shall be available in each nursery.

(12) The minimum floor area for each infant station in a nursery constructed or renovated after [~~*the effective date of these regulations*~~ *August 10, 1995,*] *shall be 50 square feet (* [~~*3.72*~~ *4.66*] *sq m) with a minimum of four feet between infant stations and aisles at least five feet wide* [~~*; and*~~ *.*]

(13) At least eight electrical outlets, two oxygen outlets, two compressed air outlets and two suction outlets shall be provided for each infant station.

c. The design criteria required for both specialty level and subspecialty level nurseries are:

(1) The requirement of § [~~*301-C-7-a-2-(a-k)*~~ *2.28 D 7 b (1-11)] shall apply* [*; .*]

(2) Nurseries constructed or renovated after [~~*the effective date of these regulations*~~ *August 10, 1995,*] *shall have a minimum floor area for each infant station of 80 square feet with at least six feet between incubators or overhead warmers, and aisles at least eight feet wide* [~~*; and*~~ *.*]

(3) Each infant station shall have at least 12 electrical outlets, two oxygen outlets, two compressed air outlets and two suction outlets.

~~6.~~*8.* Equipment requirements.

a. The hospital shall provide the following equipment in the *general level* nursery *and all higher level nurseries, unless additional equipment requirements are imposed for the higher level nurseries*:

~~a.~~*(1)* Resuscitation equipment as specified for the delivery room in these regulations shall be available in the nursery at all times;

~~b.~~*(2)* Equipment for the delivery of 100% oxygen concentration, *properly heated, blended, and humidified,* with the ability to measure [~~delivery~~] oxygen [*delivery*] in fractional inspired concentration (FI02). The oxygen analyzer shall be calibrated every eight hours and serviced ~~at least monthly~~ *according to the manufacturer's recommendations* by *a member of* the hospital's respiratory therapy department or other responsible personnel trained to perform the task;

~~c. Equipment for monitoring blood oxygen concentration levels i.e. a pulse oximeter;~~

(3) Saturation monitor (pulse oximeter or equivalent);

~~d.~~*(4)* Equipment for monitoring blood ~~sugar~~ *glucose*;

~~e.~~*(5)* Infant scales;

~~f.~~*(6)* Intravenous therapy equipment;

(7) Equipment and supplies for the insertion of umbilical arterial and venous catheters[~~.~~ ;]

~~g.~~*(8)* Open bassinets, self-contained incubators, open radiant heat infant care system or any combination thereof ~~appropriate to the service level;~~ [*appropriate to the service level;*]

~~h.~~*(9)* Equipment for stabilization of a sick infant prior to transfer that includes a radiant heat source capable of maintaining an infant's body temperature at 99 ~~degrees.~~ *°F;*

(10) Equipment for insertion of a thoracotomy tube; and

(11) Equipment for proper administration and maintenance of phototherapy.

b. The additional equipment required for the intermediate level newborn service and for any higher service level is:

(1) Pediatric infusion pumps accurate to plus or minus 1 milliliter (ml) per hour;

(2) On-site supply of PgE1;

(3) Equipment for 24-hour cardiorespiratory monitoring for neonatal use available for every incubator or radiant warmer;

(4) Saturation monitor (pulse oximeter or equivalent) available for every infant given supplemental oxygen;

(5) Portable x-ray machine; and

(6) If a mechanical ventilator is selected to provide assisted ventilation prior to transport, it shall be approved for the use of neonates.

c. The additional equipment required for the specialty level newborn service and a higher newborn service is as follows:

(1) Equipment for 24-hour cardiorespiratory monitoring with central blood pressure capability for each neonate with an arterial line;

(2) Equipment necessary for ongoing assisted ventilation approved for neonatal use with on-line capabilities for monitoring airway pressure and ventilation performance;

(3) Equipment and supplies necessary for insertion and maintenance of chest tube for drainage;

(4) On-site supply of surfactant;

(5) Computed axial tomography equipment (CAT) or magnetic resonance imaging equipment (MRI);

(6) Equipment necessary for initiation and maintenance of continuous positive airway pressure (CPAP) with ability to constantly measure delineated pressures and including alarm for abnormal pressure ([~~e.g.~~ i.e.] , vent with PAP mode); and

(7) Cardioversion unit with appropriate neonatal paddles and ability to deliver appropriate small watt discharges.

d. The hospital shall document that it has the appropriate equipment necessary for any of the neonatal surgical and special procedures it provides that are specified in its medical protocol and that are required for the specialty level newborn service.

e. The additional equipment requirements for the subspecialty level newborn service are:

(1) Equipment for emergency gastrointestinal, genitourinary, central nervous system, and sonographic studies available 24 hours a day;

(2) Pediatric cardiac catheterization equipment;

(3) Portable echocardiography equipment; and

(4) Computed axial tomography equipment (CAT) and magnetic resonance imaging equipment (MRI).

f. The hospital shall document that it has the appropriate equipment necessary for any of the neonatal surgical and special procedures it provides that are specified in the medical protocol and are required for the subspecialty level newborn service.

9. Support services and other resources.

a. The support services and other resources required for the general level newborn service and all higher levels of newborn services shall be as follows:

(1) Clinical laboratory services and blood bank services available in the hospital on a 24-hour basis. Laboratory and blood bank personnel available on-site or on-call on a 24-hour basis;

(2) Group O Rh negative blood available from the blood bank at all times and the blood bank's ability to provide correctly matched blood within 45 minutes of request;

(3) Hospital laboratory and blood bank personnel capability to perform the following tests with less than 1.0 ml of blood within one hour or less of request if specified: (i) blood group and Rh type determination/cross-matching, (ii) arterial blood gases within 20 minutes, (iii) blood glucose within 20 minutes, (iv) complete blood count, (v) total protein and albumin, (vi) total and direct bilirubin, (vii) direct Coombs' test, (viii) electrolytes, (ix) blood urea nitrogen, (x) clotting profile (may require more than one ml of blood); and

(4) Portable radiological services for basic radiologic studies in the nursery available on-call, within 30 minutes of request, on a 24-hour basis.

b. The additional support services and resources required of the intermediate level newborn service shall be as follows:

(1) A respiratory therapist in-house 24 hours a day. The therapist shall have orientation to the neonatal nursery which includes orientation to the appropriate level of care. The therapist shall have documented competence in neonatal respiratory care;

(2) A radiology technician in-house 24 hours a day;

(3) An ultrasound technician available on-call 24 hours a day;

(4) A laboratory technician in-house 24 hours a day;

(5) A blood bank technician available on call within 30 minutes of request;

(6) A licensed physical therapist or certified occupational therapist available for consultation;

(7) A registered dietitian with documented competence in neonatal nutrition available for consultation;

(8) A biomedical technician, available to the nursery, responsible for the maintenance and safe functioning of specialized medical equipment;

(9) Microvolume assays for xanthines and aminoglycosides available within 12 hours of request;

(10) Blood gases to be performed on 0.25 ml or less heparinized blood within 20 minutes of request;

(11) Blood components available within two hours of request; and

(12) Portable chest x-ray within 20 minutes of request.

c. The specialty level support services and resources that are required in addition to the requirements for the lower level nurseries are as follows:

(1) A blood bank technician in-house 24 hours a day;

(2) A pharmacist with documented competence in neonatal pharmacology on staff;

(3) A licensed physical therapist or certified occupational therapist with documented competence in neonatal care;

(4) A medical social worker as a participating member of the service;

(5) An ultrasound technician on-call 24 hours a day; and

(6) A registered dietitian with documented competence in neonatal nutrition as a participating member of the service.

d. The subspecialty level support services and resources that are required in addition to the requirements of the lower level nurseries are as follows:

(1) A radiologist with documented competence in the interpretation of pediatric and neonatal films readily available for providing pediatric and neonatal x-ray procedures and ultrasound interpretation;

(2) A developmental pediatrician on staff;

(3) A cardiothoracic surgeon with documented competence in pediatric surgical procedures on staff and on-call 24 hours a day;

(4) A pediatric surgeon on staff and on-call 24 hours a day;

(5) An anesthesiologist with documented competence in neonatal anesthesiology on-call 24 hours a day;

(6) The following pediatric subspecialists on staff available to be on-site within 30 minutes of request 24 hours a day:

(a) Cardiology

(b) Endocrinology

(c) Gastroenterology

(d) Genetics

(e) Hematology

(f) Immunology

(g) Infectious diseases

(h) Metabolism

(i) Nephrology

(j) Neurology

(k) Nutrition

(l) Pharmacology

(m) Pulmonology

(7) The following pediatric surgical subspecialists on staff available to be on-site within 30 minutes of request 24 hours a day:

(a) Neurosurgeon [,]

(b) Ophthalmologist [,]

(c) Orthopedic surgeon [,]

(d) Otolaryngologic surgeon [,]

(e) Urologic surgeon [,]

(8) An echocardiography technician on staff;

(9) An American College of Medical Genetics certified or eligible genetics counselor on staff;

(10) In-house 24-hour capability for microchemistries;

(11) Hospital resources to provide for the medical follow up of discharged, high-risk neonates that incorporate a parent education program that includes, but is not limited to, the following:

(a) Pediatric cardiopulmonary resuscitation training;

(b) Home cardiopulmonary monitoring;

(c) Home oxygen monitoring; and

(d) Lactation instruction;

(12) Hospital resources to provide comprehensive, neonatal continuing education to health professionals external to the hospital;

(13) A referral network for cardiovascular surgical consultation; and

(14) The operation of a neonatal transport system on a 24-hour basis. Transports shall be initiated within 30 minutes of request. The neonatal transport system shall operate in accordance with the most current editions of the Guidelines for Air and Ground Transport of Neonatal and Pediatric Patients published by the American Academy of Pediatrics and the Neonatal Transport Standards and Guidelines published by the National Association of Neonatal Nurses.

E. Combined obstetric and clean gynecological service. A hospital may combine obstetric and clean gynecological services. The hospital shall define clean gynecological cases in written hospital policy. A combined obstetric and clean gynecologic service shall be organized under written policies and procedures. The policies and procedures shall be approved by the medical and nursing staff of these services and adopted by the governing body and shall include, but not limited to the following requirements:

1. Cesarean section and obstetrically-related surgery, other than vaginal delivery, shall be carried out in designated operating or delivery rooms. Vaginal deliveries may be performed in designated delivery or operating rooms that are used solely for obstetric or clean gynecologic procedures.

2. Clean gynecological cases may be admitted to the postpartum nursing unit of the obstetric service according to procedures determined by the obstetrics and gynecologic staff and the hospital's infection control committee.

3. Only members of the medical staff with approved privileges shall admit and care for patients in the combined service area. These admissions shall be subject to the medical staff bylaws.

4. Hospitals with a combined service shall limit admission to the service to those patients allowed by policies adopted by the obstetric and gynecological medical staff and the hospital's infection control committee.

5. Unoccupied beds shall be reserved daily in a combined service ready for use by obstetric patients.

6. Patients admitted to the combined service may be taken to radiology or other hospital departments for diagnostic procedures, before or after surgery, if it is not evident that these procedures may be hazardous to the patients or to other patients on the combined service.

7. Patients may receive postpartum or immediate postoperative care in the general recovery room prior to being returned to the combined service area if the following conditions prevail:

a. The recovery room or intensive care unit is a separate unit adjacent to or part of the general surgical operating suite or delivery suite;

b. The recovery room is under the direct supervision of the chairman of the anesthesiology department of the hospital. In separate obstetric recovery rooms, supervision shall be provided by the obstetrician in charge or by physicians approved by the medical staff of the combined service.

8. Nursing care of all patients shall be supervised by a registered nurse.

9. Nursing care of both obstetrical and gynecological patients may be given by the same nursing personnel.

10. Visitor regulations applicable to visitors of obstetric patients shall also apply to visitors of other patients admitted to the combined service.

F. In addition to the infection control requirements specified in § 2.33 of these regulations, the hospital's infection control committee, in cooperation with the obstetric and newborn medical and nursing staff, shall establish written policies and procedures for infection control within the obstetric and newborn services. The policies and procedures shall be adopted by the governing body and shall include, but not be limited, to the following:

1. The establishment of criteria for determining infection-related maternal and newborn morbidity;

2. Written criteria for the isolation or segregation of mothers and newborns, in accordance with Guidelines for Perinatal Care (American Academy of Pediatrics/American College of Obstetricians and Gynecologists) and Control of Communicable Diseases in Man (American Public Health Association) to include at least the following categories:

a. Birth prior to admission to the facility;

b. Birth within the facility but prior to admission to the labor and delivery area;

c. Readmission to the service after transfer or discharge;

d. Presence of infection;

e. Elevated temperature; and

f. Presence of rash, diarrhea, or discharging skin lesions;

3. Written policies and procedures for the isolation of patients in accordance with Guidelines for Perinatal Care (AAP/ACOG) and Control of Communicable Diseases in Man (American Public Health Association) including, but not limited to the following:

a. Ensuring that a physician orders and documents in the patient's medical record the placement of a mother or newborn in isolation;

b. Ensuring that at least one labor room is available for use by a patient requiring isolation;

c. Provisions for the isolation of a mother and newborn together (rooming-in) or separately; and

d. Policies and procedures for assigning nursing personnel to care for patients in isolation.

4. Control of traffic, including personnel and visitors. Policies and procedures shall be established in the event that personnel from other services must work in the obstetric and newborn services or personnel from the obstetric and newborn services must work on other services. Appropriate clothing changes and handwashing shall be required of any individual prior to assuming temporary assignments or substitution from any other area or service in the hospital.

5. Determination of the health status of personnel, and control of personnel with symptoms of communicable infectious disease;

6. Review of cleaning procedures, agents, and schedules in use in the obstetric and newborn services. Incubators or bassinets shall be cleaned with detergent and disinfectant registered by the U.S. Environmental Protection Agency each time a newborn occupying it is discharged or at least every seven days;

7. Techniques of patient care, including handwashing and the use of protective clothing such as gowns, masks, and gloves;

8. Infection control in the nursery including, but not limited to, the following:

a. Closing of the nursery immediately in the event of an epidemic, as determined by the infection control director in consultation with the medical director and the Department of Health;

b. Assigning a newborn to a clean incubator or bassinet at least every seven days;

c. Using an impervious cover that completely covers the surface of the scale pan if newborns are weighed on a common scale, and changing the cover after each newborn is weighed;

d. Gowning in isolation cases;

e. Requiring that nursery personnel wear clean scrub attire in the nursery when they are handling infants. Appropriate cover garments shall be worn over scrub attire when personnel are holding infants. Personnel shall wash their hands after contact with each patient and upon entering or leaving the nursery.

§ 2.29. Psychiatric service.

A. The psychiatric service shall be under the supervision of a physician who meets the qualifications of the medical staff bylaws.

B. Psychiatric units shall conform to the applicable licensure requirements of the Department of Mental Health, Mental Retardation and Substance Abuse Services in accordance with Appendix A, Reference 15.

§ 2.30. Special care units.

A. As used in this section, special care units may be multipurpose or include but not be limited to units for: intensive care, burn care, coronary care, pulmonary care, rehabilitation, and hemodialysis.

B. Special care units shall have a defined organization. Each unit shall be designed and equipped for the defined special functions. Each special care unit shall be governed by written policies and procedures specifically relating to utilization of the service.

C. Each unit shall be under the direction of a physician qualified by training and experience in the specialty care in accordance with medical staff bylaws.

D. Personnel shall be provided based on the scope and complexity of the services provided.

E. The hospital shall have a written plan for a continuing education program developed specifically for personnel of special care units.

§ 2.31. Outpatient (ambulatory care).

A. All hospital outpatient (ambulatory care) services shall conform to all applicable rules and regulations herein, since such services are an integral part of the hospital and covered by its licensure.

B. Freestanding outpatient surgical hospitals shall comply with the provisions of Part IV of these regulations.

Article 4.
Environmental and Maintenance Services.

§ 2.32. Housekeeping service.

A. Written housekeeping procedures shall be established for the cleaning of all areas in the hospital and copies posted in appropriate areas.

B. All parts of the hospital and its premises shall be kept clean, neat, and free of litter and rubbish.

C. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe and sanitary condition.

D. Cleaning solutions and substances shall be labeled, stored in a safe place, and kept separate from food storage and patient care supplies.

E. Cleaning shall be performed in a manner which will minimize the spread of pathogenic organisms in the hospital atmosphere.

F. Exhaust ducts from kitchens and other cooking areas shall be equipped with proper filters and cleaned at regular intervals. The ducts shall be cleaned and inspected no less than twice a year.

§ 2.33. Infection control.

A. Each hospital shall have an infection control committee to perform at least the following functions:

1. Establish a hospital-wide infection surveillance program and designate an infection control officer to conduct all infection surveillance activities and to maintain appropriate records to include infection rates by body site and clinical service and all hospital acquired blood stream pathogens.

2. Establish written policies governing the admission and isolation, including protective isolation, of patients with known or suspected infectious diseases.

3. Develop, periodically evaluate, and revise as needed, infection control policies, procedures and techniques for all appropriate phases of hospital operation and service in order to protect patients, employees, and visitors. These policies shall include, but are not limited to, appropriate employee health screening and immunization and acceptable techniques and practices for high risk procedures such as parenteral hyperalimentation, urinary tract catheterization, dialysis, and intravenous therapy. (Written advice and guidance

is available in the "Guidance for Appropriate Communicable Disease and Employee Health Policies in General and Special Hospitals" provided by the Division of Epidemiology, Virginia Department of Health.)

B. An educational program on infection control for all appropriate personnel shall be conducted.

C. Reporting of diseases shall be as follows:

1. The hospital shall report promptly to the Virginia Department of Health through the local health department cases of disease designated as "reportable diseases" by the Board when such cases are admitted to or are diagnosed in the hospital in accordance with Appendix A, Reference 11. This obligation for reporting shall include all hospital outpatient care and emergency facilities.

2. The hospital shall report promptly to the Virginia Department of Health through the local health department in accordance with Appendix A, Reference 11, any outbreak of infectious disease, including nosocomial infections. An outbreak shall be defined as an increase in incidence of any infectious disease above the usual incidence at the hospital.

3. Two or more epidemiologically related infections, including, but not limited to, staphylococcus aureus, group A beta hemolytic streptococcus, and salmonella species occurring in the obstetrical or nursery units shall be reported to the Virginia Department of Health through the local health department.

§ 2.34. Laundry service.

Each hospital shall make provisions for the safe and effective cleaning of all linens as follows:

1. Hospitals providing laundry service shall have adequate facilities and equipment for the safe and effective operation of such service.

2. There shall be distinct areas for the separate storage and handling of clean and soiled linens. Those areas used for storage and handling of soiled linens shall be negatively pressurized.

3. Special procedures shall be established for the handling and processing of contaminated linens.

4. All soiled linen shall be placed in closed containers prior to transportation.

5. To safeguard clean linens from cross-contamination they shall be:

a. Transported in containers used exclusively for clean linens unless such containers are routinely and regularly sanitized before use as a clean linen transport container and shall be kept covered at all times while in transit; and

b. Stored in areas designated exclusively for this purpose.

Article 5.
Physical Plant Requirements for Existing Buildings.

§ 2.35. General.

Existing inpatient hospitals shall comply with the physical plant requirements in this section.

1. For purposes of this section an existing hospital is one which was licensed, or had approved final working drawings and specifications, or was under construction, prior to the effective date of these regulations.

2. Each hospital or part thereof shall be maintained and equipped in accordance with the codes and standards under which it was constructed to provide a functional, sanitary, safe and comfortable environment.

§ 2.36. Fire and safety.

Each hospital shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations and such a program shall include written procedures for the implementation of said rules and regulations, and logs shall be maintained for at least two years.

§ 2.37. Incinerators.

A. Incinerators shall be designed, constructed and separated from other parts of the building in accordance with Appendix A, Reference 13.

B. Incinerators shall be approved by the Virginia Air Pollution Control Board.

§ 2.38. Lighting and electrical services.

A. Policies and procedures shall be established to minimize the hazards in the use and operation of all electrical equipment.

B. The standards of Appendix A, Reference 14 of these regulations shall serve as a guide to determine the lighting levels within each area of the hospital.

C. All electrical appliances used by hospitals shall have the Underwriters Laboratories' label or its equivalent.

D. An alternate source of electricity to serve critical areas in the event of power failure shall be provided. The emergency system shall be installed so that it is automatically activated in the event of failure of the major power source and shall be capable of providing at least 24 hours of uninterrupted light and power.

§ 2.39. Plumbing.

A. All plumbing material and plumbing systems or parts thereof shall meet the minimum requirements of Appendix A, Reference 14.

B. All plumbing shall be installed in such a manner as to prevent back siphonage or cross connections between potable and nonpotable water supplies.

§ 2.40. Sewage disposal systems.

All required sanitary waste piping systems shall be connected to an approved sewage system.

§ 2.41. Waste disposal.

Pathological and bacteriological wastes, dressings and other contaminated wastes shall be incinerated at the hospital or disposed of by other methods as approved by the licensing agency.

§ 2.42. Water supply.

A. Water shall be obtained from an approved water supply system.

B. The water shall be distributed to conveniently located taps and fixtures throughout the buildings and shall be adequate in volume and pressure for all hospital purposes, including fire fighting.

C. Plumbing fixtures which require hot water and which are intended for patients' use shall be supplied with water which is controlled to provide a maximum tap water temperature of 120°F at the fixture.

D. Hot water heaters and tanks shall be of sufficient capacity to supply the hot water needs for the entire facility at all times.

§ 2.43. Heating system.

The heating system shall be capable of maintaining a temperature of 75°F uniformly throughout the patient areas. Space heaters or heaters of an open coil type shall not be used.

§ 2.44. Ventilation system.

The ventilation system shall be maintained functional at all times to change the air on a basis commensurate with the type of occupancy.

§ 2.45. Patient rooms.

A. All patient bedrooms shall be above ground level and shall have an operable window.

B. No room opening off the kitchen shall be used for patient care.

C. Patients' rooms shall have at least 70 sq. ft. of floor area per bed in multi-bed rooms and 100 sq. ft. per bed in single-bed rooms. The usable space should provide for at least three feet between beds, three feet from the end of the bed to the wall and at least two feet six inches between the bed and the wall.

D. A nurses signaling device shall be provided at each patient's bedside and at all toilet bathing facilities used by patients.

§ 2.46. Nursing units.

The following services shall be provided for each unit:

1. A nurses station shall be provided with space for nurses desk and charting, a medicine preparation area with work counter and sink and a locked medication cabinet. The medication preparation shall be well ventilated.

2. At least one utility room divided into clean and soiled sections (unless separate clean and soiled utility rooms are provided).

3. A janitor's closet with at least a service sink or floor receptor. The janitor's closet shall be separate from any toilet or utility room.

4. Toilet, handwashing and bathing facilities shall be provided on each floor in a reasonable ratio according to the number and sex of patients and personnel.

5. General storage space to accommodate all required supplies and equipment shall be provided.

6. Corridors used by patients shall be maintained free and unobstructed to permit safe patient and personnel traffic.

§ 2.47. Safety procedures.

A. Safety precautions shall be maintained against electrical, mechanical and radiation hazards, as well as against fire and explosion in accordance with the standards of Appendix A, References 8 and 14.

B. All radiographic machines shall be registered with the Bureau of Radiological Health of the Virginia Department of Health. Installation, calibration and testing of machines and storage facilities shall conform to the requirements of Appendix A, Reference 8.

C. Monitoring of personnel and of areas shall be carried out through the use of appropriate measuring devices, and records shall be maintained of results of such monitoring in accordance with the standards of Appendix A, Reference 8.

§ 2.48. Alteration of existing hospitals.

A. Architectural drawings shall be submitted for such alterations in accordance with § 3.8 of these regulations, and the project approved in writing by the department before the changes are made.

B. Alterations in existing hospitals shall not be undertaken unless the changes meet the applicable standards for new buildings in accordance with Part III of these regulations.

PART III.
STANDARDS AND DESIGN CRITERIA FOR NEW BUILDINGS AND ADDITIONS, ALTERATIONS AND CONVERSION OF EXISTING BUILDINGS

Article 1.
Standards and Design Criteria.

§ 3.1. General information.

A. The requirements set forth herein have been established under authority of §§ 32.1-127 and 32.1-132 of the Code of Virginia and constitute minimum requirements for designing, constructing, and equipping of hospitals built in Virginia after the effective date of these regulations.

B. Additions, alterations or renovations to existing licensed hospitals or existing buildings to be occupied as a hospital shall conform to these minimum requirements, except where variances are granted by the Commissioner in accordance with § 1.3 A of these regulations.

C. Conversions of existing buildings to hospital occupancy shall be considered only in those buildings which were originally constructed for institutional occupancy. Variances may be considered by the Commissioner in accordance with § 1.3 A of these regulations provided patient care and safety to life from fire are not adversely affected by such variance.

D. Additions, alterations and renovations to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing patient care services. Access, exitways, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction.

§ 3.2. Codes and fire safety.

All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a hospital shall comply with the applicable sections of the following state and local codes:

1. Statewide Uniform Building Code, including the requirements of the Life Safety Code, National Fire Protection Association, #101, 1973 Edition;

In matters regulated by both the Statewide Uniform Building Code and the Life Safety Code, the requirements of the Life Safety Code shall supersede the Statewide Uniform Building Code.

2. Rules and Regulations approved by the State Board of Health and the State Water Control Board governing sewage systems (VR 355-17-02).

3. Waterworks Regulations (VR 355-18-000) approved by the State Board of Health;

4. Solid Waste Management Regulations (VR 672-20-10) and Hazardous Waste Management Regulations (VR 672-10-1) approved by the Virginia Waste Management Board;

5. Local zoning housing and building ordinances.

§ 3.3. Certification of medical care facilities.

Under authority of § 32.1-137 of the Code of Virginia the board is the sole state agency of the Commonwealth authorized to enter into a contract with the United States government for the certification of medical facilities under Title XVIII of the Social Security Act or any amendments thereto.

§ 3.4. Special design considerations for the handicapped.

Special design features for the handicapped (patients, staff, and visitors) shall be provided for all hospitals. The following items are listed to emphasize some of these special design elements.

1. Walkways and curbs shall be planned to facilitate travel by people in wheelchairs, on crutches or walkers.

2. Signals, such as elevator calls, shall be both audible and visible. Elevator control buttons shall be accessible to wheelchair occupants.

3. Not less than 2.0% of all parking spaces (with a minimum of two spaces) shall be set aside for the handicapped.

4. Special design attention shall be given to the shielding of sharp projections, moving parts, and heated surfaces.

5. Drinking fountains, toilets, handwashing facilities and telephones shall be available for physically handicapped patients, staff, and visitors. At least one bathing facility, one handwashing lavatory, and one toilet on each nursing floor shall be provided for physically handicapped patients.

6. At least one primary grade level entrance to the building shall be arranged to be fully accessible to handicapped persons.

7. Provisions shall be made to identify each room and each floor for the visually handicapped, such as using raised letters or numerals at corridor doors and elevator entrances and controls.

8. All carpeting in areas subject to use by handicapped individuals shall be specified as high density, with a low, uncut pile. Underlayments are permissible provided they are specified as firm or hard and do not exceed 3/8 inches in depth. Carpets, and underlayments if used, shall be installed stretched taut and securely anchored at all edges to the floor to provide a minimum of resistance to wheelchair travel and to avoid tripping hazards.

§ 3.5. Site requirements.

A. The following shall be considered in selecting the site of any new hospital:

1. Easy access to the community and to service vehicles such as fire protection apparatus and other emergency vehicles.

2. The accessibility by public transportation.

3. Accessibility to professional personnel (physicians, nurses) and other employees.

4. Availability of water supply and sewage disposal services and facilities. The water supply system shall provide adequate capacity for domestic and fire protection systems.

5. To minimize flood damage, due consideration shall be given to possible flood effects when selecting and developing the site.

B. Paved roads shall be provided within the lot to provide access to the main entrance, emergency entrance, and to service entrances, including loading docks for delivery trucks. Hospitals which have an organized outpatient service shall have the outpatient entrance well marked to facilitate entry from the public roads or streets serving the site. Access to the emergency entrance shall not conflict with other vehicular traffic or pedestrian traffic. Paved walkways shall be provided for necessary pedestrian traffic.

C. Each hospital shall have parking space to satisfy the minimum needs of patients, employees, staff, and visitors. A

minimum of two parking spaces per licensed bed may be used as a guideline. This ratio may be reduced in an area convenient to a public transportation system or to public parking facilities or where other arrangements to reduce traffic have been developed if justification is included in the narrative program and provided that approval of any reduction is obtained from the appropriate state or local agency. Additional parking may be required to accommodate outpatient and other services and space shall be provided for emergency and delivery vehicles.

D. The site and building shall be designed to minimize any adverse environmental effects on the neighborhood and community. All applicable Federal and State regulations pertaining to environmental pollution such as noise, air, and traffic must be met.

§ 3.6. Equipment.

A. All equipment necessary for the operation of the hospital as designed, shall be shown on the drawings or equipment list. The design shall provide for the installation and replacement of large and special items of equipment, and also make provision for the accessibility to service and maintenance of all fixed equipment.

B. Equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications shall be so identified on the drawings to ensure coordination with the architectural, mechanical, and electrical phases of construction.

§ 3.7. Record drawings and manuals.

A. Upon completion of the contract, the hospital shall maintain a complete set of legible drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.

B. The hospital shall maintain a complete set of installation, operation, and maintenance manuals for the installed equipment.

C. The hospital shall maintain complete design data of the building(s) including structural design loadings, summary of heat loss assumptions and calculations, estimated water consumption, and electric power requirements of installed equipment.

§ 3.8. Drawings and specifications.

A. Architectural drawings and specifications for all new construction or for additions, alterations or renovations to any existing building shall be submitted to the licensing agency for review. Construction shall not be commenced prior to approval by the [office.

B. Architecture drawings and specifications and any revisions thereto shall be dated, stamped with licensure seal and signed by the architect. The architect shall certify that the drawings and specifications were prepared to conform to building code requirements.

C. Drawings for all proposed alterations shall be submitted to the licensing agency for approval. Minor alterations which do not affect the structural integrity of the building, fire safety, functional operation, or which do not increase capacity over that for which the hospital is licensed, may be freehand sketches or drawings. Maintenance and repairs routinely done by the hospital do not require approval of the licensing agency, but shall be done in compliance with the applicable provisions of these regulations.

§ 3.9. Construction inspections and certifications.

A. The owner of a hospital shall notify the licensing agency in writing, not later than 10 days after the date construction is commenced; and also when stages of construction are 50%, 75% and 95% and on completion.

B. At the completion of construction the contractor shall certify, in writing, that the project was constructed to the requirements shown in the approved drawings and specifications. A copy of this certification must be forwarded to the licensing agency.

C. The architect shall issue a Certificate of Substantial Completion and prepare a final punch list prior to the final construction inspection by the licensing agency.

D. The hospital shall provide the licensing agency with a copy of certification of testing in accordance with applicable codes and standards for the emergency electrical system, medical gas system, isolated power systems, radiation protection, and elevators, when applicable.

§ 3.10. General physical plant requirements.

A. Hospitals shall conform to applicable sections of these physical plant requirements according to the proposed services to be provided.

B. The sizes of the space for various departments will depend upon program requirements and organization of service within the hospital. Some functions requiring separate spaces or rooms may be combined provided the resulting design will not compromise the best standards of safety and of medical and nursing practices.

C. Space for dietary, laundry, power plant, mechanical equipment, ambulance entrance, autopsy or morgue, loading dock, incinerator, garbage can cleaning and storage areas for garbage and trash shall be located or constructed in a manner that will minimize noise, steam, odors, hazard and unsightliness to patient bedrooms, dining rooms, and lounge areas.

§ 3.11. Acute care nursing unit.

A. Acute nursing units shall conform to the following:

1. Patient rooms, service rooms or service areas shall not be used as required corridors or passageways to other patient rooms, service areas or required exits.

2. Patient rooms shall be located no more than 120 feet (36.6m) from the nurses' station, the clean workroom or the soiled workroom.

3. All patient corridors in the nursing unit shall be visible from the nurses' station.

4. Where one or more walls of a court contain a door or window of one or more patient rooms, the least dimension of the court shall be 30 feet (9.14m) between facing structures. A court is defined as an open exterior

space bounded on three or more sides by walls of a structure.

5. Corridors used by patients shall have a minimum width of 8 feet (2.44m). Handrails shall be mounted 33 inches (84cm) above the finished floor and shall have ends that return to the wall.

6. Night lights shall be provided in patient rooms.

B. Each patient room shall meet the following requirements:

1. Minimum room areas exclusive of toilet rooms, closets, columns or other projections shall be 100 square feet (9.29 sq. m) in single-bed rooms and 80 square feet (7.43 sq. m) per bed in multi-bed rooms. In multi-bed rooms, a clearance of 3'8" (1.12m) shall be available at the foot of each bed to permit the passage of beds.

2. Each room shall have direct access to the patient corridor except that such access may be through an anteroom or vestibule.

3. Each room shall be provided with natural light as a primary source of light. Windows shall be openable from the inside, without the use of special tools. Window openings shall be designed to prevent accidental falls by patients.

4. Nurses' calling system shall meet the requirements of § 3.49 of these regulations. Medical gas system shall meet the requirements of § 3.45 of these regulations.

5. One handwashing lavatory shall be provided in each patient room except that it may be omitted from a single-bed or a two-bed room, if a lavatory is located in adjoining toilet room which serves that room only.

6. Each patient shall have access to a toilet room with a water closet without entering the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms.

7. Each patient shall have a wardrobe, locker, or closet that is suitable for hanging full length garments and for storing personal effects.

8. Cubicle curtains for visual privacy shall be provided for each bed in multi-bed rooms.

C. The service areas noted below shall be located in each nursing unit. The size and design requirements for each service area will depend upon the number of beds to be served. Although identifiable spaces are required for each of the indicated functions, consideration will be given to design solutions to accommodate functions without specifying areas or rooms, or the sharing of some functions with other nursing units. Details of such proposals shall be included on the architecture drawings when submitted to the licensing agency. The following shall be provided in each nursing unit.

1. Nursing station with space for nurses' charting, doctors charting, storage for administrative supplies, and a handwashing lavatory. This handwashing lavatory could also serve the drug distribution station, if conveniently located.

2. Nurses office.

3. Toilet room(s) for staff.

4. Individual closets or compartments for the safekeeping of coats and personal effects of nursing personnel shall be located convenient to the nurses station or in a central location.

5. The clean workroom shall contain a work counter, handwashing lavatory and storage area.

6. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, handwashing lavatory, work counter, waste receptacle and linen receptacle.

7. Provision shall be made for convenient and prompt 24-hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. A medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff.

8. A janitor's closet shall be provided with floor receptor or service sink.

9. Clean linen storage shall be a separate closet or a designated area within the clean workroom. If a closed cart system is used, storage may be in an alcove.

10. A nourishment station shall contain a handwashing lavatory, work counter, equipment for serving nourishment between scheduled meals, refrigerator, ice maker and storage cabinets.

11. An equipment storage room shall be used for storage of equipment such as I.V. stands, stretchers, wheelchairs, inhalators, air mattresses, and walkers.

12. Bathtubs or showers shall be provided at the rate of one for each 10 beds which are not otherwise served by bathing facilities within patient rooms. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture and for drying and dressing. At least one bathing facility on each nursing floor shall be designated to permit use by a wheelchair patient with an assisting attendant.

D. Rooms for patients requiring isolation shall be provided at the rate of one for each 40 beds or major fraction thereof. These may be located within each nursing unit or placed together in a separate unit. Each isolation room shall be a single-bed room and designated as a patient room, except as follows:

1. Entrance from the patient corridor shall be through a vestibule (a closed anteroom or a passageway open to the room) which shall contain a handwashing lavatory, storage spaces for clean and soiled materials and gowning facilities;

2. If a closed anteroom is used, a viewing panel shall be provided for observation of the patient from the anteroom.

3. A private toilet room containing a water closet and a bathtub or shower shall be provided for the exclusive use of the patient with direct entry from the patient bed area without passing through the vestibule; and

4. A handwashing lavatory shall be provided for the exclusive use of the patient. It shall be located in the patient room or in the private toilet area.

E. Rooms for disturbed medical patients. When psychiatric facilities are not available elsewhere in the community, each hospital shall provide at least one single bed room for patients needing close supervision for medical and/or psychiatric care. This may be part of the psychiatric unit described in § 3.17 of these regulations. If the room is part of the acute care nursing unit it shall be located so that the doorway is visible for direct supervision. Such room shall be designed to minimize potential for escape, hiding, injury, or suicide.

§ 3.12. Long term care nursing units.

Long term care nursing units, including intermediate and skilled nursing care nursing units shall conform to the requirements of Part III, § 44, of the "Rules and Regulations for the Licensure of Nursing Homes in Virginia (VR 355-33-100)," which includes but is not limited to:

1. A total of 25 square feet (2.32 sq. m) per bed with a minimum size of not less than 225 square feet (20.9 sq. m) shall be provided for patient dining and recreational areas;

2. A separate room and appropriate equipment shall be provided for hair care and grooming needs of patients; and

3. Adequate facilities shall be provided for physical therapy, occupational therapy or activities, and consultation.

§ 3.13. Intensive care unit.

A. Facilities for the intensive care of medical, surgical, or cardiac patients have specific space requirements. These patients, especially those requiring cardiac care, are often acutely aware of the surroundings environment and may be affected by it. Controlling unnecessary noise is important. Each patient may require individual privacy, although each is required to be under constant observation. Natural lighting by windows minimizes the possibility of disorientation. Cardiac intensive care patients shall be housed in single-bed rooms. Intensive care units may be designed with single-bed rooms or multi-bed rooms, provided each unit contains at least one single-bed room. All beds shall be arranged to permit direct visual observation by nursing staff.

B. Patient rooms shall meet the following requirements:

1. Clearance between beds in multi-bed rooms shall be not less than 7'0" (2.13 m). Single-bed rooms or cubicles shall have a minimum clear space of 120 square feet (11.15 sq. m) and a minimum dimension of 10'0" (3.05 m);

2. Viewing panels shall be provided indoors and walls for nursing observation. Curtains or other means shall be provided to cover the viewing panels when the patient requires privacy. Glazing in viewing panels shall be a safety glass, wire glass, or clear plastic, except that wire glass is required in glazed openings to corridors or passageways used as means of egress for fire safety purposes;

3. An I.V. solution support shall be provided for each bed and designed so that the solution is not suspended directly over the patient;

4. A handwashing lavatory and water closet shall be provided in each single bed room. In multibed rooms one handwashing lavatory and water closet for each six beds shall be provided which is directly accessible from the bed area;

5. Each water closet shall have sufficient clearance around it to facilitate its use by patients needing assistance;

6. A nurses calling system which meets the requirements of § 3.49 of these regulations shall be provided;

7. Each patient room shall have an operable window which meets the requirements of § 3.40 of these regulations;

8. Individual lockers of a size to permit hanging of full length garments shall be provided for storage of patient clothing and personal effects. These lockers may be located outside the intensive care units; and

9. A separate visitors waiting room shall be provided in close proximity to the intensive care unit. Toilet, handwashing and public telephone facilities shall be available to the waiting area.

C. The following service areas shall be located in or readily available to each intensive care or cardiac care unit. One area may serve two or more adjacent units. The size and location of each service will depend on the number of beds to be served.

1. A nurses station shall be located to permit direct visual observation of each patient.

2. Handwashing facilities shall be convenient to nurses' station and drug distribution station.

3. Charting facilities shall be separated from monitoring service.

4. Staff's toilet room shall contain a water closet and a handwashing lavatory.

5. Individual closets or compartments for the safekeeping of coats and personal effects of nursing personnel. These shall be located at or near the nurses' station.

6. Clean workroom shall contain a work counter, handwashing lavatory and storage facilities.

7. Soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, handwashing lavatory, work counter, waste receptacle and linen receptacle.

8. Drug distribution station shall meet the requirements of § 3.11 C 7 of these regulations.

9. Janitor's closet shall meet the requirements of § 3.11 C 8 of these regulations.

10. Clean linen storage area shall meet the requirements of § 3.11 C 9 of these regulations.

11. Nourishment station area shall meet the requirements of § 3.11 C 10 of these regulations.

12. Emergency equipment storage space shall be provided for a "crash cart and similar emergency equipment."

13. Equipment storage room area shall meet the requirements of § 3.11 C 11 of these regulations.

§ 3.14. Obstetric nursing unit.

A. The obstetric nursing unit shall be designed to assure the separation of the postpartum patients from any other type of patient. "Clean" gynecological patients, as defined in hospital policy, may be housed on the unit.

B. The obstetric nursing unit shall meet the requirements of § 3.11 C of these regulations, except the following:

1. A handwashing lavatory shall be provided directly in the patient room;

2. A soiled workroom and janitors' closet shall be for the use of the obstetric nursing unit and newborn services unit;

3. All required bathing facilities shall be showers or tub units with showers.

§ 3.15. Newborn nurseries.

A. Newborn infants shall be housed in nurseries which are located adjacent to the obstetric nursing unit. The nurseries shall be designed to preclude unrelated traffic. No nursery shall open directly into another nursery.

B. Each nursery shall contain the following:

1. One handwashing lavatory for each eight bassinets. Lavatories shall be equipped with knee, wrist or foot controls, soap dispenser and paper towel dispenser;

2. The nurse emergency calling system shall meet the requirements of § 3.49 of these regulations;

3. Glazed observation windows to permit viewing infants from public areas, from workrooms, and between adjacent nurseries.

C. The general care nursery shall contain no more than 16 infant stations. A minimum of 3 feet (91 cm) shall be provided between bassinets. The minimum floor area shall be 24 square feet (2.23 sq. m) for each infant station. When a rooming-in program is used, the total number of bassinets provided in the general care nursery may be appropriately reduced, but the nursery may not be omitted.

D. A special care area for infants requiring close observation, such as those with low birth weight, is required in hospitals having 25 or more postpartum beds. The minimum floor area per infant station shall be 40 square feet (3.72 sq. m).

E. Each nursery shall be served by a connecting workroom.

F. The workroom shall contain gowning facilities at the entrance for staff and personnel, work space with counter, refrigerator, storage space and handwashing lavatory which meets the requirements of § 3.45 B of these regulations. One workroom may serve more than one nursery.

G. The examination and treatment room shall contain a work counter, storage, handwashing lavatory and charting facilities. This may be part of the workroom.

H. Janitors' closet. A closet for the use of the housekeeping staff in maintaining the nurseries shall be provided. It shall contain a floor receptor or service sink and storage space for housekeeping equipment and storage.

§ 3.16. Pediatric and adolescent unit.

A. A hospital with a designated pediatric unit shall house young children and adolescents in a nursing unit separate from adults.

B. The requirements of § 3.12 of these regulations shall be applied to a pediatric unit containing pediatric beds, except that patient rooms used for cribs shall contain at least 60 square feet (5.58 sq. m) of clear area for each crib with no more than six cribs in a room.

C. Each nursery serving pediatric patients shall contain no more than 8 bassinets and shall meet the requirements of § 3.15 B of these regulations.

D. The service areas in the pediatric and adolescent nursing unit shall meet the requirements of § 3.12 of these regulations and shall meet the following additional conditions:

1. Multipurpose or individual room(s) shall be provided for dining, educational, and play purposes. Special provisions shall be made to minimize the impact noise transmission through the floor of the multipurpose room(s) to occupied spaces below;

2. Patient's toilet room(s) be provided convenient to multipurpose room(s) and central bathing facilities;

3. Storage closets or cabinets for toys and for educational and recreational equipment shall be provided; and

4. Storage space shall be provided for replacement of cribs and beds to provide flexibility for interchange of patient accommodations.

§ 3.17. Psychiatric nursing unit.

A. Units intended for psychiatric nursing care shall be designed to facilitate care of ambulatory and non-ambulatory inpatients. Insofar as practical, provisions shall be made for flexibility in arranging various types of psychiatric therapy, and to present as noninstitutional an atmosphere as possible.

The unit shall provide a safe environment for patients and staff.

B. Psychiatric units shall conform to the licensure requirements of the Department of Mental Health, Mental Retardation and Substance Abuse Services, Appendix A, Reference 15, insofar as they do not conflict with life safety requirements for the total hospital or affect patients care in other section of the hospital.

§ 3.18. Surgical facilities.

A. The number of operating room and recovery beds and the sizes of the service areas are based on the expected surgical workload and shall be located and arranged to preclude unrelated traffic through the suite.

B. Each general operating room shall have a minimum clear area of 360 square feet (33.45 sq. m), exclusive of fixed and movable cabinets and shelves, with a minimum dimension of 18'0" (5.49m) between two walls. Each room shall contain an emergency communications system connecting with the surgical suite control station and at least two X-ray film illuminators. Storage space for splints and traction equipment shall be provided for rooms equipped for orthopedic surgery.

C. Room(s) for surgical cystoscopic and other endoscopic procedures shall be designed to accommodate the types of procedures to be used but shall have not less than a minimum clear area of 250 square feet (23.23 sq. m), exclusive of fixed and movable cabinets and shelves. Each room shall contain an emergency communications system connecting with the surgical suite control station. Facilities for the disposal of liquid wastes shall be provided.

D. Recovery room(s) for post-anesthesia recovery of surgical patients shall be provided and shall contain a drug distribution station, handwashing facilities, charting facilities, clinical sink and storage space for supplies and equipment. Design space shall provide for at least 3'0" each side of each recovery bed. Separate and additional recovery space may be necessary to accommodate surgical outpatients.

E. Individual service rooms shall be provided when so noted, otherwise alcoves for other open spaces which will not interfere with traffic may be used. Services, except the soiled workroom and the janitors' closet may be shared with and organized as part of the obstetrical facilities. Service areas shall be arranged to avoid direct traffic between the operating and the delivery rooms. The following service areas shall be provided:

1. Control station located to permit visual surveillance of all traffic entering the operating suite;

2. Supervisor's office or station;

3. Sterilizing facilities with high speed autoclave(s) conveniently located to serve all operating rooms. When the program plan indicates that adequate provisions have been made for replacement of sterile instruments during surgery sterilizing facilities in the surgical suite will not be required;

4. Provision for a drug distribution station shall be made for the storage and preparation of medication;

5. At least two scrub stations shall be provided near the entrance to each operating room. Two scrub stations may serve two operating rooms if they are located adjacent to the entrance of each operating room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts;

6. The soiled workroom shall be for the exclusive use of the surgical suite personnel and shall contain a clinical sink or equivalent flushing type fixture, work counter, handwashing lavatory, waste receptacle and linen receptacles;

7. Fluid waste disposal facilities shall be conveniently located to the general operating rooms. A clinical sink or equivalent equipment in a soiled workroom would meet this requirement;

8. A clean workroom is required when clean materials are assemble within the surgical suite prior to use. The clean workroom shall contain a work counter, handwashing lavatory and space for clean and sterile supplies;

9. Anesthesia storage facilities unless official hospital board action prohibits, in writing, the use of flammable anesthetics a separate room shall be provided for storage of flammable gases in accordance with the requirements of NFPA 56A and NFPA 70;

10. Anesthesia workroom for cleaning, testing and storing anesthesia equipment shall contain a work counter and sink;

11. Medical gas supply with storage space for reserve nitrous oxide and oxygen cylinders shall be provided;

12. Equipment storage room(s) for equipment and supplies used in surgical suite;

13. Appropriate areas for staff clothing change shall be provided for personnel working within the surgical suite. The areas shall contain lockers, showers, toilets, handwashing lavatories and space for donning scrub suits and boots;

14. In facilities with two or more operating rooms, a room or alcove as a patient holding area shall be provided to accommodate stretcher patients waiting for surgery. This waiting area shall be under the visual control of the staff;

15. Stretcher storage area shall be out of direct line of traffic;

16. Lounge and toilet facilities for surgical staff shall be provided in hospitals having three or more operating rooms and shall be located to permit use without leaving the surgical suite. A staff toilet room shall be provided near the recovery room(s);

17. A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite;

18. An outpatient surgery change area shall be provided where outpatients change from street clothing into

hospital gowns and are prepared for surgery. This would include a waiting room, lockers, toilets and clothing change or gowning area; and

19. Provisions shall be made for separating inpatient and outpatient recovery where outpatients are not subjected to general anesthesia. This requirement may be satisfied by separated rooms or by scheduling of procedures.

§ 3.19. Labor and delivery facilities.

A. Existing hospitals with licensed obstetric and newborn services in operation prior to the effective date of these regulations or revisions thereof, shall comply with all of the regulations of this section with the exception of the minimum dimensions and square footage requirements for labor rooms and LDR/LDRP rooms provided in subsections D and E of this section. Existing hospitals may not decrease the dimensions of the labor rooms and LDR/LDRP rooms from what was specified in the regulations at the time the service, or parts thereof, was granted licensure approval. Labor rooms and LDR/LDRP rooms that are renovated at the time the service, or parts thereof, was granted licensure approval. Labor rooms and LDR/LDRP rooms that are renovated in existing hospitals or are newly constructed after the effective date of these regulations shall conform with all of the room dimensions specified in this solution.

B. The number of labor rooms, delivery rooms, recovery beds, and the sizes of the service areas shall depend upon the estimated obstetrical workload.

1. The labor and delivery suite shall be designed and arranged to assure separation of obstetrical patients from other types of patients and to preclude unrelated traffic through the suite.

2. Labor and delivery rooms shall be entirely separate from emergency and operating rooms.

C. Each delivery room shall have a minimum clear area of 300 square feet (27.87 sq. m) exclusive of fixed and movable cabinets and shelves. The minimum dimension shall be 16'0" (4.88 m) in any direction between two walls. Separate resuscitation facilities (electrical outlets, oxygen, suction, and compressed air) shall be provided for newborn infants.

D. Labor rooms shall be single-bed or two bed rooms with a minimum clear area of 180 square feet per bed. In facilities having only one delivery room, two labor rooms shall be provided one of which shall be large enough to function as an emergency delivery room with a minimum of 300 square feet. Labor rooms shall have at least two oxygen and two wall-mount suction outlets. Each labor room shall contain a handwashing lavatory. Each labor room shall have access to a toilet room. One toilet room may serve two labor rooms. At least one shower shall be provided for labor room patients without patients having to enter a corridor or general area. A water closet shall be accessible to the shower facility.

E. Hospitals, which include LDR/LDRP rooms in their obstetrical program, shall designate room(s) within the labor suite for this purpose. Such rooms(s) shall be designated and arranged to prohibit unrelated traffic through the labor and delivery suite. These rooms shall meet the requirements of a labor room which may be used as an emergency delivery room as specified in subsection D of this section. The minimal dimensions shall be 16'0" clear between walls or fixed cabinets or shelving. The rooms shall have a clear area of 300 square feet. Each LDR/LDRP room shall have access to a private water closet and shower. The water closet and shower may be shared by two rooms.

F. The recovery room shall contain a minimum of two beds, charting facilities located to permit staff to have visual control of all beds, facilities for medicine dispensing, handwashing facilities, clinical sink with bedpan flushing device, and storage for supplies and equipment.

G. Individual rooms shall be provided when so noted, otherwise, alcoves or other open spaces which will not interfere with traffic may be used. Service areas, except the soiled workroom and the janitors' closet, may be shared with in the obstetrical unit. If shared, service areas shall be arranged to avoid direct traffic between the delivery and operating rooms. The following services shall be provided:

1. Control station located to permit visual surveillance of all traffic which enters the labor and delivery suite;

2. Supervisor's office or station;

3. Sterilizing facilities with high speed autoclave(s) conveniently located to serve all delivery rooms. When provisions have been made for replacement of sterile instruments during a delivery, sterilizing facilities will not be required;

4. Provisions for a drug distribution station shall be made for storage, preparation, and dispensing of medication;

5. At least two scrub stations shall be provided near the entrance to each delivery room. Two scrub stations may serve two delivery rooms if they are located adjacent to the entrance of each delivery room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts;

6. The soiled workroom shall be for the exclusive use of the labor and delivery room personnel and shall contain a clinical sink or equivalent flushing type fixture work counter, handwashing lavatory, waste receptacle and linen receptacle;

7. Fluid waste disposal facilities conveniently located to the delivery rooms. A clinical sink or equivalent in a soiled workroom or soiled holding room would meet this requirement;

8. A clean workroom shall contain a work counter, handwashing lavatory, and space for clean and sterile supplies;

9. Unless official hospital board action, in writing, prohibits use of flammable anesthetics a separate room shall be provided for storage of flammable gases in accordance with the requirements detailed in NFPA 99 and NFPA 70;

10. An anesthesia workroom for cleaning, testing and storing anesthesia equipment shall contain a work counter and sink;

11. A medical gas storage space for reserve storage of nitrous oxide and oxygen cylinders shall be provided;

12. Equipment storage room(s) for equipment and supplies used in the labor and delivery suite;

13. Appropriate staff's clothing change areas shall be provided personnel working within the labor and delivery suite. The areas shall contain lockers, showers, toilets, handwashing lavatories, and space for donning scrub suits and boots;

14. Lounge and toilet facilities for obstetrical staff and nurses shall be provided near the labor rooms and recovery room(s);

15. A janitor's closet containing a floor receptor or service sink and storage for housekeeping supplies and equipment shall be provided for the labor and delivery suite to be shared only with the newborn services unit;

16. The stretcher storage area shall be out of direct line of traffic;

§ 3.20. Outpatient and emergency suite.

A. Facilities for minimum emergency care shall be provided in each hospital as specified in subsection B of this section. Facilities for outpatient care shall be provided as required by the hospital program.

B. The extent of emergency patient care services planned for the hospital will depend upon community needs and availability of other organized programs for emergency care within the community. Hospitals what plan for a minimum level of emergency services shall provide at least an entrance, treatment room, and patient's toilet room convenient to the treatment room. Hospitals which have an organized program for emergency care must meet the following minimum requirements:

1. An entrance at grade level, sheltered from the weather, and with provision for ambulance and pedestrian access;

2. A reception and control area which is conveniently located near the entrance, waiting area and treatment rooms;

3. Public waiting space with toilet facilities, public telephone and drinking fountain;

4. Treatment rooms. Handwashing facilities shall be provided in each room or shall be conveniently adjacent to each room. The rooms shall contain cabinets, medication storage, work counter, suction outlets, x-ray film illuminators, and space for storage of emergency equipment such as emergency treatment trays, defibrillator, cardiac monitor and resuscitator;

5. Storage area out of line of traffic for stretchers and wheelchairs;

6. Staff work and charting area(s). This may be combined with reception and control area or located within the treatment room;

7. Clean supply storage. This may be a separate room or located within the treatment room;

8. Soiled workroom or area containing clinical work, work counter, handwashing lavatory, waste receptacle and linen receptacle; and

9. Patient toilet room convenient to treatment room(s).

C. The outpatient administrative, clinical, and diagnostic space will be determined by the types of services to be offered and the estimated patient load. The design of outpatient facilities should provide for the privacy and dignity of the patient during interview, examination, and treatment. The facilities shall be located so that outpatients do not pass through inpatient units. The following shall be provided or made available to the outpatient service:

1. The entrance shall be located at grade level, sheltered from weather, and able to accommodate wheelchairs.

2. The lobby shall include:

a. Wheelchair storage space(s);

b. Reception and information counter or desk;

c. Waiting space(s);

d. Public toilet facilities;

e. Public telephones; and

f. Drinking fountain(s).

3. An area for private interviews relating to social service, credit, and admissions.

4. General or individual office(s) shall be provided for business transactions, records, and administrative and professional staffs.

5. Storage space for employees' personal effects; and

6. Storage facilities for office supplies, sterile supplies, pharmaceutical supplies, splints and other orthopedic supplies and housekeeping supplies and equipment.

7. General and special purpose examination room(s). Each room shall have a minimum floor area of 80 square feet (7.43 sq. m), excluding such spaces as vestibule, toilet, closet and water counter (whether fixed or movable). Arrangement shall permit at least 2'8" (81 cm) clearance at each side and at the foot of the examination table. A handwashing lavatory and a counter or shelf space for writing shall be provided.

8. Treatment rooms. Each room used for minor surgical procedures and cast procedures shall have a minimum floor area of 120 square feet (11.15 sq. m), excluding such spaces as vestibule, toilet, closet and work counter (whether fixed or movable). The minimum room dimension shall be 10'0" (3.05 m) between two walls. A work counter, storage cabinets and a handwashing lavatory shall be provided.

9. Observation room(s). A room handling isolation, suspect, or disturbed patients shall be conveniently located to nurses' station or other control station. Patients shall have access to a toilet room without entering the general corridor area. A separate room is

not required if an examination room is modified to accommodate this function.

10. Facilities for charting and for clinical records. A nurses station with work counter, communication system, and space for supplies shall be provided. A separate space may be omitted if these functions are accommodated in each examination room and each treatment room.

11. Drug distribution station. This area shall meet the requirements of § 3.11 C 7 of these regulations.

12. Clean workroom. The clean workroom shall meet the requirements of § 3.13 C 6 of these regulations.

13. Soiled workroom or soiled holding room. The soiled workroom shall contain clinical sink or equivalent flushing rim fixture, handwashing lavatory, work counter, waste receptacle, and linen receptacle. A soiled holding room that is part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and the work counter may be omitted.

14. Stretcher storage space out of direct line of traffic.

D. Radiological facilities for diagnostic services shall be made available to the outpatient and emergency service. If a separate radiological unit is installed within the outpatient and emergency areas it shall comply with the requirements of § 3.21 of these regulations.

§ 3.21. Radiology suite.

Equipment for the radiology suite shall be provided for diagnostic purposes required by the hospital program. The suite shall contain the following elements:

1. Radiographic room(s). Radiation protection meet the requirements of § 3.40 V of these regulations;

2. Film processing facilities;

3. Viewing and administration area(s) with film storage facilities;

4. A toilet room with handwashing facilities which are directly accessible from each fluoroscopy room without entering the general corridor area;

5. A dressing area(s) with convenient access to toilets;

6. A waiting room or alcove for ambulatory patients;

7. A holding area for stretcher patients which is out of the direct line of normal traffic; and

8. Handwash facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening such as for chest X-rays.

§ 3.22. Diagnostic laboratory suite.

A. Diagnostic laboratory facilities shall be provided for hematology, clinical chemistry, urinalysis, cytology, pathology, microbiology and bacteriology to meet the workload proposed in the hospital program. These services may be provided within the hospital or through a contract arrangement with a reference laboratory.

B. If laboratory services are provided by contractual arrangement at least the following minimum services shall be available within the hospital:

1. A laboratory work counter(s) with sink, medical gases, and electrical services;

2. A lavatory(ies) or counter sink(s) equipped for handwashing;

3. Storage cabinet(s) or closet(s);

4. Blood storage facilities; and

5. Specimen collection facilities. Urine collection rooms shall be equipped with a water closet and handwashing lavatory. Blood collection facilities shall have a work counter, handwashing lavatory, and space for patient seating.

§ 3.23. Renal dialysis suite.

A. The following requirements include facilities for outpatient renal dialysis treatment. The number and type of treatment stations and the sizes of the service areas shall be based upon the projected patient load, the condition of the patients to be treated and the type of service to be provided. Inpatients will be housed in nursing units conforming to the requirements of § 3.11 of these regulations.

B. The treatment area shall contain the number of stations required by the program and shall include the following:

1. Patient treatment station areas shall have a minimum of 80 square feet (7.43 sq. m);

2. Cubicle curtains shall be provided around each treatment station for privacy;

3. Handwashing lavatories with knee or foot controls shall be provided at the rate of one for each six treatment stations;

4. Windows shall be provided conforming to requirements specified in § 3.40 of these regulations;

5. Patient toilet facilities shall be conveniently located to the treatment area and be equipped to accommodate the physically handicapped;

6. Patient locker facilities shall be provided for outpatients and be conveniently located to the treatment area; and

7. Provisions shall be made for the isolation or treatment of hepatitis B positive antigen patients.

C. The following service areas shall be located in or conveniently adjacent to the renal dialysis suite. The size and location of each service area will depend upon the number of patient stations served:

1. Nurses station shall be located to permit direct visual observation of each patient being treated. The station shall be provided with an emergency communication system connected to a central control station.

2. Charting facilities for nurses and doctors.

3. Lounge and toilet room(s) for staff.

4. Individual closets or compartments for the safekeeping of personal effects of nursing personnel. These shall be located convenient to the nurses station or in a central location.

5. Clean workroom. The clean workroom shall meet the requirements of § 3.11 C 5 of these regulations.

6. Soiled workroom. The soiled workroom shall meet the requirements of § 3.11 C 6 of these regulations.

7. Drug distribution station. This area shall meet the requirements of § 3.11 C 7 of these regulations.

8. Supply storage. A separate room for dialysis supplies shall be provided.

9. Equipment workroom and storage. A separate room shall be provided for the water treatment equipment and the repairs, adjustments, cleaning and sanitizing of dialysis equipment.

10. Nourishment station. This station shall meet the requirements of § 3.11 C 10 of these regulations. The station may be combined with or a part of the Clean Workroom on the Medication Station.

11. Janitor's closet. The janitor's closet shall meet the requirements of § 3.11 C 8 of these regulations.

D. A separate waiting area shall be provided for patients and family members and others bringing patients to and from the treatment facility or visiting with patients during treatment. A toilet room, public telephone, drinking fountain and seating accommodations shall be provided.

§ 3.24. Physical therapy suite.

Appropriate areas may be designed and arranged for shared use by occupational therapy patients and staff. If a physical therapy area is required by the hospital program, the following elements shall be provided:

1. Treatment area(s) shall be provided with the required space and equipment designed for the planned program and may include thermotherapy, diathermy, ultrasonics, and hydrotherapy;

2. Provisions shall be made for individual patient privacy, handwashing facilities and facilities for the collection of soiled linen and other material;

3. Exercise area;

4. Storage for clean linen, supplies, and equipment;

5. Toilet room equipped for the physically handicapped with water closet and handwashing lavatory;

6. Service sink; and

7. Wheelchair and stretcher storage.

§ 3.25. Occupational therapy suite.

The following appropriate areas may be designed and arranged for shared use by physical therapy patients and staff. If an occupational therapy suite is required by the hospital program, the following elements shall be provided:

1. The activities area shall include sink or lavatory and facilities for collection of waste products prior to disposal;

2. Storage for supplies and equipment; and

3. Toilet room equipped for the physically handicapped with water closet and handwashing lavatory.

§ 3.26. Inhalation therapy unit.

If an inhalation therapy unit is required by the hospital program, it shall be located convenient to the Intensive Care/Cardiac Care Unit and shall contain the following elements:

1. Office space including records file;

2. Storage for supplies and equipment;

3. Equipment servicing area; and

4. Separate soiled and clean workrooms which meet the requirements of §§ 3.11 C 5 and 3.11 C 6 of these regulations.

§ 3.27. Morgue and autopsy.

These facilities shall be designed for direct access to an outside entrance and shall be located to avoid movement of bodies through public use areas.

1. The following elements shall be provided when autopsies are performed within the hospital:

a. Work counter with handwashing lavatory;

b. Storage space for supplies, equipment, and specimens;

c. Autopsy table;

d. Clothing change area with shower, toilet, and lockers;

e. Janitor's service sink or receptacle; and

f. Refrigerated facilities for body-holding.

2. If autopsies are performed outside the hospital, only a well-ventilated body-holding room needs to be provided.

§ 3.28. Pharmacy suite.

The size and type of space to be provided in the pharmacy will depend upon the type of drug distribution system used in the hospital and whether the hospital proposes to provide, purchase, or share pharmacy services with other medical facilities. Provision shall be made for the following functional areas:

1. Dispensing area with handwashing lavatory;

2. Editing or order review area;

3. Sterile Products area. For the compounding of I.V. admixtures and other sterile products. May also be used for extemporaneous compounding;

4. Administrative areas. Office area for the pharmacist and any other personnel required for the proper maintenance of records and reports and for purchasing and accounting;

5. Storage areas. Areas for bulk, refrigeration, vault, volatile liquids storage shall be provided;

6. Drug information area;

7. Packaging area. Provide an area only if required by the hospital program;

8. Bulk compounding area. Provide an area only if required by the hospital program; and

9. Quality control area. An area is required only if either packaging or bulk compounding areas are provided.

§ 3.29. Dietary facilities.

A. Food service facilities shall be designed and equipped to meet the requirements of the hospital program. These may consist of areas for an on-site conventional food preparing system, a convenience food service system, or an appropriate combination of the two.

B. The following facilities shall be provided in the size required to implement the type of food service selected:

1. Control station for receiving food supplies;

2. Storage space for food supply including food requiring cold storage. At least 2 cubic feet of refrigerated storage per bed (0.05 cubic meter per bed) and 2 square feet of dry food storage per bed (0.7 sq. m per bed) shall be provided;

3. Food preparation facilities. Conventional food preparation systems require space and equipment for preparing, cooking, and baking. Convenience food service systems such as frozen prepared meals, bulk packaged entrees, and individual packaged portions, or systems using contractual commissionary services require space and equipment for thawing, portioning, cooking, or baking;

4. Handwashing facility(ies) located in the food preparation area;

5. Patients meal service facilities such as, tray assembly and distribution;

6. Warehousing space located in a room or an alcove separate from food preparation and serving areas with commercial-type dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using area. A handwashing lavatory shall be conveniently available to the area;

a. Energy saving dishwashing equipment may be used if the equipment is approved by the licensing agency prior to installation.

b. Potwashing facilities;

c. Sanitizing facilities and storage areas for cans, carts, and mobile tray conveyors. The sanitizing facilities may be combined with those required for linen services;

d. Waste storage facilities shall be provided in a separate room which is easily accessible to the outside for direct pickup or disposal;

e. Office or suitable work space for the dietitian or the food service supervisor;

f. Toilets with handwashing lavatory which is for dietary staff conveniently accessible but does not open directly into food service areas;

g. Janitors' closet located within the dietary department. The closet shall meet the requirements of § 3.11 C 8 of these regulations; and

h. Icemaking facilities may be provided in areas separate from food preparation area but shall be easily cleanable and convenient to dietary facilities.

§ 3.30. Administration and public areas.

The following areas shall be provided:

1. The entrance shall be at grade level, sheltered from the weather, and able to accommodate wheelchairs.

2. The lobby shall include space for:

a. Storage for wheelchairs;

b. Reception and information counter or desk;

c. Waiting space(s);

d. Public toilet facilities;

e. Public telephones; and

f. Drinking fountain(s).

3. Space for private interviews relating to social service, credit, and admissions.

4. Space for business transactions, medical and financial records, and administrative and professional staffs.

5. Storage space for office equipment and supplies.

§ 3.31. Medical records service.

The following rooms or areas shall be provided:

1. Medical records administrator/technician office or space;

2. Review and dictating room(s) or spaces;

3. Work area for sorting, recording, or microfilming records; and

4. Storage area for records.

§ 3.32. Central services department.

The various elements shall be designed and arranged to provide one-way traffic pattern for supplies from soiled to clean to sterile. The following shall be provided:

1. Receiving and decontamination room. The room shall contain work space and equipment for cleaning medical and surgical equipment and for disposal of or processing unclean material. Handwashing facilities,

lockers, showers, and toilets for staff shall be provided in this area if they are not available in adjacent employee facilities serving other soiled areas;

2. Clean workroom. The room shall contain work space and equipment for sterilizing and disinfecting medical and surgical equipment and supplies and handwashing facilities;

3. Storage areas for clean supplies and for sterile supplies. This area may be in clean workroom; and

4. Cart storage. This area shall meet the requirements of § 3.34 of these regulations.

§ 3.33. Linen service.

A. If linen is to be processed on the site, the following elements shall be designed and arranged to provide a one-way traffic pattern of linens from soiled processing to clean storage and include the following:

1. Soiled linen receiving, holding, and sorting room with handwashing facilities;

2. Laundry processing room with commercial type equipment and handwashing facilities. Energy saving laundry equipment may be considered if it is approved by the licensing agency prior to installation;

3. Storage for laundry supplies;

4. A janitors' closet which meets the requirements of § 3.11 C 8 of these regulations;

5. Clean linen inspection and mending room or area;

6. Clean linen storage, issuing, and holding room or area; and

7. Cart storage and sanitizing facilities which meet the requirements of § 3.34 of these regulations.

B. If linen is to be processed off-site the site, the following shall be provided:

1. Soiled linen holding room with a handwashing lavatory;

2. Clean linen receiving, holding, inspection, and storage room(s); and

3. Cart storage and sanitizing facilities which meet the requirements of § 3.34 of these regulations.

§ 3.34. Facilities for cleaning and sanitizing carts.

A. Facilities shall be provided to clean and sanitize carts serving the central services, dietary, and linen services. These may be centralized or departmentalized.

B. At a minimum, a separate area will be provided with a floor drain, a reel type spray hose with hot and cold water and a steam gun.

§ 3.35. General stores.

General stores shall include the following:

1. Offstreet unloading facilities;

2. Receiving area;

3. General storage rooms. A total area of not less than 20 square feet (1.86 sq. m) per inpatient bed shall be provided. General stores shall be concentrated in one area, but, in a multiple building complex, they may be in separate concentrated areas in one or more individual buildings; and

4. Additional storage area for outpatient facilities. At least 5.0% of the total area of the outpatient facilities shall be provided. This area may be combined with the general stores or located within the outpatient department.

§ 3.36. Employees facilities.

In addition to the employees' facilities as locker rooms, lounges, toilets, or shower facilities called for in certain departments, a sufficient number of such facilities that may be required to accommodate the needs of all personnel and volunteers shall be provided.

§ 3.37. Janitors' closets.

In addition to the janitors' closets called for in certain departments, sufficient janitors' closets shall be provided throughout the hospital to maintain a clean and sanitary environment. Each closet shall meet the requirements of § 3.11 C 8 of these regulations.

§ 3.38. Engineering service and equipment areas.

The following shall be provided:

1. Room(s) or separate building(s) for boilers mechanical equipment and electrical equipment;

2. Engineer's office;

3. Maintenance shop(s);

4. Storage room for building maintenance supplies; and

5. A separate room or building for yard maintenance equipment and supplies.

§ 3.39. Waste processing service.

A. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, sterilization, compaction, containerization, removal, or by a combination of these techniques.

B. A gas, electric, or oil fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste shall include, but shall not be limited to, dressings and material from open wounds, laboratory specimens, and all waste material from isolation rooms.

C. The incinerator shall be in a separate room or placed outdoors. Incinerators with a capacity of less than 50 pounds per hour may be locked in a separate area within the facility boiler room. In all cases, rooms and areas containing incinerators shall have space and facilities for cleaning.

D. Design and construction of incinerators and trash chutes shall be in accordance with NFPA Standard 82.

E. Incinerators shall be designed and equipped to conform to requirements prescribed by air pollution regulations for the community.

§ 3.40. Details and finishes.

A. Details and finishes in the design of new construction projects, including additions and alterations, shall comply with the following requirements. The nonconforming portions of existing facilities, which because of financial hardship are not being totally modernized, shall comply with the safety requirements dealing with details and finishes as listed in NFPA Standard 101.

B. Compartmentation, exits, fire alarms, automatic extinguishing systems, and other details relating to fire prevention and fire protection shall comply with requirements listed in the NFPA Standard 101. Public corridors in outpatient suites need not be more than 5'0" (1.52 m) in width except in those areas which may be commonly used by hospital inpatients being transported in beds.

C. Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

D. Rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by patients, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outwards or be otherwise designed to be opened without need to push against a patient who may have collapsed within the room.

E. The minimum width of all doors to rooms needing access for beds shall be 3'8" (1.12m) wide. Doors to rooms needing access for stretchers and to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of 2'10" (86.4cm).

F. Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing. Openings to showers, baths, patient toilets, and other small wet type areas not subject to fire rating are exempt from this requirement.

G. Doors, except those to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk in type closets are considered as occupiable spaces.

H. Windows and outer doors which may be frequently left in an open position shall be provided with insect screens.

I. Patient rooms intended for occupancy 24 hours a day shall have windows operable without the use of tools, except that windows in ICU and ICCU may be 60" (1.52m) above the floor. Windows in buildings designed with an engineered smoke control system in accordance with NFPA 90A are not required to be operable. Attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

J. Doors sidelights, borrowed lights, and windows in which the glazing extends down to within 18 inches (46cm) of the floor thereby creating possibility of accidental breakage by pedestrian traffic, shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used in wall openings of recreation rooms and exercise rooms unless otherwise required for fire safety. Safety glass or plastic glazing materials shall be used for shower doors and bath enclosures.

K. Where labeled fire doors are required, these shall be certified by an independent testing laboratory as meeting the construction requirements equal to those for fire doors in NFPA Standard 80. Reference to a labeled door shall be construed to include labeled frame and hardware.

L. Elevator shaft openings shall have class B 1 1/2 hour labeled fire doors.

M. Linen and refuse chutes shall meet or exceed the following requirements (see § 3.38 of these regulations):

1. Service openings to chutes shall not be located in corridors or passageways but shall be located in a room of construction having a fire-resistance of not less than 1 hour. Doors to such rooms shall be not less than class C 3/4-hour labeled doors;

2. Service openings to chutes shall have approved self-closing class B 1 1/2-hour labeled fire doors;

3. Minimum cross-sectional dimension of gravity chutes shall be note not less than 2'0" (61 cm);

4. Chutes shall discharge directly into collection rooms separate from incinerator, laundry, or other services. Separate collection rooms shall be provided for trash and for linen. The enclosure construction for such rooms shall have a fire-resistance of not less than 2 hours, and the doors thereto shall be not less than class B 1 1/2-hour labeled fire doors; and

5. Gravity chutes shall extend full diameter through the roof with provisions for continuous ventilation as well as for fire and smoke ventilation. Openings for fire and smoke ventilation shall have an effective area of not less than that of the chute cross-section and shall be not less than 4'0" (1.22m) above the roof and not less than 6'0" (1.83 m) clear of other vertical surfaces. Fire and smoke ventilating openings may be covered with single strength sheet glass.

N. Dumbwaiters, conveyors, and material handling systems shall not open directly into a corridor or exitway but shall open into a room enclosed by construction having a fire-resistance of not less than one hour and provided with class C 3/4-hour labeled fire doors. Service entrance doors to vertical shafts containing dumbwaiters, conveyors, and material handling systems shall be not less than class B 1 1/2-hour labeled fire doors. Where horizontal conveyors and material handling systems penetrate fire-rated walls or smoke partitions, such openings must be provided with class B 1 1/2-hour labeled fire doors with 2-hour walls and class C 3/4-hour labeled fire doors for 1-hour walls or partitions.

O. Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts. Expansion joints shall be constructed to restrict passage of smoke.

P. Grab bars shall be provided all patients' toilets, showers, tubs, and sitz baths. The bars hall have 1 1/2 inch (3.8 cm) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds (113.4 kilograms).

Q. Soap dishes, towel bars and robe hooks shall be provided at showers and bathtubs.

R. Location and arrangement of handwashing facilities shall permit their proper use and operation. Particular care should be given to the clearances required for blade-type operating handles. (See § 3.45 B 2 of these regulations).

S. Mirrors shall not be installed at handwashing fixtures in food preparation areas or in sensitive areas such as nurseries, clean and sterile supplies, and scrub sinks.

T. Provisions for hand drying shall be included at all handwash facilities except scrub sinks.

U. Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds (113.4 kilograms) on the front of the fixture.

V. Radiation protection requirements of X-ray and gamma ray installations shall conform with NCRP Reports Nos. 33, 49 and 51 and "Virginia Radiation Protection Regulations (VR 355-20-1)" of the Virginia Department of Health. Provision shall be made for testing the completed installation before use and all defects must be corrected before acceptance.

W. The minimum ceiling height shall be 8'0" (2.44m) with the following exceptions:

1. Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm) above the main boiler header and connecting piping;

2. Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling mounted surgical light fixtures shall have height required to accommodate the equipment or fixtures;

3. Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34m); and

4. Suspended tracks, rails, and pipes located in the path of normal traffic shall be not less than 6'8" (2.03m) above the floor.

X. Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed area, delivery or operating suites, unless special provisions are made to minimize such noise.

Y. Rooms containing heat producing equipment, such as boiler or heater rooms and laundries; shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 10°F (6°C) above the ambient room temperature.

Z. Noise reduction criteria shown in Table 1 of Appendix C, of these regulations shall apply to partition, floor, and ceiling construction in patient areas.

AA. Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large and small scale tests of NFPA Standard 701.

BB. Flame spread and smoke developed ratings of finishes are included in § 3.41 of these regulations. Whenever possible, the use of materials known to produce large amounts of noxious gases shall be avoided.

CC. Floors in areas and rooms in which flammable anesthetic agents are stored or administered to patients shall comply with NFPA Standard 56A. Conductive flooring may be omitted from emergency treatment, operating, and delivery rooms when a written resolution is signed by the hospital board stating that no flammable anesthetic agents will be used in these areas and provided that appropriate notices are permanently and conspicuously affixed to the wall in each such area and room.

DD. Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water and grease resistant. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens and similar work areas) shall have a nonslip, nonabrasive surface.

EE. Wall bases in kitchens, operating and delivery rooms, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

FF. Wall finishes in kitchens, operating rooms, delivery rooms and in other sensitive treatment areas shall be washable and not affected by germicidal and cleaning solutions. Wall finishes in the immediate area of plumbing fixtures shall be moisture resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

GG. Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

HH. Ceilings shall be cleanable and those in sensitive areas such as surgical, delivery, and nursery rooms shall be readily washable and without crevices that can retain dirt particles. These sensitive areas along with the dietary and food preparation areas shall have a finished ceiling covering all overhead ductwork and piping. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

II. Acoustical ceilings shall be provided for corridors in patient areas, nurses stations, labor rooms, dayrooms, recreation rooms, dining areas, and waiting areas.

§ 3.41. Construction, including fire-resistive requirements.

A. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in

accordance with the Uniform Statewide Building Code and accepted engineering practices and standards, including seismic forces where they apply.

B. Foundations shall rest on natural solid bearing if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at partical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than 1'0" (30.5 cm) below the estimated maximum frost line.

C. Construction shall be in accordance with the requirements of the Statewide Uniform Building Code and NFPA Standard 101 and the minimum requirements contained herein.

D. Separate freestanding buildings housing nonpatient areas such as the boiler plant, laundry, shops, or general storage may be of unprotected noncombustible construction, protected noncombustible construction, or fire-resistive construction.

E. Enclosures for stairways, elevator shafts, chutes and other vertical shafts, boiler rooms, and storage rooms of 100 square feet (9.29 square meters) or greater area shall be of construction having a fire-resistance rating of not less than two hours. Note that hazardous areas shall have rated enclosures and sprinklers as described in NFPA 101.

F. Interior finish materials shall comply with the flame spread limitations and the smoke production limitations and the smoke production limitations shown in Table 2, Appendix C of these regulations. If a separate underlayment is used with any floor finish materials, the underlayment and the finish material shall be tested as a unit or equivalent provisions made to determine the effect of the underlayment on the flammability characteristics of the floor finish material. Tests shall be performed by an independent testing laboratory. The above does not apply to minor quantities of wood or other trim (see NFPA 101) nor does it apply to wall covering less than 4 mil in thickness applied over a noncombustible base.

G. Building insulation materials, unless sealed on all sides and edges, shall have a flame spread rating of 25 or less and a smoke developed rating of 150 or less when tested in accordance with NFPA 255.

H. Special provisions shall be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, floods, or earthquakes.

§ 3.42. Elevators.

A. All hospitals having patient facilities (such as bedrooms, dining rooms, or recreation areas) or critical services (such as operating, delivery, diagnostic, or therapy) located on other than the main entrance floor shall have electric or electrohydraulic elevators. Installation and testing of elevators shall comply with the National Elevator Code. The minimum number of elevators which must be provided, shall be as follows:

1. At least one hospital-type elevator shall be installed where 1 to 59 patient beds are located on any floor other than the main entrance floor.

2. At least two hospital-type elevators shall be installed where 60 to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds. (Elevator service may be reduced for those floors which provide only partial inpatient services.)

3. At least three hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds. (Elevator service may be reduced for those floors which provide only partial inpatient services.)

4. For hospitals with more than 350 beds, the number of elevators shall be determined from a study of the hospital design and the estimated vertical transportation requirements.

B. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient bed and attendants and shall be at least (1.52m) wide by 7'6" (2.29m) deep. The car door shall have a clear opening of not less than 4'0" (1.22m).

C. Elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of + 1/2 inch (+ 1.3 cm).

D. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

E. Elevator controls, alarm buttons, and telephones shall be accessible to wheelchair occupants.

F. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

G. Inspections and tests shall be made and the owner shall be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.

§ 3.43. General mechanical requirements.

A. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the owner or his representative that the installation and performance of these systems conform to the requirements of the approved plans and specifications.

B. Upon completion of the contract, the owner shall be furnished with a complete set of manufacturers' operating, maintenance; and preventive maintenance instructions, and

parts lists and procurement information with numbers and description for each piece of equipment and be provided with instructions in the operational use of systems and equipment as required.

C. Insulation shall be provided within the building for the following:

1. Boilers, smoke breeching, and stacks;

2. Steam supply and condensate return piping;

3. Hot water piping above 120°F (49°C) and all hot water heaters, generators, and converters;

4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

5. Water supply and drainage piping on which condensation may occur;

6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above 80°F (27°C); and

7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system. Insulation required above may be omitted from hot water and steam condensate piping not subject to contact by patients when the heat loss from such piping without insulation does not increase the energy requirements of the system. Insulation on cold surfaces shall include an exterior vapor barrier. Insulation, including finishes and adhesives on the exterior surfaces of ducts, pipes, and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA 255. Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Publication No. 181. These linings, including coatings and adhesives, and insulation in building spaces used as air supply plenums, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA 255.

Duct linings shall not be used in systems supplying operating rooms, delivery rooms, recovery rooms, nurseries, isolation rooms, and intensive care units unless terminal filters of at least 90% efficiency are installed downstream of linings.

D. Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that, when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boilers(s) shall be sufficient to provide hot water service for clinical, dietary, and patient use; steam for sterilization and dietary purposes; and heating for operating, delivery, labor, recovery, intensive care, nursery, and general patient rooms, except that capacity for space heating is not required in areas with a design temperature of 20°F (-7°C) or more, based on the Median of Extremes in the ASHRAE Handbook of Fundamentals.

E. Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service.

F. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

G. The designed capacity of the mechanical systems shall provide the temperatures and humidities in special areas as found in Table 3 of Appendix C of these regulations. For other areas occupied by inpatients the indoor winter design temperature shall be 75°F (24°C). (A minimum relative humidity of 30% is recommended but not required.) For all other occupied areas, the indoor winter design temperature shall be 72°F (22°C).

§ 3.44. Ventilation system details.

A. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Table 4, Appendix C of these Regulations shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

B. In the interest of energy conservation, the applicant is encouraged to utilize recognized procedures such as variable air volume and load shedding systems in areas not listed in Table 4, Appendix C and where direct patient care is not affected such as administrative and public areas, general storage, etc. Consideration may be given to special design innovations in areas of Table 4, Appendix C provided that pressure relationship as an indication of direction of air flow and total number of air changes as listed are maintained.

C. Outdoor intakes shall be located as far as practical but not less than 25'0" (7.62 m) from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents stacks, or from areas which may collect vehicular exhaust and other noxious fumes (plumbing and vacuum vents that terminate above the level of the top of the air intake may be located as close as 10'0" (3.05m). The bottom of outdoor air intakes serving central systems shall be located as high as practical but not less than 6'0" (1.83 m) above ground level, or if installed above the roof, 3'0" (91cm) above the roof level.

D. The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in Table 4, Appendix C.

E. All air supplied to operating rooms, delivery rooms, and nurseries shall be delivered at or near the ceiling of the area served, and all return air from the area shall be removed near floor level. At least two return air outlets shall be used in each operating and delivery room.

F. Each space routinely used for the administering of inhalation anesthetizing agents shall be provided with a separate scavaging system for venting of waste anesthetizing gases. Pressure balance must be such that the gas collecting system does not interfere with required room pressure relationship or with breathing circuit that may affect patient safety. The intake shall be appropriately located in relation to the patient and the equipment designed so that gases are exhausted directly to the outside.

Potentially harmful effects upon personnel subject to constant exposure to anesthetizing gases are generally recognized but acceptable levels of concentration are unknown at this time. In the absence of specific figures, any scavaging system should be designed to remove as much of the anesthetizing gas as possible. Maximum effectiveness of the scavaging system may also require careful attention to selection and maintenance of anesthetizing equipment used.

G. The bottoms of ventilation (supply/return) openings shall be not less than three inches (7.6 cm) above the floor of any room.

H. Corridors shall not be used to supply air to or exhaust air from any room, except that air from corridors may be used to ventilate bathrooms, toilet rooms, janitors' closets, and small electrical or telephone closets opening directly on corridors provided that ventilation can be accomplished by undercutting of doors.

I. Isolation rooms and intensive care rooms may be ventilated by induction units if the induction units contain only a reheat coil and if only the primary air supplied from a central system passes through the reheat coil.

J. All central ventilation or air conditioning systems shall be equipped with filters having efficiencies no less than those specified in Table 5, Appendix C of these regulations. Where two filter beds are required, filter bed No. 1 shall be located upstream of the air conditioning equipment and filter bed No. 2 shall be downstream of the supply fan, any recirculating spray water systems, and water reservoir type humidifiers.

Where only one filter bed is required, it shall be located upstream of the air conditioning equipment unless an additional prefilter is employed. In this case, the prefilter shall be upstream of the equipment and the main filter may be located further downstream.

K. All filter efficiencies shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52-76 except as noted in subsections U and V of this section.

L. Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage.

M. A manometer shall be installed across each filter bed serving sensitive areas or central air systems.

N. Air handling duct systems shall meet the requirements of NFPA Standard 90A, and those serving sensitive areas shall also comply with requirements for duct linings specified in § 3.43 C of these regulations.

O. Ducts which penetrate construction for intended X-ray or other ray protection shall not impair the effectiveness of the protection.

P. Fire and smoke dampers shall be constructed, located, and installed in accordance with the requirements of NFPA Standard 90A, except that all systems, regardless of size, which serve more than one smoke or fire zone, shall be equipped with smoke detectors to shut down fans automatically as delineated in paragraph 4-3.2 of that standard. Access for maintenance shall be provided at all dampers.

Q. Switching for restart of fans may be conveniently located for fire department use to assist in evacuation of smoke after the fire is controlled, provided that provisions are made to avoid possible damage to the system because of closed dampers.

R. Supply and exhaust ducts which pass through a smoke separation of required compartmentation and through which smoke can be transferred to another area shall be provided with dampers at the separation controlled to close automatically to prevent flow of air or smoke when the fan, which moves the air through the duct, stops. Dampers shall be equipped with remote control reset devices except that manual reopening will be permitted if dampers are conveniently located.

S. Return air ducts which pass through a smoke separation of required compartmentation shall be provided with a damper at the separation actuated by smoke or products of combustion (other than heat) detectors. These dampers shall be operated by the detectors located to sense smoke in the return air duct from the smoke zone. On high velocity systems, a time delay is required so that fan will be stopped prior to damper closing. Engineered smoke exhaust systems may be considered for approval as described by NFPA on a case by case basis.

T. If the air changes required in Table 4, Appendix C of these regulations do not provide sufficient air for use by hoods and safety cabinets, the required makeup air shall be provided as necessary to maintain required room pressure relationship.

U. Laboratory hoods shall meet the following general requirements:

1. Have an average face velocity of not less than 75 feet per minute (0.38 meters per second);

2. Be connected to an exhaust system which is separate from the building exhaust system;

3. Have an exhaust fan located at the discharge end of the system; and

4. Have an exhaust duct system of noncombustible corrosion-resistant material as needed to meet the planned usage of the hood.

V. Laboratory hoods shall meet the following special requirements:

1. Each hood which processes infectious or radioactive materials shall have a minimum face velocity of 100 feet per minute (0.51 meters per second), shall be connected

to an independent exhaust system, shall have filters with a 99.97% efficiency (based on the DOP, dioctyl-phthalate, test method) in the exhaust stream, and shall be designed and equipped to permit the safe removal, disposal, and replacement of contaminated filters; and

2. Duct systems serving hoods in which radioactive and strong oxidizing agents (e.g. perchloric acid) are used shall be constructed of chemical resistant materials and shall be equipped with washdown facilities.

W. Exhaust hoods in food preparation centers shall have an exhaust rate of not less than 50 cfm per square foot (0.25 cubic meters per second per square meter) of face area. Face area is defined for this purpose as the open area from the exposed perimeter of the hood to the average perimeter of the cooking surfaces. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Cleanout openings shall be provided every 20'0" (6.10m) in horizontal exhaust duct system serving these hoods.

X. The ventilation system for anesthesia storage rooms shall conform to the requirements of NFPA Standard 56A, including the gravity option. The mechanically operated air systems required in this Section of regulations is optional in this room only.

Y. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and to limit temperatures in working stations to 97°F (36°C) Effective Temperatures (ET*) as defined by ASHRAE Handbook of Fundamentals.

Z. See § 3.40 of these regulations for additional boiler room, food preparation center, and laundry ventilation requirements.

§ 3.45. Plumbing and other piping systems.

A. All plumbing systems shall be designed and installed in accordance with the requirements of the Statewide Uniform Building Code, article for "Health Care Facility Plumbing."

B. Plumbing fixtures shall comply with the following:

1. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material;

2. The water supply spout for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum distance of five inches (12.7 cm) above the rim of the fixture. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands (single lever devices may be used subject to above). Where blade handles are used for this purpose, they shall not exceed 4 1/2 inches (11.4 cm) in length, except that handles on scrub sinks and clinical sinks shall be not less than 6 inches (15.2 cm) long;

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface and shall be provided with a hose spray attachment with hot and cold water and a vacuum breaker;

4. Shower bases and tubs shall provide nonslip surfaces;

5. Bedpan flushing devices shall be provided in each patient toilet room, except those in ambulatory care areas;

6. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers; and

7. Backflow preventers (vacuum breakers) shall be installed on hose bibbs; laboratory sinks, janitors' sinks, bedpan flushing attachments, autopsy tables, and on all other fixtures to which hoses or tubing can be attached.

C. Water supply systems shall conform to Virginia Health Department Waterworks Regulations (VR 355-18-000) in addition to the Statewide Plumbing Code and the following:

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods;

2. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture; and

3. Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at bathing and handwashing facilities shall not exceed 120°F (49°C).

D. The hot water heating equipment shall have sufficient capacity to supply water at the temperatures and amounts indicated in Table 6, Appendix C of these regulations. Water temperatures to be taken at hot water point of use or inlet to processing equipment. Storage tank(s) shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

E. Drainage systems shall conform to the following:

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material;

2. Drain lines serving automatic blood cell counters shall be of carefully selected material because of a possible undesirable chemical reaction between blood count waste which includes sodium azide, and plumbing system materials such as copper, lead, brass, and solder;

3. Insofar as possible, drainage piping shall not be installed within the ceiling nor installed in an exposed location in operating and delivery rooms, nurseries, food preparation centers, food serving food storage areas, and other critical areas. Special precautions shall be taken to protect these areas from possible leakage or condensation from overhead piping systems;

4. Floor drains shall not be installed in operating and delivery rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms; and

5. Building sewers shall discharge into a community sewerage system, or other approved system.

F. Nonflammable medical gas system installations shall be in accordance with the requirements of NFPA 56A and 56F.

(See Table 7, Appendix C of these regulations for rooms which require station outlets.) As part of the project contract, where any piping or supply of medical gases is affected by change, alteration, or additions, the entire system shall be tested and certified as to type, quality, and quantity of medical gas at each outlet and exact areas affected by each control valve station.

G. Clinical vacuum (suction) system installations shall be in accordance with the requirements of Compressed Gas Association Pamphlet No. P-2.1. (See Table 7, Appendix C of these regulations for rooms which require station outlets.)

H. Service outlets for central housekeeping vacuum systems, if used, shall not be located within operating or delivery rooms.

I. All piping, including heating, ventilating, air conditioning (HVAC) shall be color coded or otherwise marked for easy identification.

§ 3.46. General electrical requirements.

A. All materials including conductors, controls and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the architectural drawings. All materials shall be listed as complying with available standards of Underwriters' Laboratories, Inc., or other similarly established standards.

B. All electrical installations and systems shall conform to the Statewide Uniform Building Code (National Electrical Code) and be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. Such tests shall show compliance with the governing codes including conductive floors, isolated power systems, grounding continuity, and alarm systems.

C. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panelboards shall be enclosed or guarded to provide a dead-front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space free of corrosive fumes or gases. Overload protective devices shall be suitable for operating properly in the ambient temperature conditions.

D. Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits they serve.

§ 3.47. Lighting and receptacles.

A. All spaces occupied by people, machinery, and equipment within buildings, approaches to buildings, and parking lots shall have lighting.

B. Patients' rooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically controlled to prevent the bulb from coming in contact with bed linen. At least one light fixture for night lighting shall be switched at the entrance to each patient room. All switches shall be of the quiet operating type.

C. Operating and delivery rooms shall have general lighting in addition to local lighting provided by special lighting units at the operating and delivery tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

D. Nursing unit corridors shall have general illumination with provisions for reduction of light level at night.

E. Anesthetizing locations. Each operating and delivery room shall have at least three receptacles. In locations where mobile x-ray is used, an additional receptacle, distinctively marked for x-ray use, shall be provided. (See subsection G of this section for receptacle requirements when capacitive discharge mobile x-ray units are used.)

F. As a minimum, each patient room shall have duplex grounding type receptacles as follows: (i) one located on each side of the head of each bed; (ii) one for television, if used; and (iii) one on each other wall. Nurseries shall have not less than one duplex grounded receptacle for each bassinet. Receptacles in pediatric units shall be of the safety type or shall be protected by five milliampere ground fault interrupters.

G. Duplex grounded receptacles for general use shall be installed approximately 50'0" (15.24 m) apart in all corridors and within 25'0" (7.62 m) of ends of corridors. Receptacles in corridors of pediatric units shall be of the safety type or shall be protected by five milliampere ground fault interrupters or shall be controlled by switches located at a nurses' station or other supervised location. Single polarized receptacles marked for use of x-ray only shall be located in corridors of patient areas so that mobile equipment may be used in any location within a patient room without exceeding a cord length of 50'0" (15.24 m) attached to the equipment. If the same mobile x-ray unit is used in operating rooms and in nursing areas, all receptacles for x-ray use shall be of a configuration that one plug will fit the receptacles in all locations. Where capacitive discharge or battery-powered x-ray units are used, these polarized receptacles are not required.

§ 3.48. Equipment installation in special areas.

A. Installation in anesthetizing locations. All electrical equipment and devices, receptacles, and wiring shall comply with NFPA Standard /0, except that a line isolation monitor will be permitted, which alarms at a total hazard current of five milliamperes.

B. Fixed and mobile x-ray equipment installations shall conform to Article 517 of NFPA Standard 70.

C. At least two x-ray film illuminator units shall be installed in each operating room, emergency treatment room, and in the X-ray viewing room of the radiology department.

D. The electrical circuit(s) to equipment in wet areas shall be provided with five milliampere ground fault interrupters. Where ground fault interrupters are used in critical areas, provision shall be made to ensure that other essential equipment will not be affected by a single interruption.

E. In areas such as intensive units (and special nurseries, when indicated by the program) where a patient may be treated with an internal probe or catheter connected to the heart, the ground system shall comply with Article 517-84, 517-86, and 517-88 of NFPA 70.

§ 3.49. Nurses' calling system.

A. In general patient areas, each room shall be served by at least one calling station and each bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall register with floor staff and shall activate a visible signal in the corridor at the patient door, in the clean workroom, the soiled workroom, and the nourishment station of the nursing unit. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two-way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

B. A nurses' call emergency button shall be provided for patient use at each patient's toilet, bath, sitz bath, and shower room. Such a button shall be usable by a collapsed patient lying on the floor (inclusion of a pull cord will satisfy this item).

C. In areas such as intensive care where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will activate a signal that can be readily seen by the nurse.

D. A nurses' emergency calling station which may be used by nurses to summon assistance shall be provided in each operating, delivery, recovery, emergency treatment, and intensive care room, in nurseries, renal dialysis units, and in supervised nursing units for mental patients.

§ 3.50. Emergency electrical system.

A. To provide electricity during an interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power. Where stored fuel is required, capacity shall be such as to permit continuous operation for at least 24 hours.

B. The source of this emergency electric service shall be as follows:

1. An emergency generating set when the normal service is supplied by one or more central station transmission lines.

2. An emergency generating set or a central station transmission line when the normal electric supply is generated on the premises.

C. The required emergency generating set, including the prime mover and generator, shall be located on the premises. The generator set shall be self-sufficient insofar as possible without dependency on public utilities that may be subject to cut off or outages. A system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generators will be permitted provided that the number and arrangement of the prime movers are such that when one of them is out of service (due to breakdown or for routine maintenance) the prime movers can operate the required emergency generators, and provided that the connection time requirements of subsection E of this section are met.

D. Emergency electrical service shall be provided to the distribution systems as follows:

1. Circuits for the safety of patients and personnel:

a. Illumination of means of egress are as required in NFPA Standard 101.

b. Illumination for exit signs and exit directional signs as required in NFPA Standard 101 and basic task illumination for critical elements of equipment such as pumps, elevator machinery, generator sets, etc.

c. Alarm systems including fire alarms activated at manual stations, water flow alarm devices of sprinkler system if electrically operated, fire and smoke detecting systems, and alarms required for nonflammable medical gas systems if installed.

d. Paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use shall be capable of operating for at least one hour upon total failure of both normal and emergency power.

e. General illumination and selected receptacles in the vicinity of the generator set.

2. Circuits essential to care, treatment, and protection of patients.

a. Task illumination and selected receptacles in infant nurseries; medicine dispensing areas; cardiac catheterization laboratories; angiographic laboratories; labor operating, delivery, and recovery rooms; dialysis units; intensive care areas; emergency treatment rooms; basic laboratory functions; and nurses' stations.

b. Corridor duplex receptacles in patient areas.

c. Nurses' calling system.

d. Blood bank refrigeration.

e. Equipment necessary for maintaining telephone service.

f. Each patient area in which life support systems are used shall have access to both normal and emergency power directly or by extension cords of not more than 50'0" (15.24m) in length.

3. Circuits which serve necessary equipment. The connection to the following emergency electric services shall be delayed automatic except for heating, ventilation, fire pump, and elevators which may be either delayed automatic or manual.

a. Equipment for heating the operating, delivery, labor, recovery, intensive care, renal dialysis, nursery, and general patient rooms, except that service for heating of general patient rooms will not be required

under either of the following conditions: (i) if the design temperature is higher than 20°F (-7°C) based on the Median of Extremes as shown in the ASHRAE Handbook of Fundamentals, or (ii) if the hospital is served by two or more electrical services supplied from separate generators or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation so that a fault between the hospital and the generating sources will not likely cause an interruption of the hospital service feeders.

b. Elevator service that will reach every patient floor. Throwover facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.

c. Ventilation of operating and delivery rooms.

d. Central suction systems service serving medical and surgical functions.

e. Equipment which must be kept in operation to prevent damage to the building or its contents.

f. Fire pump if installed.

E. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency. It must be connected within 10 seconds through one or more primary automatic transfer switches to emergency lighting systems; alarm systems; blood banks; nurses calling systems; equipment necessary for maintaining telephone service; and task illumination and receptacles in operating, delivery, emergency, recovery, and cardiac catherization rooms, intensive care nursing areas, nurseries, renal dialysis unit, and other critical patient areas. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switches or through other automatic or manual transfer switches. Receptacles connected to the emergency system shall be distinctively marked. Storage battery-powered lights provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. Where stored fuel is required for emergency generator operation, the storage capacity shall be sufficient for not less than 24-hour continuous operation.

F. Local codes and regulations may have additional requirements which should be considered.

G. Fire protection systems shall be provided as described in NFPA 101.

PART IV.
OUTPATIENT SURGICAL HOSPITALS: ORGANIZATION, OPERATION, AND DESIGN STANDARDS FOR EXISTING AND NEW FACILITIES

Article 1.
Organization and Management.

§ 4.1. Governing authority.

A. Each outpatient surgical hospital shall have a governing body or other legal authority responsible for the management and control of the operation of the facilities.

B. There shall be disclosure of hospital ownership. Ownership interest shall be made known to the licensing agency and in the case of corporations, all individuals or entities holding 5.0% or more of total ownership shall be identified by name and address. The licensing agency shall be notified of any changes in ownership.

C. The governing body shall provide facilities, personnel, and other resources necessary to meet patient and program needs.

D. The governing body shall have a formal organizational plan with written bylaws, rules and regulations or their equivalent. These shall clearly set forth organization, duties, responsibilities, accountability, and relationships of professional staff and other personnel. The person or organizational body responsible for formulating policies shall be identified.

E. The bylaws, rules and regulations, or their equivalent, shall include at least the following:

1. A statement of purpose;

2. Description of the functions and duties of the governing body, or other legal authority;

3. A statement of authority and responsibility delegated to the chief administrative officer and to the medical staff;

4. Provision for selection and appointment of medical staff and granting of clinical privileges:

5. Provision of guidelines for relationships among the governing body, the chief administrative officer, and the medical staff.

F. The responsibility for administration and management of the outpatient surgical hospital shall be vested in an individual whose qualifications, authority and duties shall be defined in a written statement adopted by the governing body.

Article 2.
Policies and Procedures.

§ 4.2. General statement.

Policies and procedures may vary depending on scope and type of service, personnel, equipment and location of the facility. It is recognized that no two facilities will be identical because of variations in the scope and objective of the outpatient service. Even though each facility may be different, certain standards and procedures shall be

applicable to all in assuring the delivery of a high quality of care.

§ 4.3. Policy and procedures manual.

A. Each outpatient surgical hospital shall develop a policy and procedures manual which shall include provisions covering the following items:

1. The types of emergency and elective procedures which may be performed in the facility.

2. Types of anesthesia which may be used.

3. Admissions and discharges, including criteria for evaluating the patient before admission and before discharge.

4. Written informed consent of patient prior to the initiation of any procedures.

5. Procedures for housekeeping and infection control.

B. A copy of approved policies and procedures and revisions thereto shall be made available to the licensing agency upon request.

Article 3.
Staffing.

§ 4.4. Medical staff.

The size and organizational structure of the medical staff will vary depending on the scope of service.

1. Professional and clinical services shall be supervised by a physician licensed to practice medicine or surgery in Virginia.

2. Surgical procedures shall be performed by a physician licensed to perform such procedures in Virginia.

3. Clinical privileges of physician and nonphysician practitioners shall be clearly defined.

4. Credentials including education and experience shall be reviewed and privileges identified, established, and approved for each person allowed to diagnose, treat patients or perform surgical procedures in accordance with guidelines, policies or bylaws adopted by the governing body and approved by the medical staff.

§ 4.5. Nursing staff.

The total number of nursing personnel will vary depending upon the number and types of patients to be admitted and the types of operative procedures to be performed or the services programmed.

1. A registered nurse qualified on the basis of education, experience, and clinical ability shall be responsible for the direction of nursing care provided the patients.

2. The number and type of nursing personnel, including registered nurses, licensed practical nurses, and supplementary staff, shall be based upon the needs of the patients and the types of services performed.

3. At least one registered nurse shall be on duty at all times while the facility is in use.

4. Job descriptions shall be developed for each level of nursing personnel and include functions, responsibilities, and qualifications.

5. Evidence of current Virginia registration required by state statute shall be on file in the facility.

Article 4.
Patient Care Services.

§ 4.6. Anesthesia service.

A. The anesthesia service shall be directed by and under the supervision of a physician licensed to practice medicine or surgery in Virginia.

B. The physician responsible for the anesthesia service shall be present for the administration of anesthetics and recovery of patients when any general or major regional anesthetic is used.

C. There shall be written procedures to assure safety in storage and use of inhalation anesthetics and medical gases.

D. Unless the hospital program and official written action by the governing body prohibit use of flammable anesthetics, the requirements of § 2.8 of these regulations must be met.

§ 4.7. Sterile supply services.

A. Adequate provisions shall be maintained for the processing, sterilizing, storing, and dispensing of clean and sterile supplies and equipment.

B. Written procedures shall be established for the appropriate disposal of pathological and other potentially infectious waste and contaminated supplies.

§ 4.8. Dietary service.

If the program calls for the dietary service, serving of snacks or other foods, adequate space, equipment, and supplies shall be provided. Applicable state and local codes pertaining to receiving, storage, refrigeration, preparation, and serving of food shall be followed.

§ 4.9. Evacuation plan.

A. Each outpatient surgical hospital shall develop a written evacuation plan to assure reasonable precautions are taken to protect patients, employees, and visitors from hazards of fire and other disaster. The evacuation plan shall provide:

B. A program to acquaint all personnel with evacuation procedures shall be maintained.

C. A copy of the plan and procedures shall be made available to the Bureau upon request.

§ 4.10. Emergency services.

A. Each outpatient surgical hospital shall provide emergency service and maintain on the premises adequate monitoring equipment, suction apparatus, oxygen, and related items necessary for resuscitation and control of hemorrhage and other complications.

B. A written agreement which ensures emergency transportation to a licensed general hospital shall be executed with an ambulance service.

C. A written agreement shall be executed with a general hospital to ensure that any patient of the outpatient surgical hospital shall receive needed emergency treatment. The agreement shall be within a licensed general hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on 30 minutes notice and which has a physician in the hospital and available for emergency service at all times.

§ 4.11. Laboratory and pathology services.

A. Laboratory and pathology services each patient admitted to the outpatient surgical hospital shall receive appropriate laboratory testing.

B. All tissue removed shall be submitted for histological examination by a pathologist and a written report of his examination provided to the attending physician. The report of findings shall be filed in the patient's clinical record.

§ 4.12. Medical records.

A. Medical records. An accurate and complete clinical record or chart shall be maintained on each patient. The record or chart shall contain sufficient information to satisfy the diagnosis or need for the medical or surgical service. It shall include, when applicable, but not be limited to the following:

1. Patient identification;

2. Admitting information, including patient history and physical examination;

3. Signed consent;

4. Confirmation of pregnancy, if applicable;

5. Physician orders;

6. Laboratory tests, pathologist's report of tissue, and radiologist's report of x-rays;

7. Anesthesia record;

8. Operative record;

9. Surgical medication and medical treatments;

10. Recovery room notes;

11. Physician and nurses' progress notes,

12. Condition at time of discharge,

13. Patient instructions, preoperative and postoperative;

14. Names of referral physicians or agencies.

B. Provisions shall be made for the safe storage of medical records or accurate and legible reproductions thereof.

C. All medical records, either original or accurate reproductions, shall be preserved for a minimum of five years following discharge of the patient.

1. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

2. Birth and death information shall be retained for 10 years in accordance with § 32.1-274 of the Code of Virginia.

3. Record of abortions and proper information for the issuance of a fetal death certificate shall be furnished the Division of Vital Records, Virginia Department of Health, within 10 days after the abortion.

§ 4.13. Preoperative admission.

A. Prior to the initiation of any procedure, a medical history and physical examination shall be completed for each patient.

B. Where medical evaluation, examination, and referrals are made from a private physician's office, another hospital, clinic, or medical service pertinent available records thereof shall be made and included as a part of the patient's medical record at the time the patient is admitted to the outpatient surgical hospital.

C. Sufficient time shall be allowed between initial examination and initiation of any procedure to permit the reporting and review of laboratory tests by the responsible physician.

D. In outpatient surgical hospitals which provide abortion services, the diagnosis of pregnancy shall be the responsibility of the physician performing the abortion procedure.

E. Outpatient surgical hospitals which provide abortion services shall offer each patient appropriate counseling and instruction in the abortion procedure and in birth control methods.

§ 4.14. Post-operative recovery.

A. Each patient shall be observed for post-operative complications under the direct supervision of a registered professional nurse. Recovery room nurses shall have specialized training in resuscitation techniques and other emergency procedures consistent with policies and procedures of the institution for designated special units.

B. A physician licensed in Virginia shall be present on the premises at all times during the operative and post-operative period until discharge of the patient.

C. Patients shall be discharged from the recovery only on written order of the attending physician.

§ 4.15. Environment and maintenance.

A. All parts of the outpatient surgical hospital and its premises shall be kept clean, neat, and free of litter and rubbish.

B. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in a safe place, and kept in an enclosed section separate from other materials.

§ 4.16. Laundry services.

A. Each outpatient surgical hospital shall make provisions for the cleaning of all linens.

B. There shall be distinct areas for the separate storage and handling of clean and soiled linens.

C. All soiled linen shall be placed in closed containers prior to transportation.

§ 4.17. Physical plant: fire and safety; lighting and electrical; plumbing; sewage and waste disposal; water supply.

A. Each outpatient hospital shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations.

B. Policies and procedures shall be established to minimize the hazards in the use and operation of all electrical equipment.

All electrical appliances used by the outpatient surgical hospital shall have the Underwriters Laboratories label or be approved by the local electrical inspection authority.

C. All plumbing material and plumbing systems or parts thereof shall meet the minimum requirements of the Uniform Statewide Building Code. All plumbing shall be installed in such a manner as to prevent back-siphonage or cross-connections between potable and nonpotable water supplies.

D. Existing and new facilities shall be connected to an approved sewage system.

E. Pathological and bacteriological wastes, dressings, and other contaminated wastes shall be incinerated in an approved incinerator or by other methods of disposal as approved by the licensing agency.

F. Water shall be obtained from an approved water supply system. The water shall be distributed to conveniently located taps and fixtures throughout the facility and shall be adequate in volume and pressure for all hospital purposes, including fire fighting.

PART V.
DESIGN STANDARDS FOR NEW OUTPATIENT SURGICAL HOSPITALS AND ADDITIONS AND ALTERATIONS TO EXISTING OUTPATIENT SURGICAL HOSPITALS.

Article 1.
General Considerations.

§ 5.1. Narrative programs.

A. The owner or his representative shall provide a brief narrative which describes the functional space requirements, staffing patterns, departmental relationship, and other basic information relating to the fulfillment of the institution's objective.

B. The narrative shall indicate the manner in which the services are to be made available to the outpatients. When services are to be shared or purchased, appropriate modifications or deletions in space and equipment requirements shall be considered to avoid duplication. In many instances, minimum requirements are not intended in any way to restrict innovations and improvements in design or construction techniques. Plans and specifications which contain deviations from the requirements prescribed herein may be approved if it is determined that the purposes of the minimum requirements have been fulfilled. Request to waive any specific requirements shall be submitted to the licensing agency for approval prior to development of working drawings and specifications.

C. The extent (number and type) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.

§ 5.2. Applicable requirements.

If the outpatient surgical hospital is a physical part of an inpatient hospital and is intended to serve inpatients as well as outpatients, the applicable requirements of Part II and Part III of these regulations must be met.

§ 5.3. Parking.

In the absence of a formal parking study, vehicle parking for outpatient surgical hospitals shall be provided at the ratio of two parking spaces for each treatment room and each examining room plus sufficient parking spaces to accommodate the maximum number of staff on duty at one time. Exceptions may be made with approval of the licensing agency for outpatient surgical hospitals located in areas with high population density if adequate public parking is available or if the hospital is accessible to a public transportation system.

§ 5.4. Codes; fire safety; zoning; conversions.

A. All construction of new buildings and additions alterations or repairs to existing buildings for occupancy as a "free-standing" outpatient hospital shall conform to state and local codes, zoning and building ordinances, and the Statewide Uniform Building Code requirements applicable to type of occupancy. All codes applicable to the outpatient surgical hospital shall be noted on the preliminary and working drawings.

B. Conversions of existing buildings to outpatient surgical hospital occupancy will be considered only in those buildings which meet or can be remodeled to meet the requirements of the Statewide Uniform Building Code.

§ 5.5. Site requirements and location.

A. The site shall meet local zoning regulations.

B. Facilities not located on the ground floor of a building shall be served by an elevator(s) capable of accommodating a standard stretcher.

C. Facilities shall be located in buildings providing emergency electrical service. The emergency electrical service may be provided by an auxiliary generator, or, if available from the power company, two separate lines, each supplied from a separate generating source. The emergency electrical service shall have the capability to cover at least the operating, procedure, and recovery room(s) lighting and electrical equipment.

D. The sanitation, water supply, sewage, and disposal facilities shall comply with the applicable state and local codes and ordinances.

E. Adequate fire protection facilities or fire department services shall be available.

Article 2.
Architectural Plan Review.

§ 5.6. General.

During the early phase of architectural planning, prime consideration shall be given to patient traffic from the patient parking area to admissions and through the service area to discharge offices and to areas for patient pick up. Personnel traffic patterns from other areas to the service area, as well as those related to internal operations, including supply distribution shall be considered.

§ 5.7. Drawings and specifications.

A. Preliminary drawings and outline specifications shall be submitted to the licensing agency with a program narrative description for review and approval prior to starting final working drawings and specifications.

B. The final working drawings and specifications shall be submitted to the licensing agency for review and approval prior to release of contract documents for bidding.

C. The licensing agency shall be notified of the award of contracts, of the date when construction has been completed, and at least 30 days prior to the estimated date of occupancy.

D. Minor alterations or remodeling changes which do not affect the structural integrity of the building, or change functional operation, or which do not affect safety, need not be submitted for approval.

E. The preparation and submission of drawings and specifications shall be executed by or under the immediate supervision of an architect registered in the Commonwealth of Virginia.

Article 3.
Design Requirements.

§ 5.8. Administration and public areas.

A. Entrance to the building shall be located at grade level, sheltered from the weather and able to accommodate wheelchairs, if applicable.

B. The same room may serve more than one function. The design shall assure that adequate space is available for all administrative services.

C. The reception area may be considered a part of administrative services. Adequate space near the entrance shall be provided for receiving and registering patients. Work space shall provide privacy for obtaining confidential information and discussing financial arrangements.

D. Adequate waiting space shall be provided for at least one family member or friend per patient. Facilities shall include public toilets, public telephone(s), drinking fountains(s), and wheelchair storage.

E. Adequate space to assure privacy for both males and females shall be provided in dressing rooms and patient lockers, toilet and bathing facilities, preoperative preparation, medication administration, and patient holding areas.

F. If the program calls for services requiring special patient counseling, private space shall be provided for this service.

G. Facilities and space may be provided for preparation of light nourishment, refrigeration and ice machine. Handwashing facilities shall be provided in the room.

H. Space for general storage for office supplies, sterile supplies, pharmacy and housekeeping supplies shall be provided.

I. Adequate janitor's closet(s) with floor receptor or service sink shall be provided.

§ 5.9. Clinical areas.

A. The size and design of units shall be in accordance with individual programs but the following basic elements shall be incorporated in all facilities, where applicable.

B. The plumbing, heating, and electrical systems for the surgical suite shall meet all applicable parts specified in § 3.18 of these regulations.

C. The architectural design of the facilities shall provide a sufficient number of rooms for the projected case load and types of procedures to be performed. Operating rooms shall have minimum dimensions of 16' X 18'. One smaller room may be reserved for minor local excisions but that room shall be no less than 160 square feet (14.88 sq. m).

D. Scrub sinks shall be provided. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.

E. The locker and dressing areas shall be located so that personnel enter from uncontrolled areas and exit directly into the surgical suite. Locker space shall be provided for each employee, and a toilet, shower, and dressing area shall be provided in each personnel dressing room.

F. The recovery room shall have handwashing facilities, medication storage space, clerical work space, storage for clerical supplies, linens, and patient care supplies and equipment, and an adjoining toilet which shall have a water closet and handwashing lavatory.

G. The preoperative preparation area may be designed and equipped for examination. Each room shall have a handwashing lavatory and be equipped for patient examination.

H. Separate work and storage rooms shall be provided for clean and sterile holding and for instrument or equipment clean up functions.

I. Unless the narrative program and governing body prohibit, in writing, the use of flammable anesthetics a separate anesthesia storage room shall be provided for storage of flammable gases.

J. Anesthesia workroom and equipment storage facilities with adequate ventilation, work counter and sink shall be provided.

K. Sufficient clerical control stations shall be appropriately designed and located. Suitable space shall be provided for the following activities: (i) traffic control of the area; (ii) clerical functions related to room or case scheduling and

record maintenance; (iii) personnel functions; and (iv) nursing activities related to medication administration and treatments.

L. Private and adequate space to accommodate the total number of doctors who may be dictating at the same time shall be provided. This space may be located adjacent to but not inside the nurses' station, lounge, or doctors' dressing area.

M. A janitor's closet which meets the requirements of § 3.18 E 17 of these regulations shall be provided.

§ 5.10. Laboratory and radiology services.

Space and equipment requirements shall be determined by the workload described in the narrative program. These services may be provided within the outpatient surgical hospital or through an effective contractual arrangement with nearby facilities. If laboratory or radiology services or both are not provided by contractual agreement all applicable parts of §§ 2.13 and 2.19 of these regulations shall apply.

§ 5.11. General requirements.

A. Minimum public corridor width shall be 5'0" (1.52m).

B. Each building shall have at least two exits remote from each other. Other details as to exits and fire safety shall be in accordance with the Virginia Statewide Fire Prevention Code (VR 394-01-6).

C. Items such as drinking fountains, telephone booths, vending machines and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required width.

D. Toilet rooms which may be used by patients shall be equipped with doors and hardware which will permit access from the outside in any emergency.

E. The minimum width of doors for patient access to examination and treatment rooms shall be 3'0" (.91.m).

F. No door shall swing into a corridor in a manner that might obstruct traffic flow or reduce the required corridor width, except doors to space such as small closets which are not subject to occupancy.

G. Rooms containing ceiling mounted equipment and those have ceiling mounted surgical light fixtures shall have height required to accommodate the equipment or fixture. All other rooms shall have not less than 8'0" (2.43 m) ceiling except that corridors, storage rooms, toilet rooms and other minor rooms shall not be less than 7'8" (2.23 m).

H. Cubicle curtains and draperies shall be noncombustible or rendered flame retardant.

I. Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved.

J. Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant.

APPENDIX A - REFERENCES FOR GENERAL AND SPECIAL HOSPITALS

Where reference is made to rules and regulations of the State Board of Health, the State Board of Pharmacy, or other agencies, boards, or departments of the Commonwealth of Virginia, it shall be construed to mean the most current edition of such rules and regulations as formally and lawfully adopted by such board, agency, or department after notice and public hearing pursuant to the applicable provisions of the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

1. VR 355-35-01. Rules and Regulations Governing Restaurants, Commonwealth of Virginia, Board of Health.

2. "Recommended Dietary Allowances," National Research Council, National Academy of Sciences, 2101 Constitution Avenue, Washington, D.C. 20418.

3. Rules and Regulations Pertaining to Ambulance Services, Commonwealth of Virginia, Board of Health.

4. "Hospitals Laboratories," National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

5. "Accreditation Manual for Hospitals," Joint Commission on Accreditation of Hospitals, 645 North Michigan Avenue, Chicago, Illinois 60611.

6. "Protection of Records," National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

7. VR 355-20-1. Virginia Radiation Protection Regulations, Commonwealth of Virginia, State Board of Health.

8. "Drug Control Act" (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia) and VR 530-01-1. Regulations of the Board of Pharmacy Commonwealth of Virginia, Board of Pharmacy.

9. "Hospital Emergency Preparedness," National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts, 02210.

10. VR 355-28-100. "Rules and Regulations for the Reporting and Control of Diseases," Commonwealth of Virginia, State Board of Health.

11. Specified Organisms:

Atypical mycobacteria

Bacillus anthracis

Campylobacter fetus

Corynebacterium diphtheriae

Mycobacterium tuberculosis

Neisseria meningitidis

Polioviruses

Salmonella species

Shigella species

Vibrio cholerae

Yersinia pestis

12. "Standards for Incinerators," National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

13. VR 394-01-21 and VR 394-01-22. Virginia Uniform Statewide Building Code, Commonwealth of Virginia, Department of Housing and Community Development.

APPENDIX B - DESIGN STANDARDS FOR INPATIENT HOSPITALS

1. National Fire Protection Association (NFPA) Standard No. 80 "Standard for Fire Doors and Windows."

2. National Fire Protection Association (NFPA) Standard No. 90A "Installation of Air Conditioning and Ventilating Systems."

3. National Fire Protection Association (NFPA) Standard No. 101 "Life Safety Code."

4. National Fire Protection Association (NFPA) Standard No. 255 "Methods of Test of Surface Burning Characteristics of Building Materials."

5. National Fire Protection Association (NFPA) Standard No. 258 "Test Method for Measuring Smoke Generated by Solid Materials."

6. National Fire Protection Association (NFPA) Standard No. 701 "Flame Resistant Textiles and Films."

7. Underwriters' Laboratories, Inc. (UL) Standard No. 181 "Factory Made Air Duct Material and Air Duct Connectors."

These codes and standards can be obtained from the various agencies at the addresses listed below:

Air Conditioning and Refrigeration Institute
1815 N. Ft. Myer Drive
Arlington, Va. 22209

American National Standards Institute
1430 Broadway
New York, N.Y. 10018

American Society for Testing Materials
1916 Race Street
Philadelphia, Pa. 19103

American Society of Heating, Refrigerating, and Air Conditioning United Engineering Center
345 East 47th Street
New York, N.Y. 10017

Compressed Gas Association
500 Fifth Avenue
New York, N.Y. 10036

Department of Housing and Community Development
Building Regulatory Services
(Statewide Uniform Building Code)
Jackson Center
501 N. 2nd Street
Richmond, VA 23219-1321

GSA Specification Consumer Information Distribution Branch
Building 197
Washington Navy Yard
Washington, D.C. 20407

Hydronics Institute
35 Russo Place
Berkeley Heights, N.J. 07922

National Council on Radiation Protection and Measurement
P.O. Box 30175
Washington, D.C. 20014

National Fire Protection Association
470 Atlantic Avenue
Boston, Mass. 02210

Naval Publications and Form Center
5801 Tabor Avenue
Philadelphia, Pa. 19120

(For DOP Penetration Test Method) OHDS Publications
Room A-311, HEW South Building
Washington, D.C. 20201

Underwriters' Laboratories, Inc.
353 Princeton Road
Northbrook, Ill. 60062

APPENDIX C - DESIGN TABLES FOR INPATIENT HOSPITALS

Table 1.
SOUND TRANSMISSION LIMITATIONS FOR § 3.40

	AIRBORNE SOUND TRANSMISSIONS CLASS STC[1]		IMPACT INSULATION CLASS IIC[2]
	Partitions	Floors	Floors
Patients' room to patients' room	45	45	45
Public space to patients' room[3]	50	50	50[4]
Service areas to patients' room[5]	55	55	55[4]

[1]Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM Standard E90 and ASTM Standard E413.

[2]Impact insulation class (IIC) shall be determined in accordance with criteria set forth in HUD FT/TS-24, "A Guide to Airborne, Impact and Structure Borne Noise. Control in Multi-Family Dwellings."

[3]Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

[4]Impact noise limitation applicable only when corridor, public space, service area, or play or recreation area is over Patients' room.

[5]Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patients' rooms, offices, nurses' stations, and similar occupied spaces shall be effectively isolated from the floor.

NOTE: The requirement set forth in this table assumes installation methods which will not appreciably reduce the efficiency of the assembly as tested.

Table 2.

FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS ON INTERIOR FOR §§ 3.40 and 3.41

		Smoke Production Rating	Flame Spread Rating
Walls and Ceilings	Exitways, storage rooms and areas of unusual fire hazard	25 or less	ASTM Standard E84) NFPA 258
	All other	75 or less	ASTM Standard E84) NFPA 258
Floors*	Corridors and means of egress	NFPA 254-1978 (Flooring Radiant Panel Test Minimum of.45 watts/cm2	450 or less

* See subdivision 8 of § 3.4 for requirements relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices, waiting spaces, etc., as well as corridors that might be used by handicapped employees, visitors, or staff.

Table 3.

TEMPERATURE AND HUMIDITIES FOR §§ 3.43 AND 3.44

Area Designation	Temperature °F	Temperature °C	Relative Humidity(%) Min.	Relative Humidity(%) Max.
Operating Rooms	68-76*	20-24*	50	60
Delivery Rooms	70-76*	21-24*	50	60
Recovery Rooms	75	24	50	60
Intensive Care Rooms	72-78*	22-26*	30	60
Nurseries Units	75	24	30	60
Special Care Nursery Unit	75-80*	24-27*	30	60
Other Inpatient Areas	75	24	30	60

*Variable Range Required With Individual Room Control

Table 4.

GENERAL PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS FOR SECTION 3.44

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air per Hour Supplied to Room	Minimum[8] Total Air Changes per Hour Supplied to Room	All Air[7] Exhausted Directly to Outdoors	Recirculated within Room Units
Operating Room (for recirculating air system)	P	5	25	Optional	No[4]
Operating Room (all-outdoor-air system)[6]	P	15	15	Yes	No
Trauma Room	P	5	12	Optional	No[4]
Examination and Treatment Room	E	2	6	Optional	Optional
Delivery Room	P	5	12	Optional	No[4]
Nursery Unit	P	5	12	Optional	No[4]
Recovery Room	P	2	6	Optional	No[4]
Intensive Care	P	2	6	Optional	No[4,5]
Patient Room	E	2	2	Optional	Optional
Patient Room Corridor	E	2	2	Optional	Optional
Isolation Room	E	2	6	Yes	No[5]
Isolation Room-Alcove or Anteroom	E	2	10	Yes	No[5]
Examination Room	E	2	6	Optional	Optional
Medication Room	P	2	4	Optional	Optional
Pharmacy	P	2	4	Optional	Optional
Treatment Room	E	2	6	Optional	Optional
X-ray, Fluoroscopy	N	2	6	Yes	No
X-ray, Other Diagnostic Rooms	V	2	6	Optional	Optional
Physical Therapy and Hydrotherapy	N	2	6	Optional	Optional
Soiled Workroom or Soiled Holding	N	2	10	Yes	No
Clean Workroom or Clean Holding	P	2	4	Optional	Optional
Autopsy	N	2	12	Yes	No
Darkroom	N	2	10	Yes	No
Nonrefrigerated Body Holding Room	N	Optional	10	Yes	No
Toilet Room	N	Optional	10	Yes	No
Bedpan Room	N	Optional	10	Yes	No
Bathroom	N	Optional	10	Yes	No
Janitors' Closet	N	Optional	10	Yes	No
Sterilizer Equipment Room	N	Optional	10	Yes	No
Linen and Trash Chute Rooms	N	Optional	10	Yes	No
Laboratory, General[1]	N	2	6	Optional	Optional
Laboratory, Media Transfer[2]	P	2	4	Optional	No[4]
Food Preparation Centers	E	2	10	Yes	No
Warewashing	N	Optional	10	Yes	No
Dietary Day Storage	V	Optional	2	Optional	No
Laundry, General	V	2	10	Yes	No
Soiled Linen Sorting and Storage	N	Optional	10	Yes	No
Clean Linen Storage	P	Optional	2	Optional	Optional
Anesthesia Storage[3]	V	Optional	8	Yes	No
Central Services					
Soiled or Decontamination Room	N	2	6	Yes	No
Clean Workroom	P	2	4	Optional	Optional
Equipment Storage	V	Optional	2	Optional	Optional

P = Positive N = Negative E = Equal V = May Vary

[1]See subsections T, U and V of § 3.44 for additional requirements.

[2]See § 3.44 T for additional requirements.

[3]See § 3.44 X for additional requirements.

[4]Recirculating room units meeting the filtering requirements for sensitive areas in subsections J, K, L and M of § 3.44 may be used.

[5]See § 3.44 I.

[6]For maximum energy conservation, use of a recirculated filtered air system is preferred. An all outdoor air system may be used where required by local codes provided that appropriate heat recovery procedures are utilized for exhaust air.

[7]Heat recovery systems should be utilized where appropriate especially for those areas where all air is required to be exhausted to the outside.

[8]Requirements for outdoor air changes may be deleted or reduced and total air changes per hour supplied may be reduced to 25% of the figures listed when the affected room is unoccupied and unused provided that indicated pressure relationship is maintained. In addition, positive provisions such as an interconnect with room lights must be included to insure that the listed ventilation rates including outdoor air are automatically resumed upon reoccupancy of the space. This exception does not apply to certain areas such as toilets and storage which would be considered as "in use" even though "unoccupied."

General note. The outdoor air quantities for central systems employing recirculating and serving more than a single area designation may be determined by summing the individual area air quantity requirements rather than by providing the maximum listed ratio of outdoor air to total air. This does not apply to sensitive nurseries and intensive care rooms.

Table 5.
FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS FOR § 3.44

AREA DESIGNATION	MINIMUM NUMBER OF FILTER BEDS	FILTER EFFICIENCIES (%) FILTER BED No. 1	FILTER BED No. 2
Sensitive Areas*	2	25	90
Patient Care, Treatment Diagnostic, and Related Areas	2	25	90**
Food Preparation Areas and Laundries	1	80	--
Administrative, Bulk Storage and Soiled Holding Areas	1	25	--

* Includes operating rooms, delivery rooms, nurseries, recovery rooms, and intensive care units.

** May be reduced to 80% for systems using all-outdoor air. Note: Ratings shall be with tolerance of ARI Standard 680.

Table 6.
DOMESTIC HOT WATER CRITERIA FOR § 3.45

	Clinical	Dietary	Laundry
Gallons (per hour per bed)	6-1/2	4	4-1/2
Liters (second per bed)	.007	.004	.005
Temperature (°F)	110**	120*	160***
Temperature (°C)	43**	49*	71***

*Rinse water temperature at automatic warewashing equipment shall be 180°F (82°C).

**See § 3.45

***Required temperature of 160°F (71°C) in the laundry is that measured in the washing machine and shall be supplied so that the temperature may be maintained over the entire wash and rinse period. Attention is called to the fact that control of bacteria in laundry processing is dependent upon a number of interrelated factors such as detergent, bleach, number of rinses and temperature. In most instances, maximum overall economies with acceptable results can be achieved with the use of 160°F (71°C) water. Lesser temperature may require excessive bleaching or other chemical treatment that would be damaging to fabrics.

Table 7.
STATION OUTLETS FOR OXYGEN AND VACUUM SYSTEMS FOR SECTION 644

LOCATION	OXYGEN	VACUUM
Patient Room for adult medical, surgical, and post-partum care, and for pediatrics	A	A
Examination and treatment room for nursing unit	B	B
Patient room for intensive care	C	C
Nursery and pediatric nursery	A	A
General operating room	F	F
Cystoscopy and special procedure room	D	D
Recovery room for surgical and obstetrical patients	C	C
Delivery room	F	F
Labor room	A	A
Treatment room for emergency care	D	D
Autopsy room	-	D
Anesthesia workroom	-	D
Radiological procedure room	D	D

A - One outlet accessible to each bed. One outlet may serve two beds.

B - One outlet. Portable equipment for the administration of oxygen and suction may be considered acceptable in lieu of fixed outlets.

C - Two outlets for each bed or provide one outlet with Y-fitting.

D - One outlet.

E - One outlet for each bed.

F - Two outlets.

G - Three outlets.

Documents Incorporated by Reference
(§ 2.28 D of VR 355-33-500)

Guidelines for Air and Ground Transport of Neonatal and Pediatric Patients, American Academy of Pediatrics, 1993.

Guidelines for Perinatal Care, Third Edition, American Academy of Pediatrics and American College of Obstetricians and Gynecologists, 1992.

Control of Communicable Diseases in Man, 15th Edition, American Public Health Association, 1990.

Neonatal Nursing Transport Standards and Guidelines, National Association of Neonatal Nurses, 1994.

VA.R. Doc. No. R95-576; Filed June 21, 1995, 11:13 a.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: **VR 380-01-00. ~~Guidelines for~~ Public Participation ~~in the Development and Promulgation of Regulations~~ *Guidelines.***

Statutory Authority: §§ 9-6.14:7.1 and 23-9.6:1 of the Code of Virginia.

Effective Date: August 9, 1995.

Summary:

The amended regulations administer the agency's policy on public participation in its regulatory promulgation, amendment, and repeal processes. These regulations set out the procedure that the agency follows in the regulatory process. In addition, it lays out from whom the agency will solicit comments when considering regulatory action, and how and when the public may participate in the agency's process.

The amended regulations also clear up some unclear language in the Public Participation Guidelines and put them in full compliance with the Virginia Register Act, Administrative Process Act and Chapter 898 of the 1993 Acts of Assembly.

These guidelines shall apply to all regulations proposed or promulgated by the council which are subject to the Administrative Process Act.

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

Agency Contact: Frances C. Bradford, Regulatory Coordinator, State Council of Higher Education for Virginia, 101 North 14 Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2613.

VR 380-01-00. Public Participation Guidelines.

[*§ 1. Definitions.*

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

"Interested persons" includes state-supported and independent college and university presidents, state-supported and independent college and university (institutional) representatives, members of standing advisory and ad hoc committees to the council, persons who have requested to receive information in regard to specific council regulations or activities, persons who, in the preceding two years, have participated in public hearings concerning council regulatory actions, and in some cases the public at large (see § 4 A of these regulations).

"Regulatory action" means promulgating a new regulation, or amending or repealing a current regulation.]

§ [~~1.~~ 2.] Purpose.

In developing any proposed new or revised regulation, or when considering the repeal of an existing regulation, the [~~State~~] council [~~of Higher Education for Virginia ("the Council") , hereafter the Council,~~] will solicit comments from officials of institutions of higher education, [~~appropriate organizations and associations, and interested citizens~~ *relevant agencies, organizations, and interested persons*]. These guidelines outline the procedures to be used by the council in encouraging the participation of all interested persons in the formation and development of regulatory proposals under Virginia's Administrative Process Act [*(Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia)*].

The guidelines are based on the principle that interested citizens have both a right and a responsibility to take part in the governmental process, that government functions best when it provides for participation by the public, and that a state agency should impose only those requirements which are absolutely necessary to implement the agency's statutory responsibilities.

The guidelines shall apply to all regulations proposed or promulgated by the council which are subject to the Administrative Process Act.

§ [~~2.~~ 3.] Initiation of regulations ~~and identification of interested parties~~ .

The council may initiate proposed regulations at any time. *A petition for a new regulation* [*or*] *for* [*the*] *amendment* [~~, or addition,~~] *or repeal of any existing regulation may be filed by any department of government, group, or individual.* [~~*The council shall respond to that request within 180 days.*~~]

[*To be considered, a petition shall contain at least the following:*

1. The name, address, and telephone number of the petitioner.

2. The regulatory action (promulgation of new regulation, amendment of current regulation, or repeal of current regulation) proposed by the petitioner.

3. The reason for requesting the regulatory action.

4. The anticipated effects of making the regulatory change, including costs to relevant parties.

5. The anticipated effects of not making the regulatory change.

The council shall respond to the petition for regulatory action within 180 days. The council recommends that all petitions include documentation to support the requested regulatory action.]

§ [~~3.~~ *4.*] *Identification and notification of interested* [~~*parties*~~ *persons*] .

A. [*Identification of interested persons.*] Prior to the development of any regulations~~, however,~~ the council shall identify [*agency* or] institutional officials, persons, and groups who might be interested in or affected by the [~~regulations to be~~] proposed [*regulatory action*]. Because of the nature of the council's mission, there are certain regulatory functions in which [~~all citizens~~ *the public at large*] may have an interest. In these instances, the public at large will be regarded as the interested party. At other times, when proposed regulations will be more limited in their effect, the council will identify certain institutional officials, individuals, groups, associations, [*agencies*] and organizations that have an interest in the matter to be considered. *The council, in identifying* [~~*parties*~~ *persons*] *interested in proposed* [~~*regulations*~~ *regulatory changes*] *, will* [~~*use*~~ *consider*] *the following:*

1. List of advisory and ad hoc committees to the council [~~,~~ *, including the General and Professional Advisory Committee (public college presidents), Institutional and Professional Advisory Committee (public college provosts and other chief academic officers), Financial Aid Advisory Committee (public college financial aid officers), and when relevant more specialized committees such as the Library Advisory Committee;*]

2. A listing of persons who request to be placed on a mailing list maintained by the council [~~,~~ *, including those persons requesting to receive all council mailings and those who express interest in a particular area if relevant to the proposed regulation*;]

3. A listing of persons who previously participated in public proceedings concerning related subjects or issues[~~,~~ *; and*]

4. The council's complete mailing list [*, which includes all college presidents in Virginia, the members of all standing committees, institutional representatives, representatives of faculty and student organizations, legislators, representatives from other state agencies, and persons who specifically request to be placed on the council's mailing list*] .

The council's mailing list will be revised every two years to ensure that it is current [*and to make sure all relevant persons are included*].

B. [~~As a general rule,~~ *Notification of interested persons.*] The council will notify the president or chancellor of each state-supported college and university in Virginia [~~when regulations are to be developed~~ *of the initiation of any regulatory action*] . The president or chancellor of each independent college and university in Virginia will be notified of any [~~regulations to be developed pertaining~~ *regulatory action that pertains*] to the Tuition Assistance Grant Program or to any other matter which might directly or indirectly affect [~~private~~ *independent*] institutions. [*Dependent on determination pursuant to subsection A of this section, the council will notify all members of relevant advisory and ad hoc committees to the council of the intent to initiate regulatory action. The council also will notify any other persons who have been identified from the list in subsection A of this section as having a particular interest in the proposed regulatory action.*] In addition, the council will [~~notify all persons whose names are included on the council's mailing list, including institutional officials and private citizens when regulations are to be developed~~ *invite those notified to offer input regarding the proposed regulatory action*].

[~~The council will notify all members of advisory and ad hoc committees of the intent to initiate regulations. The council will seek the input of the advisory committees or consider such input offered by the committees in the event of rule making.~~]

~~The council's mailing list will be revised at least every other year to ensure that it is current.~~

[*C. Use of advisory or ad hoc committees and those groups or individuals registering interest in working with the agency. Council staff will keep informed and consult with advisory and ad hoc committees and groups or individuals who have registered an interest in working with the agency throughout the regulatory process under, but not limited to, the following circumstances:*

1. If the advisory or ad hoc committee or group or individual registering an interest in working with the agency is deemed to have expertise or advisory capabilities in an area relevant to the proposed regulatory action, or

2. If the advisory or ad hoc committee or group or individual registering an interest in working with the agency has registered as having an interest in an area relevant to the proposed regulatory action.]

~~§ 3. Notification of interested parties.~~

§ [~~*4.*~~ *5.* ~~*Notice of Intended*~~ *Proposal of*] *Regulatory Action.*

A. ~~Notice of intent.~~ [*Notice of Intended Regulatory Action.*] Prior to the development of any regulations, the council shall prepare a Notice of ~~Intent to Develop Regulations~~ *Intended Regulatory Action* ([~~notice~~ *NOIRA*]). The [~~notice~~ *NOIRA*] will contain a brief and concise statement regarding the [~~purpose of the regulations~~ *proposed regulatory action*] and invite all interested persons to provide written comments within 30 days of the publication of the [~~notice~~ *NOIRA*] in The Virginia Register of Regulations [*(Virginia Register)*] . At least two weeks prior to its publication date, the [~~notice~~ *NOIRA*] shall be submitted to the Registrar [~~of Regulations~~] for inclusion in the Virginia Register [~~of Regulations~~] . On or about the publication date of the [~~notice~~ *NOIRA*] in the Virginia Register [~~of Regulations~~] , the council , using its mailing list as described in § ~~2~~ [~~3~~ *4*] , will directly notify persons of its intent to develop the regulations.

[*The NOIRA shall state whether a public hearing is to be held. A public hearing will be held in all cases where required by basic law. If the NOIRA states that a public hearing is not scheduled to be held, then no hearing will be*

held unless, prior to the end of the comment period, the Governor directs that a public hearing should be held or the council receives requests for a public hearing from 25 or more persons.

The public hearing normally will be held in Richmond in the council's conference room. The council may hold the hearing in another location if the proposed regulations are of special interest to institutions or citizens in a particular geographic area. If determined desirable, the council may hold a public hearing on proposed regulations in several locations throughout the Commonwealth.

To the extent possible, a hearing will be conducted at a time which is generally convenient for officials, persons, and organizations most directly affected by the matter under consideration.

The public will be offered an opportunity at the hearing to make oral or written comment with regard to any proposed regulatory action. Persons addressing the proposed action at a public hearing will be encouraged to provide written copies of their statements.

At the council's discretion, the hearing's record of proceedings may be held open to provide additional time for receiving written comments following the conclusion of the public hearing.]

B. ~~Proposal of regulations.~~ [~~After consideration of all public comments received within the 30-day period, the council shall prepare the proposed draft regulations. All drafts of the regulations will be labeled with word "draft" and dated.~~ *Impact analysis statement. Prior to submitting a proposed regulatory change to the Registrar of Regulations to be printed in the Virginia Register, the council will deliver a copy of the regulation to the Department of Planning and Budget. Within 45 days from receipt of the delivery, the Department of Planning and Budget will determine the public benefit and prepare an economic impact analysis of the proposed regulation and deliver it to the council. The council will include that analysis statement as well as the council's response to that statement in its proposed regulation submission package to be printed in the Virginia Register.*

C. Submission of proposed regulations. After consideration of all public comments received within the 30-day period or at any public hearing that may have been held, the council shall prepare a draft of the proposed regulatory change. All drafts of the regulations will be labeled with word "draft" and dated. The council shall submit a copy of the draft regulations along with a summary of the regulation; a statement of the basis, purpose, substance, and issues of the regulation (as defined in § 9-6.14:7.1 of the Code of Virginia); and the economic impact analysis, along with the agency's response to that analysis, to the Registrar of Regulations who will publish the proposed regulations in the Virginia Register.]

§ ~~4.~~ [~~5.~~ *6.*]. Public participation [*period*].

[~~The council shall submit a copy of the draft regulations to the Registrar of Regulations, who will publish a hearing notice in The Virginia Register of Regulations and in appropriate newspapers identified by the council~~ *Any person will have*] at least 60 days [~~prior to the public hearing~~ *from the date of publication in the Virginia Register to offer comment on the proposed regulations*]. A copy of the draft regulations will be provided to all persons who [~~responded to the Notice of Intent~~ *Intended Regulatory Action. ~~The council will also send a copy of the draft regulations to all other parties, including individuals on the council's mailing list, who have been identified during the development process as either having an interest in or potentially being affected by the proposed regulations~~ request the document*].

[~~In any matter considered to be of interest to the general public, the council will prepare a news release and distribute it to daily and weekly newspapers, radio and television stations, and news wire services serving Virginia. The news release will include information about the subject matter and the purpose of the regulations under consideration and will announce the opportunity for public comment, including the time, date, and place of the scheduled public hearing.~~]

Copies of draft regulations will [*also*] be available for public inspection at the council's office in Richmond at the address contained in § ~~7~~ [*8 9*] of these guidelines and at the office of the Registrar of Regulations.

[*The council will publish a notice in regards to any proposed regulatory action that is considered to be of interest to more than a specific identifiable group. The notice will include information about the subject matter and the purpose of the regulations under consideration and will announce the opportunity for public comment, including the time, date, and place of the scheduled public hearing. The notice will be published in the agency's summary of its monthly meetings, which is distributed to the council's entire mailing list.*]

During the 60-day public participation period, the following persons and officials will have an opportunity to review and comment on the proposed regulations:

1. The public;
2. The Governor;
3. The General Assembly;
4. The Secretary of Education; and
5. The Attorney General.

[~~The council will hold a public hearing on any proposed regulations as prescribed in the hearing notice published in The Virginia Register of Regulations. The public hearing normally will be held in Richmond in the council's conference room. The council may hold the hearing in another location if the proposed regulations are of special interest to institutions or citizens in a particular geographic area. If determined desirable, the council may hold a public hearing on proposed regulations in several locations throughout the Commonwealth.~~

~~To the extent possible, a hearing will be conducted at a time which is generally convenient for officials, persons, and organizations most directly affected by the matter under consideration.~~

~~The public will be offered an opportunity to make oral or written comment with regard to any proposed regulations.~~

~~Persons addressing the proposed regulations at a public hearing will be encouraged to provide written copies of their statements.~~

~~At the council's discretion, the record of proceedings may be held open to provide additional time for receiving written comments following the conclusion of the public hearing.~~]

§ ~~5.~~ [~~6.~~ 7.] Emergency regulations.

From time to time, it may be necessary to enact emergency regulations which do not allow the normal 60-day period for public comment. The Administrative Process Act recognizes this possibility and permits enactment of emergency regulations with the approval of the Governor. In these instances, the emergency regulations will become effective when filed with the Registrar of Regulations (unless a later effective date is given). The emergency regulations will be published in the next edition of The Virginia Register of Regulations.

§ ~~6.~~ [~~7.~~ *8.*] Final action on proposed regulations.

[~~Following the 60-day public participation period and the public hearing,~~] The council shall take final action [~~to adopt~~ *on the*] proposed regulations [*following the 60-day public participation period and any public hearings that may have been held during that time*]. After the council [~~finally has acted~~ *takes final action*] , the action will be reported in a general news release and announced in The Virginia Register of Regulations. Under § 9-6.14:9 of the Code of Virginia, regulations cannot become operative until 30 days after the final regulations, as approved by the particular board, have been published in The Virginia Register of Regulations.

[*If the Governor, at any point in that final 30-day period, finds that one or more changes with substantial impact have been made to the proposed regulation, the Governor may require that the council solicit additional public comment on the changes. If that occurs, the council will contact those individuals/groups identified as interested persons and seek any comments they may have. In addition, the council will include a notice of the extended comment period in its next summary of council activities.*]

§ ~~7.~~ [~~8.~~ *9.*] Copies of regulations.

The council will print copies of adopted regulations.

Copies of adopted regulations may be obtained by writing the Associate Director, State Council of Higher Education for Virginia, James Monroe Building, 101 North Fourteenth Street, Richmond, VA 23219.

VA.R. Doc. No. R95-564; Filed June 21, 1995, 10:10 a.m.

* * * * * * * *

EXEMPTION NOTICE: Section 23-7.4 I of the Code of Virginia exempts the State Council of Higher Education for Virginia from the provisions of the Administrative Process Act.

Title of Regulation: **VR 380-04-01. Domicile Guidelines (REPEALED).**

VA.R. Doc. No. R95-565; Filed June 21, 1995, 10:11 a.m.

Title of Regulation: **VR 380-04-01:1. Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates.**

Statutory Authority: § 23-7.4 of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

The Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates set forth the general policies and procedures that institutions of higher education should use when determining if a student is eligible for in-state tuition rates. The council is charged with establishing these regulations in order to ensure the application of uniform criteria in determining eligibility for in-state tuition rates by institutions.

The key provisions of the regulations prescribe (i) the in-state tuition eligibility requirements for domiciliary residents of Virginia, spouses and dependent children of active-duty military members, and non-Virginia residents employed in Virginia, (ii) the reduced or in-state tuition eligibility requirements under special arrangements contracts and for other nonresidents, and (iii) the appeals process that must be in place for students denied in-state tuition rates.

The regulations will replace VR 380-04-01, Domicile Guidelines under which the program currently operates.

Agency Contact: Copies of the regulation may be obtained from Melissa A. Collum, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-0554.

VR 380-04-01:1. Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise:[1]

"Date of alleged entitlement" means the first official day of class within the semester or term of the program in which the student is enrolled. For special classes, short courses, intensive courses, or courses not otherwise following the normal calendar schedule, the date of alleged entitlement refers to the starting date of the nontraditional course in which the student is enrolled.

"Dependent student" means one who (i) is listed as a dependent on the federal or state income tax returns of the parents or legal guardians or, even if not so listed, (ii) receives substantial financial support from a parent or legal guardian.

[1] *Nothing herein is intended, nor shall be construed, to repeal or modify any provision of law.*

"Domicile" means a person's present, fixed home to which he returns following temporary absences and at which he intends to stay indefinitely. No individual may have more than one domicile at a time. Domicile, once established, shall not be affected by mere transient or temporary physical presence in another jurisdiction.

"Domiciliary intent" means present intent to remain indefinitely.

"Emancipated minor" means a person under the age of 18 on the date of the alleged entitlement whose parents or guardians have surrendered the right to his care, custody and earnings, and who no longer claim him as a dependent for tax purposes.

"FTE" means a full-time equivalent student. FTE is a statistic derived from the student-credit hour productivity of an institution. The number of FTE students in the term is obtained by dividing the total number of undergraduate, first professional, and graduate credit-hours per term by 15, 15, and 12 respectively.

"Full-time employment" means employment resulting in at least an annual earned income reported for tax purposes equivalent to 50 work weeks of 40 hours at minimum wage. This means that a person must earn the equivalent amount of 50 weeks of work, for 40 hours, at minimum wage; it does not require that the person work full time for all 50 weeks each year. As of April 1, 1991, the federal minimum wage is $4.25 per hour. Therefore, the person must have earned income of at least $8,500 to be considered as a full-time employee (50 x 40 x $4.25). The person may have earned this money in less than 50 weeks, but the time period in which the money is earned (up to one year) is irrelevant. One simply must have earned this minimum amount; furthermore, these wages must be reported for income tax purposes.

"Independent student" means one whose parents have surrendered the right to his care, custody and earnings, have ceased to support him, and have not claimed him as a dependent on federal and state income tax returns for at least 12 months prior to the date of the alleged entitlement.

"Rebuttable presumption" means that a student is presumed, or assumed, to have the fact (or domicile) in question, unless the student can show the contrary by clear and convincing evidence. The point to be made is that the student be given the chance to rebut the presumed fact by clear and convincing evidence.

"Special arrangement contract" means a written contract between an institution of higher education and a Virginia employer, or the authorities controlling a federal installation or agency located in Virginia.

"Substantial financial support" means the amount of support which equals or exceeds the amount necessary to qualify the individual to be listed as a tax dependent on federal and state income tax returns.

"Unemancipated minor" means a student under the age of 18 on the date of the alleged entitlement who is under the legal control of and is financially supported by either of his parents, legal guardian, or other person having legal custody.

"Virginia employer" means entities, including corporations, partnerships, or sole proprietorships, organized under the laws of Virginia, or having income from Virginia sources. Also included are public or nonprofit organizations authorized to operate in Virginia.

PART II.
IN-STATE TUITION RATES FOR DOMICILIARY RESIDENTS OF VIRGINIA.

Article 1.
Domicile Requirement.

§ 2.1. Determining eligibility for in-state tuition.

A. The institution shall first determine from the information furnished by the applicant whether the applicant is a dependent or independent student, emancipated or unemancipated minor.

B. The institution shall then determine whether the student has clearly and convincingly established Virginia domicile for the requisite one-year period. If the date of the alleged entitlement is, for example, September 1, 1995, then Virginia domicile must have been established no later than September 1, 1994, and continued for the entire year.

1. An independent student or emancipated minor must establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of alleged entitlement, the student was domiciled in Virginia and had abandoned any previous domicile.

2. An unemancipated minor must establish by clear and convincing evidence that for a period of least one year immediately prior to the date of alleged entitlement, the parent or legal guardian through whom the student claims eligibility was domiciled in Virginia and had abandoned any previous domicile.

3. A dependent student is rebuttably presumed to have the domicile of the parent or legal guardian listing the student as an exemption for tax purposes or providing substantial financial support. A dependent student 18 or over may seek to show a domicile independent of such parent or legal guardian; however, the student is presumed to have the same domicile unless he can show to the contrary by clear and convincing evidence.

4. The one-year period applies to all classifications and is waived only for two groups of persons: (i) active-duty military personnel residing in the Commonwealth who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, and (ii) dependent children claiming eligibility through an active-duty military member residing in Virginia.

§ 2.2. Domicile: residence requirement.

A. Domicile is defined in the law as "the present fixed home of an individual to which he returns following temporary absences and at which he intends to stay indefinitely." No person may have more than one domicile.

1. Domicile cannot be initially established in Virginia unless one actually resides, in the sense of being physically present, in Virginia with domiciliary intent.

2. Domiciliary intent means present intent to remain indefinitely, the individual has no plans or expectation to move from Virginia. Residence in Virginia for a temporary purpose or stay, even if that stay is lengthy, with present intent to return to a former state or country upon completion of such purpose, does not constitute domicile.

B. Once a person has established domicile in Virginia, actual residence here is no longer necessarily required.

1. Temporary absence from the state does not negate a claim of Virginia domicile unless the person does something incompatible with that claim, such as registering to vote in the new state, which indicates an intent to establish domicile in another state.

2. A person who has established Virginia domicile but resides in another state may be required by laws of the host state to fulfill certain obligations of the host state. Performing acts in the host state required by law of all residents, irrespective of domicile, does not automatically constitute an abandonment of Virginia domicile. However, such acts will need to be examined to determine if they were voluntary.

3. The question is whether all of the individual's acts, most importantly voluntary acts, show the formation of a new domicile in the host state and abandonment of Virginia domicile.

C. The physical presence requirement means that a person who has never resided in Virginia, or who was not residing here at the time he formed the intent to make Virginia his home, cannot be domiciled here. For example, a New York resident who has resolved to move to Virginia and to remain indefinitely in Virginia is still domiciled in New York for tuition eligibility purposes. The New York resident cannot establish Virginia domicile until actually moving to Virginia, taking the appropriate steps, and residing here for at least the one-year period with the requisite domiciliary intent.

§ 2.3. Domicile: intent requirement.

A. Where a person resides is relatively easy to determine. It can be difficult to ascertain whether a person has resided in Virginia with domiciliary intent.

1. Domiciliary intent is normally determined from the affirmative declaration and objective conduct of the person. Intent is necessarily a subjective element; however, a person demonstrates his intent through objective conduct. When evidence is conflicting, the opposing facts must be balanced against each other.

2. The burden is on the applicant to show Virginia domicile by clear and convincing evidence and to demonstrate abandonment of any prior domicile.

3. The law also requires that a person claiming eligibility for in-state tuition as a domicile (or the person through whom eligibility is being claimed) shall have demonstrated Virginia domicile for at least one year immediately prior to the date of the alleged entitlement.

B. Section 23-7.4 of the Code of Virginia includes a list of objective conduct that may be relevant in evaluating a claim of domiciliary intent. Necessarily, each of the objective criteria will not carry the same weight or importance in an individual case. No one factor is necessarily determinative but should be considered as part of the totality of evidence presented. The objective criteria that may be relevant include the following:

1. Continuous residence for at least one year immediately prior to the date of alleged entitlement. Continuous residence may be evidence supporting that the person intends to make Virginia his home indefinitely. As noted previously, once a person has affirmatively established Virginia domicile, actual residence in Virginia is not required in order to retain it. However, residence in another state or country is still relevant because it may be that the person has established a new domicile in the foreign jurisdiction.

2. State to which income taxes are filed or paid.

a. Failure to file a tax return in Virginia when one is required to is evidence that one is not a Virginia domicile. Domiciliaries are required to file returns regardless of the fact that they may reside elsewhere.

(1) The general rule is that Virginia domiciliaries residing temporarily outside the Commonwealth must file resident income tax returns if they wish to maintain their Virginia domicile.

(2) Persons claiming that they are exempt from this requirement, such as those who reside overseas and are employed by certain non-U.S. companies, have the burden of clearly identifying the exemption and demonstrating their entitlement to it.

b. Considering payment or nonpayment of income tax as a factor assumes that the individual had taxable income. Moreover, under current tax law, a Virginia domicile is not required to file a Virginia return if the person's adjusted gross income was less than $5,000. Thus, failure to file a return by someone who had no income in Virginia or whose adjusted gross income was less than $5,000 is not determinative of domiciliary status.

c. A member of the armed forces who does not claim Virginia as his tax situs for military income is normally not a Virginia domiciliary but may present clear and convincing evidence rebutting this presumption.

d. The filing of an income tax return in Virginia or the paying of income taxes to Virginia is evidence, but not conclusive evidence, that a person is domiciled in Virginia. For example, a student with a part-time job may be required to pay income tax to Virginia on wages earned in the state, even though he is a temporary resident or residing outside of Virginia.

e. Paying income taxes to another state or country is also not automatically determinative of domiciliary status. A Virginia domicile may be required by another state to pay income taxes on income earned in that state irrespective of ties to the state; however, such payment may be considered, along with all of the other evidence, in evaluating a claim of Virginia domicile.

3. Driver's license.

a. Possession of a Virginia driver's license may be evidence of intent to establish domicile in Virginia.

b. Possession of a driver's license from another state may be evidence of intent to retain domicile in that state.

4. Motor vehicle registration.

a. Registration of a motor vehicle in Virginia may be evidence of intent to establish domicile in Virginia.

b. Registration of a motor vehicle in another state may be evidence of intent to be domiciled in that state.

c. Virginia law permits, but does not require, registration by a nonresident student. Thus, a student-owner who does register in Virginia, when not required to by law, has shown evidence of Virginia domicile. However, vehicle registration alone is not determinative.

5. Voter registration.

a. Actual voting.

(1) Voting in person or by absentee ballot in another state or country during the year immediately prior to the date of the alleged entitlement is strong evidence that the individual has not established domicile in Virginia.

(2) Voting in Virginia in local or state elections is evidence of domicile, but it is not determinative.

(3) Failing to vote in state or local elections is also evidence that the person is not a domiciliary; however, it is not determinative in all cases since the individual may forget to vote, choose not to, or in the case of certain aliens, may not be entitled to vote.

b. Voter registration.

(1) Registering to vote in Virginia within the past year is evidence of domiciliary intent, but it is not determinative. The institution is not bound by the registrar's determination; however, it should be considered.

(2) The fact that a person is still registered in another state, but has not voted there in the past year, does not conclusively mean that the person is not domiciled in Virginia; however, it should be considered.

(3) Failure to register to vote by a person who, on principle, has never registered to vote anywhere should not be taken as conclusive evidence that the person lacks domiciliary intent.

6. Employment.

a. Employment in Virginia is not required for establishing domicile. If a person has otherwise shown residence in the state with domiciliary intent, unemployment does not preclude a finding that the person is a Virginia domiciliary.

b. Fulfillment of state licensing requirements in order to be certified to practice a profession in Virginia (e.g., bar examination, clinical psychologist, nursing certificates), is evidence of domiciliary intent; however, it is not determinative.

c. Employment in Virginia post-graduation.

(1) Accepting a formal offer of permanent employment with a Virginia employer following graduation is strong evidence of domiciliary intent.

(2) The burden is on the student to demonstrate that such employment exists, for example, through a written commitment between the student and the prospective employer.

(3) This factor is particularly important in reclassification cases.

d. Summer employment.

(1) Employment in Virginia during the summer may be evidence of domiciliary intent, albeit not conclusive evidence.

(2) A student returning each summer to his parents' domicile outside Virginia may be evidence of retaining that domicile.

7. Ownership of real property.

a. Ownership of real property (e.g., land, house, cottage, etc.) in Virginia may be evidence of domiciliary intent.

b. Payment of real property taxes to Virginia in the absence of other supportive evidence is insufficient to establish that a person is domiciled in Virginia. Owners of real property in Virginia are required to pay real estate taxes irrespective of their domicile.

c. A person who may have purchased real property in Virginia while domiciled here, but who subsequently left to take up residence in another state, cannot establish eligibility solely through continued ownership of Virginia property. Even though the person still has taxable real property in Virginia, the individual's actions may show that Virginia domicile has been abandoned.

8. Sources of financial support.

a. Acceptance of financial assistance from public agencies or private institutions located in another state likely precludes establishing Virginia domicile when such financial assistance is offered only to domiciliaries of the other state.

b. Acceptance of such assistance would not prohibit a student, at a later time, from showing a change of intent or that the student did not know that he was representing domicile of another state. Such claims are suspect and must be proven by clear and convincing evidence.

c. Institutions shall also consider financial support obtained from parents or other relatives. Substantial

financial support from a parent or relative in another state could be evidence of continuing ties to that state.

9. Location of checking or passbook savings accounts.

10. Social and economic relationships.

a. The fact that a person has immediate family ties to Virginia, such as a brother or sister domiciled here, may be offered to support a claim of domiciliary intent.

b. Professional and business licenses issued by Virginia agencies support a person's claim of domicile, as does the acceptance of a formal offer for permanent employment in Virginia.

c. Other social and economic ties to Virginia that may be presented include membership in religious organizations, community organizations, and social clubs.

C. A person shall not ordinarily be able to establish domicile by performing acts which are auxiliary to fulfilling educational objectives or which are required or routinely performed by temporary residents of the Commonwealth.

D. Prior determination of a student's domiciliary status by one institution is not conclusive or binding when subsequently considered by another institution; however, assuming no change of facts, the prior judgment should be taken into account in the interest of consistency.

E. Each case presents a unique combination of factors, and the institution must determine from among them those core factors which clearly and convincingly demonstrate the person's domiciliary intent.

1. Having isolated the core factors in a given case, the institution must look at the date on which the last of these essential acts was performed. At that time, domiciliary intent is established, and the clock starts running for purposes of the one-year domicile requirement.

2. In complex cases, it might be helpful to chart the steps taken to establish domicile on a time line. The factors demonstrating domiciliary intent must be shown throughout the one-year period prior to the date of alleged entitlement.

F. It is important to reiterate the reference to clear and convincing evidence. A student who claims domiciliary residence must support that claim by clear and convincing evidence. Clear and convincing evidence is not as stringent a standard as proof beyond a reasonable doubt, as required in the criminal context, but is a degree of proof higher than a mere preponderance of the evidence. Clear and convincing evidence is that degree of proof that will produce a firm conviction or a firm belief as to the facts sought to be established. The evidence must justify the claim both clearly and convincingly.

§ 2.4. Residence for educational purposes.

A. Mere physical presence or residence primarily for educational purposes does not confer domiciliary status. For example, a student who moves to Virginia for the primary purposes of becoming a full-time student is not a Virginia domicile, even if the student has been in Virginia for the required one-year period.

B. The issue is whether the individual has moved to Virginia with the primary purpose of becoming a full-time student or with the primary purpose of establishing indefinitely his home in Virginia. In questionable cases, the institution should closely scrutinize acts performed by the individual which indicate an intent to become a Virginian.

Article 2.
Special Rules for Determining Domiciliary Residence.

§ 2.5. Unemancipated minors.

A. An unemancipated minor automatically takes the domicile of his parents.

B. If the unemancipated minor is in the care of a legal guardian, the minor takes the domicile of the legal guardian unless there are circumstances indicating that the guardianship was created primarily for the purpose of conferring a Virginia domicile on the minor. With parents surviving, the guardianship must have been created by law, such as a court order. A copy of the court decree should routinely be required as proof of legal guardianship.

C. In most cases, the domicile of the parents will be the same; however, it is possible for the parents to have different domiciles.

1. Where the parents have not been divorced or legally separated by court order, the unemancipated minor may claim the domicile of either parent.

2. Parents legally separated or divorced.

a. The unemancipated minor is not automatically assigned the domicile of the custodial parent. Rather, the domicile of the unemancipated minor may be either (i) the domicile of the parent with whom he resides, (ii) the domicile of the parent who claims the minor as a dependent for federal and Virginia income tax purposes, currently and for the tax year prior to the date of alleged entitlement, or (iii) the domicile of the parent who provides substantial financial support. This derives from the definition of unemancipated minor and dependent student.

b. If a minor lives with the mother, but the father, who is a Virginia domiciliary, claims the minor as a dependent on his federal and Virginia income tax returns, the minor may claim Virginia domicile through the father.

§ 2.6. Dependent students.

A. The domicile of a dependent student is rebuttably presumed to be the domicile of the parent or legal guardian claiming the student as an exemption for federal or state income tax purposes currently and for the tax year prior to the date of alleged entitlement or providing substantial financial support.

1. A dependent student is not required to live with a parent or legal guardian.

2. A dependent student does not have to be a full-time student.

3. A dependent student may be over the age of 18. In fact, a married student may be a dependent student if listed as a tax dependent or provided substantial financial support by a parent or legal guardian as indicated above.

B. In some cases, the institution may need to consult with tax authorities to determine if the amount of support a student receives from a parent or legal guardian would qualify the student to be claimed as a tax dependent.

1. Normally, a student will be classified as a dependent of the parent or legal guardian who provides more than one half of the student's expenses for food, shelter, clothing, medical and dental expenses, transportation, and education.

2. Only financial support provided by the parent or legal guardian is considered. Earned income of the student paid by parent or legal guardian for bona fide employment is not counted as part of the parental or guardian support; however, gifts of money, or other things of value, from the parent or legal guardian to the student are counted toward the parental or guardian support to the extent that the student relies upon it for support.

C. A dependent student may rebut the presumption that the student's domicile is the same as the parent's.

1. When the parents are separated or divorced, and the parent claiming the student as a dependent for income tax purposes is domiciled in another state, the student may rebut this presumption by showing residence with the other parent, who is a Virginia domiciliary.

2. A dependent student 18 years of age or older may also rebut the presumption that the student has the domicile of the parent claiming the student as a dependent for income tax purposes by showing that Virginia domicile was established independent of the parents. The burden is on the student to show by clear and convincing evidence that he has established a Virginia domicile independent of the out-of-state parents despite the fact that the parents are claiming the student as a dependent for income tax purposes or providing substantial financial support.

3. Finally, a student may rebut the presumption that the student has the same domicile as an out-of-state parent by offering clear and convincing evidence that the parent misreported the student as a dependent for tax purposes. In this case the institution should evaluate the student as an independent student, and consider informing the relevant tax authority.

D. Military dependent children.

1. When determining the domiciliary status of a student whose parent is a member of the military, the institution should always first determine if the military parent or the nonmilitary parent is a Virginia domiciliary. A military parent may reside in Virginia but choose not to claim Virginia as his domicile and has the right to choose another state as his home state for taxation of military income purposes.

a. Paying taxes to Virginia on all military income is evidence that the military parent is a Virginia domiciliary and should be evaluated with all of the other pertinent information. To pay taxes to Virginia on military income, the military member must file a State of Legal Residence Certificate claiming Virginia as his domicile and changing the Leave and Earnings Statement authorizing the withholding of Virginia income tax. A military member becomes a Virginia domiciliary once the military member declares Virginia domicile and takes the appropriate steps to satisfy some of the factors for establishing domicile as set forth in § 2.3 B. Military members do not have to satisfy the one-year residence requirement, nor do dependent children claiming Virginia domicile through them.

b. If the military parent claims another state as his income tax situs while stationed in Virginia, the rebuttable presumption is that the parent is not a Virginia domiciliary.

2. If the student's nonmilitary parent is a Virginia domiciliary and the requisite one-year period is met, the dependent child may claim domicile through the nonmilitary parent and receive in-state rates if the student is claimed as a dependent of the nonmilitary parent.

a. As with anyone else, the strength of the nonmilitary parent's ties to Virginia should withstand scrutiny.

b. In addition to the factors listed in § 2.3 B, the institution should consider the duration of residence in Virginia and the nonmilitary parent's domiciliary history. Evidence that the nonmilitary parent has accompanied the military parent on each tour of duty outside Virginia and taken steps to establish domicile in other states may show that the nonmilitary parent has not established a Virginia domicile independent of the military parent.

3. a. If one of the parents is a Virginia domiciliary, the student may claim eligibility through that parent, provided that the student is a dependent of that parent (see § 2.6 A).

b. The institution should consider the requirements of the military exception (see Part III) only if the student is not eligible under this section as a dependent of a parent (military or nonmilitary) who is a domiciliary of Virginia.

§ 2.7. Independent students.

A. Upon reaching the age of majority, 18, students are capable of establishing domicile independent of their parents or legal guardian. Such a student must demonstrate clearly and convincingly through positive steps the establishment of an independent domicile.

B. An independent student's parents or legal guardian do not list the student as a dependent on any tax return, nor have they done so for at least 12 months prior to the date of alleged entitlement. Further, the student is not relying on a parent or legal guardian for substantial financial support.

C. Due to the one-year requirement, the earliest an independent student would be eligible for in-state rates by virtue of having established an independent domicile in Virginia would be on his 19th birthday.

§ 2.8. Emancipated minors.

A. By virtue of having been emancipated prior to reaching age 18, an emancipated minor becomes eligible to establish a domicile independent of parents as of the date of emancipation. If positive steps are necessary in order to establish a Virginia domicile, the earliest an emancipated minor may become eligible for in-state tuition is one year after the date of emancipation. A student who establishes domicile prior to emancipation is eligible for in-state tuition upon emancipation.

B. Emancipation requires that the parents or guardian consider the child emancipated.

1. A minor's declaration of emancipation is not conclusive. For example, a minor who runs away from home is not necessarily emancipated, even though the minor may not desire any further contacts with the parents or legal guardian.

2. The parents or legal guardian must no longer support the minor, and they must recognize the minor's right to retain his own wages and to live independently of them.

3. If the parents or legal guardian list the minor as a dependent on income tax returns, he cannot be emancipated. A student who claims emancipation from the parents or legal guardian must provide evidence that his parents or legal guardian consider him emancipated and do not claim the student as a tax dependent. The institution may require a copy of the tax returns if needed to substantiate the claimed emancipation.

§ 2.9. Married persons.

A. The domicile of a married person shall be determined in the same manner as the domicile of an unmarried person. A person's domicile is not automatically altered by marriage. A person cannot acquire Virginia domiciliary status simply by marrying a Virginia domiciliary.

B. Marriage is a factor in determining whether or not an individual is emancipated from the parents, but it is not conclusive.

C. There is no presumption that one spouse has the same domicile as the other spouse. Each spouse must establish Virginia domicile, irrespective of the domicile of the other spouse.

D. The spouse of a military member also must establish domicile independent of the military spouse. An institution should only apply the requirements of the military exception (see Part III) if the spouse has not established eligibility as a Virginia domiciliary for the required one-year period prior to the date of alleged entitlement.

§ 2.10. Aliens.

A. The mere fact that a person is a citizen of another country does not automatically disqualify the person from establishing domicile in Virginia. When a foreign national claims Virginia domicile, the institution must initially examine the federal immigration documents controlling the alien's purpose and length of stay in the United States. (For immigrants, this is usually Form I-551; for nonimmigrants, it is Form I-94.)

1. The purpose of examining immigration documents is to determine whether the alien is required to maintain a foreign domicile, as well as the terms and conditions governing the alien's presence in the United States relevant to evaluating the claim of Virginia domicile for the requisite one-year period.

2. If the immigration documents indicate that a person cannot establish domicile then the student is not eligible for in-state tuition rates.

3. Federal immigration laws are complex and ever evolving. Treaties may also be controlling. The burden is upon the student claiming Virginia domicile to bring pertinent information to the attention of the institution.

B. An institution should preliminarily determine under which alien category the student falls and then proceed with the evaluation of domicile in accordance with these guidelines.

1. Immigrants are admitted for permanent residence.

2. Nonimmigrants are admitted for specific time periods and for particular purposes (e.g., tourism, study, or temporary employment).[2]

3. The remainder may be persons who are on a paroled status or granted asylum.

C. In reviewing the domiciliary intent factors, keep in mind that there may be factors, such as voter registration, which are inapplicable to foreign nationals by law.

1. Aliens cannot register to vote.

2. Salaries paid by many international organizations to non-U.S. citizens are exempt from federal and state taxation by treaty or international agreement (i.e., the International Bank for Reconstruction and Development, also known as the World Bank).

3. In such instances, a record of nonvoting or nonpayment of taxes is immaterial to the domicile consideration. Unless the institution is aware of the inapplicability of any evidentiary factor, the responsibility and burden is always on the student to bring such information to the attention of the institution.

D. Aliens holding Form I-551 (green cards) are lawfully admitted as immigrants for permanent residence in the

[2] *8 USC 1101 (a) 15; 8 CFR 214 et seq. 22 CFR 40-42.*

United States.[3] *Such individuals are not prohibited from forming domicile in this country. Thus, immigrants may claim, and seek to show, eligibility for in-state tuition rates as Virginia domiciles as any citizen of the United States. The burden is on the student to establish, clearly and convincingly, domicile in Virginia for the requisite one-year period.*

E. Conditional permanent resident aliens.

1. A person, and that person's children, may acquire permanent resident status through marriage to a United States citizen or lawful permanent resident. In order to discourage fraudulent applications based on sham marriages, the Immigration and Naturalization Service, pursuant to the Immigration and Nationality Act, is now issuing two-year "conditional" Alien Registration Receipt Cards (Form I-551) to such persons. These differ from the regular Form I-551 only insofar as there is an expiration date on the back. During the last 90 days of the two-year period, the couple must appear before the INS and file a petition to remove the condition, swearing under oath that the marriage was and is valid, and that it was not entered into for the purpose of procuring an alien's entry as an immigrant.

2. In these cases, the institution should assume that the conditional basis will be removed and analyze the alien as a lawful permanent resident; however, the institution should verify at the appropriate time that the conditional basis of the alien's permanent resident status has in fact been removed. If permanent residence status is terminated by Immigration, the institution may, in accordance with the policies concerning falsification of information, reconsider the student's application for in-state status to determine whether it was fraudulent. If so, the institution may change the student's status retroactive to the term for which the fraudulent application was made.

F. Legalization (amnesty) program.

1. The Immigration Reform and Control Act provides for the legalization of aliens who establish that they were in the United States illegally as of January 1, 1982, and maintained continuous residence thereafter.

2. Several of the usual exclusion grounds have been waived for the purposes of the legalization program, and the United States Attorney General has discretion to waive most of the others. However, an alien who has been convicted of a felony or three misdemeanors is currently ineligible.

3. An applicant for legalization must go through several stages to receive permanent resident status.

4. Holders of Form I-688A or I-688 are eligible to receive in-state tuition rates upon the requisite showing of Virginia domicile for the one-year period.

5. The standards for adjustment to permanent resident status for a special group of agricultural workers (SAWs) who worked in seasonal agricultural services between May 1, 1985, and May 1, 1986, are even more liberal than for the main legalization program. Applications for in-state status from SAWs who have been issued Form I-688 should be analyzed in the same manner as legalized immigrants.

G. Political refugees/asylees. Political refugees/asylees are generally admitted into the United States for an indefinite period of time without domiciliary restriction. They usually carry Form I-94 endorsed to show either refugee or asylee status. Although some of the I-94s may have an expiration date, e.g., one year, they are usually renewed indefinitely until the person adjusts to permanent resident status. Like immigrants, such political refugees and asylees are eligible for in-state tuition rates upon clear and convincing evidence that for the period of at least one year prior to the date of alleged entitlement, they were domiciled in Virginia and abandoned any previous domicile.

H. Undocumented aliens. When faced with determining the eligibility for in-state tuition for undocumented aliens, the institution:

1. May contact the U.S. Immigration and Naturalization Service (INS) to seek clarification on the immigration status of the individual. There may be one or more explanations for an alien not having current documentation. It may be that the documentation or visa has lapsed in oversight, the matter is being processed by INS, or some special treaty, policy, or INS decision applies to the student.

2. Shall presume inability of undocumented aliens to establish domicile in the United States. Lack of legal status with INS is a strong indicator of lack of intent to remain in the state indefinitely. The burden is on the student to produce clear and convincing evidence to show eligibility.

For example, a student could live in Virginia for 10 years under an eligible nonimmigrant visa category, pay taxes to Virginia, obtain a driver's license and vehicle registration in Virginia, own property in Virginia, graduate from a Virginia high school, and establish other social and economic ties to the Commonwealth. If the student allows the visa to expire without renewing it, he would then be an undocumented alien. However, the student may meet the intent requirement, rebutting the presumption that undocumented aliens cannot establish domicile in Virginia.

I. Nonimmigrants.

1. Unlike immigrants, nonimmigrants are authorized entry into the United States temporarily for specific purposes.

2. a. The document showing their admission status is the Arrival-Departure Record (Form I-94), which is usually stapled into the passport. This form normally contains the nonimmigrant visa category under which the alien is admitted and an expiration date.

[3] *The front side of the card contains the photograph and fingerprints of the alien and an eight-digit number preceded by the letter "A." The reverse side of the card states that "the person identified by this card is entitled to reside permanently and work in the United States."*

b. The nonimmigrant visa is a stamp placed on one of the pages of the alien's passport. It is useful to distinguish between the nonimmigrant visa and Form I-94. A visa does not guarantee entry, it merely allows a person to board a plane whose destination is the United States and to apply for admission at the border. Form I-94 determines whether the alien will be admitted and how long he will be permitted to stay. When the expiration dates of the visa and the I-94 are different, the I-94 controls.

c. Institutions should also examine a Nonimmigrant's Employment Authorization Document for evidence of permission to work in the United States.

3. Eligibility to establish domicile.

a. Several of the categories listed below indicate that holders of these visas are eligible to establish domicile in Virginia. This does not mean that the individual should be conferred domiciliary status, but merely that the student be allowed to present evidence of domiciliary intent as would be presented by a U.S. citizen attempting to establish domicile. A visa holder must present clear and convincing evidence of domiciliary intent and satisfy the one-year durational requirement to receive in-state tuition.

b. Aliens who enter the United States under those categories indicated as ineligible are prohibited by federal and state law to form domicile in the United States. As a condition of entry, such aliens have pledged, and are required, to retain their foreign residence while living temporarily in this country.

c. Minor children or dependent children of aliens who enter the United States under any of the ineligible visa categories are similarly ineligible to establish Virginia domicile. However, they may be eligible for in-state status through the natural or adoptive parent or legal guardian. As with anyone else, the person through whom eligibility is claimed must have been a Virginia domiciliary for the requisite one year.

4. The present nonimmigrant visa categories are described below. The function of the institution is not to judge the appropriateness of the alien's classification but to analyze the claim of domicile, taking into account the terms and conditions of the classification and the expiration date as it appears on the I-94.

a. (1) A-1: Includes ambassadors, public ministers, career diplomats, and consular officers accredited by a foreign government and recognized by the Secretary of State, and their immediate family.

(2) A-2: Other foreign government officials and employees accepted by Secretary of State, and immediate family.

(3) A-3: Attendants, servants or personal employees of A-1 or A-2, and their immediate family.

(4) A-1, A-2, and A-3 visa holders are eligible to establish domicile.

b. (1) B-1: Temporary visitor for business having residence in foreign country which he has no intention of abandoning.

(2) B-2: Temporary visitor for pleasure having residence in foreign country which he has no intention of abandoning.

(3) B-1/B-2-Temporary visitor for pleasure and business having residence in foreign country which he has no intention of abandoning.

(4) B-1, B-2, and B-1/B-2 visa holders are ineligible.

c. (1) C-1: Alien in immediate and continuous transit through the United States.

(2) C-2: Alien in transit to United States headquarters.

(3) C-3: Foreign government officials, members of immediate family, attendants, and servants, who are in transit through the United States.

(4) C-1, C-2, and C-3 visa holders are ineligible.

d. D: Alien crewman serving on board a vessel or aircraft, who intends to land temporarily and solely in pursuit of his duties and to depart with the vessel on which he arrived or on another vessel. D visa holders are ineligible.

e. (1) E-1: Aliens and immediate family permitted to enter the United States under treaty to engage in substantial business. Allowed to remain in the United States as long as business requires.

(2) E-2: Aliens and immediate family permitted to enter United States under treaty for investment purposes. Allowed to remain in the United States as long as investment purposes require.

(3) E-1 and E-2 visa holders are eligible to establish domicile.

f. (1) F-1: Bona fide student permitted entry solely for purpose of pursuing a full course of study, having a residence in a foreign country which he has no intention of abandoning.

(2) F-2: Spouse or child of F-1, having a residence in a foreign country which he has no intention of abandoning.

(3) F-1 and F-2 visa holders are ineligible to establish domicile.

g. (1) G-1: Principal resident representative of recognized foreign member government to international organization, staff, and members of immediate family.

(2) G-2: Other representatives of recognized foreign member government to international organization and immediate family.

(3) G-3: Representative of nonrecognized or nonmember foreign government to international organization and members of immediate family.

(4) G-4: International organization, officer or employee thereof, and members of immediate family.

(5) G-5: Attendant, servant, or personal employee of G-1, G-2, G-3 and G-4 classes and members of immediate family.

(6) G-1, G-2, G-3, G-4, and G-5 visa holders are eligible to establish domicile.

h. (1) H-1: Temporary worker of distinguished merit and ability.

(2) (a) H-2A: Aliens temporarily in the United States to perform agricultural labor or services and who have residence in a foreign country which they have no intention of abandoning.

(2) (b) H-2B: Aliens temporarily in United States to perform nonagricultural labor or services and who have residence in a foreign country which they have no intention of abandoning.

(3) H-3: Trainee having a residence in a foreign country which he has no intention of abandoning.

(4) H-4: Spouse or child of alien classified as H-1, H-2, H-3; if spouse or parent is H-2 or H-3, has a residence in a foreign country which he has no intention of abandoning.

(5) H-1 and H-4 accompanying H-1 visa holders are eligible to establish domicile; H-2, H-3, and H-4 accompanying H-2 or H-3 visa holders are ineligible.

i. I: Representative of foreign information media, spouse, and children. I visa holders are eligible to establish domicile.

j. (1) J-1: Exchange visitor under educational program designated by Secretary of State and having a residence in a foreign country which he has no intention of abandoning.

(2) J-2: Spouse or child of exchange visitor and having a residence in a foreign country which he has no intention of abandoning.

(3) J-1 and J-2 visa holders are ineligible.

k. (1) K-1: Fiance or fiancee of United States citizen who seeks to enter United States solely to conclude a valid marriage in 90 days.

(2) K-2: Minor child of K-1 visa holder.

(3) K-1 and K-2 visa holders are eligible to establish domicile.

l. (1) L-1: Intra-company transferee (executive, managerial, specialized personnel) continuing employment with international firm or corporation.

(2) L-2: Spouse or minor child of alien classified as L-1.

(3) L visa holders are granted initial admission for up to three years; one two-year renewal may be obtained for a maximum stay of five years, except for registered nurses who may be granted up to six years. While their authorized stay is presently fixed in time by law, it is not clear whether Congress has thereby required such aliens to maintain their foreign domicile or prohibited domiciliary residence in the United States during their stay in the United States.

(4) Until officially clarified, the institutions should give such applicants the benefit of the doubt and give them the opportunity to claim and show, by clear and convincing evidence, that they have abandoned their former domicile and that Virginia is their domiciliary residence and has been for the requisite one year.

m. (1) M-1: Vocational or other recognized nonacademic student having residence in a foreign country which he has no intention of abandoning.

(2) M-2: Spouse or minor child of M-1, having residence in a foreign country which he has no intention of abandoning.

(3) M-1 and M-2 visa holders are ineligible.

n. N: The parent of an alien who has been accorded the status of special immigrant, but only if and while the alien is a child; or the child of such a parent accorded the status of special immigrant. N visa holders are eligible to establish domicile.

o. (1) O-1: An alien with extraordinary ability in the sciences, arts, education, business, or athletics who is in the United States to continue work in this area, and immediate family, having a foreign residence which he does not intend to abandon.

(2) O-2: An alien entering the United States solely to assist in the artistic or athletic performance by an alien who is admitted under an O-1 visa, and immediate family, having a foreign residence which he does not intend to abandon.

(3) O-1 and O-2 visa holders are ineligible.

p. P: An alien who is an athlete or entertainer of international reputation and is in the United States temporarily and solely for the purpose of performing, or the spouse or child of such an alien, who has a foreign residence which he does not intend to abandon. P visa holders are ineligible.

q. Q: An alien having a foreign residence that he has no intention of abandoning who is in the United States for a period not to exceed 15 months as a participant in an international cultural exchange program designated by the U.S. Attorney General. Q visa holders are ineligible.

r. R: An alien, and the spouse and children of that alien, if accompanying or following to join the alien, who for the two years immediately preceding the time of application for admission to the country has been a member of a religious denomination having a bona fide, nonprofit religious organization in the United States. Until officially clarified, the institutions should

give such applicants the benefit of the doubt and give them the opportunity to claim and show, by clear and convincing evidence, that they have abandoned their former domicile and that Virginia is their domiciliary residence and has been for the requisite one year.

s. (1) NATO-1: Principal permanent representative of member of state to NATO, and resident staff and immediate family.

(2) NATO-2: Other representatives to NATO, including dependents of member of force entering U.S. in accordance with the NATO Status of Forces Agreement.

(3) NATO-3: Official clerical staff and immediate family accompanying NATO-1 or NATO-2 holder.

(4) NATO-4: Officials of NATO (other than NATO-1) and immediate family.

(5) NATO-5: Experts, other than NATO officials classifiable under NATO-4, employed on missions on behalf of NATO and their dependents.

(6) NATO-6: Members of civilian component accompanying a force entering U.S. in accordance with the NATO Status of Forces Agreement; members of civilian components employed by Allied Headquarters; and dependents.

(7) NATO-7: Attendants and servants of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, and NATO-6.

(8) Aliens admitted into the United States, pursuant to the NATO Status of Forces Agreement, who are members of the armed forces, are not eligible under terms of this agreement to establish domicile in the United States.[4] Since the domicile prohibition of the NATO agreement does not apply to civilians accompanying members of the armed forces, these individuals may be able to establish domicile as any other person. The alien must demonstrate the inapplicability of the treaty agreement and provide clear and convincing evidence that he is eligible to establish domicile.

5. Pending status changes.

a. A student who has petitioned the federal government to reclassify his restricted status to immigrant status, or some other status, will continue to be ineligible despite the petition for reclassification.

b. When such petition is acted favorably upon by the federal government, the student may seek to prove Virginia domicile as anyone else and may, in the interest of fairness, claim that such domicile existed back to the date of the filing of the petition, not necessarily from the date of reclassification by the federal government. An institution may require evidence of the date that the reclassification was approved or petition filed, or both.

c. For example, an alien here under a restricted visa may be permitted by the U.S. Attorney General to remain indefinitely, and not be deported, because of racial, religious, or political persecution in the home country. The student should be prepared to submit evidence of the U.S. Attorney General's decision.

d. Merely receiving approval of a petition for an accelerated preference in a category with quotas does not constitute a reclassification for domicile purposes.

Article 3.
Reclassification and Falsification of Information.

§ 2.11. Reclassification.

A. Changes from out-of-state to in-state classification.

1. If a student is classified initially as out-of-state, it is the responsibility of the student thereafter to petition the responsible official for reclassification to in-state status if the student believes that subsequent changes in facts justify such a reclassification. The institution will not assume responsibility for initiating such an inquiry independently.

2. It is presumed that a matriculating student who enters an institution classified as an out-of-state student remains in the Commonwealth for the purpose of attending school and not as a bona fide domiciliary. The student seeking status reclassification is required to rebut this presumption by clear and convincing evidence.

3. The change in classification, if deemed to be warranted, shall be effective for the next academic semester or term following the date of the application for reclassification. No change to in-state status may be obtained by a student for an academic term that has begun before the date of the application for reclassification.

B. Changes from in-state to out-of-state classification.

1. If a student is classified initially as in-state, either the student or the institution thereafter may initiate a reclassification inquiry. It is the duty of the student to notify the institution of any changes of address or domiciliary status.

2. The institution may initiate the reclassification inquiry independently at any time after the occurrence of events or changes in facts which give rise to a reasonable doubt about the validity of the existing residential classification.

3. A student who is eligible for in-state tuition as of the date of entitlement is eligible for in-state rates throughout that term. Therefore, a student whose classification changes from in-state to out-of-state during a semester has a grace period that lasts until the end of that semester.

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[4]NATO Statute of Forces Agreement, June 19, 1951, 4 U.S.T., 1793, T.I.A.S. 2846. Article III thereof provides that the NATO force "shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State." It has also been held that a member of the Royal Air Force of the United Kingdom stationed to a U.S. Naval aircraft base in Virginia Beach, pursuant to a NATO visa, cannot be a Virginia domicile for purposes of initiating a divorce suit in Virginia's state courts. See official opinion of the Attorney General to delegate Howard E. Copeland, dated May 16, 1983.

C. Changes due to administrative errors.

1. Administrative errors may include letters announcing an incorrect domicile, actual misclassification, or incorrect tuition billing notices.

2. In the absence of fraud or knowingly providing false information, where a student receives an erroneous notice announcing the student to be, or treating the student as, eligible for in-state tuition, the student shall not be responsible for paying the out-of-state tuition differential for any enrolled semester or term commencing before the classifying institution gives to the student written notice of the administrative error.

§ 2.12. Falsification of information.

A. Where a student has been erroneously classified as a domicile for tuition purposes due to knowingly providing erroneous information in an attempt to evade payment of out-of-state fees, the application of the student is fraudulent.

B. An institution shall re-examine an application suspected as being fraudulent and redetermine domicile status. If warranted, the institution may change the student's status retroactively to the beginning of the term for which a fraudulent application was filed. Such a retroactive change will make the student responsible for the out-of-state tuition differential for the enrolled term or terms intervening between the fraudulent application and its discovery.

C. The student may also be subject to dismissal from the institution or such other action as the institution deems proper. Institutional procedures must be followed to dismiss the student and, if the student chooses, to appeal such action.

§ 2.13. Student responsibility to register under proper classification; responsibility for supplying information.

A. It is the student's responsibility to register under proper domicile classification.

B. If the student questions the right to classification as a Virginia domiciliary it is the student's obligation, prior to or at the time of registration, to raise the question with the administrative officials of the institution and have such classification officially verified.

C. An applicant or enrolled student subject to either a classification or reclassification inquiry is responsible for supplying all pertinent information requested by the institution in connection with the classification process. Failure to comply with such requests may result in one of the following consequences:

1. Where the initial classification inquiry affects a prospective enrollee, the student shall be classified out-of-state for tuition purposes;

2. Where the reclassification petition is initiated by the student to acquire a change from out-of-state to in-state status, the student shall continue to be classified as out-of-state for tuition purposes; or

3. Where the reclassification inquiry anticipates a change from in-state to out-of-state status for tuition purposes, the student may be subjected to retroactive reclassification.

D. A student who knowingly provides erroneous information in an attempt to evade payment of out-of-state tuition fees may be subject to dismissal or other disciplinary action by the institution. Each institution should provide in their student catalogues, handbooks, etc., the standards of conduct and the procedures it follows when dismissing a student or cancelling enrollment.

PART III.
IN-STATE TUITION RATES FOR SPOUSES AND DEPENDENT CHILDREN OF ACTIVE-DUTY MILITARY MEMBERS.

§ 3.1. General.

A. Subsection E of § 23-7.4 of the Code of Virginia deals with spouses and dependent children of military personnel who do not otherwise qualify for in-state tuition privileges, i.e., they are unable to show by clear and convincing evidence that Virginia is their domicile.

B. Institutions should apply the provisions of this section only if a military member, spouse, or dependent child is unable to present sufficient evidence of establishing domicile. Military personnel, their spouse, and dependent children are entitled to show eligibility for in-state tuition rates in the same manner as nonmilitary personnel, except that the one-year durational period may be waived for active duty military personnel (and their dependent children) who voluntarily elect Virginia as their permanent residence for domiciliary purposes.

§ 3.2. Children of military members.

Students who are the children of military members are also eligible for in-state tuition rates when the following conditions are met:

1. The student is not a member of the armed forces;

2. One of the student's parents is a member of the armed forces residing in Virginia pursuant to military orders; and

3. For the year immediately prior to the date of the alleged entitlement, the student's nonmilitary parent has:

a. Resided in Virginia;

b. Been employed full-time;

c. Paid personal income tax to Virginia; and

d. Claimed the student as a dependent for Virginia and federal income tax purposes. Filing a joint federal return claiming the student as a dependent is sufficient as long as the nonmilitary parent claims the student as a dependent for Virginia tax purposes.

§ 3.3. Spouses of military members.

Students who are spouses of military members are also eligible for in-state tuition rates when the following conditions are met:

1. The student is not a member of the armed forces;

2. The student is the spouse of a member of the armed forces residing in Virginia pursuant to military orders; and

3. For the year immediately prior to the date of alleged entitlement, the spouse of the military person has:

a. Resided in Virginia;

b. Been employed full-time; and

c. Paid personal income tax to Virginia.

§ 3.4. Application of military provision.

A. Sections 3.2 and 3.3 of these guidelines apply only as long as the military member is residing in Virginia pursuant to military orders and the nonmilitary parent or the spouse continues to reside in Virginia, work full-time, and pay taxes to Virginia.

B. Eligibility for in-state tuition rates must be re-evaluated annually by the institution.

C. All students receiving in-state tuition under the military exception will be counted as out-of-state students for admissions, financial aid, enrollment, and tuition and fee revenue policy purposes.

§ 3.5. Grace period tuition.

(Note: § 23-7.4 E (iii) of the Code of Virginia which grants one year of in-state tuition to the spouse and children of military personnel has been suspended for the 1994-1996 biennium by § 4-2.01 (b)(4) of Chapter 966 of the 1994 Virginia Acts of Assembly. Until funding is restored, military members are not able to receive any benefit outlined in this section.)

A. The spouse and dependent children of active duty military personnel who reside in Virginia pursuant to military orders may be eligible for in-state tuition rates for a one-year period anytime during the period that the military parent or spouse is residing in Virginia. The one-year grace period gives spouses and dependent children of military members time to take the necessary steps to establish domicile.

1. The dependent child or spouse may take advantage of the entitlement at any time during the period that the military person is residing in Virginia.

2. Section 23-7.4 of the Code of Virginia refers to the spouse and dependent children of military personnel and not the military personnel themselves.

B. Requirements for one year of in-state tuition.

1. The military parent or spouse must reside in Virginia.

2. A student must be eligible to take advantage of this benefit on the first official day of class.

3. The burden is on the student to provide copies of military documents establishing his entitlement.

C. Institutions of higher education must identify and report to the Council of Higher Education the number of students who are eligible for in-state rates. A report form will be distributed with the annual reports calendar.

D. Military personnel should be advised not only of the temporary nature of the grace period, but also of the inherent limitations of § 23-7.4 E of the Code of Virginia: the privileges are forfeited when the military member is assigned to a new duty station away from Virginia.

§ 3.6. Military members and domiciliary status.

A. Eligibility for in-state tuition rates can be preserved by the military member's adoption of Virginia domicile while residing in Virginia as explained in Part II of these guidelines.

1. To begin to establish domicile, a military member should file a State of Legal Residence Certificate claiming Virginia domicile and changing the Leave and Earning Statement to authorize the withholding of Virginia income tax.

2. Other objective indicators of domicile include, but are not limited to, obtaining a driver's license, registering a motor vehicle, registering to vote, and showing that he has not established domicile in another state or country.

3. Once established, Virginia domicile is not lost when the military member leaves the Commonwealth pursuant to military orders, provided that the member retains Virginia as state of legal residence and does nothing inconsistent with the claim of Virginia domicile.

B. In determining the domiciliary intent of active-duty military personnel residing in Virginia who voluntarily elect to establish Virginia as their permanent residence for domiciliary purposes, the requirement of one year shall be waived if all other conditions for establishing domicile are satisfied.

PART IV.
IN-STATE TUITION RATES FOR NONVIRGINIA RESIDENTS EMPLOYED IN VIRGINIA.

§ 4.1. Eligibility for in-state rates for nonresidents employed in Virginia.

A. Individuals who physically live outside Virginia but who work full time in the Commonwealth may be eligible for in-state tuition provided that:

1. They live outside Virginia;

2. They have been employed full time in Virginia for at least one year immediately prior to the term or semester for which reduced tuition is sought; and

3. They have paid Virginia income taxes on all taxable income earned in the Commonwealth of Virginia for the tax year prior to the date of alleged entitlement.

B. A nondomiciliary dependent student who lives outside of Virginia will be eligible under this exception if the parent through whom the student claims eligibility:

1. Lives outside Virginia and claims the student as a tax dependent;

2. Has been employed full-time in Virginia for at least one year immediately prior to the date of alleged entitlement; and

3. Has paid Virginia income taxes on all taxable income earned in Virginia for the tax year prior to the date of the alleged entitlement.

C. Such students shall continue to be eligible for in-state tuition charges so long as they or their qualifying parent are employed full time in Virginia, paying Virginia income taxes on all taxable income earned in this Commonwealth, and claiming the student as a dependent for Virginia and federal income tax purposes. It is incumbent upon the student to provide to the institution current information concerning classification under this category.

§ 4.2. Application of provision.

This part does not apply to individuals who reside in a state with which Virginia has income tax reciprocity.[5] Students who reside in reciprocity states cannot qualify under this section for in-state tuition rates; however, keep in mind that such students have the right to claim in-state rates as Virginia domiciles or under the military spouse or dependent provisions.

PART V.

REDUCED OR IN-STATE TUITION RATES UNDER SPECIAL ARRANGEMENT CONTRACTS.

§ 5.1. Reduced tuition under Special Arrangement Contracts.

A. Nondomiciliaries employed by a Virginia employer, including federal agencies located in Virginia, may enjoy reduced rate tuition benefits if the employer assumes the total liability of paying the tuition of these employees to the legal limit allowable and if the employer has entered into a Special Arrangement Contract with the institution.

B. Instruction may be provided in groups or on an individual basis on or off campus. (Group instruction is a collection of individuals enrolled for a given course.)

C. These guidelines apply to all instruction which is reported to the Council of Higher Education for FTE purposes.

§ 5.2. Application of provision.

A. The public institution that the nondomiciliary wishes to attend must have in force a valid Special Arrangement Contract with the employer in order for the student to qualify for reduced tuition charges.

1. The employer must be assuming the liability for the total tuition charges of its employee unless limited by federal law in which case the employee is responsible for the remaining portion.

2. The tuition charged to the employer shall be at least equal to in-state tuition fees, but the public institution of higher education may specify tuition charges in the Special Arrangement Contract that are greater than in-state tuition charges but less than out-of-state charges.

3. The reduced tuition charges are available only to the employee and not to his spouse or dependent children.

B. The public institution of higher education wishing to enter into a Special Arrangement Contract shall:

1. Negotiate with the employer or federal authority a Special Arrangement Contract which would specify the term of the contract (not to exceed two years) and the amount of tuition to be charged to the employer.

2. Forward the proposed Special Arrangement Contract to the Office of the Attorney General for approval as to legal sufficiency prior to signing.

3. Annually report all special arrangement activities to the Council of Higher Education.

4. Specify for any Special Arrangement Contracts with federal authorities for on-campus instruction the number of FTE students to be enrolled at the contract rate.

C. Virginia employers and federal agencies or installations located in Virginia, including all branches of the U.S. military, may enter Special Arrangement Contracts and may receive in-state tuition for their employees if the employee:

1. Has a primary work-site in Virginia; meaning, the employee works on a day-to-day basis at a location physically in the state of Virginia; or

2. Is ordered to a station, military base, or office located in the state of Virginia, even if the individual's primary work-site is located outside Virginia.

D. Independent of a Special Arrangement Contract, the employee must have his domicile determined by the public institution of higher education. Employees covered by Special Arrangement Contracts must also be included in all enrollment reports according to domicile, as is any other student. The institution shall report those students who meet the domicile requirements as in-state students and those students who do not meet the domicile requirements but are eligible for in-state tuition under this section as out-of-state students.

PART VI.
REDUCED OR IN-STATE TUITION RATES FOR OTHER NONRESIDENTS.

§ 6.1. In-state tuition eligibility.

A. The Code of Virginia provides in § 23-7.2 that the governing boards of any state institution may charge in-state tuition to (i) persons enrolled in programs designated by the State Council of Higher Education for Virginia who are from states which are a party to the Southern Regional Education Compact and provide reciprocity to Virginians; (ii) foreign nationals in foreign exchange programs; and (iii) high school magnet school students under a dual enrollment agreement with a community college where early credit may be earned. In such circumstances, governing board policy should be consulted and the provisions of the cited statute reviewed.

B. Pursuant to § 23-7.2:1 of the Code of Virginia, the governing board of the Virginia Community College System may charge reduced tuition to any person enrolled in one of

[5] As of April 1995, the states having income tax reciprocity with Virginia are: Arizona, California, District of Columbia, Kentucky, Maryland, Oregon, Pennsylvania, and West Virginia.

the system's institutions who is domiciled in, and is entitled to in-state charges in, the institutions of higher learning in any state which is contiguous to Virginia and which has similar reciprocal provisions for persons domiciled in Virginia.

§ 6.2. Reduced tuition rates, waiver of tuition and fees, and other benefits.

The Code of Virginia authorizes institutions to provide certain benefits to several categories of students, including, but not limited to: children of persons killed or disabled due to war service or who are prisoners of war or missing in action (§ 23-7.1 of the Code of Virginia); children and spouses of certain law-enforcement officers, correctional and jail personnel, sheriffs, members of the Virginia National Guard, fire fighters, and members of rescue squads (§ 23-7.1:01 of the Code of Virginia); certain National Guard members (§ 23-7.3 of the Code of Virginia); students participating in the Virginia Higher Education Tuition Trust Fund (§ 23-38.75 et seq. of the Code of Virginia); cooperating teachers (§ 23-8.2:1 of the Code of Virginia); students receiving unfunded scholarships (§ 23-31 of the Code of Virginia); and senior citizens under the Senior Citizen's Higher Education Act (§ 23-38.56 of the Code of Virginia).

It is the student's responsibility to notify the institution of his eligibility under one of these provisions and to provide supporting evidence. Institutions should refer to the relevant provisions of the Code of Virginia.

PART VII.
APPEALS PROCESS.

§ 7.1. Institutional appeals process.

A. Public institutions of higher education in Virginia are required to establish an appeals process for applicants denied in-state tuition. Each institution is required to have in place such an appeals process which includes the following:

1. An intermediate review of the initial determination; and

2. A final administrative review including a decision in writing, clearly stated with explanation, and reached in accordance with the statute and these guidelines. The institution shall send a copy of the decision to the student.

B. A student seeking reclassification should begin at the intermediate level of review. The institution does not have to make another initial determination for enrolled students.

C. Either the intermediate review or the final administrative review shall be conducted by an appeals committee consisting of an odd number of members.

D. No person who serves at one level of the appeals process shall be eligible to serve at any other level of this review.

E. In order to provide for the orderly and timely resolution of all disputes, the appellate procedure of the institution must be in writing and must state time limitations in which decisions will be made.

§ 7.2. Appeal to circuit court.

A. An applicant who is denied in-state tuition privileges by a final administrative decision may have the decision reviewed by the circuit court for the jurisdiction where the public institution is located. The student must file the petition for review of the final administrative decision within 30 days of receipt of the final decision. To the extent practicable, each institution should attempt to record the date of actual receipt as in the case of hand deliveries or by certified mailing (return receipt).

B. Upon the filing of a petition for review with the court, and being noticed thereof, the institution shall:

1. Immediately advise legal counsel for the institution that a petition for review has been filed with the circuit court; and

2. Coordinate with legal counsel to file with the court a copy of these guidelines, and the written decision of the institution, including the application forms and all other documentary information considered by, or made available to, the institution.

VA.R. Doc. No. R95-572; Filed June 21, 1995, 10:11 a.m.

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.

Effective Date: July 1, 1995.

Summary:

The amendments to the authority's rules and regulations for multi-family housing developments 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.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

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 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.

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 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.

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.

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.

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. R95-569; Filed June 21, 1995, 11:04 a.m.

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Title of Regulation: **VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.**

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

Effective Date: June 21, 1995.

Summary:

The regulations (i) govern the solicitation of applications for federal low-income housing tax credits; (ii) score such applications based on readiness, housing needs characteristics, development characteristics, tenant population characteristics, sponsor characteristics, efficient use of resources, and a commitment by sponsors to go beyond the minimum requirements of § 42 of the Internal Revenue Code; (iii) provide for the reservation and allocation of federal low-income housing tax credits; and (iv) provide for the monitoring of federal low-income housing tax credit developments for compliance with the Internal Revenue Code.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia

Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

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

§ 1. Definitions.

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

"Applicant" means an applicant for credits under these rules and regulations and also means the owner of the development to whom the credits are allocated.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Estimated highest gross square footage per bedroom" means in subdivision 3 a of § 6, the highest total usable, heated square footage, as certified by an architect (or contractor for rehabilitation developments of 24 units or less), [~~per bedroom~~ divided by the total number of bedrooms] in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6.

"Estimated lowest gross square footage per bedroom" means in subdivision 3 a of § 6, the lowest total usable, heated square footage, as certified by an architect (or contractor for rehabilitation developments of 24 units or less), [~~per bedroom~~ divided by the total number of bedrooms] in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6.

"Estimated highest per bedroom cost for new construction units" means, in subdivision 6 d of § 6, the highest total development cost (adjusted by the authority for location) per bedroom, as proposed by an applicant, in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of new construction units.

"Estimated highest per bedroom cost for rehabilitation units" means, in subdivision 6 d of § 6, the highest total development cost (adjusted by the authority for location) per bedroom, as proposed by an applicant, in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of rehabilitation units.

"Estimated highest per bedroom credit amount for new construction units" means, in subdivision 6 b of § 6, the highest amount of credits per bedroom (within the low-income housing units), as requested by an applicant, in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of new construction units.

"Estimated highest per bedroom credit amount for rehabilitation units" means, in subdivision 6 b of § 6, the highest amount of credits per bedroom (within the low-income housing units), as requested by an applicant, in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of rehabilitation units.

"Estimated highest per unit cost for new construction units" means, in subdivision 6 c of § 6, the highest total development cost (adjusted by the authority for location), as proposed by an applicant, in any development in the state (or if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of new construction units.

"Estimated highest per unit cost for rehabilitation units" means, in subdivision 6 c of § 6, the highest total development cost (adjusted by the authority for location), as proposed by an applicant, in any development in the state (or if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of rehabilitation units.

"Estimated highest per unit credit amount for new construction units" means, in subdivision 6 a of § 6, the highest amount of credits per low-income unit, as requested by an applicant, in any development in the state (or if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of new construction units.

"Estimated highest per unit credit amount for rehabilitation units" means, in subdivision 6 a of § 6, the highest amount of credits per low-income unit, as requested by an applicant, in any development in the state (or, if the executive director shall so determine, in each pool or subpool) for which an application for credits has been filed at the time of assignment of points pursuant to § 6 and which is composed solely of rehabilitation units.

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

["IRS" means the Internal Revenue Service.]

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the IRC.

"Qualified application" means a written request for tax credits which is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of credits thereunder.

§ 2. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of credits pursuant to § 42 of the IRC.

Notwithstanding anything to the contrary herein, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, to the extent not inconsistent with the IRC.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

Any determination made by the authority pursuant to these rules and regulations as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the authority as to such feasibility or viability.

Notwithstanding anything to the contrary herein, all procedures and requirements in the IRC must be complied with and satisfied.

§ 3. General description.

The IRC provides for credits to the owners of residential rental developments comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds as provided in the IRC) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual state housing credit ceiling for such year under the IRC. An amount not less than 10% of such ceiling is set-aside for developments in which certain qualified nonprofit organizations hold an ownership interest and materially participate in the development and operation thereof. Credit allocation amounts are counted against the Commonwealth's annual state housing credit ceiling for credits for the calendar year in which the credits are allocated. The IRC provides for the allocation of the Commonwealth's state housing credit ceiling for credits to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the IRC and, in such capacity, shall allocate for each calendar year credits to qualified low-income buildings or developments in accordance herewith.

Credits may be allocated to each qualified low-income building in a development separately or to the development as a whole in accordance with the IRC.

Credits may be allocated to such buildings or development either (i) during the calendar year in which such building or development is placed in service or (ii) if the building or development meets the requirements of § 42(h)(1)(E) of the IRC, during one of the two years preceding the calendar year in which such building or development is expected to be placed in service. Prior to such allocation, the authority shall receive and review applications for reservations of credits as described hereinbelow and shall make such reservations of credits to eligible applications in accordance herewith and subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or development or (ii) the satisfaction of the requirements of § 42(h)(1)(E) of the IRC with respect to such buildings or the development, the credits shall be allocated to such buildings or the development as a whole in the calendar year for which such credits were reserved by the authority.

Except as otherwise provided herein or as may otherwise be required by the IRC, these rules and regulations shall not apply to credits with respect to any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of credits hereunder. (See § 10 hereinbelow.)

The authority shall charge to each applicant fees in such amounts as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the IRC. Such fees shall be payable at such time or times as the executive director shall require.

§ 4. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of these rules and regulations in the qualified allocation plan. However, the authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

§ 5. Application.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC and these rules and regulations and to make the reservation and allocation of the credits in accordance with these rules and regulations. The application shall include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information must be included in the application: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other cost and fees.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence.

Each application shall include, in a form required by the executive director, a listing of all residential real estate developments in which the general partner(s) has or had an ownership interest, the location of such developments and the number of residential units and low-income housing units in such developments. Furthermore, the applicant must indicate, for developments receiving an allocation of tax credits under § 42 of the IRC, whether any such development has ever been determined to be out of compliance with the requirements of the IRC by the appropriate state housing credit agency, and if so, an explanation of such noncompliance and whether it has been corrected. No application shall be considered for a reservation or allocation of credits unless the above information is submitted with the application. If an applicant is in substantial noncompliance with the requirements of the IRC, the executive director, in his sole discretion, may reject applications by the applicant.

The application shall include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions shall be indicated on the application form or instructions.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.

After receipt of the applications, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

§ 6. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and may further subdivide those pools into subpools. The division of such pools and subpools may

be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, or occupants; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) is to materially participate (within the meaning of § 469(h) of the IRC) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own an interest in the development (directly or through a partnership) as required by the IRC; (ii) such qualified nonprofit organization is to, prior to the allocation of credits to the buildings or development, own a general partnership interest in the development which shall constitute not less than 51% of all of the general partnership interests of the ownership entity thereof (such that the qualified nonprofit organizations have at least a 51% interest in both the income and profit allocated to all of the general partners and in all items of cash flow distributed to the general partners) and which will result in such qualified nonprofit organization receiving not less than 51% of all fees, except builder's overhead and builder's profit, paid or to be paid to all of the general partners (and any other entities determined by the authority to be related to or affiliated with one or more of such general partners) in connection with the development; (iii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iv) the executive director of the authority shall have determined that the qualified nonprofit organization was not or will not be formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools or subpools (as defined below) established by the executive director, and (v) the executive director of the authority shall have determined that no officer or member of the board of directors of such qualified nonprofit organization will materially participate in the proposed development as a for-profit entity. In making the determination required by clause (iv) of this subdivision, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, and the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools or subpools ("nonprofit pools or subpools") of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools or subpools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools and subpools, and any such applications in such nonprofit pools or subpools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools or subpools to make such reservations) shall be assigned to such other pool or subpool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or subpools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or subpools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools or subpools have been so assigned to other pools or subpools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools or subpools (or for any other pools or subpools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools or subpools, reassign such applications to such nonprofit pools or subpools, rank the applications therein and reserve credits to such applications in accordance with the IRC and these rules and regulations. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools or subpools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools or subpools for reservation and allocation in any

subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools or subpools as the executive director shall designate and in which there are or remain qualified applications for credits which have not then received reservations therefor in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Any redistribution made pursuant to clause (ii) above shall be made pro rata based on the amount originally distributed to each such pool or subpool with excess qualified applications divided by the total amount originally distributed to all such pools or subpools with excess qualified applications. Notwithstanding anything to the contrary herein, no allocation of credits shall be made from any nonprofit pools or subpools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or subpools or any combination of pools or subpools may request a reservation or allocation of annual credits in an amount greater than $500,000. For the purposes of implementing this limitation, the executive director may determine that more than one application for more than one development which he deems to be a single development shall be considered as a single application.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Approval by local authorities of:

(1) The plan of development [or special use permit, or site plan] for the proposed development or written evidence satisfactory to the authority that such approval is not required [or will be obtained prior to the end of the calendar year]. (20 points)

(2) Proper zoning for such site or written evidence satisfactory to the authority that no zoning requirements are applicable. (30 points)

(3) Building permit(s) [or letter stating that all approvals are in place and building permits will be issued upon receipt of all fees]. (20 points)

b. Evidence satisfactory to the authority documenting:

(1) Availability of all requisite public utilities for such site. (15 points)

(2) [~~Availability of access~~ Dedicated public right of way] to a state maintained road [or that property is contiguous on a state maintained road.]. (15 points)

(3) Completion of plans and specifications or, in the case of rehabilitation for which plans will not be used, work write-up for such rehabilitation. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write-up by 75% [not to exceed 20 points.)

2. Housing needs characteristics.

a. (1) A letter addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision a (1) above) nor opposition (as described in subdivision a (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. [In any such letter, the chief executive officer must certify that the proposed development (i) is not consistent with current zoning or other applicable land use regulations, or (ii) is not consistent with the local Comprehensive Housing Affordability Strategy.] (0 points)

[~~b. (1) A letter addressed to the authority and signed by the elected local representative to the city council or board of supervisors, or nearest equivalent, from the district in which the proposed development is to be located stating, without qualification or limitation, the following:~~

~~"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (30 points)~~

~~(2) No letter from such official from the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such official stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (15 points)~~

~~(3) If the authority receives a letter from an elected official from the locality in which the proposed development is to be located opposing the allocation~~

~~of credits requested by to the applicant for the development. (0 points)~~

~~c.~~ b.] Documentation from the local authorities that the proposed development is located in a Qualified Census Tract (QCT) as defined by the U. S. Department of Housing and Urban Development or in an Enterprise Zone designated by the state. (20 points)

[~~d.~~ c.] Commitment by the applicant to give [~~first~~] leasing preference to individuals and families on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant. (10 points)

[~~e.~~ d.] Commitment by the applicant to give [~~first~~] leasing preference to individuals and families on section 8 (as defined in § 9 hereinbelow) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points)

[~~f.~~ e.] Firm financing commitment(s) from the local government or housing authority or a resolution passed by the locality in which the proposed development is to be located committing a grant or below-market rate loan to the development. (The amount of such financing will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

3. Development characteristics.

a. The average unit size per bedroom (100 points multiplied by the quotient calculated by (i) the actual gross square footage per bedroom minus the estimated lowest gross square footage per bedroom divided (ii) the estimated highest gross square footage per bedroom minus the estimated lowest gross square footage per bedroom.)

b. Increase in the housing stock attributable to new construction or adaptive reuse of units or to the rehabilitation of units determined by the applicable local governmental unit to be uninhabitable and so documented in the application. (80 points multiplied by the percentage of such units in the proposed development)

c. Lower amount of credit request. (30 points multiplied by the percentage by which the total amount of the annual tax credits requested is less than $1,000,000.)

d. The quality of the proposed development's amenities as determined by the following:

(1) If all 2-bedroom units have 1.5 bathrooms and all 3-bedroom units have 2 bathrooms. (15 points)

(2) If all units have a washer and dryer. (7 points)

(3) If all units have a balcony or patio. (5 points)

(4) If all units have a washer and dryer hook-up only. (3 points)

(5) If all units have a dishwasher. (2 points)

(6) If all units have a garbage disposal. (1 point)

(7) If the development has a laundry room. (1 point)

4. Tenant population characteristics.

a. Commitment by the applicant to lease low-income housing units in the proposed development only to one or more of the following: (i) persons 62 years or older, (ii) homeless persons or families, or (iii) physically or mentally disabled persons. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (30 points)

b. Commitment by the applicant to creating a development in which 20% or more of the low-income units have three or more bedrooms. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (30 points)

[c. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points)]

5. Sponsor characteristics.

a. Evidence that the development team for the proposed development has the demonstrated experience, qualifications and ability to perform. In comparison with the proposed development, the controlling general [~~partner(s)~~ partner or partners] , acting in the capacity of controlling general [~~partner(s)~~ partner or partners] , has placed in service one or more developments which, in the aggregate, would result in the highest number of points under one of the following: (i) at least an equal number of residential rental units (10 points); or (ii) two or more times as many residential rental units (20 points); or (iii) three or more times as many residential rental units (30 points); or (iv) at least an equal number of low-income housing units in any state, as evidenced by issuance of IRS Forms 8609 (40 points); or (v) two or more times as many low-income housing units in any state, as evidenced by issuance of IRS Forms 8609 (50 points); or (vi) three or more times as many low-income housing units in any state, as evidenced by issuance of IRS Forms 8609 (60 points); or (vii) at least an equal number of low-income housing units in Virginia as evidenced by issuance of IRS Forms 8609 (70 points); or (viii) two or more times as many low-income housing units in Virginia as evidenced by issuance of IRS Forms 8609 (80 points); or (ix) three or more times as many low-income housing units in Virginia as evidenced by issuance of IRS Forms 8609 (90 points).

b. Participation in the ownership of the proposed development (either directly or through a wholly-owned subsidiary) by any organization which has its

principal place of business in Virginia and which is exempt from federal taxation. (10 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the weighted average of the estimated highest per unit credit amount for new construction units and the estimated highest per unit credit amount for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development. (If the per unit credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per unit credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and then multiplied by 120 points.)

b. The percentage by which the total of the amount of credits per bedroom in such low-income housing units (the "per bedroom credit amount") of the proposed development is less than the weighted average of the estimated highest per bedroom credit amount for new construction units and the estimated highest per bedroom credit amount for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development. (If the per bedroom credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per bedroom credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and then multiplied by [~~*60*~~ *120*] *points.)*

c. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the weighted average of the estimated highest per unit cost for new construction units and the estimated highest per unit cost for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development. (If the per unit cost of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per unit cost of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and then multiplied by [~~*115*~~ *55*] *points.)*

d. The percentage by which the total of the cost per bedroom in such low-income housing units (the "per bedroom cost"), adjusted by the authority for location, of the proposed development is less than the weighted average of the estimated highest per bedroom cost for new construction units and the estimated highest per bedroom cost for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development. (If the per bedroom cost of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per bedroom cost of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and then multiplied by 55 points.)

With respect to this subdivision 6 only, the term "new construction units" shall be deemed to include adaptive reuse units and units determined by the applicable local governmental unit to be uninhabitable which are intended to be rehabilitated. Also, for the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall be those requested in the applicable application, and the per unit credit amount and per bedroom credit amount for any building located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application which is assigned a total number of points less than a threshold amount of 350 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

7. Bonus points. For each application to which the total number of points assigned is equal to or more than the above-described threshold amount of points, bonus points shall be assigned as follows:

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. (The product of (i) 50 points multiplied by (ii) the percentage of low-income housing units restricted for occupancy to households at or below 50% of the area median gross income [, provided, however, the maximum number of points that may be awarded under both this subdivision a and subdivision 7 b of this section is 50 points] .)

b. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 15-year compliance period as defined in the IRC; such commitment beyond the end of the 15-year compliance period and prior to the end of the 30-year extended use period (as defined in the IRC) being deemed to represent a waiver of the applicant's right

under the IRC to cause a termination of the extended use period in the event the authority is unable to present during the period specified in the IRC a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building. Applicants receiving points under this subdivision b may not receive bonus points under subdivision c below. (40 points for a 15-year commitment beyond the 15-year compliance period or 50 points for a 25-year commitment beyond the 15-year compliance period) [*, provided, however, the maximum number of points that may be awarded under both this subdivision b and subdivision 7 a of this section is 50 points*].

c. Commitment by the applicant to convert the low-income housing units to homeownership by qualified low income tenants at the end of the 15-year compliance period, as defined by IRC, according to a homeownership plan approved by the authority. Such plan must include, but not be limited to, (i) a provision that a portion of the rental revenue will be set aside in an escrow account for each tenant for the purpose of accumulating funds for a down payment, (ii) a provision for determining a sale price, affordable to the tenant, at the end of the 15-year compliance period, (iii) a provision for maintaining a replacement reserve for the property which would be transferable to the tenant at the time of sale to the tenant, (iv) an agreement by the applicant to record such plan as an exhibit to the low-income housing commitment described in § 7 hereinbelow. The authority reserves the right to waive any of the above conditions, if in the sole discretion of the authority, the applicant proposes a satisfactory alternative condition. Applicants receiving points under this subdivision c may not receive bonus points under subdivision b above. (50 points)

d. Applications for developments located in communities which have removed local regulatory barriers to affordable housing, as evidenced by a certification and appropriate documentation from the chief executive officer of the locality for each of the following actions: (i) waived utility tap fees for low-income housing units, (ii) adopted a local affordable dwelling unit (ADU or density bonus) ordinance under the provisions of § 15.1-491.8 or § 15.1-491.9 of the Code of Virginia, (iii) adopted a local ordinance in accordance with § 15.1-37.3:9 of the Code of Virginia to provide a source of local funding for the repair or production of low- or moderate-income housing units, (iv) adopted an ordinance in accordance with § 58.1-3220 of the Code of Virginia to provide for the partial exemption of qualifying rehabilitated residential real estate from real property taxes, (v) adopted local land use regulations permitting the permanent placement of all manufactured housing units conforming in appearance to site-built housing in one or more residential zoning districts in addition to those currently required under the terms of § 15.1-486.4 of the Code of Virginia, (vi) adopted local zoning, site plan, and subdivision regulations permitting the use of the full range of attached single-family dwelling units by right in designated districts and zoning land for such purposes, (vii) adopted local subdivision street standards no more stringent than those adopted by the Virginia Department of Transportation, (viii) adopted a linked deposits ordinance under the provisions of § 11-47.33 of the Code of Virginia, (ix) adopted a coordinated program to facilitate the local development review process, including self-imposed deadlines, preapplication conferences on request, review expediters or similar methods, and (x) adopted other innovative local actions removing [*or mitigating*] *regulatory barriers to affordable housing which may be submitted for review and approval by the authority. (10 points for each of the above actions taken, up to a maximum of 30 points)*

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools or subpools shall have been established, each application shall be assigned to a pool or subpool and shall be ranked within such pool or subpool. Those applications assigned more points shall be ranked higher than those applications assigned fewer points.

In the event of a tie in the number of points assigned to two or more applications within the same pool or subpool, or, if none, within the state, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or subpool or, if none, within the Commonwealth, select one or more of the applications with the most bonus points as described above, and each application so selected shall receive (in order based upon the number of such bonus points, beginning with the application with the most bonus points) a reservation of credits in the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or subpool or, if none, in the Commonwealth. If two or more of the tied applications receive the same number of bonus points and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) the lesser of the full amount determined by the executive director to be permissible hereunder or the amount of credits remaining therefor in such pool or subpool or, if none, in the Commonwealth.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified

low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines, in his sole discretion, to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool or subpool, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool or subpool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools or subpools at different times for different pools or subpools and may reserve credits, based on such rankings, one or more times with respect to each pool or subpool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool or subpool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may (i) permit the applicant to modify such proposed development and his application so as to achieve financial feasibility based upon the amount of such available credits or (ii), for developments which meet the requirements of § 42(h)(1)(E) of the IRC only, reserve additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. Any modifications shall be subject to the approval of the executive director; provided, however, that in no event shall such modifications result in a material reduction in the number of points assigned to the application pursuant to § 6 hereof. The reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be made only to proposed developments that rank high enough to receive some credits from the state housing credit ceiling for the current year. However, any such reservation shall be in the sole discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools or subpools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools or subpools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pools or subpools as the executive director may designate and in which there remain excess qualified applications or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Any redistribution made pursuant to subparagraph (ii) above shall be made pro rata based on the amount originally distributed to each of such pools or subpools so designated by the executive director with excess qualified applications divided by the total amount originally distributed to all such designated pools or subpools with excess qualified applications. Such redistributions may continue to be made until either all of the credits are reserved or all qualified applications have received reservations.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by these rules and regulations) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and these rules and regulations. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, these rules and regulations and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to § 6 hereof). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, these rules and regulations and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, these rules and regulations or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with these rules and regulations, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

§ 7. Allocation of credits.

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of these rules and regulations, the binding commitment and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, these rules and regulations, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described above. The applicant shall certify to the authority the full extent of all

federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines, in his sole discretion, to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to § 6) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in § 6 hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than $100.

Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, (i) on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period or (ii) the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and these rules and regulations. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an

allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and these rules and regulations as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under § 6 hereof) require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits, (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to § 6 hereof and (ii) only in the case of any buildings or development which are to receive an allocation of credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and these rules and regulations.

§ 8. Reservation and allocation of additional credits.

Prior to the initial determination of the qualified basis (as defined in the IRC) of the qualified low-income buildings of a development pursuant to the IRC, an applicant to whose buildings' credits have been reserved may submit an application for a reservation of additional credits. Subsequent to such initial determination of the qualified basis, the applicant may submit an application for an additional allocation of credits by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any application for an additional allocation of credits shall include such information, opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings or development will be entitled to such additional credits under the IRC and these rules and regulations. The application shall be submitted, reviewed, ranked and selected by the executive director in accordance with the provisions of § 6 hereof, and any allocation of credits shall be made in accordance with § 7 hereof. For the purposes of such review, ranking and selection and the determinations to be made by the executive director under the rules and regulations as to the financial feasibility of the development and its viability as a qualified low-income development during the credit period, the amount of credits previously reserved to the application or allocated to the buildings or development (or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of credits hereunder, the amount of credit which may be claimed by the applicant) shall be included with the amount of such credits so requested.

§ 9. Monitoring for IRS compliance.

A. Federal law requires the authority to monitor developments receiving credits for compliance with the requirements of § 42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of § 42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth hereinbelow are to qualify the authority's allocation plan of credits. The authority's obligation to monitor for compliance with the requirements of § 42 of the IRC does not make the authority liable for an owner's noncompliance, nor does the authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).

2. The percentage of residential rental units in the building that are low-income units.

3. The rent charged on each residential rental unit in the building (including any utility allowances).

4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under § 42(g)(2) of IRC (as in effect before the amendments made by the Revenue Reconciliation Act of 1989).

5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.

6. The annual income certification of each low-income tenant per unit.

7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under § 42(g) of the IRC.

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.

9. The character and use of the nonresidential portion of the building included in the building's eligible basis under § 42(d) of the IRC (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

C. The owner of a low-income housing development must certify annually to the authority, on the form prescribed by the authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under § 42(g)(1)(A) of the IRC or the 40-60 test under § 42(g)(2)(B) of the IRC, whichever minimum set-aside test was applicable to the development.

2. There was no change in the applicable fraction (as defined in § 42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.

3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B.

4. Each low-income unit in the development was rent-restricted under § 42(g)(2) of the IRC.

5. All units in the development were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC).

6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes.

7. There was no change in the eligible basis (as defined in § 42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge).

8. All tenant facilities included in the eligible basis under § 42(d) of the IRC of any building in the development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.

9. If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

10. If the income of tenants of a low-income unit in the development increased above the limit allowed in § 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.

11. An extended low-income housing commitment as described in § 42(h)(6) of the IRC was in effect (for buildings subject to § 7108(c)(1) of the Revenue Reconciliation Act of 1989).

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the authority, on a form prescribed by the authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The authority will review each certification set forth in subsection C of this section for compliance with the requirements of § 42 of the IRC. Also, the authority will inspect at least 20% of low-income housing developments each year and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in those

developments. The authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the authority for compliance review copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the authority when the development is placed in service. The authority, at its sole discretion, reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The authority will provide written notice to the owner of a low-income housing development if the authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of § 42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of § 42 of the IRC. The authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The authority may extend the correction period for up to 6 months, but only if the authority determines there is good cause for granting the extension.

The authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under § 42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the authority need not file Form 8823 in subsequent years to report that building's noncompliance.

The authority will retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective Form 8823. In all other cases, the authority must retain the certifications and records described in subsection C of this section for three years from the end of the calendar year the authority receives the certifications and records.

G. If the authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by the [~~Farmers Home Administration (FmHA)~~ Rural Economic Community Development (RECD)] under the § 515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under § 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the authority must enter into an agreement with the [~~FmHA~~ RECD] or tax-exempt bond issuer. Under the agreement, the [~~FmHA~~ RECD] or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the authority. The authority may assume the accuracy of the information provided by [~~FmHA~~ RECD] or the tax-exempt bond issuer without verification. The authority will review the information and determine that the income limitation and rent restriction of § 42(g)(1) and (2) of the IRC are met. However, if the information provided by the [~~FmHA~~ RECD] or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority will request the necessary additional income or rent information from the owner of the buildings. For example, because [~~FmHA~~ RECD] determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under section 8, the authority may have to calculate the tenant's income for purposes of § 42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the authority such fees in such amounts and at such times as the authority shall, in its sole discretion, reasonably require the owners to pay in order to reimburse the authority for the costs of monitoring compliance with § 42 of the IRC.

§ 10. Tax-exempt bonds.

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority, or an issuer other than the authority, in such amount so as not to require under the IRC an allocation of credits hereunder, the owner of the buildings or development shall submit to the authority, in a timely fashion, an application for allocation of credits and supporting information and documents as described in § 7 hereof, and such other information and documents as the

executive director may require. The executive director shall determine, in accordance with the IRC, whether such buildings or development satisfies the requirements for allocation of credits hereunder. For the purposes of such determination, buildings or a development shall be deemed to satisfy the requirements for allocation of credits hereunder if (i) the application submitted to the authority in connection therewith is assigned not fewer than the threshold number of points (exclusive of bonus points) under the ranking system described in § 6 hereof, and (ii) the executive director shall determine that the buildings or development shall receive an amount of credits necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC, and more fully described in § 7 hereof. The owner of the buildings or development shall, as required by the executive director, pay such fees as described in § 5 hereof, and such good faith deposits as described in § 7 hereof. Furthermore, the owner of the buildings or development shall satisfy all other requirements for an allocation as required by the executive director, including execution, delivery and recordation of an extended low-income housing commitment as more fully described in § 7 hereof and all requirements for compliance monitoring as described in § 9 hereof.

VA.R. Doc. No. R95-570; Filed June 21, 1995, 11:02 a.m.

Ex. A

COMMONWEALTH OF VIRGINIA
LOW-INCOME HOUSING TAX CREDIT PROGRAM

1995 ANNUAL OWNER'S CERTIFICATION
(please do not retype form)

Date Due: _____, 1996
Fees Submitted with Report ($15 per low-income unit allocation): _____
Project Name: _____
Project Address: _____
Owner: _____
Bldg. Identification #(s): (from IRS Form 8609) _____
_____
_____
_____
_____
(if more space is needed, attach extra sheets)

Initial each certification, indicating your acceptance and verification of each statement: for the 12-month period of January 1, 1995 to December 31, 1995, I/we hereby certify that:

____ a. The project met the requirements of the 20-50 test under section 42(g)(1)(A) or the 40-60 test under section 42(g)(2)(B), whichever minimum set-aside test was applicable to the project;

____ b. There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change ___ _____;

____ c. The owner or his representative has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, an acceptable alternative, is a statement from a public housing authority declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

____ d. Each low-income unit in the project was rent-restricted under section 42(g)(2);

____ e. All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii));

____ f. Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes;

____ g. There was no change in the eligible basis (as defined in section 43(d)) of any building in the project, or that there was a change, and the nature of the change _____ _____,

____ h. All tenant facilities included in the eligible basis under section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;

____ i. If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

COMMONWEALTH OF VIRGINIA
LOW-INCOME HOUSING TAX CREDIT PROGRAM

PROJECT INFORMATION REPORT

Complete and mail to: Cara A. Wallo, Tax Credit Compliance Officer, VHDA, 601 South Belvidere Street, Richmond, VA 23220. Due date: _____, 1996.

Property Name: _____

Check box that applies:

☐ I am not yet renting units in this property (anticipated date to begin renting: _____)
☐ I am renting units in this property but am not claiming credits for 1995
☐ I am renting units in this property and am claiming partial credits for 1995
☐ The property is fully in service and I am claiming credits for 1995
____ Total Units in Property
____ Total LIHTC Units in Property

Provide the following information only if
(i) '95 is your first year placed in service (claiming credits) or
(ii) there has been a change from the '94 monitoring year

Owner Name: _____
Owner Address: _____
_____
Owner Employer ID/Taxpayer ID Number: _____
Owner Phone & Fax #'s: _____

Property Address: _____
Phone & Fax #'s at the Property: _____

Contact Person (if different from Owner): _____
Contact Person's Address: _____
Contact Person's Phone & Fax #'s: _____

Income election chosen: 40% at 60% _____ or 20% at 50% _____ Other--list: _____

Check which utilities residents pay to a third party:
water? _____ sewer? _____ gas? _____ electricity? _____ garbage? _____
(Note: If resident pays any utilities, you must subtract an allowance from the gross max. rent for the unit.)
Date the utility allowance estimate was reviewed in 1995: _____

State the character and use of the nonresidential portions of each building in the project that are included in the building's eligible basis that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities (if different for different buildings, please indicate): _____
_____
_____

List any subsidies on the property: _____

Monitoring Year: 1995

_____
Signature

_____
Date

____ j. If the income of tenants of a low-income unit in the project increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

____ k. An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings receiving low-income housing tax credits after January 1, 1990).

The undersigned certifies under penalty of perjury that the information on this form and the certifications herein have been verified as required. The undersigned certifies that the documentation to support the information herein has been received and such documentation shall be kept for the minimum amount of time required under law by the Internal Revenue Service. The undersigned understands that any non-compliance with Section 42 of the Internal Revenue Code will be reported to the Internal Revenue Service in accordance with their published regulations on compliance monitoring.

Report submitted by:

_____
Owner - print name
(Management Agents should not sign)

_____
Signature

_____
Title

_____
Date

_____
Owner Address

_____

_____
Telephone/Fax

_____ of _____
City/County of _____, To-Wit:
The foregoing Certification was acknowledged before me this _____ day of _____, 19___, by _____, the _____ of _____.

My commission expires: _____

[S E A L]

_____
Notary Public

COMPLETE THIS FORM ONLY IF THIS IS THE FIRST YEAR OF YOUR CREDIT PERIOD

COMMONWEALTH OF VIRGINIA
LOW-INCOME HOUSING TAX CREDIT PROGRAM
BUILDING INFORMATION REPORT

ɔject Name _____
ɔnitoring Year: 1995

Page _____ of _____ Pages
Total Units in Property: _____
Total LIHTC Units in Property: _____

Information may be found on Form 8609
(Review both Part I--filled in by housing credit agency and Part II--that owner completed following the first year of the credit period)

Building Address	BIN Number	Eligible Basis - Acquisition	Eligible Basis - Rehab	Eligible Basis - New Construction	Qualified Basis - Acquisition	Qualified Basis - Rehab	Qualified Basis - New Construction	Acquisition Placed in Service Date	New/Rehab Placed in Service Date	In Service Election Date (if applicable)	Credit $'s Allocated - Acquisition	Credit $'s Allocated - Rehab	Credit $'s Allocated - New Construction	Actual info from first credit year: Total Units per Building	No. of Low Income Units in Bldg.	Percent of Units Low Income in Bldg.	Total Sq. Ft. in Building	Total Low Income Sq. Ft. in Bldg.	Percent of Sq. Ft. Low Income

Under penalty of perjury, I declare that I have examined this form and to the best of my knowledge and belief, it is true, correct and complete.

Signature: _____
Date: _____

>98

Ex. C

COMMONWEALTH OF VIRGINIA
LOW-INCOME HOUSING TAX CREDIT PROGRAM
OCCUPANCY STATUS REPORT

Project Name ____________________
Bldg. ID # ____________________
Monitoring Year **1995**

Page ____ of ____ Pages
Total Units in this Building ________
Total LIHTC Units in this Building ________

Unit Number	Number of BR's	Gross Square Feet	LIHTC Unit ("Y" or "N")	At 50% or 60% of Median Income?	Move-Out Date of Prev. Resident	Household Name	Family Size @ Move-In	Initial Move-In Date	Initial Annual Income	Family Size at 12/31/95	Last Income Recert Date in 1995	Income on Last Recert Date	Res-Paid Monthly Rent @ 12/31/95	Type of Subsidy (if any)	Utility Allowance at 12/31/95

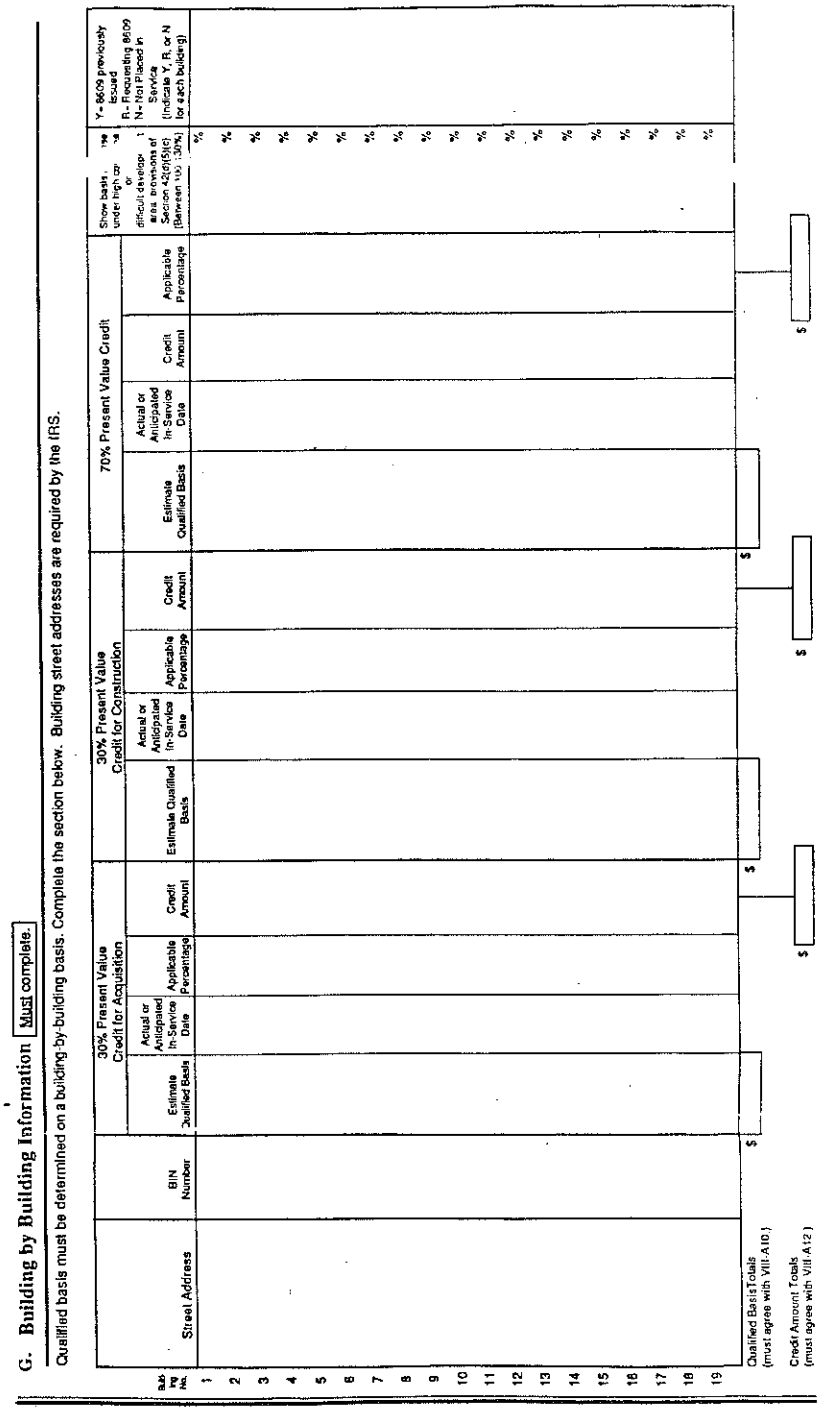
Ex. D

Under penalty of perjury, I declare that I have examined this form and to the best of my knowledge and belief, it is true, correct and complete.

Signature: ____________________

Date: ____________________

Jan-96



G. Building by Building Information Must complete.

Qualified basis must be determined on a building-by-building basis. Complete the section below. Building street addresses are required by the IRS.

Building No.	Street Address	BIN Number	30% Present Value Credit for Acquisition					30% Present Value Credit for Construction					70% Present Value Credit					Show basis under high cost or difficult develop area provisions of Section 42(d)(5)(C) (Between 100 - 130%)	Y= 8609 previously issued R= Requesting 8609 N= Not Placed in Service (Indicate Y, R, or N for each building)
			Estimate Qualified Basis	Actual or Anticipated In-Service Date	Applicable Percentage	Credit Amount		Estimate Qualified Basis	Actual or Anticipated In-Service Date	Applicable Percentage	Credit Amount		Estimate Qualified Basis	Actual or Anticipated In-Service Date	Credit Amount	Applicable Percentage			
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	Qualified Basis Totals (must agree with VIII-A10.)		$				$					$							
	Credit Amount Totals (must agree with VIII-A12.)					$					$				$				

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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.

Effective Date: July 1, 1995.

Summary:

The amendments to the authority's rules and regulations for multi-family housing developments for mentally disabled persons 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.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

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 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 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 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 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. R95-568; Filed June 21, 1995, 11:05 a.m.

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

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

Effective Date: July 1, 1995.

Summary:

The amendments to the authority's rules and regulations for the acquisition by the authority of multi-family housing developments 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.

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

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 § 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 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 for 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.

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 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. R95-567; Filed June 21, 1995, 11:05 a.m.

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Regulations of the Board of Pharmacy.**

Statutory Authority: §§ 54.1-2400, 54.1-3307, and 54.1-3312 of the Code of Virginia.

Effective Date: August 9, 1995.

Summary:

The 1994 General Assembly amended § 54.1-3312 of the Code of Virginia with an effective date of July 1, 1995, to authorize the board to license graduates of foreign schools of pharmacy provided they meet other qualifications provided in the law. The amendments adopted by the board, pursuant to the statutory requirements, define a "foreign college of pharmacy" and specify the pharmacy equivalency examination and the examination of written and spoken English.

Technical amendments have been made to remove obsolete Public Participation Guidelines. VR 530-01-3, which became effective June 15, 1994, was promulgated to replace these Public Participation Guidelines. Also, § 1.4, which established selected one-time fee reductions for renewal of pharmacy licenses and permits, expired January 1, 1995, and has been removed from the regulation.

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 Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

VR 530-01-1. Regulations of the Board of Pharmacy.

PART I.
GENERAL PROVISIONS.

~~§ 1.1. Public participation guidelines.~~

~~A. Mailing list.~~

~~The executive director of the board will maintain a list of persons and organizations who will be mailed the following documents:~~

~~1. "Notice of intent" to promulgate regulations.~~

~~2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.~~

~~3. Final regulation adopted.~~

~~B. Being placed on list; deletion.~~

~~Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Those on the list may be periodically requested to indicate their desires to continue to receive documents or to be deleted from the list. After 30 days, the names of the persons who do not respond will be deleted from the list.~~

~~C. Notice of intent.~~

~~At least 30 days prior to the publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.~~

~~D. Informational proceedings or public hearings for existing rules.~~

~~At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceeding may be held separately or in conjunction with other informational proceedings.~~

~~E. Petition for rulemaking.~~

~~Any person may petition the board to adopt, amend, or delete any regulation. Any petition received in a timely~~

~~manner shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.~~

~~F. Notice of formulation and adoption.~~

~~At any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.~~

~~G. Advisory committees.~~

~~The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.~~

§ ~~1.2.~~ *1.1.* Definitions.

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

"ACPE" means the American Council on Pharmaceutical Education.

"Board" means the Virginia State Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"Foreign college of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hermetic container" means a container that is impervious to air or any other gas under the ordinary or customary conditions of handling, shipment, storage, and distribution.

"Hospital" or *"nursing home"* means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Light resistant container" means a container that protects the contents from the effects of light by virtue of the specific properties of the material of which it is composed, including any coating applied to it. Alternatively, a clear and colorless or a translucent container may be made light-resistant by means of an opaque covering, in which case the label of the container bears a statement that the opaque covering is needed until the contents have been used. Where a monograph directs protection from light, storage in a light-resistant container is intended.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act(s) being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"Radiopharmaceutical" means any article that exhibits spontaneous decay or disintegration of any unstable atomic nucleus, usually accompanied by the emission of ionizing radiation and any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such article.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act *of 1970 (15 USC §§ 1471-1476)*, i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of

the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. *"Cold"* means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. *"Room temperature"* means the temperature prevailing in a working area.

3. *"Controlled room temperature"* is a temperature maintained thermostatically between 15° and 30°C (59° and 86°F).

4. *"Warm"* means any temperature between 30° and 40°C (86° and 104°F).

5. *"Excessive heat"* means any temperature above 40°C (104°F).

6. *"Protection from freezing"* means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Tight container" means a container that protects the contents from contamination by extraneous liquids, solids, or vapors, from loss of the drug, and from efflorescence, deliquescence, or evaporation under the ordinary or customary conditions of handling, shipment, storage, and distribution, and is capable of tight reclosure. Where a tight container is specified, it may be replaced by a hermetic container for a single dose of a drug and physical tests to determine whether standards are met shall be as currently specified in United States Pharmacopoeia-National Formulary.

"Unit-dose container" means a container that is a single-unit container, as defined in United States Pharmacopoeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a physician's order or medication administration record.

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

§ ~~1.3.~~ *1.2.* Fees.

A. ~~Except as provided in § 1.4,~~ Fees shall be as listed ~~below~~ *in this section*, and unless otherwise provided, such fees shall not be refundable.

~~A.~~ *B.* Fee for initial pharmacist licensure.

1. The application and initial examination fee for a pharmacist license shall be $300. If an applicant withdraws the application prior to taking the examination, all but $25 of the fee will be refunded. If the applicant wishes to take portions of the examination on separate dates, the fees shall be as follows:

a. The National Association of Boards of Pharmacy Examination (NABPLEX) shall be $200.

b. The Federal Drug Law Examination (FDLE) shall be $75.

c. The State Drug Law Examination (SDLE) shall be $75.

2. The application and State Drug Law Examination fee for licensure by endorsement shall be $150. The fee for retaking the examination shall be $75.

3. The application and State Drug Law Examination fee for licensure by score transfer of NABPLEX or FDLE scores or both shall be $150. The fee for taking NABPLEX, if needed, shall be $200. The fee for taking FDLE, if needed, shall be $75. The fee for retaking the SDLE shall be $75.

4. The application fee for a person whose license has been revoked or suspended indefinitely shall be $300.

~~B.~~ *C.* Renewal of pharmacist license.

1. The annual fee for renewal of a pharmacist license shall be $50.

2. The annual fee for renewal of an inactive pharmacist license shall be $35.

3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a $25 late fee within 60 days of expiration.

4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and

shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of $50.

~~C.~~ *D.* Other licenses or permits.

1. The annual permit fee to conduct a resident or nonresident pharmacy shall be $200.

2. The annual license fee for a permitted physician to dispense drugs shall be $200.

3. An application for a change of the pharmacist-in-charge shall be accompanied by a fee of $25.

4. An application for a change of location or a remodeling which requires an inspection shall be accompanied by a fee of $100.

5. A nonrestricted manufacturing permit shall be $200 annually.

6. A restricted manufacturing permit shall be $150 annually.

7. A wholesale distributor license shall be $200 annually.

8. A warehouser permit shall be $200 annually.

9. A permit for a medical equipment supplier shall be $150 annually.

10. A permit for a licensed humane society shall be $10 annually.

11. If a licensee fails to renew a required license or permit prior to the expiration date, a $25 late fee shall be assessed.

12. If a required license or permit is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of $50.

~~D.~~ *E.* Controlled substances registration.

1. The annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be $20.

2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a $10 late fee shall be paid prior to renewal.

3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a $25 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal and may subject the registrant to disciplinary action by the board. Reinstatement of a lapsed registration is at the discretion of the board and may be granted by the executive director of the board upon completion of an application and payment of all fees.

~~E.~~ *F.* Other fees.

1. A request for a duplicate wall certificate shall be accompanied by a fee of $25.

2. A request for certification of grades to another board shall be accompanied by a fee of $25.

~~F.~~ *G.* Board approval of continuing education programs and providers.

1. The application fee for approval of an individual CE program is $100.

2. The application fee for approval of provider status is $300.

3. Renewal of approved provider status is $300 paid biennially.

~~§ 1.4. Fee reductions.~~

~~Between January 1, 1994, and January 1, 1995, the following fees shall be in effect as listed below:~~

~~1. Renewal of pharmacist license.~~

~~a. The annual fee for renewal of a pharmacist license shall be $25.~~

~~b. The annual fee for renewal of an inactive pharmacist license shall be $25.~~

~~2. Other licenses or permits.~~

~~a. The annual permit fee to conduct a resident or nonresident pharmacy shall be $100.~~

~~b. The annual license fee for a permitted physician to dispense drugs shall be $100.~~

~~c. A nonrestricted manufactured permit shall be $100 annually.~~

~~d. A restricted manufacturing permit shall be $75 annually.~~

~~e. A wholesale distributor permit shall be $100 annually.~~

~~f. A permit for a medical equipment supplier shall be $75 annually.~~

PART II.
LICENSURE REQUIREMENTS FOR PHARMACISTS.

§ 2.1. Requirements for practical experience.

A. Each applicant for licensure by examination shall have gained practical experience in prescription compounding and dispensing within a pharmacy for a period of not less than six months.

B. During the six months of practical experience required, the applicant shall accumulate a minimum of 1,000 hours. For purposes of this regulation, credit will not be given for more than 50 hours in any one week.

C. All practical experience credit required shall only be gained after completion of the first professional year in an approved school of pharmacy.

D. Practical experience gained in a college of pharmacy which has a program designed to provide the applicant with practical experience in all phases of pharmacy practice and which program is approved by the American Council on Pharmaceutical Education will be accepted by the board for the time period during which the student is actually enrolled. The applicant will be required to gain any additional experience needed toward fulfilling the six months and 1,000 hours of experience required.

E. An applicant shall not be admitted to the examination unless all of the practical experience has been gained.

§ 2.2. Procedure for gaining practical experience outside of an accredited college clerkship program.

A. Each pharmacy student who desires to gain practical experience in a pharmacy within the Commonwealth shall register with the board on a form provided by the board prior to becoming so engaged. This requirement shall also apply to students gaining practical experience within the Commonwealth for licensure in another state. The student shall be called a "student externe."

B. Graduates of an approved school of pharmacy who wish to gain practical experience within the Commonwealth shall register with the board prior to being so engaged. Such graduates shall be called "pharmacy interne."

C. The applicant shall be supervised by a pharmacist who holds an unrestricted license and assumes full responsibility for the training, supervision and conduct of the externe or the interne. The supervising pharmacist shall not supervise more than one interne or externe during the same time period.

D. The practical experience of the student externe shall be gained at times nonconcurrent with the school year with the exception of school vacations.

E. The registration of a student externe shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

F. Practical experience gained within any state must be registered with and certified by the board of that state in order to be accepted or certified by this board.

G. All practical experience of the student externe or pharmacy interne shall be evidenced by an affidavit which shall be filed prior to or with the application for examination for licensure.

H. An applicant for examination shall file affidavits or certificates of experience on a form prescribed by the board no less than 30 days prior to the date of the examination.

§ 2.3. Curriculum and approved colleges of pharmacy.

A. ~~Length of curriculum.~~ The following minimum educational requirements for licensure for the specified periods shall be recognized by the board for the purpose of licensure.

1. On and after June 1, 1928, but before June 1, 1936, the applicant for licensure shall have been graduated from a three-year course of study with a pharmacy graduate or pharmacy college degree in pharmacy awarded.

2. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

3. On and after June 1, 1964, the applicant for licensure shall have been graduated from at least a five-year course of study with a Bachelor of Science degree in pharmacy or a Doctorate of Pharmacy degree awarded.

B. ~~First professional degree required.~~ In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a college of pharmacy which meets the requirements of § 54.1-3312 of the Code of Virginia.

§ 2.4. Content of the examination and grades required; *limitation on admittance to examination.*

A. The examination for licensure as a pharmacist shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy. The board will additionally examine the candidates' knowledge of federal and state laws related to pharmacy practice.

B. ~~Passing requirements.~~ The passing grade on the integrated pharmacy examination shall be not less than 75. The passing grade on any law examination shall be not less than 75.

C. ~~Limitation on admittance to examination.~~ When an applicant for licensure by examination fails to meet the passing requirements of ~~paragraph~~ *subsection B* of this section on three occasions, he shall not be readmitted to the examinations until he has completed an additional six months of practical experience as a pharmacy interne as set forth in § 2.2.

§ 2.5. Requirements for foreign-trained applicants.

Applicants for licensure who were trained in foreign colleges of pharmacy shall meet the following requirements:

1. Obtain from the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy (NABP) verification of the following:

a. That the applicant is a graduate of a foreign college of pharmacy.

b. That the applicant has received a score acceptable to the Board on the Foreign Pharmacy Graduate Equivalency Examination (FPGEE).

c. That the applicant has received a score acceptable to the board on the Test of English as a Foreign Language (TOEFL).

2. Complete the Test of Spoken English (TSE) as given by the Educational Testing Service with a score acceptable to the board.

3. Fulfill the requirements for practical experience as prescribed in § 2.1 A and B and all of § 2.2.

4. Fulfill the requirements for the examination and passing grade as prescribed in § 2.4.

§ ~~2.5.~~ *2.6.* Renewal of license.

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date has 60 days in which to renew by submission of the renewal and late fee, renewal form, and statement of compliance with continuing education requirements.

D. Failure to renew within the 60 days of expiration shall cause his license to lapse. Reinstatement may be granted by the executive director of the board upon completion of an application for reinstatement of license, the payment of all back renewal fees and a delinquent fee, and submission of a statement of compliance with continuing education requirements. Practice of pharmacy with a lapsed license shall be illegal and may subject the licensee to disciplinary action by the board.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, comply with CE requirements, and pay the current year renewal fee in order to resume active licensure.

F. It shall be the duty and responsibility of each licensee to inform the board of his current address. A licensee shall immediately notify the board in writing of any change of an address of record. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address given and shall not relieve the licensee of the obligation to comply.

§ ~~2.6.~~ *2.7.* Requirements for continuing education.

A. On and after December 31, 1993, a licensee shall be required to have completed a minimum of 1.5 CEU's or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEU's or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing pharmacy education program is:

1. One that is approved by the American Council on Pharmaceutical Education and carries the provider logo and number of the ACPE; or

2. One that is approved by the board.

C. A licensee is exempt from completing CE requirements and considered in compliance on the first renewal date following his initial licensure.

D. The board may grant an extension of up to one year for the completion of CE requirements upon a written request from the licensee prior to the renewal date. Any subsequent extension shall be granted only for good cause shown. Such an extension shall not relieve the licensee of the requirement for CEU's or hours.

E. The board may grant an exemption for all or part of the CE requirements due to circumstances beyond the control of the pharmacist, such as temporary disability, mandatory military service, or officially declared disasters.

F. Licensees are required to attest to compliance with CE requirements on their annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their CE requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the CEU's or contact hours, and certification from an approved provider. Documentation shall be maintained for a period of two years following renewal in a file available to inspectors at the pharmacist's principal place of practice or, if there is no principal place of practice, at the pharmacist's address of record.

H. A pharmacist who holds an inactive license, who has allowed his license to lapse or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active.

I. Pharmacists who are licensed by other states and who have obtained a minimum of 1.5 CEU's or 15 contact hours of approved CE programs of such other states need not obtain additional hours.

§ ~~2.7.~~ *2.8.* Approval of continuing education programs and providers.

A. The board will approve without application or further review any program offered by a ACPE-approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program or may grant approved provider status under the following provisions:

1. Approval of an individual CE program.

a. An approved individual program is a course, activity, or lecture which includes subject matter related to the competency of the practice of pharmacy and which has been approved for CE credit by the board.

b. In order to receive approval for an individual program, the sponsor or provider must make application prior to the program offering on a form provided by the board. The information which must be provided shall include but not be limited to: name of provider, location, date and time of program, charges to participants, description of program content and objectives, credentials of speaker or author, method of delivery, evaluation procedure, evidence of a pre and

post test, credits requested, mechanism for record-keeping, and any such information as the board deems necessary to assure quality and compliance.

c. The sponsor making application for board approval of an individual program must pay a fee as required in § ~~1.3 F~~ *1.2 G* of this regulation.

d. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of credits which may be awarded.

2. Approval of CE provider status.

a. An approved provider is any person, corporation, school, association, or other entity who has demonstrated an ability to provide qualified CE programs and has met the requirements of the board for approved provider status.

b. An applicant for approved provider status must have sponsored at least three individually board approved programs for a minimum period of two years immediately preceding the submission of application for approved status.

c. The application for approved provider status shall include but not be limited to: information on the entity making application, a listing of approved CE programs offered during the last two years, accreditation, methods of promotion and delivery of programs, assessment process, maintenance of records, policy on grievances and tuition, standards for selection of speakers, program goals and objectives, and a description of facilities adequate to meet those objectives.

d. The application for approved provider status shall be accompanied by a fee as required in § ~~1.3 F~~ *1.2 G*.

e. An applicant who has been granted approved provider status is permitted to offer CE programs by submitting to the board information on that offering at least 10 days prior to the program. The approved provider is not required to submit application for approval of each individual program nor to pay the fee for such approval.

f. An approved provider must have that status renewed every two years, must pay the renewal fee, and must provide information on program offerings to the board for review.

g. The board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the necessary standards and requirements.

3. Certificate of completion. The provider of an approved program shall provide to each participant who completes the required hours and passes the post test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

4. Maintenance of records. The provider of an approved program shall maintain all records on that program, its participants, and hours awarded for a period of three years and shall make those records available to the board upon request.

5. Monitoring of programs. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

6. Changes in programs or providers. Any changes in the information previously provided about an approved program or provider must be submitted or the board may withdraw its approval.

PART III.
PHARMACIES.

§ 3.1. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than one pharmacy.

B. The pharmacist-in-charge or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the pharmacist-in-charge or other pharmacist on duty by nonpharmacist personnel shall be deemed the practice of pharmacy.

C. When the pharmacist-in-charge ceases practice at a pharmacy or no longer wishes to be designated as pharmacist-in-charge, he shall take a complete and accurate inventory of all Schedule II through V controlled substances on hand and shall immediately return the pharmacy permit to the board.

D. An application for a permit designating the new pharmacist-in-charge shall be filed with the required fee within 14 days on a form provided by the board. Pursuant to §§ 54.1-111 1 and 54.1-3434 of the Code of Virginia, it shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline.

§ 3.2. Special or limited-use pharmacy permits.

For good cause shown, the board may issue a special or limited-use pharmacy permit, when the scope, degree or type of pharmacy practice or service to be provided is of a special, limited or unusual nature as compared to a regular pharmacy service. The permit to be issued shall be based on special conditions of use requested by the applicant and imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice.

2. A policy and procedure manual detailing the type and method of operation, hours of operation, and method of documentation of continuing pharmacist control must accompany the application.

3. The issuance and continuation of such permits shall be subject to continuing compliance with the conditions set forth by the board.

§ 3.3. Pharmacies going out of business.

A. At least 30 days prior to the closing date, the board shall be notified by the pharmacist-in-charge or owner. The disposition of all Schedule II through VI drugs shall be reported to the board. If the pharmacy drug stock is to be transferred to another licensee, the pharmacist-in-charge or owner shall inform the board of the name and address of the licensee to whom the drugs are being transferred and the date of transfer.

B. Exceptions to the 30-day public notice as required in § 54.1-3434.01 of the Code of Virginia and the notice required in § 3.3 A of these regulations shall be sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances as approved by the board.

C. In the event of an exception to the 30-day notice as required in § 54.1-3434.01 of the Code of Virginia and in § 3.3 A of these regulations, the pharmacist-in-charge shall provide notice as far in advance of closing as allowed by the circumstances.

§ 3.4. New pharmacies and changes to existing pharmacies.

A. Any person wishing to open a new pharmacy, change the location of an existing pharmacy, or move the location or make structural changes to an existing prescription department shall file an application with the board.

B. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

1. Pharmacy permit applications which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the dispensing area shall comply with §§ 3.5, 3.6, 3.7, 3.8, and 3.9 of these regulations.

C. Upon completion of the inspection, the executive director of the board shall review the findings of the inspection. Drugs shall not be stocked within the proposed pharmacy or moved to a new location until approval is granted or the permit is issued by the executive director of the board or his designee.

§ 3.5. Physical standards for all pharmacies.

A. ~~Space requirements.~~ The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. ~~Access to prescription department.~~ Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to the effective date of this regulation.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet U.S.P.-N.F. specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary record keeping.

F. A sink with hot and cold running water shall be within the prescription department.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department, if the pharmacy stocks such drugs.

§ 3.6. Sanitary conditions.

A. The entire area of any place bearing the name of a pharmacy shall be maintained in a clean and sanitary manner and in good repair and order.

B. The prescription department and work counter space and equipment in the dispensing area shall be maintained in a clean and orderly manner.

C. Adequate trash disposal facilities and receptacles shall be available.

§ 3.7. Required minimum equipment.

The pharmacist-in-charge shall be responsible for maintaining the following equipment:

1. A current copy of the United States Pharmacopeia Dispensing Information Reference Book.

2. A set of Prescription Balances, sensitive to 15 milligrams, and weights.

3. A copy of the current Virginia Drug Control Act and board regulations.

4. A current copy of the Virginia Voluntary Formulary.

5. A laminar flow hood for pharmacies engaging in the compounding of sterile product(s).

6. Other equipment, supplies, and references consistent with the pharmacy's scope of practice and with the public safety.

§ 3.8. Security system.

A device for the detection of breaking shall be installed in each prescription department of each pharmacy. The

installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The device shall be maintained in operating order and shall have an auxiliary source of power.

3. The device shall fully protect the prescription department and shall be capable of detecting breaking by any means when activated.

4. Access to the alarm system for the prescription department area of the pharmacy shall be restricted to the pharmacists working at the pharmacy, and the system shall be activated whenever those areas are closed for business.

5. This regulation shall not apply to pharmacies which have been granted a permit prior to the effective date of this regulation provided that a previously approved security alarm system is in place, that no structural changes are made in the prescription department, that no changes are made in the security system, that the prescription department is not closed while the rest of the business remains open, and provided further that a breaking and loss of drugs does not occur.

6. If the prescription department was located in a business with extended hours prior to the effective date of these regulations and had met the special security requirements by having a floor to ceiling enclosure, a separately activated alarm system shall not be required.

7. This section shall not apply to pharmacies which are open and staffed by pharmacists 24 hours a day. If the pharmacy changes its hours or if it must be closed for any reason, the pharmacist-in-charge must immediately notify the board and have installed within 72 hours a security system which meets the requirements of subdivisions 1 through 4 of this section.

§ 3.9. Prescription department enclosures.

A. The prescription departments of each pharmacy shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be constructed in such a manner that it protects the controlled drug stock from unauthorized entry and from pilferage at all times whether or not a pharmacist is on duty.

2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the drugs.

3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions.

4. Doors to the area must have locking devices which will prevent entry in the absence of the pharmacist.

B. The door keys and alarm access code to the dispensing areas shall be subject to the following requirements:

1. Only pharmacists practicing at the pharmacy and authorized by the pharmacist-in-charge shall be in possession of any keys to the locking device on the door to such enclosure.

2. The pharmacist may place a key or the access code in a sealed envelope or other container with the pharmacist's signature across the seal in a safe or vault within the pharmacy or other secured place. This key or code shall only be used to allow entrance to the prescription department by other pharmacists.

C. ~~Restricted access to the prescription department.~~ The prescription department is restricted to pharmacists, externes, and internes who are practicing at the pharmacy. Clerical assistants and other persons designated by the pharmacist may be allowed access by the pharmacist but only during the hours the pharmacist is on duty.

§ 3.10. Storage of drugs, devices, and controlled paraphernalia.

A. Prescriptions awaiting delivery. Prescriptions prepared for delivery to the patient may be placed in a secure place outside of the prescription department and access to the prescriptions restricted by the pharmacist to designated clerical assistants. With the permission of the pharmacist, the prepared prescriptions may be transferred to the patient at a time when the pharmacist is not on duty.

B. Dispersion of Schedule II drugs. Schedule II drugs shall either be dispersed with other schedules of drugs or shall be maintained within a locked cabinet, drawer, or safe.

C. Safeguards for controlled paraphernalia. Controlled paraphernalia shall not be placed on open display or in an area completely removed from the prescription department whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

D. Expired drugs; security. Any drug which has exceeded the expiration date shall not be dispensed or sold; it shall be separated from the stock used for dispensing. Expired prescription drugs shall be maintained in a designated area within the prescription department until proper disposal.

§ 3.11. Disposal of Schedule II through V drugs by pharmacies.

If a pharmacist-in-charge wishes to dispose of unwanted Schedule II through V drugs, he shall use one of the following procedures:

1. Return the drugs to the Drug Enforcement Administration (DEA) by delivery to the nearest DEA office; ~~or~~

2. Transfer the drugs to another person or entity authorized to possess Schedule II through V drugs; or

3. Destroy the drugs according to the following procedures:

a. At least 14 days prior to the destruction date, the pharmacist-in-charge shall provide a written notice to the board office; the notice shall state the following:

(1) Date, time, manner, and place of destruction.

(2) The names of the pharmacists who will witness the destruction process.

b. If the destruction date is to be changed or the destruction does not occur, a new notice shall be provided to the board office as set forth above in this subsection.

c. The actual destruction shall be witnessed by the pharmacist-in-charge and another pharmacist not employed by the pharmacy.

d. The drugs shall be destroyed in accordance with all applicable local, state and federal laws and regulations by burning in an incinerator or by other methods approved in advance by the board.

e. The DEA drug destruction form shall be used to make a record of all drugs to be destroyed.

f. Each form shall show the following information:

(1) Legible signatures and license numbers of the pharmacist-in-charge and the witnessing pharmacist;

(2) The method of destruction; and

(3) The date of the destruction.

g. At the conclusion of the destruction of the drug stock:

(1) Three copies of the completed destruction form shall be sent to Drug Enforcement Administration, Washington Field Division, Room 2558, 400 - 6th Street S.W., Washington, D.C. 20024, Attn: Diversion Control Group.

(2) A copy of the completed destruction form shall be sent to the office of the board.

(3) A copy of the completed destruction form shall be retained with the pharmacy inventory records.

PART IV.
NUCLEAR PHARMACIES.

§ 4.1. General requirements for pharmacies providing radiopharmaceutical services.

A. A permit to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist. In emergency situations, in the pharmacist's absence, he may designate one or more other qualified pharmacists to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and shall document such withdrawals in the control system.

B. Pharmacies providing ordinary pharmacy services in addition to radiopharmaceutical services shall comply with all regulations applicable to pharmacies in general. Pharmacies providing only radiopharmaceutical services shall comply with all regulations related to physical standards, sanitary conditions and security.

C. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance and office area.

D. A prescription order for a radiopharmaceutical shall be dispensed in a unit-dose package. A pharmacy may furnish the radiopharmaceuticals for office use only to practitioners for an individual patient except for the occasional transfer to a pharmacist.

E. In addition to any labeling requirements of the board for nonradioactive drugs, the immediate outside container of a radioactive drug to be dispensed shall also be labeled with: (i) the standard radiation symbol; (ii) the words "Caution--Radioactive Material"; (iii) the name of the radionuclide; (iv) the chemical form; (v) the amount of radioactive material contained, in millicuries or microcuries; (vi) if a liquid, the volume in milliliters; (vii) the requested calibration time for the amount of radioactivity contained; and (viii) the practitioner's name and the assigned lot number.

F. The immediate inner container shall be labeled with: (i) the standard radiation symbol; (ii) the words "Caution--Radioactive Material"; and (iii) the prescription number.

G. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.

H. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

§ 4.2. Qualification as a nuclear pharmacist.

In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:

1. Meet Nuclear Regulatory Commission standards of training for medically used or radioactive by-product material.

2. Have received a minimum of 200 contact hours of didactic instruction in nuclear pharmacy.

3. Attain a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved college of pharmacy.

4. Submit an affidavit of experience and training to the board.

PART V.
DRUG INVENTORY AND RECORDS.

§ 5.1. Manner of maintaining records, prescriptions, inventory records.

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. All records of Schedule II through V drugs shall be maintained at the same location as the stock of drugs to which the records pertain except that records maintained in an off-site database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

4. In the event that an inventory is taken as the result of a theft of drugs pursuant to § 54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.

5. All records required by this section shall be filed chronologically.

B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing.

2. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

3. Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs.

§ 5.2. Automated data processing records of prescriptions.

A. An automated data processing system may be used for the storage and retrieval of original and refill dispensing information for prescriptions instead of manual record keeping requirements, subject to the following conditions:

1. A hard copy prescription shall be placed on file as set forth in § 5.1 B.

2. Any computerized system shall provide retrieval (via computer monitor display or printout) of original prescription information for those prescriptions which are currently authorized for dispensing.

3. Any computerized system shall also provide retrieval via computer monitor display or printout of the dispensing history for prescriptions dispensed during the past two years.

4. Documentation of the fact that the information entered into the computer each time a pharmacist fills a prescription for a drug is correct shall be provided by the individual pharmacist who makes use of such system. If the system provides a printout of each day's prescription dispensing data, the printout shall be verified, dated and signed by the individual pharmacist who dispensed the prescription. The individual pharmacist shall verify that the data indicated is correct and then sign the document in the same manner as his name appears on his pharmacist license (e.g., J.H. Smith or John H. Smith).

In place of such printout, the pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in dispensing shall sign a statement each day, in the manner previously described, attesting to the fact that the dispensing information entered into the computer that day has been reviewed by him and is correct as shown.

B. Printout of dispensing data requirements. Any computerized system shall have the capability of producing a printout of any dispensing data which the user pharmacy is responsible for maintaining under the Drug Control Act *(§ 54.1-3400 et seq. of the Code of Virginia)*.

§ 5.3. Pharmacy repackaging of drug; records required; *labeling requirements.*

A. ~~Records required.~~ Pharmacies in which bulk reconstitution of injectables, bulk compounding or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used, strength, if any, quantity prepared, initials of the pharmacist supervising the process, the assigned control number, or the manufacturer's or distributor's name and control number, and an expiration date.

B. ~~Labeling requirements.~~ The drug name, strength, if any, the assigned control number, or the manufacturer's or distributor's name and control number, and an appropriate expiration date shall appear on any subsequently repackaged or reconstituted units as follows :

1. If U.S.P.-N.F. Class B or better packaging material is used for oral unit dose packages, an expiration date not to exceed six months or the expiration date shown on the original manufacturing bulk container, whichever is less, shall appear on the repackaged or reconstituted units.

2. If it can be documented that the repackaged unit has a stability greater than six months, an appropriate expiration date may be assigned.

3. If U.S.P.-N.F. Class C or less packaging material is used for oral, solid medication, an expiration date not to

exceed 30 days shall appear on the repackaged or reconstituted units.

PART VI.
PRESCRIPTION ORDER AND DISPENSING STANDARDS.

§ 6.1. Dispensing of prescriptions; acts restricted to pharmacists; *certification of completed prescription.*

A. The following acts shall be performed by a pharmacist, or by a student externe or pharmacy interne, provided a method for direct monitoring by the pharmacist of such acts of the externe or interne is provided:

1. The accepting of an oral prescription from a practitioner or his authorized agent and the reducing of such oral prescription to writing.

2. The personal supervision of the compounding of extemporaneous preparations.

3. The conducting of a prospective drug review as required by § 54.1-3319 of the Code of Virginia prior to the dispensing or refilling of any prescription.

4. The providing of drug information to the public or to a practitioner.

5. The communication with the practitioner regarding any changes in a prescription, substitution of the drug prescribed, refill authorizations, drug therapy, or patient information.

6. The direct supervision of those persons assisting the pharmacist in the prescription department under the following conditions:

a. Only one person who is not a pharmacist may be present in the prescription department at any given time with each pharmacist for the purpose of assisting the pharmacist in preparing and packaging of prescriptions.

b. In addition to the person authorized in subdivision 6 a of this subsection, personnel authorized by the pharmacist may be present in the prescription department for the purpose of performing clerical functions, to include data entry of prescription and patient information into a computer system or a manual patient profile system.

B. ~~Certification of completed prescription.~~ After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction.

C. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

§ 6.2. Transmission of a prescription order by facsimile machine.

Prescription orders for Schedule VI drugs may be transmitted to pharmacies by facsimile device (FAX) upon the following conditions:

1. The transmission shall occur only with permission of the patient.

2. A valid faxed prescription must contain all required information for a written prescription, including the prescriber's signature.

3. A faxed prescription shall be valid only if faxed from the prescriber's practice location and only if the following additional information is recorded on the prescription prior to faxing:

a. Documentation that the prescription has been faxed;

b. The date that the prescription was faxed;

c. The printed name, address, phone number, and fax number of the authorized prescriber and the pharmacy to which the prescription was faxed; and

d. The institution, if applicable, from which the prescription was faxed, including address, phone number and fax number.

4. If the faxed prescription is of such quality that the print will fade and not remain legible for the required retention period, the receiving pharmacist shall photocopy the faxed prescription on paper of permanent quality.

§ 6.3. Dispensing of Schedule II drugs.

A. A prescription for a Schedule II drug shall be dispensed in good faith but in no case shall it be dispensed more than six months after the date on which the prescription was issued.

B. A prescription for a Schedule II drug shall not be refilled except as authorized under the conditions for partial dispensing as set forth in § 6.5.

§ 6.4. Emergency prescriptions for Schedule II drugs.

In case of an emergency situation, a pharmacist may dispense a drug listed in Schedule II upon receiving oral authorization of a prescribing practitioner, provided that:

1. The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period;

2. The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 54.1-3410 of the Drug Control Act, except for the signature of the prescribing practitioner;

3. If the pharmacist does not know the practitioner, he shall make a reasonable effort to determine that the oral authorization came from a practitioner using his phone number as listed in the telephone directory or other good-faith efforts to ensure his identity; and

4. Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 54.1-3410 of the Drug Control Act, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Drug Enforcement Administration and the board if the prescribing practitioner fails to deliver a written prescription to him. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing practitioner.

§ 6.5. Partial dispensing of Schedule II prescriptions.

A. The partial filling of a prescription for a drug listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, and he makes a notation of the quantity supplied on the face of the written prescription. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing; however, if the remaining portion is not or cannot be dispensed within the 72-hour period, the pharmacist shall so notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

B. Prescriptions for Schedule II drugs written for patients in long-term care facilities may be dispensed in partial quantities, to include individual dosage units. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained and readily retrievable) the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II drugs in all partial dispensing shall not exceed the total quantity prescribed. Schedule II prescriptions shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

C. Information pertaining to current Schedule II prescriptions for patients in a nursing home may be maintained in a computerized system if this system has the capability to permit:

1. Output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, identification of the nursing home, identification of drug authorized (to include dosage form, strength, and quantity), listing of partial dispensing under each prescription and the information required in subsection B of this section.

2. Immediate (real time) updating of the prescription record each time a partial dispensing of the prescription is conducted.

D. ~~Partial filling of Schedule II prescriptions for terminally ill patients.~~ A prescription for a Schedule II drug may be filled in partial quantities to include individual dosage units for a patient with a medical diagnosis documenting a terminal illness under the following conditions:

1. The practitioner shall classify the patient as terminally ill, and the pharmacist shall verify and record such notation on the prescription.

2. On each partial filling, the pharmacist shall record the date, quantity dispensed, remaining quantity authorized to be dispensed, and the identity of the dispensing pharmacist.

3. Prior to the subsequent partial filling, the pharmacist shall determine that it is necessary. The total quantity of Schedule II drugs dispensed in all partial fillings shall not exceed the total quantity prescribed.

4. Schedule II prescriptions for terminally ill patients may be partially filled for a period not to exceed 60 days from the issue date unless terminated sooner.

5. Information pertaining to partial filling may be maintained in a computerized system under the conditions set forth in § 6.5 C.

§ 6.6. Refilling of Schedule III through VI prescriptions.

A. ~~Refilling of Schedule III, IV, and V drugs.~~ A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

1. Each refilling of a prescription shall be entered on the back of the prescription, initialed and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.

2. The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:

a. Each partial dispensing is recorded in the same manner as a refilling;

b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and

c. No dispensing occurs after six months after the date on which the prescription order was issued.

B. ~~Refilling of Schedule VI drugs.~~ ~~1.~~ A prescription for a drug listed in Schedule IV shall be refilled only as expressly authorized by the practitioner. If no such authorization is given, the prescription shall not be refilled.

~~2.~~ A prescription for a Schedule VI drug or device shall not be dispensed or refilled more than two years after the date on which it was issued.

C. As an alternative to all manual record-keeping requirements provided for in subsections A and B of this section, an automated data processing system as provided in

§ 5.2 may be used for the storage and retrieval of dispensing information for prescription for drugs dispensed.

D. Authorized refills of all prescription drugs may only be dispensed in reasonable conformity with the directions for use as indicated by the practitioner; if directions have not been provided, then any authorized refills may only be dispensed in reasonable conformity with the recommended dosage and with the exercise of sound professional judgment.

PART VII.
LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

§ 7.1. Labeling of prescription as to content and quantity.

Unless otherwise directed by the prescribing practitioner, any drug dispensed pursuant to a prescription shall bear on the label of the container, in addition to other requirements, the following information:

1. The drug name and strength, when applicable:

a. If a trade name drug is dispensed, the trade name of the drug or the generic name of the drug.

b. If a generic drug is dispensed in place of a trade name drug, in addition to the requirements of § 32.1-87 A of the Code of Virginia, one of the following methods shall be used:

(1) The generic name,

(2) A name for the product dispensed which appears on the generic manufacturer's label, or

(3) The generic name followed by the words "generic for" followed by the trade name of the drug for which the generic drug is substituted.

2. The number of dosage units, or if liquid, the number of milliliters dispensed.

§ 7.2. Packaging standards for dispensed prescriptions.

A. A drug shall be dispensed only in packaging approved by the current U.S.P.-N.F. for that drug. In the absence of such packaging standard for that drug, it shall be dispensed in a well-closed container.

B. Drugs may be dispensed in compliance packaging for self-administration when requested by the patient or for use in hospitals or long-term care facilities provided that such packaging meets all current U.S.P.-N.F. standards for packaging, labeling and record keeping.

§ 7.3. Special packaging.

A. Each drug dispensed to a person in a household shall be dispensed in special packaging except when otherwise directed in a prescription by a practitioner, when otherwise requested by the purchaser, or when such drug is exempted from ~~such requirements~~ *16 CFR § 1702.1 et seq.* promulgated pursuant to the Poison Prevention Packaging Act of 1970 *(15 USC §§ 1471-1476)*.

B. Each pharmacy may have a sign posted near the prescription department advising the patients that nonspecial packaging may be requested.

C. If nonspecial packaging is requested, documentation of such request shall be maintained for two years from the date of dispensing.

PART VIII.
STANDARDS FOR PRESCRIPTION TRANSACTIONS.

§ 8.1. Issuing a copy of a prescription that can be refilled.

A. A copy of a prescription for a drug which pursuant to § 54.1-3411 of the Code of Virginia, can be refilled at the time the copy is issued shall be given upon request to another pharmacist.

B. The transfer of original prescription information for a drug listed in Schedules III through VI for the purpose of refill dispensing is permissible between pharmacies if the transfer is communicated directly between two pharmacists, and the transferring pharmacist records the following information:

1. Records the word "VOID" on the face of the invalidated prescription;

2. Records on the reverse of the invalidated prescription the name, address, and the Drug Enforcement Administration (DEA), registry number of the pharmacy to which it was transferred, except for a prescription for a Schedule VI drug, and the name of the pharmacist receiving the prescription information; and

3. Records the date of the transfer and the name of the pharmacist transferring the information.

C. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on a prescription and include:

a. Date of issuance of original prescription;

b. Original number of refills authorized on the original prescription;

c. Date of original dispensing;

d. Number of valid refills remaining and date of last refill;

e. Pharmacy name, address, DEA registry number except for Schedule VI prescriptions, and original prescription number from which the prescription information was transferred; and

f. Name of transferring pharmacist.

3. Both the original and transferred prescription shall be maintained for a period of two years from the date of last refill.

D. Nothing in this regulation shall prevent the giving of a prescription marked "For Information Only" to a patient.

E. Pharmacists may use computer systems in lieu of recording on the hard copy prescription provided that the system used clearly meets all requirements of § 8.1 B and C while retaining all previous dispensing information.

§ 8.2. Issuing a copy of a prescription that cannot be refilled.

A. A copy of a prescription for a drug which, pursuant to § 54.1-3411 of the Drug Control Act, cannot be refilled at the time the copy is issued, shall be given on request of a patient but such copy shall be marked with the statement "FOR INFORMATION ONLY," the patient's name and address, the date of the original prescription, and the date the copy was given.

B. A copy marked in this manner is not a prescription, as defined in § 54.1-3400 of the Drug Control Act, and shall not be refilled.

C. The original prescription shall indicate that a copy has been issued, to whom it was issued, and the issuing date.

§ 8.3. Confidentiality of patient information.

A pharmacist shall not exhibit, dispense, or reveal any prescription or discuss the therapeutic effects thereof, or the nature or extent of, or the degree of illness suffered by or treatment rendered to, any patient served by the pharmacist with any person other than the patient or his authorized representative, the prescriber, or other licensed practitioner caring for this patient, or a person duly authorized by law to receive such information.

§ 8.4. Kickbacks, fee-splitting, interference with supplier.

A. A pharmacist shall not solicit or foster prescription practice with a prescriber of drugs or any other person providing for rebates, "kickbacks," fee-splitting, or special charges in exchange for prescription orders unless fully disclosed in writing to the patient and any third party payor.

B. A pharmacist shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

§ 8.5. Returning of drugs and devices.

Drugs or devices shall not be accepted for return or exchange by any pharmacist or pharmacy for resale after such drugs and devices have been taken from the premises where sold, distributed, or dispensed unless such drug or devices are in the manufacturer's original sealed containers or in unit-dose container which meets the U.S.P.-N.F. Class A or Class B container requirement.

§ 8.6. Permitted physician licensed by the board.

Permitted physicians licensed by the board to dispense drugs shall be subject to the following sections of these regulations:

§ 3.8. Security system.

All of Part V. DRUG INVENTORY AND RECORDS.

All of Part VI. PRESCRIPTION ORDER AND DISPENSING STANDARDS.

All of Part VII. LABELING AND PACKAGING STANDARDS FOR PRESCRIPTIONS.

All of Part VIII. STANDARDS FOR PRESCRIPTION TRANSACTIONS.

PART IX.
UNIT DOSE DISPENSING SYSTEMS.

§ 9.1. Unit dose dispensing system.

A. A unit dose drug dispensing system may be utilized for the dispensing of drugs to patients in a hospital or long-term care facility. The following requirements shall apply regardless of whether licensed or unlicensed persons administer medications :

1. Any equipment outside the pharmacy used to house drugs to be administered in a unit dose system shall be fitted with a locking mechanism and be locked at all times when unattended.

2. A signed order by the prescribing practitioner shall accompany the requests for a Schedule II drug, except that a verbal order for a hospital patient for a Schedule II controlled substance may be transmitted to a licensed nurse or pharmacist employed by the hospital who will promptly reduce the order to writing in the patient's chart. Such an order shall be signed by the prescriber within 72 hours.

3. Properly trained personnel may transcribe the physician's drug orders to a patient profile card, fill the medication carts, and perform other such duties related to a unit dose distribution system provided these are done under the personal supervision of a pharmacist.

4. All dosages and drugs shall be labeled with the drug name, strength, lot number and expiration date when indicated.

5. The patient's individual drug drawer or tray shall be labeled with the patient's name and location.

6. All unit dose drugs intended for internal use shall be maintained in the patient's individual drawer or tray unless special storage conditions are necessary.

7. A back-up dose of a drug of not more than one dose unit may be maintained in the patient's drawer, tray, or special storage area provided that the dose is maintained in the patient's drawer, tray, or special storage area with the other drugs for that patient.

8. A record shall be made and maintained within the pharmacy for a period of one year showing:

a. The date of filling of the drug cart;

b. The location of the drug cart;

c. The initials of person who filled the drug cart; and d. The initials of the pharmacist checking and certifying the contents of the drug cart in accordance with the provisions in § 6.1 B.

9. A patient profile record or medication card will be accepted as the dispensing record of the pharmacy for unit dose dispensing systems only, subject to the following conditions:

a. The record of dispensing must be entered on the patient profile record or medication card at the time the drug drawer or tray is filled.

b. In the case of Schedule II through V drugs, after the patient profile record or medication card has been completed, the card must be maintained for two years.

c. In the case of the computer-based distribution system, a uniformly maintained "fill list" or other document containing substantially the same information may be accepted as the dispensing record for Schedule II through VI drugs. Records of disposition/administration for floor stock drugs as provided in § 10.4 B will be accepted for drugs distributed as floor stock.

B. In providing unit dose systems to hospitals or long-term care facilities where only those persons licensed to administer are administering drugs, the pharmacy shall dispense not more than a seven-day supply of a drug in a solid, oral dosage form at any one given time.

C. In addition to the requirements listed in § 9.1 A, the following requirements apply to those long-term care facilities in which unlicensed persons administer drugs:

1. The pharmacy providing medications to such facility shall dispense no more than a 72-hour supply of drugs in a solid, oral dosage form at any one given time.

2. The pharmacy shall provide to persons administering medications training specific to the particular unit dose system being used.

3. The pharmacy shall provide a medication administration record to the facility listing each drug to be administered with full dosage directions to include no abbreviations.

4. The drugs in a unit dose system shall be placed in slots within a drawer labeled or coded to indicate time of administration.

PART X.
PHARMACY SERVICES TO HOSPITALS.

§ 10.1. Chart order.

A chart order for a drug to be dispensed for administration to an inpatient in a hospital shall be exempt from the requirement of including all elements of a prescription as set forth in §§ 54.1-3408 and 54.1-3410 of the Code of Virginia. A hospital pharmacy policy and procedures manual shall set forth the minimum requirements for chart orders consistent with federal and state law.

§ 10.2. Responsibilities of the pharmacist-in-charge.

A. The pharmacist-in-charge in a pharmacy located within a hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to a hospital shall be responsible for the proper storage and security of all drugs used throughout the hospital.

B. The pharmacist-in-charge of a pharmacy serving a hospital shall be responsible for a monthly review of drug therapy for each patient within the hospital for a length of stay of one month or greater. A record of such review shall be signed and dated by the pharmacist and shall include but not limited to any irregularities in drug therapy, drug interactions, drug administration, or transcription errors. All significant irregularities shall be brought to the attention of the attending practitioner or other person having authority to correct the potential problem.

§ 10.3. After-hours access to the pharmacy.

When authorized by the pharmacist-in-charge, a supervisory nurse may have access to the pharmacy in the absence of the pharmacist in order to obtain emergency medication, provided that such drug is available in the manufacturer's original package or in units which have been prepared and labeled by a pharmacist and provided further that a separate record shall be made and left within the pharmacy on a form prescribed by the pharmacist-in-charge and such records are maintained within the pharmacy for a period of one year showing:

1. The date of withdrawal;

2. The patient's name;

3. The name of the drug, strength, dosage form and dose prescribed;

4. Number of doses removed; and

5. The signature of the authorized nurse.

§ 10.4. Floor stock drugs*; proof of delivery; distribution records*.

A. ~~Proof of delivery.~~ A delivery receipt shall be obtained for Schedule II through V drugs supplied as floor stock. This record shall include the date, drug name and strength, quantity, hospital unit receiving drug and the signatures of the dispensing pharmacist and the receiving nurse. Receipts shall be maintained in the pharmacy for a period of two years.

B. ~~Distribution records.~~ A record of disposition/administration shall be used to document administration of Schedule II through V drugs when a floor stock system is used for such drugs. The record shall be returned to the pharmacy within three months of its issue. The pharmacist-in-charge or his designee shall:

1. Match returned records with delivery receipts to verify that all records are returned;

2. Periodically audit returned administration records for completeness as to patient's names, dose, date and time of administration, signature or initials of person administering the drug, and date the record is returned;

3. Verify that all additions to inventory are recorded, that all additions to and deductions from inventory are correctly calculated, that sums carried from one record to the next are correctly recorded, and periodically verify that doses documented on administration records are reflected in the medical record; and

4. Initial or sign the returned record, file chronologically by date of issue, and retain for two years from the date of return.

§ 10.5. Emergency room.

All drugs in the emergency department shall be under the control and supervision of the pharmacist-in-charge and shall be subject to the following additional requirements:

1. All drugs kept in the emergency room shall be in a secure place from which unauthorized personnel and the general public are excluded.

2. Oral orders for medications shall be reduced to writing and shall be signed by the practitioner.

3. A medical practitioner may dispense drugs to his patients if in a bona fide medical emergency or when pharmaceutical services are not readily available and if permitted to do so by the hospital; the drug container and the labeling shall comply with the requirements of these regulations and the Drug Control Act.

4. A record shall be maintained of all drugs administered in the emergency room.

5. A separate record shall be maintained on all drugs, including drug samples, dispensed in the emergency room. The records shall be maintained for a period of two years showing:

a. Date and time dispensed;

b. Patient's name;

c. Physician's name;

d. Name of drug dispensed, strength, dosage form, quantity dispensed, and dose.

§ 10.6. Pharmacy services.

A. In addition to service to inpatients, a hospital pharmacy may dispense drugs to the following:

1. Patients who receive treatments or consultations on the premises;

2. Outpatients or emergency patients upon discharge for their personal use away from the hospital; and

3. The hospital employees, medical staff members, or students for personal use or for the use of their dependents.

Nothing in this regulation shall prohibit a hospital pharmacy not operated under a separate outpatient pharmacy permit from providing such services or drugs, or both, as are not readily available in the community to patients who may not otherwise be served by the hospital pharmacy.

B. If a pharmacy located within a hospital dispenses drugs to patients other than those listed in § 10.6 A, the pharmacy shall obtain a separate pharmacy permit and shall operate in a space separated from the hospital pharmacy.

§ 10.7. Mechanical devices for dispensing drugs.

A hospital may utilize mechanical devices for the dispensing of drugs pursuant to § 54.1-3301 of the Drug Control Act, provided the utilization of such mechanical devices is under the personal supervision of the pharmacist. Such supervision shall include:

1. The packaging and labeling of drugs to be placed in the mechanical dispensing devices. Such packaging and labeling shall conform to all requirements pertaining to containers and label contents.

2. The placing of previously packaged and labeled drug units into the mechanical dispensing device.

3. The removal of the drug from the mechanical device and the final labeling of such drugs after removal from the dispensing device.

4. In the absence of a pharmacist, a person legally qualified to administer drugs may remove drugs from such mechanical device.

§ 10.8. Certified emergency medical technician program.

The pharmacy may prepare a drug kit for a Certified Emergency Medical Technician Program provided:

1. The pharmacist-in-charge of the hospital shall be responsible for all controlled drugs contained in this drug kit.

2. The drug kit is sealed in such a manner that it will preclude any possibility of loss of drugs.

3. Drugs may be administered by a technician upon an oral order of an authorized medical practitioner. The oral order shall be reduced to writing by the technician and shall be signed by the physician.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. A record signed by the physician for the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year.

5. The record of the drugs administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations.

§ 10.9. Identification for medical intern or resident prescription form in hospitals.

The prescription form for the prescribing of drugs for use by medical interns or residents who prescribe only in a hospital shall bear the prescriber's signature, the legibly printed name, address, and telephone number of the prescriber and an identification number assigned by the hospital. The identification number shall be the Drug Enforcement Administration number assigned to the hospital pharmacy plus a suffix assigned by the institution. The assigned number shall be valid only within the course of duties within the hospital.

PART XI.
PHARMACY SERVICES TO LONG-TERM CARE FACILITIES.

§ 11.1. Drugs in long-term care facilities.

Drugs, as defined in the Drug Control Act, shall not be floor stocked by a long-term care facility, except those in the stat drug box or emergency drug box or as provided for in § 11.5 within these regulations.

§ 11.2. Pharmacy's responsibilities to long-term care facilities.

The pharmacy serving a long-term care facility shall:

1. Receive a valid order prior to the dispensing of any drug.

2. Ensure that personnel administering the drugs are trained in using the dispensing system provided by the pharmacy.

3. Ensure that the drugs for each patient are kept and stored in the originally received containers and that the medication of one patient shall not be transferred to another patient.

4. Ensure that each cabinet, cart or other area utilized for the storage of drugs is locked and accessible only to authorized personnel.

5. Ensure that the storage area for patients drugs is well lighted, of sufficient size to permit storage without crowding, and is maintained at appropriate temperature.

6. Ensure that poison and drugs for "external use only" are kept in a cabinet and separate from other medications.

7. Provide for the disposition of discontinued drugs under the following conditions:

a. Discontinued drugs may be returned to the pharmacy for resale if authorized by § 8.5 or destroyed by appropriate means in compliance with any applicable local, state, and federal laws and regulations.

b. Drug destruction at the pharmacy shall be witnessed by the pharmacist-in-charge and by another pharmacy employee. Drug destruction at the facility shall be witnessed by the director of nursing or, if there is no director, then by the facility administrator and by a pharmacist providing pharmacy services to the facility or by another employee authorized to administer medication.

c. A complete and accurate record of the drugs returned or destroyed or both shall be made. The original of the record of destruction shall be signed and dated by the persons witnessing the destruction and maintained at the long-term care facility for a period of two years. A copy of the destruction record shall be maintained at the provider pharmacy for a period of two years.

d. All destruction of the drugs shall be done without 30 days of the time the drug was discontinued.

8. Ensure that appropriate drug reference materials are available in the facility units.

9. Ensure that a monthly review of a drug therapy by a pharmacist is conducted for each patient. Such review shall be used to determine any irregularities, which may include but not be limited to drug therapy, drug interactions, drug administration or transcription errors. The pharmacist shall sign and date the notation of the review. All significant irregularities shall be brought to the attention of the attending practitioner or other party having authority to correct the potential problem.

§ 11.3. Emergency drug kit.

The pharmacist providing services may prepare an emergency kit for a facility in which only those persons licensed to administer are administering drugs under the following conditions :

1. The contents of the emergency kit shall be of such a nature that the absence of the drugs would threaten the survival of the patients.

2. The contents of the kit shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the institutions and shall be limited to drugs for administration by injection or inhalation only, except that Nitroglycerin SL may be included.

3. The kit is sealed in such a manner that it will preclude any possible loss of the drug.

4. The opened kit is maintained under secure conditions and returned to the pharmacy within 72 hours for replenishing.

5. Any drug used from the kit shall be covered by a prescription, signed by the physician, when legally required, within 72 hours.

§ 11.4. Stat-drug box.

An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. A stat-drug box shall be provided to those facilities in which only those persons licensed to administer are administering drugs and shall be subject to the following conditions:

1. The box is sealed in such a manner that will preclude the loss of drugs.

2. When the stat-drug box has been opened, it is returned to the pharmacy.

3. Any drug used from the box shall be covered by a drug order signed by the practitioner, when legally required, within 72 hours.

4. There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.

5. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.

6. The contents of the box shall be limited to those drugs in which a delay in initiating therapy may result in harm to the patient.

a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the long-term care facility.

b. The stat-drug box shall contain no Schedule II drugs.

c. The stat-drug box shall contain no more than one Schedule III through V drug in each therapeutic class and no more than five doses of each.

§ 11.5. Floor stock.

In addition to an emergency box or stat-drug box, a long-term care facility in which only those persons licensed to administer are administering drugs may maintain a stock of intravenous fluids, irrigation fluids, heparin flush kits, medicinal gases, sterile water and saline, and prescription devices. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.

PART XII.
OTHER INSTITUTIONS AND FACILITIES.

§ 12.1. Drugs in infirmaries/first aid rooms.

A. Controlled drugs purchased by an institution, agency, or business within the Commonwealth, having been purchased in the name of a practitioner licensed by the Commonwealth of Virginia and who is employed by an institution, agency, or business which does not hold a pharmacy permit, shall be used only for administering to those persons at that institution, agency, or business.

B. All controlled drugs shall be maintained and secured in a suitable locked storage area, the key to which will be in the possession of the practitioner or nurse who is under the direction and supervision of the practitioner.

C. Such institution, agency, or business shall adopt a specific protocol for the administration of prescription drugs, listing the inventory of such drugs maintained, and authorizing the administering of such drugs in the absence of a physician in an emergency situation when the timely prior verbal or written order of a physician is not possible. Administering of such drugs shall be followed by written orders.

1. For the purpose of this regulation, emergency shall be defined as a circumstance requiring administration of controlled drugs necessary to preserve life or to prevent significant or permanent injury or disability.

2. The protocol shall be maintained for inspection and documentation purposes.

D. A nurse may, in the absence of a practitioner, administer nonprescription drugs and provide same in unit dose containers in quantities which in the professional judgment of the nurse and the existing circumstances will maintain the person at an optimal comfort level until the employee's personal practitioner can be consulted. The administering and providing of such medication must be in accordance with explicit instructions of a specific protocol promulgated by the practitioner in charge of the institution, agency, or business.

§ 12.2. Humane societies and animal shelters.

A humane society or animal shelter, after having obtained the proper permits pursuant to state and federal laws, may purchase, possess and administer any drug approved by the State Veterinarian to euthanize injured, sick, homeless and unwanted domestic pets and animals provided that these procedures are followed :

1. A veterinarian shall provide general supervision for the facility and appropriate training to the person(s) responsible for administration of the drugs.

2. The person in charge of the facility shall obtain the required permit and controlled substance registration from the board and shall be responsible for maintaining proper security and required records of all controlled substances obtained.

a. If that person ceases employment with the facility or relinquishes his position, he shall immediately return the permit to the board and shall take a complete and accurate inventory of all drugs in stock.

b. An application for a new permit shall be filed with the required fee within 14 days on a form provided by the board. At that time, the new person in charge of the facility shall take a complete and accurate inventory of all drugs in stock.

3. Drugs shall be stored in a secure place and only the person(s) responsible for administering may have access to the drugs.

4. Any drug used shall be obtained and administered in the injectable form only.

5. All invoices and order forms shall be maintained for a period of two years.

6. Complete and accurate records shall be maintained for two years on the administration of the drug; the record shall show the date of administration, the species of the animal, the weight of animal, the amount of drug administered and signature of the person administering the drug.

§ 12.3. Drugs in correctional institutions.

All prescription drugs at any correctional unit shall be obtained only on an individual prescription basis from a pharmacy and subject to the following conditions:

1. All prepared drugs shall be maintained in a suitable locked storage area with only the person responsible for administering the drugs having access.

2. Complete and accurate records shall be maintained of all drugs received, administered and discontinued. The administration record shall show the:

a. Prescription number;

b. Drug name and strength;

c. Number of dosage units received;

d. Physician's name; and

e. Date, time and signature of person administering the individual dose of drug.

3. All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. Such drugs shall be returned to the provider pharmacy

along with the drug administration record within seven days.

a. The provider pharmacy shall review the returned drug administration for accountability of all dosage units dispensed.

b. The drug administration records shall be filed in chronological order by the provider pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the provider pharmacy to the facility.

c. Drugs may be returned to the provider pharmacy stock in compliance with the provisions of § 8.5.

d. Other drugs shall be disposed of or destroyed by the provider pharmacy in accordance with local, state, and federal regulations.

4. Emergency and stat-drug box. An emergency box and a stat-drug box may be prepared for the facility served by the pharmacy pursuant to §§ 11.3 and 11.4 of the regulations provided that the facility employs one or more full-time physicians, registered nurses, licensed practical nurses, or correctional health assistants.

PART XIII.
EXEMPTED STIMULANT OR DEPRESSANT DRUGS AND CHEMICAL PREPARATIONS.

§ 13.1. Excluded substances.

The list of excluded substances, which may be lawfully sold over the counter without a prescription under the federal Food, Drug and Cosmetic Control Act (21 USC 301), as set forth in ~~the Code of Federal Regulations, Title 21, Part~~ *21 CFR §* 1308.22, is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.2. Exempted chemical preparations.

The list of exempt chemical preparations set forth in ~~the Code of Federal Regulations, Title 21, Part~~ *21 CFR §* 1308.24 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

§ 13.3. Excepted compounds.

The list of excepted compounds set forth in ~~the Code of Federal Regulations, Title 21, Part~~ *21 CFR §* 1308.32 is adopted pursuant to the authority set forth in §§ 54.1-3443, 54.1-3450 and 54.1-3452; the excepted compounds are drugs which are subject to the provisions of § 54.1-3455 of the Drug Control Act.

PART XIV.
MANUFACTURERS, WHOLESALE DISTRIBUTORS, WAREHOUSERS, AND MEDICAL EQUIPMENT SUPPLIERS.

§ 14.1. Licenses and permits generally.

A license or permit shall not be issued to any manufacturer, wholesale distributor, warehouser, or medical equipment supplier to operate from a private dwelling, unless a separate business entrance is provided, and the place of business is open for inspection at all times during normal business hours. The applicant shall comply with all other federal, state and local laws and ordinances before any license or permit is issued.

§ 14.2. Safeguards against diversion of drugs.

The following requirements shall apply to manufacturers, wholesale distributors, or warehousers of prescription drugs:

1. The holder of the permit shall restrict all areas in which prescription drugs are manufactured, stored, or kept for sale, to only designated and necessary persons.

2. The holder of the permit shall provide reasonable security measures for all drugs in the restricted area.

3. The holder of the permit shall not deliver any drug to a licensed business at which there is no one in attendance at the time of the delivery nor to any person who may not legally possess such drugs.

4. The holder of the permit shall comply with the security requirements set forth in § 3.8.

5. This regulation shall not apply to the holder of a permit to manufacture or distribute only medical gases.

§ 14.3. Manufacturing of cosmetics.

The building in which cosmetics are manufactured, processed, packaged and labeled, or held shall be maintained in a clean and orderly manner and shall be of suitable size, construction and location in relation to surroundings to facilitate maintenance and operation for their intended purpose. The building shall:

1. Provide adequate space for the orderly placement of equipment and materials used.

2. Provide adequate lighting and ventilation.

3. Provide adequate washing, cleaning, and toilet facilities.

§ 14.4. Good manufacturing practices.

A. The Good Manufacturing ~~Practices~~ *Practice for Finished Pharmaceuticals* regulations set forth in ~~the Code of Federal Regulations, Title 21, Part 211 and effective April 1, 1986,~~ *21 CFR 211* are adopted by reference.

B. Each manufacturer of drugs shall comply with the requirements set forth in the federal regulations referred to in subsection A of this section.

§ 14.5. Prescription drug marketing act.

A. The requirements for wholesale distribution of prescription drugs set forth in the federal Prescription Drug Marketing Act of 1987 ~~and Title 21, Part 205 of the Code of Federal Regulations~~ *(21 USC 321; 21 CFR 205)* are adopted by reference.

B. Each wholesale distributor of prescription drugs shall comply with minimum requirements for qualifications, personnel, storage, handling, and records as set forth in the federal regulations referred to in subsection A of this section.

§ 14.6. Medical equipment suppliers.

A. A medical equipment supplier may dispense to the ultimate consumer the following: prescription devices, medicinal oxygen, Schedule VI drugs which have no medicinal properties and are used in the operation and cleaning of medical devices, and hypodermic needles and syringes as authorized by § 54.1-3435.3 of the Drug Control Act.

B. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file for a period of two years from date of last dispensing.

C. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained for two years from date of dispensing and shall include:

1. Name and address of patient;
2. Name and address of physician ordering;
3. Item dispensed and quantity, if applicable; and
4. Date of dispensing.

NOTICE: The forms used in administering the Regulations of the Board of Pharmacy are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Pharmacy, Southern States Building, 6606 West Broad Street, 4th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Application for Registration as an Externe/Interne (eff. 5/93)

Application for Licensure as a Pharmacist by Examination (eff. 5/93)

Application for Re-examination (eff. 5/93)

Application for Pharmacist License to be Reactivated Application for Approval of a Continuing Education Program

Verification of Licensure/Registration (eff. 8/94)

Application for License to Dispense Drugs (eff. 5/93)

Application for a Pharmacy Permit

Application for a Non-Resident Pharmacy Registration

Application for a Permit as a Medical Equipment Supplier

Application for a Restricted Manufacturer's Permit

Application for a Non-Restricted Manufacturer's Permit

Application for a Permit as a Warehouser (eff. 5/93)

Application for a License as a Wholesale Distributor

Application for a Non-Resident Wholesale Distributor Registration

Application for a Controlled Substances Registration

Application for Reinstatement of Controlled Substance Registration Renewal Notice and Application

Application for Reinstatement of License

Application for Continuing Education Provider Application for Permit as a Humane Society

Application for Registration as an Interne for Graduates of a Foreign College of Pharmacy

Instructions for Graduates of Foreign Schools of Pharmacy

DOCUMENTS INCORPORATED BY REFERENCE

The United States Pharmacopoeia - National Formulary, United States Pharmacopoeia Convention.

VA.R. Doc. No. R95-561; Filed June 20, 1995, 1:14 p.m.

DEPARTMENT OF STATE POLICE

Title of Regulation: **VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.**

Statutory Authority: § 19.2-390.1 of the Code of Virginia.

Effective Date: August 9, 1995.

Summary:

Chapter 362 of the 1994 Acts of Assembly (SB 455) amended the Code of Virginia by adding § 19.2-390.1, requiring the Department of State Police to keep and maintain a Sex Offender Registry. The Department of State Police is required to promulgate regulations (i) governing the operation and maintenance of the Sex Offender Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement has been entered; and (ii) establishing a fee for responding to requests for information from the Sex Offender Registry. These regulations establish the procedures and forms to be used in registration of persons required by law to register with the Sex Offender Registry, and in the lawful dissemination of the Sex Offender Registry. These regulations also establish the fee to be charged for responding to requests for information from the Sex Offender Registry.

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

Agency Contact: Lieutenant John G. Weakley, Records Management Division, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.

§ 1. Sex Offender Registry established.

A. The Department of State Police shall keep and maintain a Sex Offender Registry, to include conviction data received from the courts pursuant to § 19.2-390 of the Code of Virginia and registrations received from persons required to do so by § 19.2-298.1 of the Code of Virginia.

B. The records of the Sex Offender Registry shall be maintained separate and apart from all other records maintained by the Department of State Police.

§ 2. Registration.

A. Any person required to register with the Department of State Police pursuant to § 19.2-298.1 of the Code of Virginia shall do so by completing the Sex Offender Registration Form, Form SP-236, and mailing it to Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P. O. Box 27472, Richmond, Virginia 23261-7472. Form SP-236 may be obtained at any office of the Department of State Police.

B. Within 30 days following any change of residence by any person required to register with the Sex Offender Registry, any such person shall reregister by mailing a new Sex Offender Registration Form with the new residence information.

§ 3. Expungement from registry.

A. Upon receipt of a certified copy of a death certificate recording the death of any person registered with the Sex Offender Registry, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

B. Upon receipt of a duly attested copy of a pardon issued by the Governor of Virginia as to any conviction reported to the Sex Offender Registry, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender Registry. If the pardoned person has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

C. Upon receipt of a report from any clerk of a circuit court that any conviction previously reported to the Sex Offender Registry has been reversed, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender Registry. If the person whose conviction is reversed has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

D. Upon receipt of a certified copy of an order of expungement entered pursuant to § 19.2-298.3 or § 19.2-392.1 of the Code of Virginia, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender Registry. If the person whose conviction has been expunged has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

§ 4. Dissemination of Sex Offender Registry information.

Any authorized officer or employee of an agency authorized to receive Sex Offender Registry information pursuant to § 19.2-390.1 of the Code of Virginia may request such information by completing a Sex Offender Registry Record Request form, Form SP-230, and mailing the completed form, along with the appropriate fee, to Department of State Police, Central Criminal Records Exchange, P. O. Box C-85076, Richmond, Virginia 23261-5076. Form SP-230 may be obtained from any office of the Department of State Police.

§ 5. Fee for responding to requests for information.

Any person requesting Sex Offender Registry information shall pay a fee of $15 for each Sex Offender Registry record requested. If the request is made in conjunction with a request for a criminal history "name search" record for the same individual, the person making the request shall pay a fee of $20 to cover both requests.

VA.R. Doc. No. R95-562; Filed June 21, 1995; 11:25 a.m.

SP-236 7-1-94

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE

SEX OFFENDER REGISTRATION FORM

Section 19.2-298.1(B) requires every person serving a sentence of confinement or under community supervision for a felony sexual offense as specified on the reverse side of this form to register with the Department of State Police. Refer to reverse for instructions on completing this form.

☐ AGENCY OR ☐ INDIVIDUAL PROVIDING REGISTRY INFORMATION:

(CHECK ONE)

☐ CIRCUIT COURT
NAME OF COURT_____ SIGNATURE: _____

☐ DEPT. OF CORRECTIONS Name of Location _____

Type of Release & Date _____

Inmate Number _____

☐ PROBATION/PAROLE/OTHER COMMUNITY SUPERVISION
District Office _____

TYPE OF REGISTRATION
INITIAL ☐
UPDATE ☐

OFFENDER INFORMATION: (PRINT CLEARLY)

LAST NAME	MAIDEN	FIRST	MIDDLE	SEX	RACE	DOB

ALIASES USED: _____

SSN ___ ___

HOME ADDRESS STREET	CITY-TOWN	STATE	ZIP CODE

VIRGINIA CONVICTION(S) INFORMATION:

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NO.

OUT OF STATE CONVICTION(S) INFORMATION:

CONVICTED IN ANOTHER STATE OF SEX OFFENSE (S)? YES ☐ NO ☐

STATE(S)	DATE(S) OF CONVICTION	SENTENCING COURT (S)	COURT CASE NO.

*SIGNATURE OF PERSON REGISTERING _____ DATE SUBMITTED _____

*My signature herewith signifies that I have been duly informed of my responsibilities to maintain this information current with the Department of State Police. Furthermore, I understand I am required to re-register with the Department of State Police within 30 days following any change of address. The intentional failure to register or knowingly providing false information to the Registry is punishable as a Class 1 misdemeanor.

MAIL THIS FORM TO:
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
ATTN: SEX OFFENDER REGISTRY

REGISTRY NUMBER:
STATE POLICE USE ONLY
_____

Instructions for Completing Sex Offender Registration Form

Sections 19.2-298.1 (A) and (C), 19.2-390 (C), 19.2-390.1 (A), 46.2-323, 53.1-116.1, and 53.1-160.1 require all individuals convicted of any sex offense(s) listed below whether such conviction occurred pursuant to Virginia law or under substantially similar law of the United States or any other state to register with the Department of State Police.

This registration form is to be used for reporting and/or updating the Sex Registry as maintained by the Department of State Police. Questions concerning this form or procedures relating to the registry may be directed to the Office Manager, Central Criminal Records Exchange by phoning (804) 674-2086.

Convictions Reportable to Sex Offender Registry

18.2-61	Rape
18.2-63	Carnal knowledge of child between 13 and 15 years old
18.2-64.1	Carnal knowledge of certain minors
18.2-67.1	Forcible sodomy
18.2-67.2	Inanimate Object Sexual Penetration
18.2-67.3	Aggravated Sexual Battery
18.2-67.5	Attempted Rape, Forcible Sodomy, Inanimate Object Sexual Penetration, Aggravated Sexual Battery and Sexual Battery.
18.2-361	Crimes Against Nature
18.2-366	Adultery and Fornication by Persons Forbidden to Marry: Incest
18.2-370	Taking Indecent Liberties with Children
18.2-370.1	Taking Indecent Liberties with Child by Person in Custodial or Supervisory Relationship.

Clerk of Courts

Section 19.2-390 of the Code, as amended, requires the Clerk of a Circuit Court to register an individual, whether convicted as a juvenile or adult with the Department of State Police. Instructions for completing the registration form are as follows:

1. Check the block to identify the Circuit Court of origin, write the name of the court, and sign the document.

2. Indicate the type of registration; initial or update. When this report is submitted after conviction, consider it an initial registration. If the court modifies or amends information submitted on a previous report, show "update" as the type of registration.

3. Offender Information: Enter the full name of individual who was convicted as it **appears on the sentencing court order**, record all aliases the individual is known to have used, including sex, race, date of birth, social security number and home address.

4. Virginia Conviction(s) Information: List the specific reference to the offense(s) for which the individual has been convicted by recording the Code Section(s) and literal description(s) of the offense(s). PLEASE NOTE: If the individual has previously been convicted in your court at any time of any of the aforementioned offenses, provide this information in this category of the registration form.

5. Out of State Conviction(s) Information: Record any past criminal convictions which may become a matter of court record in any other state or federal law conviction which is substantially similar to the offenses as aforementioned.

Section 19.2-298.1, as amended requires sentencing order(s) for a conviction of any of the aforementioned offenses to specify, as a part of the sentence imposed, to register with the Department and imposes a duty to keep the registration current. The signature block of this form has been developed to disclose to the offender his responsibility to maintain his/her registration current, therefore, obtaining the offender's signature in the space provided will finalize the official completion of the registration form.

Department of Corrections/Probation/Parole and Other Community Supervision

Section 19.2-298.1 (B) of the Code requires every person serving a sentence of confinement or under community supervision for a felony as aforementioned to be required to register with the Department of State Police and shall be given notice of the duty of register. Additionally, Section 19.2-390(F), as amended, provides for the Department of Corrections to make reports of correctional status changes to the Sex Offender Registry, therefore, the completion and submission of this form to the Department of State Police will be utilized to report correctional status information.

1. Check the block to indicate the form was submitted by a Correctional facility and note the location in which the form was prepared.

2. Indicate the type of release (i.e., parole, discharge, etc.) and the date of release from custody.

3. Offender Information: Record the individuals full commitment name, all aliases used, sex, race, date of birth, social security number and the full post-release address.

4. Out of State Convictions Information: Record any past convictions within any other state or federal court which are substantially similar to the offenses listed above.

SP-230 9/94

*SEX OFFENDER REGISTRY RECORD REQUEST ☐
CRIMINAL HISTORY RECORD REQUEST ☐

(Please check box to identify the type of search requested.)

A CERTIFIED CHECK OR MONEY ORDER MADE PAYABLE TO "VIRGINIA STATE POLICE" FOR $15.00 MUST ACCOMPANY THIS REQUEST BEFORE A FILE SEARCH WILL BE INITIATED. A REQUEST FOR BOTH RECORDS MUST INCLUDE A CERTIFIED CHECK OR MONEY ORDER IN THE AMOUNT OF $20.00.

• Personal Checks Not Accepted •

MAIL REQUEST TO: DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
P. O. BOX C-85076
RICHMOND, VIRGINIA 23261-5076

☐ CHARGE ACCT# _____
☐ PAID
☐ CJA

Please fold reply at marks indicated

1. (Print Clearly) NAME TO BE SEARCHED

LAST NAME	FIRST	MIDDLE	MAIDEN	SEX	RACE	DATE OF BIRTH
						/ /

PLACE OF BIRTH - County or City	PLACE OF BIRTH - State or Country	SOCIAL SECURITY NUMBER
		— —

2. AGENCY, INDIVIDUAL OR AUTHORIZED AGENT MAKING REQUEST

MAIL REPLY TO: Agency, Individual or Authorized Agent Making Request

NAME
_____
STREET\RFD
_____
CITY STATE ZIP CODE
_____

Search conducted for:
(Check the appropriate box)
☐ Registered small family day-care home
☐ Unregistered small family day-care home
☐ Foster care
☐ Domestic adoption
☐ International adoption
☐ VISA application
☐ Other _____
(Specify)

As provided for in Sections 19.2 - 389 and 19.2-390.1, Code of Virginia, I hereby request the criminal history record and/or sex offender record of the individual named in Section 1 above.

I certify that I am entitled by law to receive this record, and that the record provided shall be used only for the administration of criminal justice or for the screening of current or prospective employees or volunteers. I understand that further dissemination of sex offender registry records or use for purposes not authorized by law is prohibited and constitutes a violation punishable as a Class 1misdemeanor. Sex Offender Registry searches may only be conducted for: law enforcement agencies; public school divisions; private, denominational or parochial schools; child welfare agencies; or a registered/unregistered small family day-care home as specified in Section 63.1-195, Code of Virginia.

Date of Request _____ Signature of Person Making Request _____ Printed Name _____

FOR AN ADDITIONAL COPY OF A ☐ SEX OFFENDER RECORD OR ☐ A CRIMINAL HISTORY RECORD, CHECK THE APPROPRIATE BLOCK AND ENCLOSE A SEPARATE CHECK OR MONEY ORDER IN THE AMOUNT OF $5.00 FOR EACH ADDITIONAL RECORD.

NOTICE

Response based on comparison of information about person named in request against a master name index contained in the files of the Virginia State Police Central Criminal Records Exchange/Sex Offender Registry only.

NO CONVICTION DATA ☐ NO CRIMINAL RECORD - Name Search Only ☐ NO SEX OFFENDER RECORD ☐

Date: _____ By: _____

DEPARTMENT OF SOCIAL SERVICES

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 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 615-05-55. Exemptions Applicable to Public Assistance Programs.**

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

Effective Date: August 9, 1995.

Summary:

Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided through any public assistance program. The Department of Social Services will receive and consider comments from interested parties at any time.

Agency Contact: Copies of the regulation may be obtained from Charlene H. Chapman, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1750.

VR 615-05-55. Exemptions Applicable to Public Assistance Programs.

§ 1. Foreign government restitution payments to Holocaust survivors.

The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for all public assistance programs as defined in § 63.1-87 of the Code of Virginia.

VA.R. Doc. No. R95-557; Filed June 12, 1995, 3:23 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

June 19, 1995

Ms. Carol A. Brunty, Commissioner
Department of Social Services
Division of Benefit Programs
730 East Broad Street
Richmond, Virginia 23219

Re: VR 615-05-55 Exemptions Applicable to Public Assistance Programs

Dear Ms. Brunty:

This will acknowledge receipt of the above-referenced regulations from the Department of Social 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,

Joan W. Smith
Registrar of Regulations

JWS/jbc

Register/FedEx/Agncy(Pg.1)

PROPOSED REGULATIONS

Division of Communications

Title of Regulation: **Rules Governing the Offering of Competitive Local Exchange Telephone Service (PUC950018).**

Statutory Authority: §§ 12.1-13 and 56-265.4:4 of the Code of Virginia.

AT RICHMOND, JUNE 9, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of investigating local exchange telephone competition, including adopting rules pursuant to Va. Code § 56-265.4:4.C.3

CASE NO. PUC950018

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

The 1995 session of the Virginia General Assembly amended the Utility Facilities Act (§§ 56-265.1 through 56-265.9 of the Code of Virginia) to add a new subsection, C., to § 56-265.4:4. In addition, a new section, § 56-481.2, was enacted. *See* 1995 Acts of Assembly Ch. 187. Both of these provisions will take effect July 1, 1995.

Section 56-265.4:4.C.3. states:

> The Commission shall promulgate rules necessary to implement this subsection. These rules shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the applicant and incumbent local exchange telephone company so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) require that the Commission determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services.

In order to carry out the mandate of § 56-265.4:4.C.3., the Commission directed its Staff to draft a set of proposed local exchange competition rules. The draft rules are attached hereto as Appendix A. Attached as Appendix B are questions that also should be addressed regarding the offering of competitive local exchange telephone service. The Commission invites interested parties to file written comments concerning the draft rules and questions and to propose any additions, modifications, or deletions which are desired. Interested parties may request a hearing before the Commission. Accordingly,

IT IS THEREFORE ORDERED:

(1) That this matter is docketed and assigned Case No. PUC950018;

(2) That, on or before June 22, 1995, the Division of Communications shall complete publication of the following notice, to be published as a classified advertisement in major newspapers of general circulation throughout the Commonwealth:

NOTICE OF CONSIDERATION BY THE VIRGINIA STATE CORPORATION COMMISSION OF PROPOSED RULES GOVERNING THE OFFERING OF COMPETITIVE LOCAL EXCHANGE TELEPHONE SERVICE
CASE NO. PUC950018

The State Corporation Commission ("Commission") is considering rules governing the offering of competitive local exchange telephone service pursuant to the provisions of Va. Code § 56-265.4:4.C.3. enacted by the 1995 session of the Virginia General Assembly.

The Commission issued an order prescribing notice and inviting comments concerning a draft set of rules which is attached to that order as Appendix A. Comments are also invited concerning a list of questions which is Appendix B to that order.

The Commission's Order Prescribing Notice and Inviting Comments, together with the draft rules and a list of questions, may be reviewed by the public at the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, Monday through Friday 8:15 a.m. to 5:00 p.m. Copies may be requested by writing the Division of Communications at P. O. Box 1197, Richmond, Virginia 23209, or by calling (804) 371-9420.

Interested persons shall submit an original and five (5) copies of written comments or requests for hearing concerning the draft rules on or before August 4, 1995. All comments and requests shall be filed with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23216, and shall refer to Case No. PUC950018. Interested persons may contact the Division of Communications at (804) 371-9420 to obtain more information about the draft rules.

If no request for hearing on the proposed rules is received, the Commission may act on these proposed rules, together with any filed comments, without convening a hearing. Interested persons should be advised that after considering any comments filed herein and after any other proceedings as the Commission may direct, the Commission may adopt, reject, or alter the proposed rules in whole or in part.

VIRGINIA STATE CORPORATION COMMISSION

(3) That, on or before June 22, 1995, a copy of this Order and the Appendices shall also be made available for public inspection in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. until 5:00 p.m. Monday through Friday. Interested parties may also request a copy from the Division of Communications, P. O. Box 1197, Richmond, Virginia 23209, or by calling (804) 371-9420;

(4) That, on or before August 4, 1995, any interested person shall file an original and five (5) copies of written comments concerning the draft rules set out in Appendix A and addressing the questions set out in Appendix B to this Order. All written comments shall be filed with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23216, and shall refer to Case No. PUC950018;

(5) That if no request for hearing is received, the Commission may consider the proposed rules, together with any filed comments, without convening a hearing in this proceeding;

(6) That this Order and Appendices A and B shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register; and

(7) That, on or before August 4, 1995, the Division of Communications shall file with the Clerk of the Commission proof of publication of the notice prescribed herein.

AN ATTESTED COPY of this Order, including the Appendices, shall be sent by the Clerk of the Commission to: local exchange telephone companies as set out in Attachment 1 hereto; all Virginia certificated interexchange carriers as set out in Attachment 2 hereto; Edward L. Petrini, Senior Assistant Attorney General, Office of Attorney General, Division of Consumer Counsel, 900 East Main Street, Richmond, Virginia 23219; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; James C. Roberts, Esquire, and Donald G. Owens, Esquire, Virginia Cable Television Association, Mays & Valentine, P. O. Box 1122, Richmond, Virginia 23208; Louis R. Monacell, Esquire, and Alexander F. Skirpan, Esquire, Christian, Barton, Epps, Brent & Chapell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; Ronald B. Mallard, Director, Fairfax County Department of Consumer Affairs, 12000 Government Center Parkway, Suite 433, Fairfax, Virginia 22035; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, Economics and Finance, and Public Service Taxation.

Rules Governing the Offering of Competitive Local Exchange Telephone Service (PUC950018).

APPENDIX A

§ 1. Definitions.

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

"Competing local exchange carriers" means all certificated providers of local exchange telephone service, whether incumbents or new entrants.

"Incumbent local exchange telephone company" means a public service company providing local exchange telephone service in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity.

"Interconnection" means the point of interface between competing local exchange carriers' networks. Interconnection can be achieved at different points of the network.

"Interim number portability" means the service provided in lieu of true number portability by the incumbent local exchange telephone company. Interim solutions include remote call forwarding and direct inward dialing, which enable customers to change providers without the appearance of changing telephone numbers, but rely on the incumbent's network to process all calls.

"Mutual exchange of traffic" means the reciprocal arrangement by which a competing local exchange carrier terminates the local calls of its competitor's customers on its network in exchange for the completion of its customers' calls on the competitor's network.

"New entrant" means an entity certificated to provide local exchange telephone service in Virginia after January 1, 1996, under § 56-265.4:4 of the Code of Virginia.

"Terminating compensation" means the payment or other exchange mechanism (e.g., bill and keep) designed to recover the expense for terminating local exchange traffic of competing local exchange carriers.

"True number portability" means the technical capability of a competing local exchange carrier to allow customers to retain their telephone number when they change providers (without a change in location) without reliance on calls being routed through the incumbent's end office where the original NXX is assigned.

"Unbundling" means the process by which a local exchange telephone carrier's network is disaggregated into functional components.

§ 2. Certification requirements.

The certification requirements for local competition are provided in subdivisions 1 through 7 below:

1. An original and 15 copies of applications for certificates of public convenience and necessity shall be filed with the Clerk of the State Corporation Commission.

2. Notice of the application shall be given to all competing local exchange companies in the applicant's proposed serving territory. Each applicant shall publish notice in newspapers having general circulation in the requested service area in a form to be prescribed by the commission.

3. The applicant shall submit information which identifies the applicant including (i) its name, address, and telephone number; (ii) its corporate ownership; (iii) the

name, address, and telephone number of its corporate parent or parents, if any; (iv) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals and their directors if the principals are corporations; and (v) the names, addresses, and telephone numbers of its legal counsel.

4. Each incorporated applicant for a certificate shall demonstrate that it is authorized to do business in the Commonwealth of Virginia as a public service company.

5. Applicants shall be required to show their financial, managerial, and technical ability to render local exchange telephone service.

a. As a minimum requirement, a showing of financial ability shall be made by attaching the applicant's most recent stockholders annual report and its most recent SEC 10K or, if the company is not publicly traded, its most recent financial statements.

b. To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing local exchange telephone service and shall list the geographic areas in which it has been and is currently providing service. Newly-created companies shall list the experience of each principal officer in order to show its ability to provide service.

c. Technical abilities shall be indicated by a description of the applicant's experience in providing telephone services, or in the case of newly-created companies, the applicant may provide other documentation which supports its technical abilities.

6. Each application for a certificate to provide local exchange service shall include the applicant's initial tariffs, rules, regulations, terms, and conditions. Applicants who desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with § 4 of this regulation.

7. The applicant shall file maps with the application for certification in sufficient detail that designate the actual geographic area or areas to be served. Such maps should also identify the proposed initial local calling areas of the applicant.

8. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in § 4 of this regulation.

§ 3. Conditions for certification.

A. In the public interest evaluation of the applicant's request for a certificate to provide local exchange service, the commission will, at a minimum, require a new entrant, either directly or through arrangements with other carriers, to provide the following:

1. Access to 911 and E911 services;

2. White page directory listings;

3. Access to telephone relay services;

4. Access to directory assistance;

5. Access to operator services;

6. Equal access to interLATA long distance carriers;

7. Compliance with applicable commission service and billing standards or rules;

8. Free blocking of 900- and 700-type services;

9. Interconnection on a nondiscriminatory basis with other local exchange telephone service providers;

10. At a minimum, the applicable intraLATA access requirements of incumbent local exchange telephone companies as determined in PUC850035.

B. To the extent feasible, the new entrant should be willing and able to provide service to all customers in the same service classification in its designated geographic service area in accordance with its tariff offerings.

C. The commission may, in the public interest, attach or waive any conditions or exceptions to these rules that it finds appropriate to any certificate issued under § 56-265.4:4 C of the Code of Virginia.

§ 4. Regulation of new entrants providing local exchange telephone service.

A. Unless otherwise allowed by the commission, tariffs are required for all service offerings with the exception of those which are determined to be comparable to "competitive" offerings of the incumbent telephone company which do not require tariffs.

B. The new entrant may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings.

C. Unless otherwise allowed by the commission, prices for local exchange services provided by the new entrant shall not exceed those of the comparable tariffed services provided by the incumbent local exchange carrier or carriers in the same local serving areas. Tariff changes within this price ceiling plan shall be implemented as follows:

1. Price decreases shall become effective on one-day notice to the commission.

2. Price increases below ceiling rates shall become effective after 30 days notice is provided to customers through billing inserts or publication for two consecutive weeks as display advertising in newspapers having general circulation in the areas served by the new entrant.

3. Price ceilings are the tariffed rates for comparable services of the incumbent local exchange telephone companies as of January 1, 1996. Price ceilings will be increased as an incumbent's prices are raised through applicable regulatory procedures. Unless otherwise determined by the commission, price decreases for an incumbent's service whether initiated by the carrier or adopted by the commission will not require a corresponding decrease in the price ceilings applicable to the new entrant.

4. A pricing structure or proposed rates of a new entrant's local exchange service(s) that do not conform with the established price ceilings may be permitted subject to commission approval.

5. These pricing requirements do not apply to a new entrant's services which are determined by the commission to be comparable to services classified as competitive for the incumbent.

D. A new entrant may submit an alternative regulatory plan to that described in this section for the commission's consideration in the applicant's certification proceeding or at a later date.

E. No form of earnings regulation will be required for the regulation of new entrants. However, new entrants will be required to file financial and other reports as identified in § 5 of this regulation to enable the commission to evaluate the effectiveness of local exchange telephone competition.

F. No new entrant providing local exchange telephone service shall abandon or discontinue service except with the approval of the commission, and upon such terms and conditions as the commission may prescribe.

G. Should the commission ever determine that this form of regulation of new entrants does not effectively, or is no longer necessary to, regulate the prices of their services, it may, pursuant to § 56-481.2 of the Code of Virginia, modify the form of regulation.

§ 5. Financial and reporting requirements for new entrants.

A. All providers of local exchange telephone service certificated under this regulation shall be required to file the following reports with the Division of Economics and Finance, unless specified otherwise:

1. Annual report on the number of access lines by local exchange area and classified by residential and business lines.

2. Annual price list for all detariffed competitive telephone services provided by the applicant.

3. Quarterly statement of units and revenues for all competitive telephone services provided by the applicant.

4. Stockholders annual report for the parent company and the applicant, if available. Otherwise, an auditor's annual report. The SEC Form 10-K and FCC Form M for the parent and applicant should also be attached, if available.

5. Reports and information required by the Division of Public Service Taxation in performing its functions per §§ 58.1-2600 through 58.1-2690 of the Code of Virginia. This information is to be filed with the Division of Public Service Taxation.

B. A new entrant is required to remit the telecommunications relay surcharge amount to the commission per the October 5, 1990, final order issued in Case No. PUC900029. The remittance, along with any other required information, should be made to the commission's Division of Public Service Taxation.

C. Any expansion or reduction of the geographic service area of a new entrant shall require the filing of amended maps with the Division of Communications.

D. Upon the request of the staff, any new entrant will file such other information with respect to any of its services or practices as may be required of public service companies under current Virginia law, or any amendments thereto. If any new entrant fails to provide data required by the staff, it may be penalized for a violation of a commission order.

E. A new entrant, when it is determined by the commission to have a monopoly over any of its services, whether or not those services are telephone services, shall file annual data to demonstrate that its revenues from local exchange telephone services cover their long run incremental costs in the aggregate.

§ 6. Interconnection.

The commission recognizes that interconnection of local exchange networks between and among new entrants and incumbent local exchange telephone companies is necessary and vital to the development of competitive local exchange markets. The following requirements will apply:

1. Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis requested by a competing local exchange carrier to provide quality service. The commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.

2. Interconnection arrangements should apply equally and on a nondiscriminatory basis to all competing local exchange carriers.

3. Interconnection arrangements must be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any provider to another carrier will be allowed.

4. Competing local exchange telephone companies must provide nondiscriminatory use, on a tariffed basis, of pole attachments, conduit space, and rights-of-way.

5. Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed within 30 days of the conclusion of negotiations and reviewed by the commission to determine if they are reasonable and nondiscriminatory.

6. Negotiations for interconnection arrangements should be completed within 90 days of a bona fide request. After a minimum of 45 days of the initial interconnection request, any affected party may petition the commission for a hearing in lieu of negotiations or as a result of unsuccessful negotiations to establish tariffed prices and service arrangements for interconnection.

7. Unbundled functional elements of a local exchange telephone company's network that are made available through interconnection agreements should also be

made available on an individual tariffed basis within 60 days of commission review of any interconnection arrangement.

§ 7. Terminating traffic compensation.

The mutual exchange of local traffic between competing local exchange carriers is necessary in a competitive market to provide for continued ubiquitous calling for all telecommunications users in the Commonwealth. The following requirements will apply:

1. Any compensation arrangement for the mutual exchange of local traffic should reflect the reciprocal relationship between competing local exchange carriers and the development of local exchange competition.

2. The commission encourages good faith negotiations between competing local exchange carriers on terminating compensation arrangements. The commission may establish at any time, upon application or its own motion, appropriate compensation levels for mutual exchange of local traffic if negotiations are unsuccessful or any arrangements are found to be unreasonable or discriminatory.

3. Any compensation arrangement for the mutual exchange of local traffic will conform to the established local calling areas of the incumbent local exchange telephone companies. The new entrants may only deliver this local traffic for termination on the incumbent's local network at the compensation level established in conformance with this regulation.

4. Any compensation arrangements for the mutual exchange of local traffic shall provide for equal treatment or rates between the competing local exchange carriers.

§ 8. Number portability and number assignment.

The availability of local number portability will be a critical element in promoting competition and assessing the potential for competition in the local exchange market. The following requirements will apply:

1. Consumers shall have the ability to retain the same telephone number if they do not change locations, regardless of their chosen local exchange carrier.

2. True number portability shall be made available when technically feasible. In the near term, the commission will rely on national and industry efforts to establish appropriate standards and resolve implementation issues.

3. Interim number portability arrangements shall be utilized until true number portability is available. The parties shall include interim number portability issues in initial interconnection negotiations.

4. To the extent feasible, the incumbent local telephone company shall provide new entrants with reservations for a reasonably sufficient block of numbers for their use.

§ 9. Universal service.

The goals of universal service and affordability of basic local exchange telephone service need to be maintained in a competitive local exchange environment for the citizens of Virginia. The following requirements shall apply:

1. The commission may, if necessary, establish a Universal Service Fund and applicable payment mechanism. Any such fund shall require the participation and support of all competing local exchange carriers.

2. The establishment of a Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone service and the calculation of the subsidy required to support the ubiquity of such service.

3. The incumbent local exchange companies shall be designated as the carriers of last resort in their current local serving areas until such time as the commission determines otherwise.

APPENDIX B

QUESTIONS
LOCAL EXCHANGE TELEPHONE COMPETITION

The Commission requests interested parties to respond to these questions and fully explain all answers and comments.

1. Is local exchange competition in the public interest at this time? What should the commission consider in evaluating the public interest objectives established in § 56-265.4:4 C 1? Is an overall public interest finding on local exchange competition sufficient, or will any such finding be required for the granting of each applicant's certificate?

2. Should new entrants be required to provide service to all customers in their serving area, or is there some feasible minimum standard (*e.g.*, abut facilities, reasonable access to customer's premises, availability of construction charges, access to unbundled loops, etc.)?

3. How should the provision of white page directories be handled in a competitive environment? Should the incumbent be required to provide listings to new entrants and books to their customers? If so, at what cost?

4. Should the incumbent local exchange company be required to provide access to databases, signaling systems, E-911 facilities, or other such platforms/facilities?

5. What problems may arise if new entrants do not have the same local calling areas of the incumbent local exchange telephone company?

6. The draft rules do not currently provide for resale of existing tariffed local exchange services of incumbent local exchange telephone companies. Should competing local exchange carriers be required to make their local services available for resale? Should there be limitations on such resale (*e.g.*, usage based services only, business services only)? Should wholesale offerings be required?

7. Should the Shared Tenant Service rules established in Case No. PUC850036 be amended with the advent of local exchange competition? If so, how? Will shared tenant providers need to be certificated as new entrants?

8. Should the incumbent be required to provide directory assistance listings and other operator functions to the new entrant, and at what cost?

9. Should new entrants providing residential local service be required to offer service at reduced rates to qualified customers in compliance with the Virginia Universal Service Plan currently applicable to incumbent local exchange telephone companies?

10. Should new entrants be required to meet commission-established quality of service standards? If not, how will this affect traffic and service between competing local exchange carriers?

11. Should costing requirements be established for rates associated with interconnection arrangements and unbundled elements of competing local exchange carriers? Should a floor and/or ceiling be utilized, and on what basis (*e.g.*, long run incremental, stand alone, etc.)? Should any such requirements apply to both new entrants and incumbents?

12. Should the commission determine the specific components of a local exchange telephone carrier's network that should be unbundled? What should the unbundled network components include (*e.g.*, loops, ports, signaling links, etc.)?

13. In promulgating local exchange competition rules, how should the commission "consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider" as required by section (iii) of § 56-265.4:4 C 3? How can any such consideration be reconciled with section (i) which requires the commission to implement such rules that "promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers"?

14. Should the commission adopt any additional regulatory requirements or restrictions related to the bundling of local exchange service with other service offerings, whether or not those services are telephone services? If so, what requirements should be implemented?

ATTACHMENT 1

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Ms. Joy Brown, Manager
P. O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P. O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Martin H. Bocock
Vice President and General Manager
P. O. Box 6788
Charlottesville, Virginia 22906

Bell Atlantic - Virginia
Mr. Hugh R. Stallard, President
and Chief Executive Officer
600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. David R. Maccarelli, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Stephen C. Spencer, Reg. Director
External Affairs
One James Center
901 East Cary Street
Richmond, Virginia 23219

GTE South
Stephen C. Spencer, Reg. Director
External Affairs
One James Center
901 East Cary Street
Richmond, Virginia 23219

GTE
Joe W. Foster, Esquire
Law Department
P.O. Box 110 - FLTC0007
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P. O. Box 38
New Hope, Virginia 24469

North River Telephone Cooperative
C. Douglas Wine, Manager
P. O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P. O. Box 549
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.
President & General Manager
P. O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. William J. Franklin
Executive Vice President
P. O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P. O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.
Mr. H. John Brooks
Vice President & General Manager
112 Sixth Street, P. O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

ATTACHMENT 2

INTER-EXCHANGE CARRIERS

Access Transmission Services of Virginia, Inc.
Mr. Gordon P. Williams, Jr.
Office of General Counsel
MCI Telecommunications
2400 North Glenville Drive
Richardson, Texas 75082

AlterNet of Virginia
Mr. Leonard J. Kennedy, Counsel
Dow, Lohnes & Albertson
1255 Twenty-Third Street
Washington, D.C. 20037-1194

AT&T Communications of Virginia
Ms. Wilma R. McCarey, General Attorney
3033 Chain Bridge Road, Room 3D
Oakton, Virginia 22185-0001

CF-W Network Inc.
Mr. James S. Quarforth
Chairman and CEO
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
1108 East Main Street, Suite 1200
Richmond, Virginia 23219-3535

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

GTE South, Inc.
Mr. Stephen Spencer
One James Center
901 East Cary Street
Richmond, Virginia 23219

Institutional Communications Company - Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1133 19th Street, N.W., 11th Floor
Washington, D.C. 20036

Metromedia Communications Corporation
d/b/a LDDSMetromedia Communications
Mr. Brian Sulmonetti
Regulatory Affairs
1515 South Federal Highway
Boca Raton, Florida 33432

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P. O. Box 174
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. William J. Franklin, Executive VP & Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P. O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
d/b/a Cable and Wireless, Inc.
Mr. Charles A. Tievsky
Regulatory Attorney
1919 Gallows Road
Vienna, Virginia 22182

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Virginia MetroTel, Inc.
Mr. Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

VA.R. Doc. No. R95-558; Filed June 14, 1995, 11:46 a.m.

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Bureau of Financial Institutions

Title of Regulations: **VR 225-01-0604. Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices.**
VR 225-01-0605. Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices.

Statutory Authority: § 6.1-244 and 12.1-13 of the Code of Virginia.

AT RICHMOND, JUNE 12, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of amending the rules governing open-end credit and mortgage lending in offices licensed under the Consumer Finance Act — CASE NO. BFI950177

ORDER DIRECTING NOTICE

The Commission has authorized certain licensees under the Consumer Finance Act ("the Act"), Chapter 6 (Section 6.1-244 et seq.) of Title 6.1 of the Code of Virginia, to engage in the businesses of extending open-end credit and mortgage lending through affiliates operating in offices licensed under the Act, subject to certain rules, viz., "Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices" (VR 225-01-0604) and "Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices" (VR 225-01-0605). The Bureau of Financial Institutions has reviewed these Rules, in light of the enactment of Chapter 2 of the 1995 Acts of the General Assembly, and proposes that the Commission amend the Rules as shown in the two designated attachments to this order.

It appearing that interested parties should be afforded notice of the proposed amended regulations and an opportunity to be heard in the matter of their adoption,

IT IS ORDERED:

(1) That this matter be assigned Case No. BFI950177 and papers relating to this matter be filed therein;

(2) That on or before July 31, 1995, any interested person may submit comments in support of, or in opposition to, the Commission's adoption of the amended regulations, or any such person may file 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. BFI950177;

(3) That this order and two attachments shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register; and

(4) That the Bureau of Financial Institutions send a copy of this Order and the proposed amendments 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 copies upon request to other interested persons.

This order and the proposed amendments 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.

VR 225-01-0604. Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices.

~~1.~~ *§ 1. Separate entity required; compliance with applicable laws.*

The business of extending open-end credit shall be conducted by a separate legal entity, and not by the consumer finance licensee. *The separate, open-end credit entity ("separate entity") shall comply with all applicable state and federal laws.*

~~2. All governing State and Federal laws shall be observed.~~

~~3.~~ *§ 2. Separate books to be maintained; Bureau of Financial Institutions' access to records.*

Separate books and records shall be maintained by the licensee and the separate entity, and the books and records of the licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. *The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and*

shall be furnished such information as it may require in order to assure compliance with these rules.

§ 3. Accounting for expenses to be separate.

The expenses of the two entities will be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

~~4. The minimum amount of credit which may be extended to any consumer or borrower under an open-end credit agreement shall be at least two hundred dollars ($200.00) greater than the consumer finance loan ceiling in effect at the time such agreement is made.~~

~~5.~~*§ 4. Misleading advertising, misrepresentation about licensing or supervision prohibited.*

Advertising or other information published by the licensee or the separate entity shall not contain any false, misleading or deceptive statement or representation concerning the rates, terms or conditions for loans or credit made or extended by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

~~6.~~*§ 5. Duplicate loans prohibited.*

The licensee and the separate entity shall not make both a consumer finance loan and an extension of open-end credit to the same borrower or borrowers as part of the same transaction ~~or for the purpose of obtaining a higher interest rate~~.

~~7.~~*§ 6. Sale of certain insurance prohibited; exceptions.*

Except as authorized by the Commissioner *of Financial Institutions*, or by order of the *State Corporation* Commission, insurance, other than credit life ~~or~~ *insurance,* credit accident and ~~health,~~ *sickness* insurance *and credit involuntary unemployment insurance*, shall not be sold in licensed consumer finance offices in connection with any extension of open-end credit by the separate entity.

~~8.~~*§ 7. Finance charge to end on date balance paid.*

When the balance owed under an open-end credit agreement is paid, finance charges will be assessed only to the date of payment.

~~9. The expenses of the two entities will be accounted for separately and so reported to the Bureau as of the end of each calendar year.~~

~~10.~~*§ 8. Conversion to consumer finance loan forbidden.*

The balance owed under an open-end credit agreement shall not, in whole or in part, be converted to or included in the amount of a consumer finance loan.

~~11. The Bureau shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with these Rules.~~

~~12. The provisions of these Rules supersede all prior Rules Governing Open-End Lending In Consumer Finance Offices.~~

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VR 225-01-0605. Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices.

~~1.~~*§ 1. Separate entity required; compliance with applicable laws.*

The business of making or purchasing loans secured by liens on real estate shall be conducted by a separate legal entity, and not by the consumer finance licensee. *This separate, mortgage entity ("separate entity") shall comply with all applicable state and federal laws.*

~~2. All governing State and Federal laws shall be observed.~~

~~3.~~*§ 2. Separate books to be maintained; Bureau of Financial Institutions' access to records.*

Separate books and records shall be maintained by the consumer finance licensee and the separate entity, and the books and records of the consumer finance licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. *The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with these rules.*

§ 3. Accounting for expenses to be separate.

The expenses of the two entities shall be accounted for separately and so reported to the Bureau of Financial Institutions as of the end of each calendar year.

~~4. The minimum real estate mortgage loan that may be made or purchased shall be at least two hundred dollars ($200.00) greater than the consumer finance loan ceiling in effect at the time the real estate mortgage loan is made or purchased.~~

~~5.~~*§ 4. Misleading advertising, misrepresentation about licensing or supervision prohibited.*

Advertising or other information published by the licensee or the separate entity shall not contain any false, misleading, or deceptive statement or representation concerning the rates, terms or conditions for loans made by either of them. The separate entity shall not make or cause to be made any misrepresentation as to its being a licensed lender, or as to the extent to which it is subject to supervision or regulation.

~~6.~~*§ 5. Duplicate loans prohibited.*

The consumer finance licensee and the separate entity shall not make both a consumer finance loan and a real estate mortgage loan to the same borrower or borrowers as part of the same transaction ~~or for the purpose of obtaining a higher interest rate~~.

~~7.~~*§ 6. Conversion to consumer finance loan forbidden.*

The balance owed under a real estate mortgage loan shall not, in whole or in part, be converted to or included in the amount of a consumer finance loan.

~~8.~~ *§ 7. Compensation for referral not to be charged to borrower.*

Any compensation paid by the separate entity to any other party for the referral of loans, pursuant to an agreement or understanding between the separate entity and such other party, shall be an expense borne entirely by the separate entity. Such expense shall not be charged directly or indirectly to the borrower.

~~9.~~ *§ 8. Sale of certain insurance prohibited; exceptions.*

Except as authorized by the Commissioner *of Financial Institutions*, or by order of the *State Corporation* Commission, insurance, other than credit life *insurance,* ~~or~~ credit accident and ~~health,~~ *sickness* insurance *and credit involuntary unemployment insurance*, shall not be sold in licensed consumer finance offices in connection with any mortgage loan made or purchased by the separate entity.

~~10.~~ *§ 9. Collateral other than real estate prohibited.*

No interest in collateral other than real estate shall be taken in connection with any real estate mortgage loan made or purchased by the separate entity.

~~11. The expenses of the two entities shall be accounted for separately and so reported to the Bureau as of the end of each calendar year.~~

~~12. The Bureau shall be given access to the books and records of the separate entity, and shall be furnished such information as it may require in order to assure compliance with these Rules.~~

~~13. The provisions of these Rules supersede all prior Rules Governing Real Estate Mortgage Business In Licensed Consumer Finance Offices.~~

VA.R. Doc. No. R95-559; Filed June 14, 1995, 11:45 a.m.

FINAL REGULATIONS

Division of Securities and Retail Franchising

Title of Regulation: **Securities Act Rules (Articles 1, 2, 5 and 11).**

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: July 1, 1995.

AT RICHMOND, JUNE 8, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte, in re: Promulgation of rules pursuant to Virginia Code § 13.1-523 (Securities Act) CASE NO. SEC950021

ORDER AMENDING AND ADOPTING RULES

On or about April 17, 1995, the Division of Securities and Retail Franchising mailed to broker-dealers and investment advisors registered or pending registration under the Securities Act, issuers who had agents registered or pending registration under the Securities Act, and to other interested parties summary notice of the contents of proposed new Securities Act Rules, of proposed amendments to existing Securities Act Rules and forms, and of the opportunity to file comments and request to be heard with respect to any objections to the proposals. Similar notice was published in several newspapers in general circulation throughout the Commonwealth. This notice, as well as the text of the proposals which involve new or amended language, also was published in "The Virginia Register of Regulations," Vol. 11, Issue 16, May 1, 1995, pp. 2581-2606. Four persons filed comments, but no one requested to be heard, and no hearing was held.

The Commission, upon consideration of the proposals, the comments submitted, and the recommendations of the Division, is of the opinion and finds that the proposals should be adopted as noticed. The Commission is further of the opinion and finds that the Rule containing definitions (originally Rule 103; renumbered as § 4 of Article 1) should be amended by adding definitions of "Commission" and "SEC" (this will conform the rule to changes to it made by the Code Commission pursuant to its authority under Va. Code § 9-77.10:1) and that Form S.A.1 ("Supplemental Information for Commonwealth of Virginia to be Furnished with Form BD") should be amended by adding in paragraph 6.a the language "or on a similar examination designated by the Director of the Division of Securities and Retail Franchising" (this will conform this form to a new provision in Art. 2, § 7 A.1). Accordingly, it is

ORDERED:

(1) That evidence of mailing and publication of notice of the proposed changes and new rules be filed in this case;

(2) That the proposed changes and new rules previously noticed as well as the two changes described above be, and they hereby are, adopted and shall be become effective as of July 1, 1995; and

(3) That this matter is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following by the Division of Securities and Retail Franchising: Every person who filed comments in this proceeding; the Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, 1231 25th Street, N.W., Washington, D.C. 20037; and Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.

Agency Contact: Copies of the regulation may be obtained from Mr. Don Gouldin, Division of Securities, State Corporation Commission, P.O. Box 1197, Richmond, VA 23209, telephone (804) 371-9051. Copying charges are $1.00 for the first two pages, and 50¢ for each page thereafter.

Securities Act Rules.

[Article 1.
Definitions.

~~Rule 103~~ *§ 4.* Definitions.

As used in the Securities Act ("the Act"), ~~these Rules~~ *the following regulations* and ~~Forms~~ *forms pertaining to securities*, instructions and orders of the Commission, the following meanings shall apply:

~~D.~~ "Act" ~~shall mean~~ *means* the Securities Act contained in ~~Code of Virginia (1950), Title 13.1,~~ Chapter ~~5,~~ *(§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.* ~~as now or hereafter amended.~~

~~A.~~ "Applicant" ~~shall mean~~ *means* a person on whose behalf an application for registration or a registration statement is filed.

~~B.~~ "Application" ~~shall mean~~ *means* all information required by the forms prescribed by the *State Corporation* Commission as well as any additional information required by the Commission and any required fees.

"Commission" means the Virginia State Corporation Commission.

~~F.~~ "NASAA" ~~shall mean~~ *means* the North American Securities Administrators Association, Inc.

~~E.~~"NASD" ~~shall mean~~ *means* the National Association of Securities Dealers, Inc.

~~C.~~ "Registrant" ~~shall mean~~ *means* an applicant for whom a registration or registration statement has been granted or declared effective by the Commission.

"SEC" means the United States Securities and Exchange Commission.]

Article 2.
Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer.

~~Rule 206~~ *§ 7.* Examinations/qualifications.

A. Broker-dealers registered pursuant to § 15 of the *federal* Securities Exchange Act of 1934 *(15 USC §§ 78a-78jj).*

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on the Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63) *or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.*

2. In lieu of meeting the examination requirement described in ~~subsection A.1. of this Rule~~ *subdivision 1 of this subsection A*, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) *or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.*

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this ~~Rule~~ *section* is applicable only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to § 15 of the *federal* Securities Exchange Act of 1934.

B. Broker-dealers not registered pursuant to § 15 of the *federal* Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on:

a. The Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63)~~;~~ or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

b. Any additional securities-related examination(s) that the commission deems appropriate in light of the business in which the applicant proposes to engage.

2. Subsection B of this ~~Rule~~ *section* is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the *federal* Securities Exchange Act of 1934.

~~Rule 208~~ *§ 9.* Application for registration as a broker-dealer agent.

A. Application for registration as a NASD member broker-dealer agent shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the rules prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (adopted by Rule 800).

2. The statutory fee in the amount of $30. The check must be made payable to the NASD.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE," Series 63 exam~~. (Rule 214)~~ *or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the*

commission, the Director of the Division of Securities and Retail Franchising designates. (Art. 2, § 15)

4. Any other information the commission may require.

B. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (adopted by Rule 800).

2. The statutory fee in the amount of $30. The check must be made payable to the Treasurer of Virginia.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam~~. (Rule 214)~~ *or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (Art. 2, § 15)*

4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

~~Rule 214~~ *§ 15.* Examination/qualification.

An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63) *or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates* with a minimum grade of 70%.

~~Rule 215~~ *§ 16.* Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form U-4.

2. The statutory fee in the amount of $30. The check must be made payable to the Treasurer of Virginia.

3. Completed Agreement for Inspection of Records Form.

4. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam~~. (Rule 221)~~ *or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (Art. 2, § 22)*

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

~~Rule 221~~ *§ 22.* Examination/qualification.

An individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD exam report of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63) *or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates* with a minimum grade of 70%.

Article 5.
~~Exempt Securities.~~ *Exemptions.*

~~Rule 503 Uniform Limited Offering Exemption.~~

§ 4. Uniform limited offering exemption.

~~Preliminary Notes~~

~~1.~~ *A.* Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

~~2.~~ In view of the objective of this rule and the purpose and policies underlying the Act, this exemption is not available to ~~any~~ *an* issuer with respect to ~~any~~ *a* transaction which, although in technical compliance with this rule is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

~~3.~~ Nothing in this rule is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

~~4.~~ Nothing in this rule is intended to exempt ~~any~~ *a* person from the broker-dealer or agent registration requirements of ~~the Act~~*, Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 below.*

~~RULE~~

B. For the purpose of the limited offering exemption referred to in ~~Section 13.1-514 B.13~~ *§ 13.1-514 B 13* of the Act, the following securities are determined to be exempt from the securities registration requirements of ~~the Act~~, *Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia:*

~~A.~~ ~~Any~~ Securities offered or sold in compliance with *the federal* Securities Act of 1933 *(15 USC §§ 77a-77aa)*, Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 or 230.506 as made effective in Release No. 33-6389 *(47 FR 11251)*, and as amended in Release Nos. 33-6437 *(47 FR 54764)*, 33-6663 *(51 FR 36385)*, 33-6758 *(53 FR 7866)*, and 33-6825 *(54 FR 11369)* and which satisfy the following further conditions and limitations:

1. The issuer and ~~any person~~ *persons* acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this rule are registered in accordance with § 13.1-505 of the Act *except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 below.*

2. No exemption under this rule shall be available for the securities of any issuer if any of the persons described in *the federal* Securities Act of 1933 *(15 USC §§ 77a-77aa)*, Regulation A, Rule §230.262(a), (b), or (c):

a. Has filed a registration statement which is subject of a currently effective stop order entered pursuant to ~~any~~ *a* state's securities law within five years prior to the ~~commencement~~ *beginning* of the offering.

b. Has been convicted within five years prior to the ~~commencement~~ *beginning* of the offering of ~~any~~ *a* felony or misdemeanor in connection with the purchase or sale of ~~any~~ *a* security or ~~any~~ *a* felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to ~~any~~ *a* state's administrative order or judgment entered by that state's securities administrator within five years prior to the ~~commencement~~ *beginning* of the offering or is subject to ~~any~~ *a* state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the ~~commencement~~ *beginning* of the offering.

d. Is currently subject to ~~any~~ *a* state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to ~~any~~ *an* order, judgment, or decree of ~~any~~ *a* court of competent jurisdiction temporarily or ~~preliminary~~ *preliminarily* restraining or enjoining, or is subject to ~~any~~ *an* order, judgment or decree of ~~any~~ *a* court of competent jurisdiction, entered within five years prior to the ~~commencement~~ *beginning* of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of ~~any~~ *a* security or involving the making of ~~any~~ *a* false filing with ~~any~~ *a* state.

f. The prohibitions of ~~paragraphs~~ *subdivisions* a, b, c and e above shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. ~~Any~~ *A* disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the *State Corporation* Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this rule be denied.

3. The issuer shall file with the *State Corporation* Commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

a. A notice on Form D (17 CFR 239.500).

b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.

c. An executed consent to service of process appointing the Clerk of the State Corporation Commission *as its agent for purpose of service of process*, unless a currently effective consent to service of process is on file with the commission.

d. A filing fee of $250.

4. In ~~all~~ sales to nonaccredited investors, the issuer and ~~any person~~ *persons* acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to ~~his/her~~ *the purchaser's* other security holdings and financial situation and needs.

~~5. The Commission may, upon request, waive the examination requirements of Rule 221 for an agent of the issuer offering and/or selling securities exempted by this Rule upon a showing of good cause; provided, however, that the agent has not participated in more than 2 securities offerings during the 18 months prior to the request for waiver.~~

~~6.~~ *5.* Offers and sales of securities which are exempted by this rule ~~may~~ *shall* not be combined with offers and sales of securities exempted by ~~any other~~ *another* rule or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of ~~any other~~ *another* applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

~~7.~~ 6. In any proceeding involving this rule the burden of proving the exemption or ~~any~~ *an* exception from a definition or condition is upon the person claiming it.

~~B.~~ C. The exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

~~Rule 506 Chicago Board Options Exchange Exemption~~

~~In accordance with Section 13.1-514 A.12. of the Act, any security listed on the Chicago Board Options Exchange, Inc. ("CBOE") is exempt from the securities registration requirements of the Act if (i) the issuer of the security meets any of the criteria set forth in section A and (ii) the exchange has at least the criteria set forth in sections B through F, below:~~

~~A. The issuer, or in the case of an American Depository Receipt, the foreign issuer of the underlying equity securities, has been subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 for the preceding 180 days and is current in its filings; or, in the case of an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, such company has been subject to the reporting requirements imposed by the applicable insurance regulatory authority in its domiciliary State for the preceding 180 days and is current in its filings; or,~~

~~in the case of a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940, such company has been subject to the applicable reporting requirements of Section 30 of the Investment Company Act of 1940 for the preceding 180 days and is current in its filings.~~

~~B. CBOE shall require that the issuer have a class of securities currently registered under Section 12 of the Securities Exchange Act of 1934; or in the case of an American Depository Receipt issued against the equity securities of a foreign issuer, such equity securities are registered pursuant to Section 12 of the Securities Exchange Act of 1934; or the issuer is an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934 or is a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940 with securities registered under the Securities Act of 1933.~~

~~C. CBOE shall require at least the following standards to be met for listing of common stock and other securities convertible into or carrying a right to purchase or subscribe to common stock of the issuer (hereafter referred to as "equity issues") on CBOE:~~

	~~Alt. No. 1~~	~~Alt. No. 2~~
~~Net Tangible Assets[1]~~	~~$4,000,000~~	~~$12,000,000~~
~~Public Float~~	~~500,000~~	~~1,000,000~~
~~Pre-Tax Income~~	~~750,000~~	~~———~~
~~Net Income~~	~~400,000~~	~~———~~
~~Shareholders[2]~~	~~800/400~~	~~800/400~~
~~Market Value of Float~~	~~3,000,000~~	~~15,000,000~~
~~Minimum Bid~~	~~$5/Share~~	~~———~~
~~Operating History~~	~~———~~	~~3 Years~~

~~[1] "Net Tangible Assets" is defined for purposes of this Rule to include the value of patents, copyrights, and trademarks but to exclude the value of good will.~~

~~[2] The minimum number of shareholders under each alternative is 800 for issuers with at least 500,000 but less than 1,000,000 shares publicly held or a minimum of 400 if the issuer has either (i) at least 1,000,000 shares publicly held or (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for the six months preceding the listing.~~

~~D. CBOE shall require at least the following minimum corporate governance standards for its domestic issuers of equity issues:~~

~~1. Distribution of Annual and Interim Reports.~~

~~a. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with CBOE at the time it is distributed to shareholders.~~

~~b. Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with CBOE. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.~~

~~c. Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the CBOE.~~

~~2. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section D, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a~~

relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to CBOE.

5. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the issuer's common voting stock.

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to CBOE.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

8. Shareholder Approval Policy. Each issuer shall require shareholder approval of a plan or arrangement under a. below or, prior to the issuance of designated securities under b., c., or d. below, when:

a. A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the issuer or broadly based plans or arrangements including other employees (e.g. ESOP's). In a case where the shares are issued to a person not previously employed by the issuer, as an inducement essential to the individual's entering into an employment contract with the issuer, shareholder approval will generally not be required.

The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.

b. The issuance will result in a change of control of the issuer.

c. In connection with the acquisition of the stock or assets of another company if:

(1) any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(2) in the case of the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than in a public offering for cash, where the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock, or the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities.

d. In connection with a transaction other than a public offering involving:

(1) the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the issuer equals 20% or more common stock or 20% or more of the voting power outstanding before the issuance; or

(2) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of this stock.

e. Exceptions may be made upon application to CBOE when:

(1) the delay in securing shareholder approval would seriously jeopardize the financial viability of the issuer and

(2) reliance by the issuer on this exception is expressly approved by the issuer's audit committee or a comparable body.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that

the issuer's audit committee of the Board or a comparable body has expressly approved the exception.

f. Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph 8. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

g. Voting power outstanding as used in this paragraph 8 refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the issuer's security holders for a vote.

h. An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

E. Voting Rights.

1. The rules of CBOE shall provide as follows: No rule, stated policy, practice, or interpretation of CBOE shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if, on or after October 15, 1992, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.

2. For the purpose of paragraph 1. of this Section E, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

a. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial owner or record holder.

b. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the length of time such shares have been held by such beneficial owner or record holder.

c. Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

d. Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For the purpose of paragraph 1. of this Section E, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

a. The issuance of securities pursuant to an initial registered public offering.

b. The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

c. The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

d. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial owner or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. Definitions. The following terms shall have the following meanings for purposes of this Section E, and the rules of CBOE shall include such definitions for the purposes of the prohibition in paragraph 1. of this Section:

a. The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

b. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.

c. The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.

d. The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall

~~exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.~~

~~F. Maintenance Criteria. After listing on CBOE, equity issues must meet the following criteria to continue to be listed on CBOE:~~

~~1. The issuer of the security has net tangible assets of at least:~~

~~a. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or~~

~~b. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years;~~

~~2. There are at least 200,000 publicly held shares;~~

~~3. There are at least 400 shareholders or at least 300 shareholders of round lots;~~

~~4. The aggregate market value of publicly held shares is at least $1,000,000.~~

~~G. The Commission may rescind this order pursuant to its authority under Section 13.1-523 of the Act, thereby revoking this rule, if the Commission determines that the listing requirements of CBOE have been so changed or insufficiently applied so that the protection of investors is no longer afforded.~~

~~H. The Commission shall have the authority to deny or revoke the exemption created by this Rule as to a specific issue or category of securities.~~

~~I. CBOE shall promptly notify the Commission of the delisting of an issue of securities by CBOE.~~

§ 7. Chicago Board Options Exchange.

A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on the Chicago Board Options Exchange, Inc. (CBOE); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.

B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.

C. The State Corporation Commission may rescind this rule by order if it determines that CBOE's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc., and the Chicago Board Options Exchange, Inc.," approved May 30, 1991, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 801 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.

D. The State Corporation Commission may rescind this rule by order if it determines that CBOE has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings, all linked securities and entities whose securities' values underlie Contingent Value Rights that CBOE ordinarily obtains in regulating issuers listed on CBOE, based on agreement with the State Corporation Commission concerning the information to be provided.

~~Rule 507 Solicitations of Interest Prior to the Filing of a Registration Statement~~

§ 8. Solicitations of interest prior to the filing of a registration statement.

A. In accordance with § 13.1-514.1 C of the Act, an offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for ~~such~~ *the* security is exempt from the securities *and, where the offer is made by an agent of the issuer, agent* registration requirements of the Act if all of the conditions set forth in ~~Sections~~ A *subdivisions 1* through ~~K~~ *11* below, are satisfied:

~~A.~~ *1.* The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada and is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries~~.~~ *;*

~~B.~~ *2.* The solicitation of interest is not for a so-called "blind pool" offering or other offering for which the specific business in which to be engaged or property to be acquired cannot be described at the time of [~~them~~ *the*] solicitation~~.~~ *;*

~~C.~~ *3.* It is intended that the security be registered under the Act and that the offering be conducted pursuant to either Regulation A *(17 CFR §§ 230.251-230.263)* or Rule 504, *§ 230.504* of Regulation D *(17 CFR §§ 230.501-230.508),* as promulgated by the ~~U.S.~~ *United States* Securities and Exchange Commission~~.~~ *;*

~~D.~~ *4.* At least 10 business days prior to the initial solicitation of interest under this rule, the offeror files with the *State Corporation* Commission a Solicitation of Interest form along with any other materials to be used to conduct solicitations of interest, including, but not limited

to, the script of any broadcast to be made and a copy of any notice to be published. ;

E. *5.* At least five business days prior to usage, the offeror files with the *State Corporation* Commission any amendments to the materials specified in Section D *subdivision 4* above, or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree, which materials shall be filed with the commission no later than five business days after usage. ;

F. *6.* No Solicitation of Interest form, script, advertisement or other material which the offeror has been notified by the *State Corporation* Commission not to distribute is used to solicit indications of interest. ;

G. *7.* Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a Solicitation of Interest form, the offeror does not communicate with any *an* offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest form at or before the time of the communication or within five calendar days after the communication. ;

H. *8.* During the solicitation of interest period, the offeror does not solicit or accept money or a commitment to purchase securities. ;

I. *9.* No sale is made until at least seven calendar days after delivery to the purchaser of a prospectus which is part of a registration statement declared effective under § 13.1-508 or § 13.1-510 of the Act. ;

J. *10.* No offer or sale of the security is consummated by any *a* person who is not registered under or exempted from registration by the Act as a broker-dealer or an agent. ;

K. *11.* The offeror does not know, and in the exercise of reasonable care, could not know that any of the issuer's officers, directors, *agents*, 10% shareholders or promoters:

1. *a.* Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any *a* federal or state securities law within five years prior to the filing of the Solicitation of Interest form. ;

2. *b.* Has been convicted within five years prior to the filing of the Solicitation of Interest form of any *a* felony or misdemeanor in connection with the offer, purchase or sale of any *a* security or any *a* felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud. ;

3. *c.* Is currently subject to any *a* federal or state administrative enforcement order or judgment entered by any *a* state securities administrator or the U.S. *United States* Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest form, or is subject to any *a* federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found. ;

4. *d.* Is subject to any *a* federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any *an* exemption from registration in connection with the offer, purchase or sale of securities. ; *or*

5. *e.* Is currently subject to any *an* order, judgment, or decree of any *a* court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any *an* order, judgment or decree of any *a* court of competent jurisdiction, permanently restraining or enjoining, such *the* party from engaging in or continuing any *a* conduct or practice in connection with the purchase or sale of any *a* security or involving the making of any *a* false filing with the state entered within five years prior to the filing of the Solicitation of Interest form.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such *the* person or if the broker-dealer employing such *the* party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such *the* person. No person disqualified under this Section K may *subdivision 11 shall* act in a capacity other than that for which the person is licensed or registered. Any *A* disqualification caused by this Section K *subdivision 11* is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

L. *B.* A failure to comply with a term, condition or requirement of Sections A-K *subdivisions 1 through 11 of subsection A of* this Rule *section* will not result in the loss of the exemption from the securities registration requirements of the Act for any *an* offer to a particular individual or entity if the offeror shows:

1. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

2. The failure to comply was insignificant with respect to the offering as a whole; and

3. A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Sections A-K. *subdivisions 1 through 11 of subsection A.*

Where an exemption is established only through reliance upon this Section L, *subsection B,* the failure to comply shall nonetheless be actionable by the *State Corporation* Commission as a violation of the Act, and shall constitute *be* grounds for denying or revoking the exemption as to a specific security or transaction.

~~M.~~ *C.* The offeror shall comply with the requirements set forth *in subdivisions 1 and 2* below. Failure to comply will not result in the loss of the exemption from the securities registration requirements of the Act, but shall be a violation of the Act, ~~be~~ actionable by the *State Corporation* Commission, and ~~constitute~~ grounds for denying or revoking the exemption as to a specific security or transaction.

1. Any published notice or script for broadcast and any printed material delivered apart from the Solicitation of Interest form ~~must~~ *shall* contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

a. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

b. NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

c. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND;

d. THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE ~~SEC~~ *SECURITIES AND EXCHANGE COMMISSION* AND THE SECURITIES ARE REGISTERED IN THIS STATE; and

e. REGISTRATION OF THE SECURITIES FOR SALE IN THIS STATE IS DEPENDENT ON COMPLIANCE WITH THE SECURITIES LAWS OF VIRGINIA. THEREFORE, THERE CAN BE NO ASSURANCE THAT THE SECURITIES WILL BE REGISTERED FOR SALE IN VIRGINIA.

This requirement shall not apply to the delivery of printed material to a person who has already received a Solicitation of Interest form with the legends correctly included.

2. All communications with offerees made in reliance on this rule ~~must~~ *shall* cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

~~N.~~ *D.* Other than the requirements of ~~Section J~~, *subdivision 10 of subsection A* above, the *State Corporation* Commission may waive any condition of this exemption in writing, upon application by the offeror and good cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of ~~any~~ *an* objection or order by the *State Corporation* Commission with respect to ~~any~~ *an* offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of ~~any~~ a condition of the rule or deemed to be a confirmation by the *State Corporation* Commission of the availability of this rule.

~~O.~~ *E.* Offers made in reliance on this rule will not result in a violation of § 13.1-507 of the Act by virtue of being integrated with subsequent offers or sales of securities unless ~~such~~ *the* subsequent offers and sales would be integrated under federal securities laws.

~~P.~~ *F.* Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ~~subsection~~ *subdivision* B 7 or B 13 of § 13.1-514 of the Act until six months after the last communication with an offeree made pursuant to this rule.

COMMENTS:

1. All communications made in reliance on this rule are subject to the anti-fraud provisions of the Act.

2. ~~Nothing in this Rule is intended to exempt any person from the broker-dealer or agent registration requirements of the Act.~~ Persons who ~~solicit indications of interest~~ *deliver a prospectus in connection with an offering for which indications of interest have been solicited* under this rule must be registered under~~, or exempted from registration by,~~ the Act as a broker-dealer or as an agent.

3. The *State Corporation* Commission may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

4. With respect to ~~Sections D and E~~ *subdivisions 4 and 5 of subsection A* of this rule, the offeror may begin to conduct solicitations of interest once the prefiling requirements have been satisfied, unless notified otherwise by the *State Corporation* Commission. The *State Corporation* Commission may at any time notify the offeror not to distribute ~~any~~ *a* Solicitation of Interest form, script, advertisement or other material which the *State Corporation* Commission believes is in violation of the Act's anti-fraud provisions.

5. ~~Any~~ *An* offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under § 13.1-522 of the Act. Likewise, ~~any~~ *a* misrepresentation or omission may give rise to civil liability.

6. Issuers should note that under certain conditions the *State Corporation* Commission may refuse to grant effectiveness to ~~any~~ *a* registration statement filed under § 13.1-508 or § 13.1-510 of the Act. In that event, sales to prospective Virginia investors solicited under this rule may not be consummated. Please refer to § 13.1-513 of the Act, Rule 900, and Rule 402.

NOTE TO USERS: The following form sets forth the minimum informational ~~requirement~~ *requirements* for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that ~~any~~ *a* discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must thereby be complete. Also, ~~any~~ *a* discussion of potential rewards of the proposed investment must be balanced by a

discussion of possible risks. You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented.

SOLICITATION OF INTEREST FORM

_____

NAME OF COMPANY

Street Address of Principal Office:

Company Telephone Number:

Date of Organization:

Amount of the Proposed Offering:

Name of the Chief Executive Officer:

THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE COMPANY AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE ~~SEC~~ *SECURITIES AND EXCHANGE COMMISSION* AND THE SECURITIES ARE REGISTERED IN THIS STATE.

REGISTRATION OF THE SECURITIES FOR SALE IN THIS STATE IS DEPENDENT ON COMPLIANCE WITH THE SECURITIES LAWS OF VIRGINIA. THEREFORE, THERE CAN BE NO ASSURANCE THAT THE SECURITIES WILL BE REGISTERED FOR SALE IN VIRGINIA.

This Company: ( ) Has never conducted business operations.

( ) Is in the development stage.

( ) Is currently conducting operations.

( ) Has shown a profit for the last fiscal year.

( ) Other (Specify) _____.

BUSINESS:

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

OFFERING PROCEEDS:

3. Describe in general how the company intends to use the proceeds of the proposed offering.

KEY PERSONNEL OF THE COMPANY:

4. Provide the following information for all officers and directors or persons occupying similar positions.

~~Name, Title, Office Street Address, Telephone Number, Employment History (Employers~~ *Name, title, office street address, telephone number, employment history (employers*, titles and dates of positions held during the past five years), and ~~Education~~ *education* (degrees, schools and dates).

(end of form)

§ 9. Philadelphia Stock Exchange, Inc.

A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Philadelphia Stock Exchange, Inc. (the Exchange); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.

B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.

C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Philadelphia Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 2941 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.

D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.

§ 10. Pacific Stock Exchange, Inc.

A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Pacific Stock Exchange, Inc. (the Exchange); securities of the same issuer

that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.

B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.

C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Pacific Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 2841 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.

D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.

§ 11. Issuer limited transactional exemption.

A. In accordance with § 13.1-514 B 7(b) of the Act, an offer or sale by the issuer of any of the following securities issued by a corporation, partnership, limited liability company, or real estate investment trust, as the case may be: note, stock, bond, debenture, evidence of indebtedness, partnership interest, share of beneficial interest in a real estate investment trust, a warrant or right to purchase or subscribe to any of the foregoing or a security convertible into any of the foregoing, shall be exempt from the securities, broker [-] dealer and agent registration requirements of the Act, provided the following conditions are met:

1. In connection with an offering pursuant to this rule, there shall be no more than 35 purchasers in this Commonwealth during any period of 12 consecutive months;

2. In connection with an offering pursuant to this rule, the issuer shall:

a. Deliver Form VA-1 and in certain prescribed circumstances, Part 2 of Form VA-1 or a disclosure document containing the information required by Form VA-1 and Part 2, if required, to each prospective purchaser prior to a sale to a purchaser; and

b. Sell securities only to purchasers, each of which the issuer shall, after reasonable inquiry, believe either:

(1) Has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and is able to bear the economic risks of the prospective investment; or

(2) Together with a purchaser representative or representatives, has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and that the purchaser is able to bear the economic risks of the prospective investment; and,

3. No more than $100,000 shall be raised pursuant to this rule during any period of 12 consecutive months.

4. No commission or similar remuneration is paid or given, directly or indirectly, for soliciting a prospective purchaser, or in connection with sales of securities in reliance on this rule, unless paid to a broker-dealer and its agent who are registered under the Act;

B. This exemption is not available with respect to an offering:

1. Pursuant to a registration statement or Regulation A (17 CFR §§ 230.251-230.263) notification which has been filed under the federal Securities Act of 1933;

2. Pursuant to an exemption under Regulation D (17 CFR § 230.505 or 17 CFR § 230.506), which offering may be exempted in Virginia only by Article 5, § 4 of these rules (uniform limited offering exemption);

3. If the amount of money to be raised from the offering, when added to the total amount of money raised from all prior offerings under this rule, exceeds $500,000;

4. If the issuer has offered for sale or sold its securities which are of the same or a similar class as that to be offered for sale or sold under this rule within 180 days prior to this offering or if the issuer offers for sale or sells its securities that are of the same or a similar class as those offered and sold under this rule within 180 days after this offering; or

5. If the issuer does not have a principal place of business in this Commonwealth.

C. An exemption under this rule is not available if the issuer, its directors, officers, partners, members, trustees or beneficial owners of 10% or more of a class of its voting securities, or its promoters or agents connected with it or a person offering or selling the securities for or on behalf of the issuer:

1. Has been convicted (or has pleaded nolo contendere) within five years prior to reliance on this rule of a felony or a misdemeanor in connection with the purchase or sale of a security, or in connection with making a false filing with the United States Securities and Exchange Commission or a state securities administrator or of a

felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;

2. Is subject to an order, judgment or decree of a court of competent jurisdiction that temporarily or [~~preliminary~~ preliminarily] restrains or enjoins, or is subject to an order, judgment or decree of a court of competent jurisdiction, entered within five years prior to reliance on this rule, which permanently restrains or enjoins a person from engaging in or continuing a practice or conduct in connection with the purchase or sale of a security, or involving the making of a false filling with the United States Securities and Exchange Commission or a state securities administrator;

3. Is subject to a United States Postal Service false representation order entered within five years prior to reliance on this rule; or

4. Is subject to a state administrative order entered within five years prior to reliance on this rule by a state securities administrator in which fraud or deceit was found.

D. The issuer shall file with the State Corporation Commission 15 days prior to the first sale in this Commonwealth in reliance on this rule:

1. A copy of Form VA-1, including Part 2, if applicable or a disclosure document containing the information required by the Form;

2. An executed Consent to Service of Process on Form U2 appointing the Clerk of the State Corporation Commission as its agent for service of process;

3. An undertaking to promptly provide to the State Corporation Commission, upon request, additional information as the State Corporation Commission may require; and

4. A nonrefundable filing fee of $250.

E. This rule does not exempt persons or transactions from the anti-fraud provisions of the Virginia Securities Act (§ 13.1-501 et seq. of the Act).

F. The State Corporation Commission may deny the exemption if it determines that a particular transaction or offering is not in the public interest.

G. For purposes of this rule and § 13.1-514 B 7(b) of the Act, the following shall apply:

1. Neither the issuer nor persons acting on its behalf shall offer or sell the securities by form of general solicitation or advertising, including but not limited to, the following:

a. "Cold" calls by telephone or other means, advertising, article, notice, or other communication published in a newspaper, newsletter, magazine, mass mailing, electronic media, or similar media or broadcast over television or radio; or

b. Seminars or meetings whose attendees have been invited by general solicitation or general advertising.

2. Securities acquired in a transaction under this rule shall not be resold without registration under or exemption from the Virginia Securities Act. The issuer or a person acting on its behalf shall exercise reasonable care to assure that the purchasers of the securities in an offering under this rule are purchasing for investment and not with a view to distribution of the securities. Reasonable care shall include, but not be limited to, the following:

a. Reasonable inquiry to determine whether the purchaser is acquiring the securities for himself or for other persons;

b. Placement of a restrictive legend on the certificate or other document evidencing the securities. The legend shall be in the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE (OR OTHER DOCUMENT) HAVE BEEN ISSUED PURSUANT TO A CLAIM OF EXEMPTION FROM THE REGISTRATION OR QUALIFICATION PROVISIONS OF FEDERAL AND STATE SECURITIES LAWS AND SHALL NOT BE SOLD OR TRANSFERRED WITHOUT COMPLIANCE WITH THE REGISTRATION OR QUALIFICATION PROVISIONS OF APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR APPLICABLE EXEMPTIONS THEREFROM;

c. Issuance of stop-transfer instructions to the issuer's transfer agent with respect to the securities, or, if the issuer transfers its own securities, notation in the appropriate records of the issuer; and

d. Obtaining from the purchaser a signed agreement that the securities will not be sold unless they are registered under the Virginia Securities Act or exempted from registration.

3. All sales that are part of the same offering under this rule shall meet all the conditions of this rule. Offers and sales that are made more than six months before the commencement of an offering under this rule or are made more than six months after completion of an offering under this rule will not be considered part of that offering, so long as during those six-month periods there are no offers or sales of securities by or on behalf of the issuer that are of the same or a similar class as those offered or sold under this rule. If securities of the same or a similar class as those offered pursuant to this rule are offered or sold less than six months before or after an offer or sale pursuant to this rule, those offers to sell or sales, will be deemed to be "integrated" with the offering.

H. In proceedings involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

I. The exemption authorized by this rule shall be known and may be cited as the "Issuer Limited Transactional Exemption."

FORM VA-1 Part 1
7/1/95

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

NOTICE OF LIMITED OFFERING OF SECURITIES
PURSUANT TO ARTICLE 5, §11 OF THE SECURITIES ACT RULES

The issuer shall file this notice with the Division of Securities and Retail Franchising not later than 15 days prior to the first sale of securities in this Commonwealth.

This notice shall be accompanied by a non-refundable filing fee of $250.00. This notice shall be deemed filed with the division for purposes of the rule as of the date on which the notice is received by the division.

IF ADDITIONAL SPACE IS REQUIRED TO RESPOND COMPLETELY TO ANY ITEM, PLEASE ATTACH ADDITIONAL SHEETS.

1. Name of issuer: _____

   Address of issuer: _____

   City_____ State____ Zip_____ Telephone number_____

2. Correspondence to whom communications regarding this notice should be directed:

   Name: _____

   Address: _____

   City_____ State____ Zip_____ Telephone number_____

3. Describe, in summary form, the issuer's business [{] including but not limited to the operations being conducted (if the business is not operational, describe when operations will begin):

4. Describe in detail the risk factors to be considered in purchasing the securities:

5. Describe, in summary form, assets owned or leased by the issuer's business and if leased, describe the terms:

6. Describe, in summary form, pending litigation involving the issuer's business or its officers or directors:

7. Issuer's type of business organization: _____
   (corporation, partnership, [{ limited liability company },] real estate investment trust)

8. Year in which the issuer was incorporated or organized: _____

9. State or country in which the issuer was incorporated or organized: _____

10. Identify the exemption from federal registration on which the issuer is relying in connection with this offering:

    _____
    (SEC Rule 504, Section 4(2) of the Securities Act of 1933, SEC Rule 147, other (specify))

11. List the other jurisdictions in which it is proposed that securities in connection with this offering will be offered or sold: _____

12. Indicate the nature of the issuer's securities that are the subject of this offering: _____

notes ____ debentures ____ stocks ____ evidence of indebtedness ____

bonds ____ partnership interests ____

shares of beneficial interest of a real estate investment trust ____

warrants or rights to purchase or subscribe to one of the above ____

other securities convertible into one of the above ____

13. Have securities of the same or a similar class as those that are the subject of this offering been offered or sold within the six months preceding the beginning of this offering?

Yes _____ No _____

Date of first sale in Virginia: _____ If "yes", explain briefly:

14. Date of beginning of this offering: _____

15. Aggregate offering price of the securities intended to be sold in this offering: $_____

Number of units offered: _____

Price per unit offered: $_____

Use of proceeds (be specific) _____

_____

16. State the aggregate offering price of the securities intended to be sold in Virginia, if different from answer to 15, above: $_____

17. On a separate sheet; state the name, home address and position of each officer, director, general partner or trustee of the issuer, in the following format:

_____
Name Position

_____
Home Address

_____
City, State, Zip Code

18. Using a separate sheet if necessary, state the name and home address of each person who is, or will be immediately after completion of this offering, a beneficial owner of 10% or more of the outstanding class of voting securities of the issuer, in the following format:

_____
Name Position

_____
Address

_____
City, State, Zip Code

19. Using a separate sheet if necessary, identify all persons authorized by the issuer to sell securities of the issuer under this offering, in the following format:

_____
Name

_____
Address

_____ (___) _____
City, State, Zip Code Telephone Number

Is this person affiliated with the issuer? Yes _____ No _____

If "yes", position: _____

Type and value of any remuneration to this person for sale of securities (if "none", so state):

_____

Is this person a broker-dealer or an agent of a broker-dealer? Yes____ No____

20. Applicant's Signature:

_____

Name (please print): _____

Title: _____

Date of Notice: _____

FORM VA-1 Part 2
7/1/95

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

NOTICE OF LIMITED OFFERING OF SECURITIES
PURSUANT TO ARTICLE 5, §11 OF THE SECURITIES ACT RULES

Issuer limited transactional exemption.

An issuer must deliver Part 2 of Form VA-1 or a disclosure document containing the information required by Part 2 of Form VA-1 to all purchasers, if:

1. Within 18 months prior to the first sale of securities under this rule, the issuer has issued or committed to be issued securities of the same or a similar class for consideration of a value 25 % or more below the offering price of securities to be sold under this rule, if the securities issued or committed to be issued constitute 10% or more of the securities of the same or a similar class outstanding at the beginning of the offering under this rule, or if the securities were issued or committed to be issued to an officer, director, general partner, trustee, or promoter of the issuer; or

2. The entire proceeds of the offering under this rule are not to be escrowed in a bank, as defined in the federal Securities Act of 1933, §3(a)(2), or a savings and loan association or similar institution as defined in the federal Securities Act of 1933, §(3)(a)(5), until completion of the offering.

(a) Indicate the names of officers, directors, general partners, trustees (if a real estate investment trust) or promoters of the issuer to whom any amount of securities of the issuer has been, or is to be, issued at a price of 25% or more below the offering price of this offering, regardless of the percentage of securities of the Issuer this represents, if issued or committed to be issued within the last 18 months.

NAME	CLASS/TYPE	NO. OF SHARES	PRICE

(b) Indicate the names of any persons other than those named in paragraph (a), above, to whom securities aggregating 10% or more of the total securities outstanding at the beginning of this offering have been issued or committed to the issued within the last 18 months and which were issued or are to be issued at a price 25% or more below the offering price of this offering.

NAME	CLASS/TYPE	NO. OF SHARES	PRICE

(c) Are any proceeds of this offering to be escrowed pending completion of this offering?
Yes _____ No _____

(1) If "yes", identify the escrow agent:

_____
Name

_____
Address

_____ (____)_____
City, State, Zip Code Telephone Number

(2) If "yes", will the escrow account be:
_____ entire proceeds of offering; or
_____ partial proceeds of offering [.]

(3) If "yes", describe the duration, e.g., "until completion of the offering" or "until partial proceeds [~~started~~ *stated*] in Paragraph 2 are raised", and terms regarding interest, indicating for whose benefit any interest will accrue.

NOTICE TO PROSPECTIVE INVESTORS: IF THE ENTIRE PROCEEDS ARE NOT TO BE ESCROWED PENDING COMPLETION OF THE OFFERING, PROSPECTIVE INVESTORS ARE WARNED THAT THEIR TOTAL INVESTMENT MAY BE LOST OR EXPOSED TO CLAIMS OF CREDITORS OF THE ISSUER IF THE ISSUER IS UNSUCCESSFUL IN COMPLETING THE OFFERING.

SIGNATURE:

Applicant's Signature:

_____

Name (please print): _____

Title: _____

Date of Notice: _____

Article 11.
Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination and Changing Connection from One Investment Advisor to Another.

~~Rule 1106~~ § 7. Examination/qualification.

A. An individual applying for registration as an investment advisor representative on or after July 1, 1989, shall be required to provide evidence of passing the Uniform Investment Adviser Law Examination, Series 65, *or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates* with a minimum grade of 70 ~~percent~~ %.

B. In lieu of meeting the examination requirement described in ~~paragraph~~ *subsection* A of this ~~Rule~~ *section*, an applicant who meets the qualifications set forth below may file with the commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of ~~Series 65~~ Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.

2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.

3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.

4. The investment advisor(s) referred to in ~~paragraph~~ *subdivision* 3 has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least forty million dollars under management.

5. The applicant verifies that he/she has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Articles ~~X—XIV~~ *10 through 14* of these rules.

6. The applicant verifies that none of the questions in Item 22 (disciplinary history) on his Form U-4 have been, or need be, answered in the affirmative.

S.A.I (7/95)

SUPPLEMENTAL INFORMATION FOR COMMONWEALTH OF VIRGINIA TO BE FURNISHED WITH [~~REVISED~~] FORM BD

Full name of applicant exactly as stated on [~~current~~] Form BD Date

Answer the following questions and supply the information required:

[~~I.~~ 1.] Is the applicant "in good standing" in its state of [~~incorporation~~ organization]? Yes _____ No_____.

[~~II.~~ 2.] Submit a check payable to Treasurer of Virginia in the amount of $200.[~~00~~] ([~~Virginia Code §13.1-505.F.~~ § 13.1-505 F of the Code of Virginia])

[~~III.~~ 3.] The following must be submitted along with the [~~current~~] Form BD:

[~~(a)~~ a.] A completed Agreement for Inspection of Records. ([~~Rule 200 B.4.~~ § 1 B 4 of Article 2])

[~~(b)~~ b.] A copy of the firm's written supervisory procedures. Sole proprietorships are excluded. ([~~Rule 200 B.5.~~ § 1 B 5 of Article 2])

[~~IV.~~ 4.]. Financial reports pursuant to [~~Rule 207.~~ § 8 of Article 2.]

[~~(a)~~ a.] Attach [~~1~~ one] copy of applicant's latest audited financial statement.

[~~(b)~~ b.] Attach [~~1~~ one] copy of applicant's latest Joint Regulatory Report or FOCUS Report.

[~~(c)~~ c.] Furnish [~~1~~ one] copy of applicant's latest unaudited financial statement. (If applicant's latest audited financial statement [~~(a)~~ required by subsection a] is not dated within 90 days preceding the filing of this application, the unaudited financial statement must be dated within the 90 day period and attested to by an officer or director of the applicant).

[~~(d)~~ d.] Attach a copy of all currently effective subordination agreements if applicable.

[~~V.~~ 5.] Broker-Dealer bond.

The surety bond must be executed if the broker-dealer does not have a net worth in excess of $25,000. ([~~See §13.1-505.B. of the Virginia Securities Act and Rule 307~~ § 13.1-505 B of the Code of Virginia and § 8 of Article 3]) Attached is the required surety bond in the penal amount of $_____.

[~~VI.~~ 6.] Exam ~~R~~requirements for principals.
See definition of "Principal" under [~~Rule 206 A.2.~~ § 7 A 2 of Article 2.]
Applicant must comply with either[~~(a)~~ a] or [~~(b)~~ b] below.

[~~(a)~~ a.] All principals of applicant have obtained a minimum passing grade of 70% on the USASLE [(Uniform Securities Agent State Law Exam)] exam, Series 63 [or on a similar examination designated by the Director of the Division of Securities and Retail Franchising.] ([~~206 A.1.~~ § 7 A 1 of Article 2]) Yes ____ No _____

[~~(b)~~ b.] At least [~~2~~ two] principals of applicant have been registered with the SEC or the NASD as a general securities principal ([~~Rule 206 A.2.~~ § 7 A 2 of Article 2]) The NASD requires general securities principals to take and successfully pass the Series 24 Exam. Yes ____ No _____

PROVIDE EVIDENCE OF THE ABOVE IN THE FORM OF AN NASD EXAM REPORT.

~~S.D.3 (10/92)~~ S.A.3 (1995)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

AFFIDAVIT FOR WAIVER OF ~~SERIES 65~~ EXAMINATION
Pursuant to ~~Rule 1106~~ Art. 2, § 7 B

State of _____

County/City of _____, to wit:

The undersigned, having been duly sworn, deposes and says:

1. My name is _____.

2. My CRD number is _____.

3. The name of the investment advisory with which I am, or will be connected is _____
_____.

4. The CRD number of this investment advisor is _____.

5. I am, and have been for at least the five years immediately preceding the date on which my application for registration was filed, actively engaged in the investment advisory business.

6. I have been for at least the two years immediately preceding the date on which my application for registration was filed the president, chief executive, chairman of the board of directors, or managing partner, member, trustee or similar functionary, of an investment advisor actively engaged in the investment advisory business.

7. The investment advisor(s) referred to in ~~paragraph~~ subdivision 6, above, have, or had during my tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary, at least forty million dollars under management.

8. I have read and am familiar with the investment advisor and investment advisor representative provisions of the Virginia Securities Act (§ 13.1 501 et seq. of the Code of Virginia) and provisions of Articles ~~X—XIV~~ 10 - 14 of this Commission's Securities Act Rules.

9. None of the questions in Item 22 (disciplinary history) on my Form U-4 have been, or need be, answered in the affirmative.

_____
Signature of the Affiant

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 19_____.

_____(SEAL)
Signature of the Notary Public

My commission expires:_____

INSTRUCTIONS

This form must be filed with the Division of Securities and Retail Franchising. Form U-4 (or any amendment) and any required fee must be filed with the NASA/NASD Central Registration Depository system.

S.D.4 ~~(1972)~~ (1995)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

APPLICATION FOR RENEWAL OF ~~AGENT'S LICENSE~~ REGISTRATION AS AN AGENT OF AN ISSUER

(Print or Type)

Last Name _____ First Name _____ Middle Name _____

residing at _____, hereby
Street Number City State Zip

applies for a renewal ~~license~~ of registration as an agent registered under the Securities Act, and reaffirms his connection with the ~~broker-dealer or~~ issuer specified below:

_____
(Name of ~~Broker-Dealer or~~ Issuer)

During the past year the applicant has resided at the following address:

_____

The address of the applicant's place of business is to be entered here if other than the principal address of the ~~broker-dealer or~~ issuer.

_____

In order to assist in determining ~~the character and reputation of the applicant,~~ whether to grant the application, check below whether or not ~~he~~ the applicant has been involved in any of the following during the preceding ~~licensing~~ registration year.

	YES	NO
Has been convicted of felony or misdemeanor involving dishonesty?	( )	( )
Has been sued for fraud, deceit or breach of trust?	( )	( )
Has been adjudicated as bankrupt?	( )	( )
Has any unsatisfied judgments against him?	( )	( )
Has been denied a ~~license~~ registration to sell securities?	( )	( )
Has had a ~~license~~ securities registration suspended or revoked?	( )	( )

If the ~~broker-dealer or~~ issuer is unable to answer any of the above with a (NO), the renewal cannot be processed until the situation is discussed with the ~~Securities~~ Division.

CERTIFICATE

The ~~broker-dealer or~~ issuer named in the foregoing renewal application certifies that the information supplied is true and correct to the best of its knowledge and promises to notify the Commission promptly with respect to any change in information heretofore given.

_____
~~Broker-Dealer~~ Issuer Date

_____
By (Signature) Title

INSTRUCTIONS

~~1. All renewal applications must be submitted simultaneously with the broker-dealer or issuer renewal application.~~

~~2.~~1. **Do not** send separate $30.00 checks for each agent. Incorporate all fees into one check covering all renewals. Check to be made payable to the Treasurer of Virginia.

~~3.~~2. Should an investigation of the applicant be necessary, the Commission may require additional information.

~~4.~~3. If the applicant ceases to be connected with the ~~broker-dealer or~~ issuer specified in the application, he and the ~~broker-dealer or~~ issuer must promptly notify the Commission giving date of termination and advising that the agent's record is either clear or not clear.

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	May 31, 1997
Estimated average burden hours per response.	9.01

FORM ADV INSTRUCTIONS

1. **This is a Uniform Form for use by investment advisers to:**

   - register with the Securities and Exchange Commission and the jurisdictions that require advisers to register.
   - update those registrations. When updating, complete all amended pages in full and circle the number of the item being changed. Each amendment must include the execution page.
   - comply with their obligation under SEC Rule 206(4)-4 to disclose material financial and disciplinary information to clients. When using Part II of this form to disclose this information to clients, advisers must satisfy the timing of disclosure requirements described in paragraph (c) of SEC Rule 206(4)-4. Note that SEC Rule 206(4)-4(c) requires an adviser to disclose this information promptly to clients, while SEC Rule 204-3(b) only requires an adviser to annually offer to deliver its brochure to existing clients.

2. **Organization**

   The Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II can generally be given to clients to satisfy the brochure rule. The Form also contains the following schedules:

   - Schedule A — for corporations;
   - Schedule B — for partnerships;
   - Schedule C — for entities that are not sole proprietorships, partnerships or corporations;
   - Schedule D — for reporting information about individuals under Part I Item 12;
   - Schedule E — for continuing responses to Part I items;
   - Schedule F — for continuing responses to Part II items;
   - Schedule G — for the balance sheet required by Part II Item 14; and
   - Schedule H — for satisfaction of the brochure rule by sponsors of wrap fee programs.

3. **Format**

   - Type all information.
   - Give all individual names in full, including full middle names.
   - Use only Form ADV and its Schedules or a reproduction of them.

4. **Signature**

   - All filings and amendments must be filed with a signed execution page (page 1).
   - Each copy filed with the Securities and Exchange Commission and any jurisdiction must be manually signed.

If applicant is	Form ADV should be signed by
• a sole proprietor	the proprietor
• a partnership	a general partner for the partnership
• a corporation	an authorized principal officer for the corporation
• any other organization	the managing agent (an authorized person that participates in managing or directing applicant's affairs)

5. **General Definitions** (Additional definitions appear in Part I Item 11 and Part II.)

   - Applicant — The investment adviser applying on or amending this Form.
   - Client — An investment advisory client of the applicant.
   - Control — The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company. (This definition is used solely for the purpose of Form ADV.)

SEC 1707 (6-94)

- Custody — A person has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. An adviser has custody, for example, if it has a general power of attorney over a client's account or has signatory power over a client's checking account. (The definition and examples are for the convenience of registrants. Depending on the facts and circumstances, other situations also may involve custody.)
- Jurisdiction — Any non-Federal government or regulatory body in the United States, or Puerto Rico.
- Person — An individual, partnership, corporation or other organization.
- Related person — Any officer, director or partner of applicant or any person directly or indirectly controlling, controlled by or under common control with the applicant, including any non-clerical, non-ministerial employee.
- Self-regulatory organizations — Any national securities or commodities exchange or registered association, or registered clearing agency.

6. **Continuation Sheets** — Schedules E and F provide additional space for continuing Form ADV items (Schedule E for Part I; Schedule F for Part II) but not for continuing Schedules A, B, C, D, G or H. To continue Schedules A, B, C, D and G, use copies of the schedule being continued. The response to Schedule H should be included as a separate document attached to the Schedule.

7. **SEC Filings**

   - Submit filings in triplicate to the Securities and Exchange Commission, Washington, D.C. 20549. To register, submit a check or money order for $150 payable to the Securities and Exchange Commission. This fee is non-refundable. There is no fee for amendments.
   - **Non-Residents** — Rule 0-2 under the Investment Advisers Act of 1940 [17 CFR 275.0-2] covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204-2(j) under the Investment Advisers Act of 1940 [17 CFR 275.204-2] covers the notice of undertaking on books and records non-residents must file with Form ADV.
   - **Updating.** Federal law requires filing amendments:

     — promptly for *any* changes in:

     Part I — Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;

     — Promptly for *material* changes in:

     Part I — Items 9 and 10, all items of Part II except Item 14, and all Items of Schedule H;

     — within 90 days of the end of the fiscal year for any other changes.

   - **Federal Information Law and Requirements** — Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number, which aids identifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 USC 1001 and 15 USC 80b-17.

8. **Filings in Jurisdictions** — Consult the requirements of each jurisdiction in which you are filing to determine its requirements for, among other things:

   - filings
   - updates
   - financial statements
   - bonding
   - examinations and qualifications
   - photographs and fingerprints
   - limitations on advisory fees

   Information on a jurisdiction's requirements is available from its Securities Administrator. For the address and telephone number of the Securities Adminstrator in a jurisdiction, contact the North American Securities Administrators Association, Inc., One Massachusetts Ave., N.W., Suite 310, Washington, D.C. 20001, (202) 737-0900.

9. **Sponsors of Wrap Fee Programs** — Sponsors of wrap fee programs must provide clients and prospective clients of wrap fee programs with a document containing the information required by Schedule H.

   - **Wrap Fee Programs** — A wrap fee program is any program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

   - **Sponsors** — A sponsor of a wrap fee program is any applicant that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

   The document prepared in response to Schedule H must be provided to clients of the wrap fee program in lieu of Part II (or the document containing the information required by Part II), which the sponsor is require to provide to other advisory clients. Part II and Schedule F need only contain an abbreviated narrative discussion of a sponsor's wrap fee programs, although responses to check-the-box questions in Part I and Part II should reflect the applicant's wrap fee programs.

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	May 31, 1997
Estimated average burden hours per response	.9.01

FORM ADV
Part I - Page 1

Uniform Application for Investment Adviser Registration

This filing is an: ☐ Initial Application
or an: ☐ Amendment

If this filing is an Amendment:
- Give the Applicant's SEC File Number 801-_____
- Is Applicant now active in business as an Investment Adviser? Yes ☐ No ☐

WARNING: Failure to complete this Form accurately and keep it current subjects applicant to administrative, civil and criminal penalties.

1. A. Applicant's full name (If sole proprietor, state last, first and middle name):

B. Name under which business is conducted, if different:

C. If business name is being amended, give previous name:

2. A. Principal place of business: (Number and Street — Do not use P.O. Box Number) (City) (State) (Zip Code)

B. Hours business is conducted at this location:
from _____ to _____

C. Telephone Number at this location: (Area Code) (Telephone Number)

D. Mailing address, if different from address given in 2A: (Number and Street or P.O. Box Number) (City) (State) (Zip Code)

E. Is the address in Item 2A or 2D being amended in this filing? Yes ☐ No ☐

F. On Schedule E give the addresses and telephone numbers of all offices at which applicant's investment advisory business is conducted, other than the one given in Item 2A.

3. A. If books and records required by Section 204 of the Investment Advisers Act of 1940 are kept somewhere other than at the principal place of business given in Item 2A, give the following information (if kept in more than one place, give additional names, addresses and hours of business on Schedule E):

Name and address of entity where books and records are kept:

(Number and Street) (City) (State) (Zip Code)

B. Hours business is conducted at this location:
from _____ to _____

C. Telephone Number at this location: (Area Code) (Telephone Number)

EXECUTION

For the purpose of complying with the laws of the State(s) I have marked in Item 7 relating to the giving of investment advice, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this Form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date:	Name of Applicant:	By (Signature):
Typed Name and Title:		
Subscribed and sworn before me this _____ day of _____ 19____		
By:		
My commission expires	County of	State of

Answer all items.

FORM ADV
Part I - Page 2

Applicant:	SEC File Number: 801-	Date:

4. A. Persons to contact for further information about this Form: (Name) (Title)

B. Mailing Address (Number and Street, City, State, Zip Code): | Area Code and Telephone Number: ( )

5. A. Applicant consents that notice of any proceeding before the Securities and Exchange Commission or a jurisdiction in connection with its investment adviser registration may be given by registered or certified mail or confirmed telegram to: (Last Name) (First Name) (Middle Name)

B. (Number and Street) (City) (State) (Zip Code) | 6. Applicant's fiscal year ends: (Month) (Day)

7. In the box below, give status of applicant's investment adviser registration by indicating:
"1" for pending
"2" for registered
"3" for withdrawn before registration within the last 10 years
"4" for previously registered within the last 10 years

Securities and Exchange Commission ____

AL ____ AK ____ AZ ____ AR ____ CA ____ CO ____ CT ____ DE ____ DC ____ FL ____ GA ____ HI ____ ID ____
IL ____ IN ____ IA ____ KS ____ KY ____ LA ____ ME ____ MD ____ MA ____ MI ____ MN ____ MS ____ MO ____
MT ____ NE ____ NV ____ NH ____ NJ ____ NM ____ NY ____ NC ____ ND ____ OH ____ OK ____ OR ____ PA ____
RI ____ SC ____ SD ____ TN ____ TX ____ UT ____ VT ____ VA ____ WA ____ WV____ WI ____ WY____ Puerto Rico ____
Other (Specify): ____

8. Applicant is a (check box that applies and complete those items):

A. ☐ CORPORATION - Complete Schedule A.	(1) Date of incorporation (Month, Day, Year):	(2) Jurisdiction where incorporated:		
B. ☐ PARTNERSHIP - Complete Schedule B.	(1) Date of establishment (Month, Day, Year):	(2) Current legal address (Number, Street, City, State, Zip Code):		
C. ☐ SOLE PROPRIETORSHIP	(1) Date business began (Month, Day, Year):	(2) Current residence address of proprietor: (Number, Street, City, State, Zip Code)	(3) Social Security No.	
D. ☐ Other - Specify ____ Complete Schedule C	(1) Date of establishment (Month, Day, Year):	(2) Current legal address (Number, Street, City, State, Zip Code):		

9. Is the applicant taking over the business of a registered investment adviser? (If yes, describe the transfer on Schedule E, including the transfer date, and predecessor's full name, IRS employer number and SEC file number) ..... Yes ☐ No ☐

10. A. Does any person not named in Item 1A or Schedules A, B, or C, through agreement or otherwise, control the management or policies of applicant? ..... Yes ☐ No ☐

(If yes, state on Schedule E the exact name of each person and describe the basis for the person's control.)

B. Is the applicant financed by a person not named in Items 1A or Schedule A, B, or C other than by: (1) a public offering under the Securities Act of 1933; (2) credit given in the ordinary course of business by banks, suppliers or others; or (3) a satisfactory subordination agreement under Securities Exchange Act of 1934 Rule 15c3-1 (17 CFR 240.15c3-1)? ..... Yes ☐ No ☐

(If yes, state on Schedule E the exact name of each person and describe the arrangement through which financing is made available, including the amount.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 3	Applicant:	SEC File Number: 801-	Date:

11. Disciplinary questions. Definitions:

- Advisory affiliate — A person named in Items 1A, 10A or Schedules A, B or C; or an individual or firm that directly or indirectly controls or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions.
- Investment or investment-related — Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank or savings and loan association).
- Involved — Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

A. In the past ten years has the applicant or an advisory affiliate been convicted of or pleaded guilty or nolo contendre ("no contest") to:

(1) a felony or misdemeanor involving:

- investment or an investment-related business
- fraud, false statements, or omissions
- wrongful taking of property or
- bribery, forgery, counterfeiting, or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any court:

(1) in the past ten years, enjoined the applicant or an advisory affiliate in connection with any investment-related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or an advisory affiliate was involved in a violation of investment-related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or an advisory affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or an advisory affiliate to have been involved in a violation of its regulations or statutes? Yes ☐ No ☐

(3) found the applicant or an advisory affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or an advisory affiliate's registration or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency or any state regulatory agency:

(1) ever found the applicant or an advisory affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or an advisory affiliate to have been involved in a violation of investment regulations or statutes? ..... Yes ☐ No ☐

(3) ever found the applicant or an advisory affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) in the past ten years, entered an order against the applicant or an advisory affiliate in connection with an investment-related activity? ..... Yes ☐ No ☐

(5) ever denied, suspended, or revoked the applicant's or an advisory affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? Yes ☐ No ☐

(6) ever revoked or suspended the applicant's or an advisory affiliate's license as an attorney or accountant? .. Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part I - Page 4

Applicant:	SEC File Number: 801-	Date:

E. Has any self-regulatory organization or commodities exchange ever:

		Yes	No
(1)	found the applicant or an advisory affiliate to have made a false statement or omission?	☐	☐
(2)	found the applicant or an advisory affiliate to have been involved in a violation of its rules?	☐	☐
(3)	found the applicant or an advisory affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4)	disciplined the applicant or an advisory affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities?	☐	☐

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or an advisory affiliate related to investments or fraud? Yes ☐ No ☐

G. Is the applicant or an advisory affiliate now the subject of any proceeding that could result in a 'yes' answer to parts A-F of this item? Yes ☐ No ☐

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? Yes ☐ No ☐

I. Does the applicant have any unsatisfied judgments or liens against it? Yes ☐ No ☐

J. Has the applicant or an advisory affiliate of the applicant ever been a securities firm or an advisory affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? Yes ☐ No ☐

K. Has the applicant, or an officer, director or person owning 10% or more of the applicant's securities failed in business, made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt? Yes ☐ No ☐

If a 'yes' answer on Item 11 involves:

- an individual, complete a Schedule D for the individual
- a partnership, corporation or other organization, on Schedule E give the following details of any court or regulatory action:
  - the organization and individuals named
  - the title and date of the action
  - the court or body taking the action
  - a description of the action.

12. Individual's Education, Business and Disciplinary Background. Complete a Schedule D for each individual who is:

A. The applicant, named in Part I Item 1A

B. A control person named in Part I Item 10

C. An owner of at least 10% of a class of applicant's equity securities

D. An officer, director, partner, or individual with similar status of applicant, described in Schedule A Item 2a, Schedule B Item 2, or Schedule C Item 2

E. A member of the applicant's investment committee that determines general investment advice to be given to clients

F. If applicant has no investment committee, an individual who determines general investment advice (if more than five, complete for their supervisors only)

G. An individual giving investment advice on behalf of the applicant in the jurisdiction in which this application is filed

H. An individual reporting a 'yes' answer to the disciplinary question, Part I Item 11

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 5	Applicant:	SEC File Number: 801-	Date:

13. Does applicant have custody (see definition in instructions) of any advisory client:

	Yes	No
A. funds	☐	☐
B. securities	☐	☐

C. If either answer is yes, the value of those funds and securities at the end of applicant's last fiscal year was:

(1) ☐ under $100,000
(2) ☐ $100,000 to $1,000,000
(3) ☐ $1,000,000 to $5,000,000
(4) ☐ Over $5,000,000

14. Do any of applicant's related persons have custody (see definition in instructions) of any advisory client:

	Yes	No
A. funds	☐	☐
B. securities	☐	☐

If either is yes:

	Yes	No
C. is that person a registered broker-dealer qualified to take custody under Section 15 of the Securities Exchange Act of 1934?	☐	☐

D. the value of those funds and securities at the end of applicant's last fiscal year was:

(1) ☐ under $100,000
(2) ☐ $100,000 to $1,000,000
(3) ☐ $1,000,001 to $5,000,000
(4) ☐ Over $5,000,000

	Yes	No
15. Does applicant require prepayment of fees of more than $500 per client and more than 6 months in advance?	☐	☐

16. With a few exceptions, the "brochure rule" (Advisers Act Rule 204-3) requires that clients must be given information about the investment adviser. Will applicant be giving clients (other than wrap fee clients to be given Schedule H):

	Yes	No
A. Part II of this Form ADV?	☐	☐
B. Another document that includes at least the information contained in Form ADV Part II?	☐	☐

17. A. The number of employees of applicant who perform investment advisory functions (including research, but excluding unrelated functions such as accounting) is: (check only one box)

(1) ☐ 1 person, part time
(2) ☐ 1 person primarily involved in providing investment advisory services
(3) ☐ 2-9 persons
(4) ☐ 10 or more persons

B. The number of clients to whom applicant provided advisory services during the last fiscal year was:

(1) ☐ 14 or fewer
(2) ☐ 15 to 50
(3) ☐ 51 to 100
(4) ☐ 101 to 500
(5) ☐ over 500

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 6	Applicant:	SEC File Number: 801-	Date:

18. Does applicant manage client securities portfolios on a discretionary basis? ..... Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year these accounts:

A. numbered _____. B. totaled in aggregate market value, rounded to nearest thousand ..... $_____000.00

19. Does applicant manage or supervise client securities portfolios on a non-discretionary basis? ..... Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year these accounts:

A. numbered _____. B. totaled in aggregate market value, rounded to nearest thousand ..... $_____000.00

20. Does applicant hold itself out as providing financial planning or some similarly termed services to clients? ..... Yes ☐ No ☐

If yes, during the last fiscal year applicant provided financial planning services to clients:

A. who numbered:

(1) ☐ 14 or fewer
(2) ☐ 15 to 50
(3) ☐ 51 to 100
(4) ☐ 101 to 500
(5) ☐ over 500

B. whose investments in financial products based on those services totaled:

(1) ☐ under $100,000
(2) ☐ $100,000 to $1,000,000
(3) ☐ $1,000,001 to $5,000,000
(4) ☐ over $5,000,000

21. Did applicant recommend securities to clients during its last fiscal year in which the applicant acted (itself or through a related person) as an underwriter, general or managing partner, or offeree representative, or had any ownership or sales interest (other than the receipt of normal and customary sales commissions as a broker or brokers representative)? ... Yes ☐ No ☐

If yes, the approximate value of securities so recommended during its last fiscal year is:

A. ☐ Under $50,000
B. ☐ $50,000 to $250,000
C. ☐ $250,001 to $1,000,000
D. ☐ over $1,000,000

22. Attach to this Form any financial statements required by the jurisdiction in which applicant is filing, other than the balance sheet required by Part II Item 14.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV
Part II · Page 1

Uniform Application for Investment Adviser Registration

OMB APPROVAL	
OMB Number:	3235-0049
Expires:	May 31, 1997
Estimated average burden hours per response	9.01

Name of Investment Adviser:						
Address:	(Number and Street)	(City)	State)	(Zip Code)	Area Code: ( )	Telephone Number:

This part of Form ADV gives information about the investment adviser and its business for the use of clients. The information has not been approved or verified by any governmental authority.

Table of Contents

(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

FORM ADV Part II- Page 2	Applicant:	SEC File Number: 801-	Date:

Definitions for Part II

Related person — Any officer, director or partner of applicant or any person directly or indirectly controlling, controlled by, or under common control with the applicant, including any non-clerical, non-ministerial employee.

Investment Supervisory Services — Giving continuous investment advice to a client (or making investments for the client) based on the individual needs of the client. Individual needs include, for example, the nature of other client assets and the client's personal and family obligations.

1. **A. Advisory Services and Fees.** (check the applicable boxes)

For each type of service provided, state the approximate % of total advisory billings from that service. (See instruction below.)

Applicant:

- ☐ (1) Provides investment supervisory services ..... ____%
- ☐ (2) Manages investment advisory accounts not involving investment supervisory services ..... ____%
- ☐ (3) Furnishes investment advice through consultations not included in either service described above ..... ____%
- ☐ (4) Issues periodicals about securities by subscription ..... ____%
- ☐ (5) Issues special reports about securities not included in any service described above ..... ____%
- ☐ (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities ..... ____%
- ☐ (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities ..... ____%
- ☐ (8) Provides a timing service ..... ____%
- ☐ (9) Furnishes advice about securities in any manner not described above ..... ____%

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates.)

B. Does applicant call any of the services it checked above financial planning or some similar term? ..... Yes ☐ No ☐

C. Applicant offers investment advisory services for: (check all that apply)

- ☐ (1) A percentage of assets under management
- ☐ (2) Hourly charges
- ☐ (3) Fixed fees (not including subscription fees)
- ☐ (4) Subscription fees
- ☐ (5) Commissions
- ☐ (6) Other

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

2. **Types of Clients** — Applicant generally provides investment advice to: (check those that apply)

- ☐ A. Individuals
- ☐ B. Banks or thrift institutions
- ☐ C. Investment companies
- ☐ D. Pension and profit sharing plans
- ☐ E. Trusts, estates, or charitable organizations
- ☐ F. Corporations or business entities other than those listed above
- ☐ G. Other (describe on Schedule F)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II- Page 3	Applicant:	SEC File Number: 801-	Date:

3. **Types of Investments.** Applicant offers advice on the following: (check those that apply)

A. Equity Securities
- ☐ (1) exchange-listed securities
- ☐ (2) securities traded over-the-counter
- ☐ (3) foreign issuers

☐ B. Warrants

☐ C. Corporate debt securities (other than commercial paper)

☐ D. Commercial paper

☐ E. Certificates of deposit

☐ F. Municipal securities

G. Investment company securities:
- ☐ (1) variable life insurance
- ☐ (2) variable annuities
- ☐ (3) mutual fund shares

☐ H. Unites States government securities

I. Options contracts on:
- ☐ (1) securities
- ☐ (2) commodities

J. Futures contracts on:
- ☐ (1) tangibles
- ☐ (2) intangibles

K. Interests in partnerships investing in:
- ☐ (1) real estate
- ☐ (2) oil and gas interests
- ☐ (3) other (explain on Schedule F)

☐ L. Other (explain on Schedule F)

4. **Methods of Analysis, Sources of Information, and Investment Strategies.**

A. Applicant's security analysis methods include: (check those that apply)

(1) ☐ Charting
(2) ☐ Fundamental
(3) ☐ Technical
(4) ☐ Cyclical
(5) ☐ Other (explain on Schedule F)

B. The main sources of information applicant uses include: (check those that apply)

(1) ☐ Financial newspapers and magazines
(2) ☐ Inspections of corporate activities
(3) ☐ Research materials prepared by others
(4) ☐ Corporate rating services
(5) ☐ Timing services
(6) ☐ Annual reports, prospectuses, filings with the Securities and Exchange Commission
(7) ☐ Company press releases
(8) ☐ Other (explain on Schedule F)

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

(1) ☐ Long term purchases (securities held at least a year)
(2) ☐ Short term purchases (securities sold within a year)
(3) ☐ Trading (securities sold within 30 days)
(4) ☐ Short sales
(5) ☐ Margin transactions
(6) ☐ Option writing, including covered options, uncovered options or spreading strategies
(7) ☐ Other (explain on Schedule F)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II · Page 4	Applicant:	SEC File Number: 801-	Date:

5. **Education and Business Standards.**

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients? ☐ Yes ☐ No

(If yes, describe these standards on Schedule F.)

6. **Education and Business Background.**

For:

- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name
- year of birth
- formal education after high school
- business background for the preceding five years

7. **Other Business Activities.** (check those that apply)

☐ A. Applicant is actively engaged in a business other than giving investment advice.

☐ B. Applicant sells products or services other than investment advice to clients.

☐ C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F.)

8. **Other Financial Industry Activities or Affiliations.** (check those that apply)

☐ A. Applicant is registered (or has an application pending) as a securities broker-dealer.

☐ B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.

C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:

☐ (1) broker-dealer
☐ (2) investment company
☐ (3) other investment adviser
☐ (4) financial planning firm
☐ (5) commodity pool operator, commodity trading adviser or futures commission merchant
☐ (6) banking or thrift institution
☐ (7) accounting firm
☐ (8) law firm
☐ (9) insurance company or agency
☐ (10) pension consultant
☐ (11) real estate broker or dealer
☐ (12) entity that creates or packages limited partnerships

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest? ☐ Yes ☐ No

(If yes, describe on Schedule F the partnerships and what they invest in.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II - Page 5	Applicant:	SEC File Number: 801-	Date:

9. **Participation or Interest in Client Transactions.**

Applicant or a related person: (check those that apply)

☐ A. As principal, buys securities for itself from or sells securities it owns to any client.

☐ B. As broker or agent effects securities transactions for compensation for any client.

☐ C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.

☐ D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.

☐ E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

10. **Conditions for Managing Accounts.** Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services *and* impose a minimum dollar value of assets or other conditions for starting or maintaining an account? ..... Yes ☐ No ☐

(If yes, describe on Schedule F.)

11. **Review of Accounts.** If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. **For reviews**, include their frequency, different levels, and triggering factors. **For reviewers**, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

B. Describe below the nature and frequency of regular reports to clients on their accounts.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II · Page 6	Applicant:	SEC File Number: 801-	Date:

12. Investment or Brokerage Discretion.

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

	Yes	No
(1) securities to be bought or sold?	☐	☐
(2) amount of the securities to be bought or sold?	☐	☐
(3) broker or dealer to be used?	☐	☐
(4) commission rates paid?	☐	☐

B. Does applicant or a related person suggest brokers to clients? Yes ☐ No ☐

For each yes answer to A describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it; and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

13. Additional Compensation.

Does the applicant or a related person have any arrangements, oral or in writing, where it:

	Yes	No
A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients?	☐	☐
B. directly or indirectly compensates any person for client referrals?	☐	☐

(For each yes, describe the arrangements on Schedule F.

14. Balance Sheet. Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities; or
- requires prepayment of more than $500 in fees per client and 6 or more months in advance

	Yes	No
Has applicant provided a Schedule G balance sheet?	☐	☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of Form ADV FOR CORPORATIONS	Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Item 8.)

1. This Schedule requests information on the owners and executive officers of the applicant.

2. Please complete for:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and

   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the applicant.

3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited and special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5% A - 5% up to 10% B - 10% up to 25% C - 25% up to 50% D - 50% up to 75% E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this Form.

FULL NAME Last	First	Middle	Beginning Date Month	Year	Title or Status	Ownership Code	Control Person	CRD No., or, if none Social Security Number	OFFICIAL USE ONLY

List below names reported on the most recent previous filing under this item that are being DELETED:

FULL NAME Last	First	Middle	Ending Date Month	Year	CRD No., or, if none Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule B of Form ADV FOR PARTNERSHIPS	Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part 1 Item 8.)

1. This Schedule requests information on the owners and partners of the applicant.

2. Please complete for all general partners and with respect to limited and special partners all those who have contributed directly or indirectly through intermediaries, 5% or more of the partnership's capital.

3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited and special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5% A - 5% up to 10% B - 10% up to 25% C - 25% up to 50% D - 50% up to 75% E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this Form.

FULL NAME Last	First	Middle	Beginning Date Month	Year	Title or Status	Ownership Code	Control Person	CRD No., or, if none Social Security Number	OFFICIAL USE ONLY

List below names reported on the most recent previous filing under this item that are being DELETED:

FULL NAME Last	First	Middle	Ending Date Month	Year	CRD No., or, if none Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule C of Form ADV for OTHER THAN Partnerships and Corporations

Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Item 8.)

1. This Schedule requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the person's authority and beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Astrisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.

FULL NAME Last	First	Middle	RELATIONSHIP Beginning Date Month	Year	Title or Status	CRD No., or, if none Social Security Number	Description of Authority and Beneficial Interest

List below names reported on the most recent previous filing under this item that are being DELETED:

FULL NAME Last	First	Middle	Ending Date Month	Year	CRD No., or, if none Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule D of Form ADV Page 1	Applicant:	SEC File Number: 801-	Date:

(Answers for Form ADV Part I Items 11 and 12.)

This Schedule is submitted for an individual who is: (Check all boxes that apply)

☐ A. the applicant, named in Part I Item 1A

☐ B. a control person, named in Part I Item 10A

☐ C. an owner of at least 10% of a class of applicant's equity securities

☐ D. an officer or director, partner, or individual with similar status of applicant, described in Schedule A Item 2a, Schedule B Item 2, or Schedule C Item 2

☐ E. a member of the applicant's investment committee that determines general investment advice to be given to clients

☐ F. if applicant has no investment committee, an individual who determines general client advice (if more than five, complete for their supervisors only)

☐ G. an individual giving investment advice on behalf of the applicant in the jurisdictions checked below:

AL ___ AK ___ AZ ___ AR ___ CA ___ CO ___ CT ___ DE ___ DC ___ FL ___ GA ___ HI ___ ID ___
IL ___ IN ___ IA ___ KS ___ KY ___ LA ___ ME ___ MD ___ MA ___ MI ___ MN ___ MS ___ MO ___
MT ___ NE ___ NV ___ NH ___ NJ ___ NM ___ NY ___ NC ___ ND ___ OH ___ OK ___ OR ___ PA ___
RI ___ SC ___ SD ___ TN ___ TX ___ UT ___ VT ___ VA ___ WA ___ WV___ WI ___ WY___ Puerto Rico ___
Other: _____
(Specify)

☐ H. involved in any yes answer to the disciplinary question, Part I Item 11.

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule D of Form ADV Page 2

Applicant:	SEC File Number: 801-	Date:

(Answers for Form ADV Part I Items 11 and 12.)

1. Applicant investment adviser: (see Part I Item 1A)			IRS Empl. Ident. No.:
2. Individual's full name for whom this Schedule is being completed:	Social Security Number:	CRD No., if any:	IRS Empl. Ident. No.:

3. (a) Residence of individual: (Number and Street) (City) (State) (Zip Code)

(b) Birth Date:	(c) City:	(d) State or Province:	(e) Country:

4. NAMES USED. List all names other than the one given in Item 2 above that the individual has used, including maiden names.
(Last) (First) (Middle)

5. EDUCATION. Start with last high school attended. If no degree received, state "none."

School: (Name, City and State)	Years Attended	Year Graduated	For College and above Degree	Major

6. BUSINESS BACKGROUND. Provide complete consecutive statement of all employment for the past ten years, beginning with the most recent position first.

Name of Firm and Address	Kind of Business	Exact Nature of Connection or Employment	Beginning Date Month	Beginning Date Year	Ending Date Month	Ending Date Year

7. EXAMINATIONS/PROFESSIONAL DESIGNATIONS. List all jurisdiction, self-regulatory organization, and professional examinations and designations. Give examination or designation name (include any examination's title and number), body giving it, and date taken or conferred. If examination was waived, give details.

8. PROCEEDINGS. For each 'yes' answer to Part I Item 11 involving the individual, give the following details of any court or regulatory action:

- the adviser and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule E of Form ADV Continuation Sheet for Form ADV Part I	**Applicant:**	SEC File Number: 801-	Date:

(Do not use this Schedule as a continuation sheet for Form ADV Part II or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of Form ADV Continuation Sheet for Form ADV Part II	Applicant:	SEC File Number: 801-	Date:

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule G of Form ADV Balance Sheet	Applicant:	SEC File Number: 801-	Date:

(Answers in Response to Item 4 of Form ADV-S, or Form ADV Part II Item 14.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:

Instructions

1. The balance sheet must be:

   A. Prepared in accordance with generally accepted accounting principles

   B. Audited by an independent public accountant

   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

2. Securities included at cost should show their market or fair value parenthetically.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et seq.).

4. Sole proprietor investment advisers:

   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities

   B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule H of Form ADV Page 1	Applicant:	SEC File Number: 801-	DATE: MM/DD/YY

(for sponsors of wrap fee programs)

Name of wrap fee program or programs described in attached brochure:

1. *Applicability of Schedule.* This schedule must be completed by applicants that are compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program ("sponsors"). A wrap fee program is any program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

2. *Use of Schedule.* This Schedule sets forth the information the sponsor must include in the wrap fee brochure it is required to deliver or offer to deliver to clients and prospective clients of its wrap fee programs under Rule 204-3 under the federal Advisers Act and similar rules of the jurisdictions. The wrap fee brochure prepared in response to this Schedule must be filed with the Commission and the jurisdictions as part of Form ADV by completing the identifying information on this Schedule and attaching the brochure. Brochures should be prepared separately, not on copies of this Schedule. Any wrap fee brochure filed with the Commission as part of an amendment to Form ADV shall contain in the upper right hand corner of the cover page the sponsor's registration number (801-).

3. *General Contents of Brochure.* Unlike Parts I and II of this form, this Schedule is not organized in "check-the-box" format. These instructions, including the requests for information in Item 7 below, should not be repeated in the brochure. Rather, this Schedule describes minimum disclosures that must be made in the brochure to satisfy the sponsor's duty to disclose all material facts about the sponsor and its wrap fee programs. **Nothing in this Schedule relieves the sponsor from any obligation under any provision of the federal Advisers Act or rules thereunder, or other federal or state law to disclose information to its advisory clients or prospective advisory clients not specifically required by this Schedule.**

4. *Multiple Sponsors.* If two or more persons fall within the definition of "sponsor" in Item 1 above for a single wrap fee program, only one such sponsor need complete the Schedule. The sponsors may choose among themselves the sponsor that will complete the Schedule.

5. *Omission of Inapplicable Information.* Any information not specifically required by this Schedule that is included in the brochure should be applicable to clients and prospective clients of the sponsor's wrap fee programs. If the sponsor is required to complete this Schedule with respect to more than one wrap fee program, the sponsor may omit from the brochure furnished to clients and prospective clients of any wrap fee program or programs information required by this Schedule that is not applicable to clients or prospective clients of that wrap fee program or programs. If a sponsor of more than one wrap fee program prepares separate wrap fee brochures for clients of different programs, each brochure prepared must be filed with the Commission and the jurisdictions attached to a separate copy of this Schedule. Each such brochure must state that the sponsor sponsors other wrap fee programs and state how brochures for those programs may be obtained.

6. *Updating.* Sponsors are required to file an amendment to the brochure promptly after any information in the brochure becomes materially inaccurate. Amendments may be made by use of a "sticker," *i.e.*, a supplement affixed to the brochure that indicates what information is being added or updated and states the new or revised information, as long as the resulting brochure is readable. Stickers should be dated and should be incorporated into the text of the brochure when the brochure itself is revised.

7. *Contents of Brochure.* Include in the brochure prepared in response to this Schedule:

   (a) on the cover page, the sponsor's name, address, telephone number, and the following legend in bold type or some other prominent fashion:

   This brochure provides clients with information about [name of sponsor] and the [name of program or programs] that should be considered before becoming a client of the [name of program or programs]. This information has not been approved or verified by any governmental authority.

   (b) a table of contents reflecting the subject headings in the sponsor's brochure;

   (c) the amount of the wrap fee charged for each program or, if fees vary according to a schedule established by the sponsor, a table setting forth the fee schedule, whether such fees are negotiable, the portion of the total fee (or the range of such amounts) paid to persons providing advice to clients regarding the purchase or sale of specific securities under the program ("portfolio managers"), and the services provided under each program (including the types of portfolio management services);

Schedule H of Form ADV Page 2	Applicant:	SEC File Number: 801-	DATE: MM/DD/YY

(d) a statement that the program may cost the client more or less than purchasing such services separately and a statement of the factors that bear upon the relative cost of the program (*e.g.*, the cost of the services if provided separately and the trading activity in the client's account);

(e) if applicable, a statement that the person recommending the program to the client receives compensation as a result of the client's participation in the program, that the amount of this compensation may be more than what the person would receive if the client participated in other programs of the sponsor or paid separately for investment advice, brokerage, and other services, and that the person may therefore have a financial incentive to recommend the wrap fee program over other programs or services;

(f) a description of the nature of any fees that the client may pay in addition to the wrap fee and the circumstances under which these fees may be paid (including, if applicable, mutual fund expenses and mark-ups, mark-downs or spreads paid to market makers from whom securities were obtained by the wrap fee broker);

(g) how the program's portfolio managers are selected and reviewed, the basis upon which portfolio managers are recommended or chosen for particular clients, and the circumstances under which the sponsor will replace or recommend the replacement of the portfolio manager;

(h) (1) if applicable, a statement to the effect that portfolio manager performance information is not reviewed by the sponsor or a third party and/or that performance information is not calculated on a uniform and consistent basis,

(2) if performance information is reviewed to determine its accuracy, the name of the party who reviews the information and a brief description of the nature of the review,

(3) a reference to any standards (*i.e.*, industry standards or standards used solely by the sponsor) under which performance information may be calculated;

(i) a description of the information about the client that is communicated by the sponsor to the client's portfolio manager, and how often or under what circumstances the sponsor provides updated information about the client to the portfolio manager;

(j) any restrictions on the ability of clients to contact and consult with portfolio managers;

(k) in narrative text, the information required by Items 7 and 8 of Part II of this form and, as applicable to clients of the wrap fee program, the information required by Items 2, 5, 6, 9A and C, 10, 11, 13 and 14 of Part II;

(l) if any practice or relationship disclosed in response to Item 7, 8, 9A, 9C and 13 of Part II presents a conflict between the interests of the sponsor and those of its clients, explain the nature of any such conflict of interest; and

(m) if the sponsor or its divisions or employees covered under the same investment adviser registration as the sponsor act as portfolio managers for a wrap fee program described in the brochure, a brief, general description of the investments and investment strategies utilized by those portfolio managers.

8. ***Organization and Cross References.*** Except for the cover page requirements in Item 7(a) above, information contained in the brochure need not follow the order of the items listed in Item 7. However, the brochure should not be organized in such a manner that important information called for by the form is obscured.

Set forth below the page(s) of the brochure on which the various disclosures required by Item 7 are provided.

	Page(s)		*Pages(s)*		*Page(s)*
Item 7(a)	cover	Item 7(f)		Item 7(j)	
#7(b)		#7(g)		#7(k)	
#7(c)		#7(h)		#7(l)	
#7(d)		#7(i)		#7(m)	
#7(e)					

VA.R. Doc. No. R95-554; Filed June 12, 1995, 9:47 a.m.

* * * * * * * *

Title of Regulation: **Virginia Retail Franchising Act Rules and Forms (REPEALED).**

VA.R. Doc. No. R95-555; Filed June 12, 1995, 9:46 a.m.

Title of Regulation: **The Uniform Franchise Offering Circular Rules.**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

Effective Date: July 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Mr. Don Gouldin, State Corporation Commission, P.O. Box 1197, Richmond, VA 23209, telephone (804) 371-9051. Copying charges are $1.00 for the first two pages, and 50¢ for each page thereafter.

AT RICHMOND, JUNE 8, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC950020

Ex Parte, in re: Promulgation of
rules pursuant to Virginia Code
§ 13.1-572 (Retail Franchising Act)

ORDER AMENDING AND ADOPTING RULES

On or about April 17, 1995, the Division of Securities and Retail Franchising mailed to all franchisors registered or pending registration under the Retail Franchising Act and to other interested parties notice of the proposed repeal and replacement of all of the existing rules and forms adopted under the Act and of the opportunity to file comments and request to be heard with respect to any objections to the proposed changes. Similar notice was published in several newspapers in general circulation throughout the Commonwealth. This notice, as well as the text of the proposed new rules and forms, also was published in "The Virginia Register of Regulations," Vol. 11, Issue 16, May 1, 1995, pp. 2607-2652. One person filed comments but did not request to be heard, and no hearing was held.

The Commission, upon consideration of the proposals, the comments submitted, and the recommendations of the Division, is of the opinion and finds that the proposed changes should be adopted as noticed. Accordingly, it is

ORDERED:

(1) That evidence of mailing and publication of notice of the proposed new rules and forms be filed in this case;

(2) That the existing Retail Franchising Act rules and forms be, and they hereby are, repealed as of July 1, 1995, and the rules and forms attached to and made a part of this order be, and they hereby are, adopted and shall become effective as of July 1, 1995; and

(3) That this matter is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following by the Division of Securities and Retail Franchising: Every person who filed comments in this proceeding; the Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, 1231 25th Street, N.W., Washington, D.C. 20037; and, Business Franchise Guide, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.

The Uniform Franchise Offering Circular Rules.

§ 1. Definitions.

"Commission" means Virginia State Corporation Commission.

"Effective date" means the date on which the franchise becomes registered under the provisions of § 13.1-561 of the Code of Virginia.

"Effective registration" means authorization to offer and grant one or more franchises provided that the initial contracts or agreements are substantially identical in their terms or provisions. Whenever the franchisor offers or grants more than one franchise and the resulting contracts or agreements vary substantially in their terms or provisions, separate franchises will be deemed to have been offered or granted and separate registration will be required. For the purpose of this rule, substantial variation in the contract will relate without limitation to different products, services, fees charged, dues imposed, obligations incurred or investments required to be made by contract or agreement.

"Franchise broker" means a person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience are otherwise required to be disclosed in Item 11 in the body of the disclosure document.

"Material change" includes a fact, circumstance, or condition which would have a substantial likelihood of influencing a reasonable prospective franchisee in the making of a decision relating to the purchase of a franchise.

"UFOC" means Uniform Franchise Offering Circular.

"Virginia Retail Franchising Act" means § 13.1-557 et seq. of the Code of Virginia.

§ 2. Preliminary statement.

Follow these rules for each item in franchise applications and disclosures in the UFOC.

The following rules shall be adhered to with respect to applications for registration, applications for renewal of registration, and amendments filed with the commission pursuant to Chapter 8 (§ 13.1-557 et seq.) of Title 13.1 of the Code of Virginia.

§ 3. Original registration application; documents to file.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page (also known as "Facing Page"), Form A;

2. Supplemental Information page(s), Form B;

3. Certification page, Form C;

4. Uniform Consent to Service of Process, Form D;

5. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;

6. Uniform Franchise Offering Circular;

7. Application fee; and

8. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular.

B. Examples of Forms A through D are printed at the end of these rules.

§ 4. Pre-effective and post-effective amendments to the registration.

Upon the occurrence of a material change, the franchisor shall amend the effective registration filed at the commission. An amendment to an application filed either before or after the effective date of registration shall include only the pages containing the information being amended. The information being amended shall be identified by item, shall be underscored in red or identified in some other appropriate manner, and shall be verified by means of the prescribed certification page (Form C). Each amendment shall be accompanied by a facing page (Form A) on which the applicant shall indicate that the filing is an amendment. The required fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

§ 5. Expiration; application to renew the registration.

A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute. The registrant shall file a renewal application by submitting a facing page (Form A) accompanied by a UFOC and the required fee. Alterations from the text of the UFOC previously filed as a part of registration shall be indicated by means of underscoring.

§ 6. Automatic effectiveness.

An application to amend or renew an effective registration which is accompanied by an executed Affidavit of Compliance on Form E and filed in accordance with § 4 or § 5, above, shall become effective immediately upon receipt by the commission (or upon such later date as the applicant indicates in writing to the commission) unless one or more of the following is applicable:

1. The franchisor has, since the effective date of its most recent application, been convicted of any crime or been held liable in any civil action by final judgment (if such crime or civil action involved a felony, an act of fraud, a misdemeanor involving a franchise, or a violation of the Virginia Retail Franchising Act).

2. The franchisor is insolvent or in danger of becoming insolvent, either in the sense that its liabilities exceed its assets (determined in accordance with "generally accepted accounting principles") or in the sense that it cannot meet its obligations as they mature.

3. The revised disclosure document submitted in connection with the application to amend/renew is not in compliance with the requirements of § 8 E, below.

If the application does not qualify for automatic effectiveness, it shall become effective as of the date it is granted by the commission.

§ 7. Consent to service of process.

If the franchisor is not a Virginia corporation or a foreign corporation authorized to transact business in the Commonwealth of Virginia, the franchisor shall execute the Consent to Service of Process on Form D. If the franchisor is a Virginia corporation or a foreign corporation authorized to transact business in the Commonwealth of Virginia, a Consent to Service of Process is not necessary.

The Division of Securities and Retail Franchising does not handle the qualification of foreign corporations. Qualification of foreign corporations is handled by the Clerk of the State Corporation Commission (804) 371-9672, P. O. Box 1197, Richmond, Virginia 23209. Qualification must be completed prior to the filing of the application.

§ 8. Disclosure requirements; definition of disclose.

A. "Disclose" means to state the material facts in an accurate and unambiguous manner. Disclosure shall be clear, concise and in a narrative form that is understandable by a person unfamiliar with the franchise business. For clear and concise disclosure avoid legal antiques[1] and repetitive phrases.[2] When possible, use active, not passive voice.[3]

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[1] Avoid these legal antiques. Preferred substitutes are in parentheses: aforesaid; arising from (from); as between; as an inducement for; as part of the consideration; as set forth in (in); as the case may be; at a later point in time; binding upon and inure; commence (begin); condition precedent (before); condition subsequent (after); consist of (are); engaged in the business of offering (offers); for and in consideration of the grant of the franchise; for a period of (for); foregoing; forthwith; from time to time; further; hereby; herein; hereinafter; hereto; heretofore; if necessary; in the event (if); including but not limited to (including); in any manner whatsoever; including without limitation (including); in conjunction with; in connection with; in no event; in the event of (if); in whole or in part; it will be specifically understood that; manner in which; not later than (within, by); not less than (at least); notwithstanding; offers to an individual, corporation or partnership (offer); on behalf of (for); precedent (before); prescribed (required); prior to (before); provided however (but, unless); provided that (if, unless); purporting to; relating to (under); subsequent (after); such (this); so as to (to); so long as (while); thereafter; therefrom; thereof; thereunder; without limiting the foregoing; whatsoever; with respect to.

[2] Avoid repetitive phrases. Preferred substitutes are in parentheses: agrees, acknowledges and recognizes; any and all; are and remain; based upon, related to, or growing out of (because); certified as true and correct (certified); consultation, assistance and guidance (guidance); each and every; equipment, furniture, supplies and inventory set forth on the equipment list attached as Exhibit __ (items on Exhibit __); necessary and appropriate; sample, test and review (test); and twenty-three (23) (write as 23).

Limit the length and complexity of disclosure through careful organization of information in the disclosure. Avoid technical language and unnecessary detail. Make the format and chronological order consistent within each Item.

B. Since prospective franchisees shall have sufficient disclosure to understand economic commitments and to develop a business plan, Items 5, 6, 7, and 8 of the UFOC shall disclose the minimum and maximum franchisee cost. The franchisor shall provide reasonably available information to allow franchisees to forecast future charges listed in these Items and to be paid to persons who are independent of the franchisor. Future payments to the franchisor shall be specific as is required by individual Items.

C. The disclosure for each UFOC Item shall be separately titled and in the required order. Do not repeat the UFOC question in the offering circular. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required "if applicable," respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

For each Item in the UFOC, type the requirement's Item title and number. Sub-items may be designated by descriptive headings, but do not use sub-item letters and numbers.

D. Additional requirements for disclosure are:

1. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the offering circular.

2. Use 8½ by 11 inch paper for the entire application.

3. When the applicant is a master franchisor seeking to sell subfranchises, references in these requirements and instructions to "franchisee" include the subfranchisor unless the language context requires a different meaning.

4. The offer of subfranchises is an offer separate from the offer of franchises and usually requires a separate registration. A single application may register the sale of single unit and multi-unit franchises if the offering circular is not confusing.

5. When the applicant is a subfranchisor, disclose to the extent applicable the same information concerning the subfranchisor that is required about the franchisor.

6. In offerings by a subfranchisor, "franchisor" means both the franchisor and subfranchisor.

7. The commission may modify or waive these rules or may require additional documentation or information.

8. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.

E. The instructions on the preparation of the UFOC that continue after these provisions use the following format:

1. The title of the item follows the item number. It is capitalized and centered on the page.

2. The "Item" is a restatement of the UFOC item requirement. It is capitalized and follows the title of the item.

3. The "Instruction" appears beneath the item. It explains portions of the item requirements.

4. The "Sample Answer" at the end of each item provides sample disclosures. Double horizontal lines divide the Sample Answer from the Instructions.

§ 9. Requirements for UFOC preparation.

COVER PAGE: The state cover page of the offering circular must state:

1. *The title in boldface type: FRANCHISE OFFERING CIRCULAR*
2. *The franchisor's name, type of business organization, principal business address and telephone number.*
3. *A sample of the primary business trademark, logotype, trade name, or commercial label or symbol under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)*
4. *A brief description of the franchised business.*
5. *The total amounts in Items 5 and 7 of the offering circular: Franchisee's Initial Franchisee Fee or Other Payment and Franchisee's Initial Investment.*
6. *The following statements:*

   Information comparing franchisors is available. Call the state administrators listed in Exhibit ____ or your public library for sources of information.

   Registration of this franchise by a state does not mean that the state recommends it or has verified the information in this offering circular. If you learn that anything in the offering circular is untrue, contact the Federal Trade Commission and (State or Provincial authority).
7. *Effective Date: (Leave blank until notified of effectiveness by state regulatory authority.)*

Cover Page Instructions:

i. Present information in the required order. Except for risk factors or when instructed by the examiner, do not capitalize or underline.

ii. The estimated cash investment should agree with the Item 7 total. This total should represent the franchisee's entire initial investment minus only exclusions allowed by Item 7. Do not state what the total includes.

[3] The preferred phrase is in parentheses: As the franchisor prescribes (you must); being offered (offers); consist of (is); engaged in the business of offering (offer); giving rise to; if it becomes necessary for (if); inure to the benefit of (benefits); is granted the right to (can); is given an opportunity to (can); is required to (must); shall be no less than (a minimum of); shall continue in effect (continues); with the exception of (except).

iii. *Limit the cover page disclosure to one page unless risk factors require additional space. Disclosure on the cover page should be brief. Limit the description of the business to the product or service offered by the franchisor. Unless required by a state regulator, do not disclose financing arrangements or the franchisee's right to use the trademark. Exclude non-required information unless necessary as a risk factor or required by a state regulator.*

iv. *If applicable, disclose the following risk factors using the following language on the cover:*

1. *THE FRANCHISE AGREEMENT PERMITS THE FRANCHISEE (TO SUE) (TO ARBITRATE WITH) _____ ONLY IN _____. OUT OF STATE (ARBITRATION) (LITIGATION) MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE (TO SUE) (TO ARBITRATE WITH) _____ IN _____ THAN IN YOUR HOME STATE.*
2. *THE FRANCHISE AGREEMENT STATES THAT _____ LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.*
3. *THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.*

v. *In addition to the above language, disclose other risk factors required by a state regulator.*

vi. *Use capital letters for risk factor disclosure.*

vii. *In multi-state offerings in which the franchisor uses a single offering circular, refer to an exhibit to the offering circular for a list of States or Provincial authorities and effective dates.*

Sample Cover Page:

(Logo) *Franchise Offering Circular*

Belmont Mufflers, Inc.
A Minnesota Corporation
First Street
Jackson, Minnesota 55000
(612) 266-3430

The franchisee will repair and install motor vehicle exhaust systems.

The initial franchise fee is $10,000. The estimated initial investment required ranges from $132,700 to $160,200. This sum does not include rent for the business location.

Risk Factors:

THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS BE SETTLED BY ARBITRATION IN MINNESOTA. OUT OF STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN MINNESOTA THAN IN YOUR HOME STATE.

Information about comparisons of franchisors is available. Call the state administrators listed in Exhibit ___ or your public library for sources of information.

Registration of this franchise with the state does not mean that the state recommends it or has verified the information in this offering circular. If you learn that anything in this offering circular is untrue, contact the Federal Trade Commission and (State or Provincial authority).

Effective Date:

TABLE OF CONTENTS: INCLUDE A TABLE OF CONTENTS BASED ON THE REQUIREMENTS OF THIS OFFERING CIRCULAR.

TABLE OF CONTENTS INSTRUCTION:

Refer to UFOC Items and state the page where each UFOC Item disclosure begins. List exhibits by letter. Use the following format:

TABLE OF CONTENTS

ITEM *PAGE*

SAMPLE TABLE OF CONTENTS:

TABLE OF CONTENTS

ITEM *PAGE*

18 Public Figures

19 Earnings Claims

20 List of Outlets

21 Financial Statements

22 Contracts

23 Receipt

Exhibits

A. Franchise Agreement

B. Equipment Lease

C. Lease for Premises

D. Loan Agreement

Item 1
THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES

Item 1 Instructions:

i. Use the word "we," initials or one or two words to refer to the franchisor. Use different initials or a different one or two words to refer to other persons contracting with the franchisee under the franchise agreement. Except in the 23 Item titles, use these initials or the word(s) to describe these persons or entities throughout the offering circular.

ii. Define the franchisee as "you" and use this description throughout the offering circular. If the franchisee could be a corporation, partnership or other entity, disclose whether "you" includes the franchisee's owners.

iii. "Predecessor" in Item 1 means a person from whom the franchisor acquired directly or indirectly the major portion of the franchisor's assets.

iv. The disclosure regarding predecessors need only cover the 10 year period immediately before the close of the franchisor's most recent fiscal year.

v. Affiliate in Item 1 means a person (other than a natural person) controlled by, controlling or under common control with the franchisor, which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor.

DISCLOSE IN SUMMARY FORM:

A. THE NAME OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES.

B. THE NAME UNDER WHICH THE FRANCHISOR DOES OR INTENDS TO DO BUSINESS.

Item 1B Instruction:

If the franchisor does business under a name different from the name disclosed in Item 1A, state that other name. If not, state that the franchisor does not do business under another name.

C. THE PRINCIPAL BUSINESS ADDRESS OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES, AND THE FRANCHISOR'S AGENT FOR SERVICE OF PROCESS.

Item 1C Instructions:

i. Principal business address means "home office" in the United States, not in the state for which the offering circular was prepared. If appropriate, also disclose the location of an international "home office." The business address cannot be a post office box.

ii. In a multi-state offering in which the agent for service of process is required, the franchisor may use an exhibit or the acknowledgment of receipt to disclose this agent.

D. THE BUSINESS FORM OF THE FRANCHISOR

Item 1D Instruction:

Disclose the state of incorporation or business organization and the type of business organization.

E. THE FRANCHISOR'S BUSINESS AND THE FRANCHISES TO BE OFFERED IN THIS STATE.

Item 1E Instructions:

Disclose the following:

i. That the franchisor sells or grants franchises;

ii. Whether the franchisor operates businesses of the type being franchised;

iii. The franchisor's other business activities;

iv. The business to be conducted by the franchisees;

v. The general market for the product or service to be offered by the franchisee. (For example, is the market developed or developing? Will the goods be sold primarily to a certain group? Are sales seasonal?)

vi. In general terms any regulations specific to the industry in which the franchise business operates. It is not necessary to include laws or regulations that apply to businesses generally.

vii. A general description of the competition.

F. THE PRIOR BUSINESS EXPERIENCE OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES INCLUDING:

(1) THE LENGTH OF TIME THE FRANCHISOR HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(2) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(3) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(4) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES FOR

THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(5) WHETHER THE FRANCHISOR HAS OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS; AND

(C) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED EACH OTHER FRANCHISE.

(6) WHETHER EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS; AND

(C) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED EACH OTHER FRANCHISE.

Item 1F Instruction:

Limit disclosure about predecessors to the time before the franchisor acquired the predecessor's assets. Thus, under the 10 year limitation, if a franchisor acquired the assets of a predecessor 8 years ago, the disclosure about the predecessor should cover only the 2 year period before the acquisition.

Sample Answer

To simplify the language in this offering circular "Belmont" means Belmont Mufflers Inc., the franchisor. "You" means the person who buys the franchise. Belmont is a Minnesota corporation that was incorporated on September 3, 1963. Belmont does business as Belmont Muffler Shops. Our principal business address is 111 First Street, Jackson, Minnesota 55555.

Belmont's agent for service of process is disclosed in Exhibit ____.

Belmont currently operates 12 Belmont Muffler Shops and sells pipe bending machines and mufflers to various muffler shops.

Belmont franchises the right to sell and install mufflers for the public. You must honor our guarantee to replace mufflers or exhaust pipes that wear out if the vehicle ownership has not changed. Belmont's franchisees often operate their muffler shop franchise with their service stations or tire center. Your competitors include department store service departments, service stations and other national chains of muffler shops. Exhibit _____ is attached to this offering circular and contains a summary of the special regulations for muffler installation in your state.

During the past 5 years Belmont has operated 7 muffler shops that are similar to the franchised shops being offered. All these shops are located in urban areas, have approximately xxxxx square feet of floor space and are located on busy streets. An additional 3 muffler shops were opened in 1990. From 1968 to 1973, Belmont offered franchises for "Repair-All Transmission Shops." "Repair-All" franchisees repaired and replaced motor vehicle transmissions under a marketing plan similar to the franchise in this offering circular. Belmont sold 40 of these franchises primarily in the states of Minnesota, Michigan, Wisconsin and Illinois. In 1973, Belmont sold this transmission repair company to CTF Inc.

Item 2
BUSINESS EXPERIENCE

LIST BY NAME AND POSITION THE DIRECTORS, TRUSTEES AND/OR GENERAL PARTNERS, THE PRINCIPAL OFFICERS AND OTHER EXECUTIVES OR SUBFRANCHISORS WHO WILL HAVE MANAGEMENT RESPONSIBILITY RELATING TO THE FRANCHISES OFFERED BY THIS OFFERING CIRCULAR. LIST ALL FRANCHISE BROKERS. STATE EACH PERSON'S PRINCIPAL OCCUPATIONS AND EMPLOYERS DURING THE PAST FIVE YEARS.

Item 2 Instructions:

i. Principal officers include the chief executive and chief operating officer, the president, financial, franchise marketing, training and franchise operations officers.

ii. First disclose the position and the name of the person holding it. Underline this information; then skip one line.

iii. Disclose the beginning date and departure date for each job held in the five year period whether or not this date is within the past five years. Disclose the location of the job.

iv. Do not disclose home addresses, home telephones, social security numbers or birth dates in this Item.

v. Disclose the required information concerning the franchise broker's directors, principal officers and executives with management responsibility to market or service the franchises.

vi. In a multi-state offering in which the franchisor uses a single offering circular and franchise brokers and executives with direct management responsibility to the franchisees differs from state to state, use an exhibit to refer to these personnel.

Sample Answer

President: Jane J. Doe

From June, 1978, until April, 1986, Ms. Doe was Vice-President of Atlas Inc., a Houston, Texas based manufacturer

of automobile wheels. In April, 1986, she joined Belmont as a Director and Vice President. She was promoted to president in June, 1987.

Item 3
LITIGATION

DISCLOSE WHETHER THE FRANCHISOR, ITS PREDECESSOR, A PERSON –IDENTIFIED IN ITEM 2 OR AN AFFILIATE OFFERING FRANCHISES UNDER THE FRANCHISOR'S PRINCIPAL TRADEMARK:

A. HAS AN ADMINISTRATIVE, CRIMINAL OR MATERIAL CIVIL ACTION PENDING AGAINST THAT PERSON ALLEGING A VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IN ADDITION, INCLUDE ACTIONS OTHER THAN ORDINARY ROUTINE LITIGATION INCIDENTAL TO THE BUSINESS WHICH ARE SIGNIFICANT IN THE CONTEXT OF THE NUMBER OF FRANCHISEES AND THE SIZE, NATURE OR FINANCIAL CONDITION OF THE FRANCHISE SYSTEM OR ITS BUSINESS OPERATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM, NATURE, AND CURRENT STATUS OF THE PENDING ACTION. FRANCHISOR MAY INCLUDE A SUMMARY OPINION OF COUNSEL CONCERNING THE ACTION IF A CONSENT TO USE OF THE SUMMARY OPINION IS INCLUDED AS PART OF THIS OFFERING CIRCULAR.

B. HAS DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR BEEN CONVICTED OF A FELONY OR PLEADED NOLO CONTENDERE TO A FELONY CHARGE; OR BEEN HELD LIABLE IN A CIVIL ACTION BY FINAL JUDGMENT OR BEEN THE SUBJECT OF A MATERIAL ACTION INVOLVING VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM AND DATE OF CONVICTION OR DATE JUDGMENT WAS ENTERED, PENALTY OR DAMAGES ASSESSED AND/OR TERMS OF SETTLEMENTS.

C. IS SUBJECT TO A CURRENTLY EFFECTIVE INJUNCTIVE OR RESTRICTIVE ORDER OR DECREE RELATING TO THE FRANCHISE OR UNDER A FEDERAL, STATE OR CANADIAN FRANCHISE, SECURITIES, ANTITRUST, TRADE REGULATION OR TRADE PRACTICE LAW RESULTING FROM A CONCLUDED OR PENDING ACTION OR PROCEEDING BROUGHT BY A PUBLIC AGENCY. IF SO, DISCLOSE THE NAME OF THE PERSON, THE PUBLIC AGENCY AND COURT, A SUMMARY OF THE ALLEGATIONS OR FACTS FOUND BY THE AGENCY OR COURT AND THE DATE, NATURE, TERMS AND CONDITIONS OF THE ORDER OR DECREE.

Item 3 Definitions:

i. For purposes of these instructions to Item 3, "franchisor" includes the franchisor, its predecessors, persons identified in Item 2 and affiliates offering franchises under the franchisor's principal trademarks.

ii. Action: Action includes complaints, cross claims, counterclaims, and third party complaints in a judicial proceeding, and their equivalents in an administrative action or arbitration proceeding. The franchisor may disclose its counterclaims. Omit actions that were dismissed by final judgment without liability of or entry of an adverse order against the franchisor.

iii. Included in the definition of material is an action or an aggregate of actions if a reasonable prospective franchisee would consider it important in making a decision about the franchised business.

iv. In this Item, settlement of an action does not diminish its materiality if the franchisor agrees to pay material consideration or agrees to be bound by obligations which are materially adverse to its interests.

v. "Ordinary routine litigation" means actions which ordinarily result from the business and which do not depart from the normal kinds of actions in the business.

vi. "Held liable" includes a finding by final judgment in a judicial, binding arbitration or administrative proceeding that the franchisor, as a result of claims or counterclaims must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.

vii. "Currently Effective": An injunctive or restrictive order or decree is "currently effective" unless it has been vacated or rescinded by a court or by the issuing public agency. An order that has expired by its own terms is not "currently effective." If the named party(s) have fully complied with an order (for example, through registration of its franchise offer), the order is not "currently effective." A party has not fully complied with an order to act or to refrain from an act (for example to comply with the franchise law or to refrain from violating the franchise law) until the order expires by its own terms.

Item 3 Instructions:

Civil litigation, or Injunctive or Restrictive Order:

viii. Use sample answer 3-1 for a negative response to Item 3 if the franchisor has never been named in litigation or if the only litigation naming the franchisor is outside the scope of Item 3.

ix. Disclose in the same order as the instructions below appear.

x. Title each action and state its case number or citation in parentheses. Underline the title of the action.

xi. For each action state the action's initial filing date and the opposing party's name and relationship with the franchisor. Relationships include competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees.

xii. Summarize the legal and factual nature of each claim in the action.

xiii. Summarize the relief sought or obtained. Summarize conclusions of law or fact.

xiv. State that other than these (list number of actions) no litigation is required to be disclosed in this offering circular.

Criminal convictions or Pleas:

xv. Disclose in the same order as the following instructions appear.

xvi. Title each action and state its citation in parentheses. Underline the title of the action.

xvii. Name the person convicted or who pleaded.

xviii. Next, state the crime or violation and the date of conviction.

xix. Next, disclose the sentence or penalty imposed.

xx. Lastly, state that other than these (list the number of actions) actions, no litigation is required to be disclosed in this offering circular.

Sample Answer 3-1

No litigation is required to be disclosed in this offering circular.

Sample Answer 3-2

Doe v. Belmont Muffler Service, Inc. (cite) On March 1, 1985, our franchisee, Donald Doe, sought to enjoin us from terminating him for nonpayment of royalty fees. Doe alleged _____. On April 3, 1986, Doe withdrew the case when we repurchased his franchise for $90,000 and agreed not to enforce non-compete clauses against him.

Indiana v. Belmont Muffler Service, Inc. (cite) On April 1, 1985, the Attorney General of Indiana sought to enjoin us from offering unregistered franchises and from using false income representations. The Attorney General alleged that the earnings claims were false because . . .. The court found that we had offered franchises, that the offers were not registered and that we had made the alleged false representations in our earnings claims. The court enjoined us from repeating those acts.

Other than these 2 actions, no litigation is required to be disclosed in this offering circular.

Item 4
BANKRUPTCY

STATE WHETHER THE FRANCHISOR, ITS AFFILIATE, ITS PREDECESSOR, OFFICERS OR GENERAL PARTNER DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR (A) FILED AS DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE; (B) OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE; OR (C) WAS A PRINCIPAL OFFICER OF A COMPANY OR A GENERAL PARTNER IN A PARTNERSHIP THAT EITHER FILED AS A DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE OR THAT OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE DURING OR WITHIN 1 YEAR AFTER THE OFFICER OR GENERAL PARTNER OF THE FRANCHISOR HELD THIS POSITION IN THE COMPANY OR PARTNERSHIP. IF SO, DISCLOSE THE NAME OF THE PERSON OR COMPANY THAT WAS THE DEBTOR UNDER THE BANKRUPTCY CODE, THE DATE OF THE ACTION AND THE MATERIAL FACTS.

Item 4 Instructions:

i. First, name the party that filed (or had filed against it) the petition in bankruptcy and the party's relationship to the franchisor. If the debtor in a bankruptcy proceeding was or is affiliated with the franchisor, state the relationship. If the debtor in a bankruptcy proceeding is unaffiliated with the franchisor, state the name, address and principal business of the bankrupt company.

ii. Disclose that the entity filed bankruptcy or reorganization under the bankruptcy law and the date of the original filing.

iii. Identify the bankruptcy court, and the case name and number. Put this information in parentheses.

iv. State the date on which the debtor obtained a discharge in bankruptcy (including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the U.S. Bankruptcy Code).

v. Disclose other material facts.

vi. Cases, actions and other proceedings under the laws of foreign nations relating to bankruptcy proceedings should be included in answers, where responses are required, as if those cases, actions and proceedings took place under the U.S. Bankruptcy Code.

vii. If information is disclosed in this Item, at the end of the disclosure add sample answer 4-1 with the qualification "other than these actions."

viii. Use Sample Answer 4-1 if no person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings or any person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings but the bankruptcy proceedings (under the U.S. Bankruptcy Code or its predecessor, the National Bankruptcy Act of 1898) were discharged more than 10 years ago. "Person" includes natural persons and legal entities listed in Items 1 and 2. Person does not include anyone acting solely as the franchisor's agent for service of process.

Sample Answer 4-1

No person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

Sample Answer 4-2

On March 2, 1984, Belmont filed a petition to reorganize under Chapter 11 of the U.S. Bankruptcy Code. We were allowed to continue to operate under bankruptcy court supervision. On October 2, 1985, the bankruptcy court approved our plan of reorganization and discharged the proceedings. (US Bankruptcy Court for the District of _____ Case B 84-301).

Belmont's present president, Roger Rowe, was president of Acme Muffler Service, Inc., a Houston, Texas based manufacturer of exhaust systems, from July 1, 1978, through June 14, 1983. On June 6, 1983, an involuntary petition under the U.S. Bankruptcy Code was filed against Acme by its creditors. On July 14, 1983, the court entered an order of relief. Acme sold its assets and was dissolved.

Other than these 2 actions, no person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

Item 5
INITIAL FRANCHISE FEE

DISCLOSE THE INITIAL FRANCHISE FEE AND STATE THE CONDITIONS WHEN THIS FEE IS REFUNDABLE.

Item 5 Instructions:

i. "Initial fee" includes all fees and payments for services or goods received from the franchisor before the franchisee's business opens. "Initial fee" includes all fees and payments whether payable in lump sum or installments.

ii. If the initial fee is not uniform, disclose the formula or the range of initial fees paid in the fiscal year before the application date and the factors that determined the amount.

iii. Disclose installment payment terms in this Item or in Item 10.

Sample Answer 5-1

All franchisees pay a $10,000 lump sum franchise fee when they sign the franchise agreement. Belmont will refund the entire amount if we do not approve your application within 45 days. Belmont will refund $9,000 of this fee if you do not satisfactorily complete your 2-week training. There are no refunds under other circumstances.

Sample Answer 5-2

You must pay a franchise license fee of $_____ per thousand licensed drivers who reside within your exclusive area when the franchise agreement is signed. The number of licensed drivers is determined by the latest abstract of the state agency which issues driver's licenses. The minimum fee is $20,000. When you send your application, you must pay a non-refundable $500 application fee. You must pay an additional $10,000 when you receive your equipment. The balance of your fee is payable in 12 equal monthly installments of $_____. The first installment payment is due 1 year after your shop opens. Belmont charges 10% annual interest on the unpaid balance. Interest compounds daily and accrues from the date that you receive your equipment. All buyers pay this uniform fee and receive the same financing terms on the fee. If your application is not accepted, Belmont retains the $500 for investigative costs, but you are not liable for the $19,500 remainder. Belmont does not give refunds under other circumstances.

Item 6
OTHER FEES

DISCLOSE OTHER RECURRING OR ISOLATED FEES OR PAYMENTS THAT THE FRANCHISEE MUST PAY TO THE FRANCHISOR OR ITS AFFILIATES OR THAT THE FRANCHISOR OR ITS AFFILIATES IMPOSE OR COLLECT IN WHOLE OR IN PART ON BEHALF OF A THIRD PARTY. INCLUDE THE FORMULA USED TO COMPUTE THESE OTHER FEES AND PAYMENTS. IF ANY FEE IS REFUNDABLE, STATE THE CONDITIONS WHEN EACH FEE OR PAYMENT IS REFUNDABLE.

Item 6 Instructions:

i. First disclose fees in tabular form. Use footnotes or a "remarks" column to elaborate on the information in the table or to disclose caveats. If elaborations are lengthy, use footnotes instead of a remarks column.

ii. Disclose the amount of each fee. A dollar amount or a percentage of gross sales is acceptable if the term gross sales is defined. If dollar amounts may increase, disclose the formula which determines the increase or the maximum amount of the increase.

iii. Disclose the due date for recurring payments.

iv. If all fees are payable to only the franchisor, disclose this in a footnote.

v. If all fees are imposed and collected by the franchisor, disclose this in a footnote.

vi. If all fees are nonrefundable, state this in a footnote.

vii. Disclose the voting power of franchisor owned outlets on any fees imposed by cooperatives. If franchisor outlets have controlling voting power, disclose a range for the fee. Disclose this information in a footnote or a "remarks" column.

viii. The franchisor need not repeat information contained in Items 8 and 9, but the table should direct the franchisees to those Items.

ix. Examples of fees are royalty, lease negotiation, construction, remodeling, additional training, advertising, group advertising, additional assistance, audit, accounting/inventory, and transfer and renewal fee.

Sample Answer 6-1

Name of fee	*Amount*	*Due Date*	*Remarks*
Royalty[1]	*4% of total gross sales*	*Payable monthly on the 10th day of the next month*	*Gross sales includes all revenues from the franchise location. Gross sales does not include sales tax or use tax.*
Advertising	*2% of total gross sales*	*Same as Royalty fee*	
Cooperative Advertising	*Maximum - 2% of total gross sales*	*Established by franchisees*	*Franchisees may form an advertising cooperative and establish local advertising fees. Company owned stores have no vote in these cooperatives.*
Additional Training	*$1,000 per person*	*2 weeks prior to beginning of training*	*Belmont trains 2 persons free - See Item 11*
Additional Assistance	*$500 per day*	*30 days after billing*	*Belmont provides opening assistance free-See Item 11*
Transfer	*$1,000*	*Prior to consummation of transfer*	*Payable when you sell your franchise. No charge if franchise transferred to a corporation which you control.*
Audit	*Cost of audit plus 10% interest on underpayment*[2]	*30 days after billing*	*Payable only if audit shows an understatement of at least 2% of gross sales for any month.*
Renewal Fee	*$1,000*	*30 days before renewal*	

[1]All fees are imposed by and are payable to Belmont. All fees are nonrefundable.

[2]Interest begins from the date of underpayment.

Item 7
INITIAL INVESTMENT

DISCLOSE THE FOLLOWING EXPENDITURES STATING TO WHOM THE PAYMENTS ARE MADE, WHEN PAYMENTS ARE DUE, WHETHER EACH PAYMENT IS REFUNDABLE, THE CONDITIONS WHEN EACH PAYMENT IS REFUNDABLE, AND, IF PART OF THE FRANCHISEE'S INITIAL INVESTMENT IN THE FRANCHISE MAY BE FINANCED, AN ESTIMATE OF THE LOAN REPAYMENTS, INCLUDING INTEREST:

A. REAL PROPERTY, WHETHER PURCHASED OR LEASED. IF NEITHER ESTIMABLE NOR DESCRIBABLE BY A LOW-HIGH RANGE, DESCRIBE REQUIREMENTS, SUCH AS PROPERTY TYPE, LOCATION AND BUILDING SIZE.

B. EQUIPMENT, FIXTURES, OTHER FIXED ASSETS, CONSTRUCTION, REMODELING, LEASEHOLD IMPROVEMENTS AND DECORATING COSTS, WHETHER PURCHASED OR LEASED.

C. INVENTORY REQUIRED TO BEGIN OPERATION.

D. SECURITY DEPOSITS, UTILITY DEPOSITS, BUSINESS LICENSES, OTHER PREPAID EXPENSES.

E. ADDITIONAL FUNDS REQUIRED BY THE FRANCHISEE BEFORE OPERATIONS BEGIN AND DURING THE INITIAL PHASE OF THE FRANCHISE.

F. OTHER PAYMENTS THAT THE FRANCHISEE MUST MAKE TO BEGIN OPERATIONS.

Item 7 Instructions:

i. Begin disclosure by listing expenditures in tabular form. List preopening expenses first. Use footnotes to comment on expected expenditures.

ii. Disclose payments required by the franchise agreement and all costs necessary to begin operation of the franchise and operate the franchise during the initial phase of the business. A reasonable time for the initial phase of the business is at least 3 months or a reasonable period for the industry. Include an entry titled "additional funds" and disclose the length of the initial phase in the entry.

iii. If a specific expenditure amount is not ascertainable, use a low-high range based on the franchisor's current experience. If real property costs can not be estimated in a low-high range, disclose the approximate size of the property and building involved. Describe the probable location of the building (for example, strip shopping center, mall, downtown, rural or highway).

iv. The franchisor may include additional expenditure tables to show expenditure variations caused by differences in site location, premise size, etc. Describe in general terms the factors, basis and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

v. *If the franchisor or an affiliate finances part of the initial investment, state the expenditures that it will finance. State the required down payment, annual percentage rate of interest, rate factors, and the estimated loan repayments. Make the discussion brief, and refer to Item 10.*

vi. *Total the initial investment. This total should be the same as the total investment on the offering circular cover.*

SAMPLE ANSWER 7

YOUR ESTIMATED INITIAL INVESTMENT

	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
INITIAL FRANCHISE FEE	$10,000 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Belmont, Inc.
TRAVEL AND LIVING EXPENSES WHILE TRAINING	$2,500 to $5,000	As Incurred	During Training	Airlines, Hotels and Restaurants
REAL ESTATE AND IMPROVEMENTS	(Note 2)	(Note 2)	(Note 2)	(Note 2)
EQUIPMENT	$40,000 (Note 3)	Lump Sum	Prior to Opening	Belmont or vendors
SIGNS	$2,200	Lump Sum	Prior to Opening	Abbey Sign Company
MISCELLANEOUS OPENING COSTS	$8,000 (Note 4)	As Incurred	As Incurred	Suppliers, Utilities, etc.
OPENING INVENTORY	$8,000 (Note 5)	Lump Sum	Prior to Opening	Belmont or vendors
ADVERTISING FEE -3 months	$500		Monthly	Belmont
ADDITIONAL FUNDS - 3 Months	$50,000 to $75,000 (Note 6)	As Incurred	As Incurred	Employees, Suppliers, Utilities
TOTAL	$132,700 to $160,200 (Notes 7 & 8)	(Does not include real estate costs)		

Notes:

(1) See Item 5 for the conditions when this fee is partly refundable. Belmont does not finance any fee.

(2) If you do not own adequate shop space, you must lease the land and building for the Belmont Muffler Shop. Typical locations are light industrial and commercial areas. The typical Belmont Muffler Shop has 5,000 - 8,000 square feet. Former three or four bay gasoline service stations have been converted with relative ease into Belmont Muffler Shops. Rent is estimated to be between $12,000 - 20,000 per year depending on factors such as size, condition and location of the leased premises.

(3) This payment is fully refundable before equipment installation. After installation, Belmont deducts $3,000 installation costs from your refund.

(4) Includes security deposits, utility costs, incorporation fee.

(5) This payment is fully refundable before Belmont delivers your inventory. After delivery Belmont deducts a 10% restocking fee from your refund.

(6) This estimates your initial start up expenses. These expenses include payroll costs. These figures are estimates and Belmont cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow Belmont's methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period.

(7) Belmont relied on its 30 years of experience in the muffler business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

(8) Belmont does not offer direct or indirect financing to franchisees for any items.

Item 8
RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

DISCLOSE FRANCHISEE OBLIGATIONS TO PURCHASE OR LEASE FROM THE FRANCHISOR ITS DESIGNEE OR FROM SUPPLIERS APPROVED BY THE FRANCHISOR OR UNDER THE FRANCHISOR'S SPECIFICATIONS. FOR EACH OBLIGATION DISCLOSE:

A. THE GOODS, SERVICES, SUPPLIES, FIXTURES, EQUIPMENT, INVENTORY, COMPUTER HARDWARE AND SOFTWARE OR REAL ESTATE RELATING TO ESTABLISHING OR OPERATING THE FRANCHISED BUSINESS.

B. THE MANNER IN WHICH THE FRANCHISOR ISSUES AND MODIFIES SPECIFICATIONS OR GRANTS AND REVOKES APPROVAL TO SUPPLIERS.

C. WHETHER, AND FOR WHAT CATEGORIES OF GOODS AND SERVICES, THE FRANCHISOR OR ITS AFFILIATES ARE APPROVED SUPPLIERS OR THE ONLY APPROVED SUPPLIERS.

D. WHETHER, AND IF SO, THE PRECISE BASIS BY WHICH THE FRANCHISOR OR ITS AFFILIATES WILL OR MAY DERIVE REVENUE OR OTHER MATERIAL CONSIDERATION AS A RESULT OF REQUIRED PURCHASES OR LEASES.

E. THE ESTIMATED PROPORTION OF THESE REQUIRED PURCHASES AND LEASES TO ALL PURCHASES AND LEASES BY THE FRANCHISEE OF GOODS AND SERVICES IN ESTABLISHING AND OPERATING THE FRANCHISED BUSINESS.

F. THE EXISTENCE OF PURCHASING OR DISTRIBUTION COOPERATIVES.

Item 8 Instructions:

i. An obligation includes those imposed by written agreement or by the franchisor's practice. The franchisor may include the reason for the requirement.

ii. Do not include goods or services provided as part of the franchise and without a separate charge (for example, a fee for initial training when the cost is included in the franchise fee). These fees should be described in Item 5. Do not include fees disclosed in response to Item 6.

iii. For "precise basis," disclose the franchisor's total revenues and the franchisor's revenues from all required purchases and leases of products and services. Also, disclose the percentage of the franchisor's total revenues represented by the franchisor's revenues from required purchases or leases. If the franchisor's affiliates also sell or lease products or services to franchisees, disclose affiliate revenues from those sales or leases. These amounts should be taken from the franchisor's statement of operations (or profit and loss statement) from the most recent annual audited financial statement attached to the offering circular. If the franchisor's annual audited financial statement is not required to be attached to the offering circular or if the franchisor's affiliate sells or leases required products or services to franchisees, disclose the sources of information used in computing revenues.

iv. State how the franchisor formulates and modifies specifications and standards imposed on franchisees.

v. Disclose whether specifications and standards are issued to franchisees, subfranchisors, or approved suppliers.

vi. Describe how suppliers are evaluated, approved or disapproved. Disclose whether the franchisor's criteria for supplier approval are available to franchisees. State the fees and procedure to secure approval and how approvals are revoked. State the time period when the franchisee will receive notification of approval or disapproval.

vii. If the designated supplier will make payments to the franchisor because of transactions with franchisees, disclose the basis for the payment. Specify a percentage or a flat amount. Purchases of similar goods or services by the franchisor at a lower price than that available to franchisees is a payment.

viii. Disclose whether the franchisor negotiates purchase arrangements with suppliers (including price terms) for the benefit of franchisees.

ix. Disclose whether the franchisor provides material benefits (for example renewal or granting additional franchises) to a franchisee based on a franchisee's use of designated or approved sources.

x. Use sample answer 8-1 if the response to Item 8 is negative.

Sample Answer 8-1

Belmont has no required specifications, designated suppliers, or approved suppliers for goods, services or real estate relating to your franchise business. Belmont will not derive revenue from your purchases or leases.

Sample Answer 8-2

You must purchase your pipe bending machine, hoist, cutting torch and supplies under specifications in the operations manual. These specifications include standards for delivery, performance, design and appearance. You may purchase this equipment from Belmont. In the year ending December 31, 1992, Belmont's revenues from the sale of this equipment to franchisees was $500,000, or 5% of Belmont's total revenues of $10,000,000. The cost of equipment purchased in accordance with specifications represents 10% of your total purchases in connection with establishment of your store.

Belmont's affiliate, Muffler Supply Co., is an approved supplier of mufflers to franchisees. In the year ending December 31, 1992, the affiliate's revenues from the sale of mufflers to franchisees was $2,000,000. The purchase of mufflers from approved sources will represent 15 to 20% of your overall purchases in operating the store. Belmont has

approved other suppliers of mufflers and exhaust pipe. If you would like to purchase these items from another supplier, you may request our "Supplier Approval Criteria and Request Form." Based on the information and samples you supply to us and your payment of a $500 fee, we will test the items supplied and review the proposed supplier's financial records, business reputation, delivery performance, credit rating and other information. Our review typically is completed in 30 days.

One of the approved suppliers of mufflers and exhaust pipes, Scottie's Pipes, Inc., pays Belmont a rebate of 1% of all franchisee purchases, which is deposited in the Belmont Advertising Fund. Another approved supplier, Michael's Clean-Air, Inc., pays Belmont 2% of all franchisee purchases of catalytic converters. This amount is used in Belmont's training center for classes in catalytic converter repair and replacement.

Item 9
FRANCHISEE'S OBLIGATIONS

DISCLOSE THE PRINCIPAL OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE AND OTHER AGREEMENTS AFTER THE SIGNING OF THESE AGREEMENTS.

Item 9 Instructions:

i. Disclose obligations in tabular form. Refer to the section of the agreement that contains the obligation and any Item of the Offering Circular that further describes the obligation.

ii. The table should contain a response to each category listed below. If the response to any category is that no obligation is imposed, the table should state that. Do not change the names of the categories. Fit all obligations within the listed categories. If other material obligations fall outside the scope of all of the prescribed categories, add additional categories as needed. The categories of franchisee obligations are:

- *a. Site selection and acquisition/lease*
- *b. Pre-opening purchases/leases*
- *c. Site development and other pre-opening requirements*
- *d. Initial and ongoing training*
- *e. Opening*
- *f. Fees*
- *g. Compliance with standards and policies/Operating Manual*
- *h. Trademarks and proprietary information*
- *i. Restrictions on products/services offered*
- *j. Warranty and customer service requirements*
- *k. Territorial development and sales quotas*
- *l. Ongoing product/service purchases*
- *m. Maintenance, appearance and remodeling requirements*
- *n. Insurance*
- *o. Advertising*
- *p. Indemnification*
- *q. Owner's participation/management/staffing*
- *r. Records and reports*
- *s. Inspections and audits*
- *t. Transfer*
- *u. Renewal*
- *v. Post-termination obligations*
- *w. Non-competition covenants*
- *x. Dispute resolution*
- *y. Other (describe)*

iii. Before the table, state the following:

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

Sample Answer 9

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

	Obligation	Section in Agreement	Item in Offering Circular
a.	Site selection and acquisition/lease	Section 2A of Franchise Agreement	Items 6 and 11
b.	Pre-opening purchases/leases	Section 3D of Franchise Agreement	Item 8
c.	Site development and other pre-opening requirements	Sections 3A and 3B of Franchise Agreement	Items 6, 7 and 11
d.	Initial and ongoing training	Section 5 of Franchise Agreement	Item 11

e.	Opening	Section 4 of Franchise Agreement	Item 11
f.	Fees	Section 6 of Franchise Agreement	Items 5 and 6
g.	Compliance with standards and policies/Operating Manual	Section 8A of Franchise Agreement	Item 11
h.	Trademarks and proprietary information	Sections 7 and 11 of Franchise Agreement	Items 13 and 14
i.	Restrictions on products/services offered	Section 12 of Franchise Agreement	Item 16
j.	Warranty and customer service requirements	Section 8B of Franchise Agreement	Item 11
k.	Territorial development and sales quotas	None	
l.	Ongoing product/service purchases	Section 9 of Franchise Agreement	Item 8
m.	Maintenance, appearance and remodeling requirements	Sections 8C and 10 of Franchise Agreement	Item 11
n.	Insurance	Section 13A of Franchise Agreement	Items 6 and 8
o.	Advertising	Section 15 of Franchise Agreement	Items 6 and 11
p.	Indemnification	Section 13B of Franchise Agreement	Item 6
q.	Owner's participation/management/staffing	Sections 4, 5 and 14 of Franchise Agreement	Items 11 and 15
r.	Records/reports	Section 17A of Franchise Agreement	Item 6
s.	Inspections/audits	Section 17B of Franchise Agreement	Items 6 and 11
t.	Transfer	Section 18 of Franchise Agreement	Item 17
u.	Renewal	Section 20 of Franchise Agreement	Item 17
v.	Post-termination obligations	Section 22 of Franchise Agreement	Item 17
w.	Non-competition convenants	Sections 11, 18 and 22C of Franchise Agreement	Item 17
x.	Dispute resolution	Section 24 of Franchise Agreement	Item 17

Item 10
FINANCING

DISCLOSE THE TERMS AND CONDITIONS OF EACH FINANCING ARRANGEMENT THAT THE FRANCHISOR, ITS AGENT OR AFFILIATES OFFERS DIRECTLY OR INDIRECTLY TO THE FRANCHISEE, INCLUDING:

Item 10 Instructions:

i. "Financing" includes leases and installment contracts.

ii. Payments due within 90 days on open account financing need not be disclosed under this Item.

iii. A written arrangement between a franchisor or its affiliate and a lender for the lender to offer financing to the franchisee or an arrangement in which a franchisor or its affiliate receives a benefit from a lender for franchisee financing is an "indirect offer of financing" and must be disclosed under this Item. The franchisor's guarantee of a note, lease or obligation of the franchisee is an "indirect offer of financing" and must be disclosed under this Item.

iv. If financing of the initial fee is disclosed in the Item 7 disclosure, a cross reference to Item 7 is sufficient if all the disclosure which Item 10 requires is provided in Item 7.

v. If an affiliate offers financing, identify the affiliate and its relationship to the franchisor.

vi. The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to entries in the chart to provide additional information required by these instructions that does not fit in the chart.

vii. If a financing arrangement is for the establishment of the franchised business, disclose what the financing covers, including:

a) Initial franchise fee;

b) Site acquisition;

c) Construction or remodeling;

d) Equipment or fixtures; and

e) Opening inventory or supplies.

viii. If the franchisor generally offers financing for the operation of the franchised business, disclose what the financing arrangement covers, including:

a) Inventory or supplies;

b) Replacement equipment or fixtures; and

c) Other continuing expenses.

ix. Disclose the terms of each financing arrangement, including:

a) The identity of the lender(s) providing the financing and its relationship to the franchisor (for example, affiliate);

b) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed;

c) The annual percentage rate of interest ("APR") charged, computed as provided by Sections 106-107 of the Consumer Protection Credit Act, 15 U.S.C. §§ 106-107. If the APR may differ depending on when the financing is issued, disclose the APR on a specified recent date;

d) The number of payments or the period of repayment;

e) Nature of security interest required by the lender;

f) Whether a person other than the franchisee (for example spouse, shareholder of the franchisee) must personally guarantee the debt;

g) Whether the debt can be prepaid and the nature of any prepayment penalty;

h) The franchisee's potential liabilities upon default, including any accelerated obligation to pay the entire amount due, court costs and attorney's fees for collection, and termination of the franchise, or other cross default clauses whether directly, as a result of non-payment, or indirectly, as a result of loss of necessary facilities; and

i) Other material financing terms.

x. Include specimen copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms. Put this information in parentheses at the end of the description of the term.

xi. Use Sample Answer 10-1 if the franchisor does not offer financing.

A. A WAIVER OF DEFENSES OR SIMILAR PROVISIONS IN A DOCUMENT.

Item 10A Instructions:

i. Disclose the terms of waivers of legal rights by the franchisee under the terms of the financing arrangement (for example confession of judgment).

ii. Describe provisions of the loan agreement that bar the franchisee from asserting a defense against the lender, the lender's assignee or the franchisor.

iii. If the loan agreement does not contain the provisions in (i) or (ii), disclose that fact.

iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

B. THE FRANCHISOR'S PRACTICE OR ITS INTENT TO SELL, ASSIGN, OR DISCOUNT TO A THIRD PARTY ALL OR PART OF THE FINANCING ARRANGEMENT.

Item 10B Instructions:

i. Practice includes past or present practice and future intent to sell or assign franchisee financing arrangements.

ii. Disclose the assignment terms including whether the franchisor will remain primarily obligated to provide the financed goods or services.

iii. If the franchisor may sell or assign its rights under the financing agreement, disclose that the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

v. If no disclosure is required by Instruction 10B, disclose that fact.

C. PAYMENTS TO THE FRANCHISOR OR AN AFFILIATE(S) FOR THE PLACEMENT OF FINANCING WITH THE LENDER.

Item 10C Instructions:

i. Describe the payments.

ii. If no disclosure is required by Instruction 10C(i) for a financing arrangement, disclose that fact.

iii. Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

iv. Disclose the amount or the method of determining the payment.

v. Cite the section and name of the document containing these arrangements. Put this information in parentheses at the end of the description of the term.

Sample Answer 10-1

Belmont does not offer direct or indirect financing. Belmont does not guarantee your note, lease or obligation.

Sample Answer 10-2

See Table on following page.

SUMMARY OF FINANCING OFFERED

ITEM FINANCED (SOURCE)	AMOUNT FINANCED	DOWN PAYMENT	TERM (YRS)	APR %	MONTHLY PAYMENT	PREPAY PENALTY	SECURITY REQUIRED	LIABILITY UPON DEFAULT	LOSS OF LEGAL RIGHT ON DEFAULT
INITIAL FEE (NOTE 1) (BELMONT)	$10,000		10	18	$	NONE	PERSONAL GUARANTEE	LOSS OF FRANCHISE UNPAID LOAN	WAIVE NOTICE CONFESS JUDGMENT
[~~AND/~~ LAND/] CONSTRUCT	[None]								
LEASED SPACE (NOTE 2) (BELMONT)		$2,000 (SECUR. DEP.)	7-10	N/A	$	NONE	PERSONAL GUARANTEE	LOSS OF FRANCHISE BACK RENT 2 MOS. FRANCHISE RIGHTS ATTY'S FEES	NONE
EQUIPMENT LEASE (NOTE 3) (USA CREDIT CORP.)	$5,000	NONE	5	15	$	NONE	EQUIPMENT PERSONAL GUARANTEE	COST OF REMOVAL	LOSE ALL DEFENSES
EQUIP PURCH (NOTE 4 [ ]] (BELMONT)	$3,750	$1,250 (25%)	2-7	15	$	$500	EQUIPMENT PERSONAL GUARANTEE	LOSS OF FRANCHISE ATTY'S FEES	NONE
OPENING INVENT.	NONE								
OTHER FINANCING	NONE								

NOTE 1 - If you meet Belmont's credit standards, Belmont will finance the $10,000 initial franchisee fee over a 10-year period at an APR of 18%, using the standard form note in Exhibit A. The only security Belmont requires is a personal guarantee of the note by you and your spouse or by all the shareholders of your corporation. (Loan Agreement Section ____) The note can be prepaid without penalty at any time during its 10-year term. (Loan Agreement Section ____) If you do not pay on time, Belmont can call the loan and demand immediate payment of the full outstanding balance and obtain court costs and attorney's fees if a collection action is necessary. (Loan Agreement Section ____) Belmont also has the right to terminate your franchise if you do not make your payments on time more than three times during the note term. (Loan Agreement Section ____) You waive your rights to notice of a collection action and to assert any defenses to collection against Belmont. (Loan Agreement Section ____) Belmont discounts these notes to a third party who may be immune under the law to any defenses to payment you may have against Belmont. (Loan Agreement Section ____)

NOTE 2 - In most cases Belmont will sublease the franchised premises to you but will guarantee your lease with a third party if you have acceptable credit and that is the only way to obtain an exceptional location. (Lease Section ____) The precise terms of Belmont's standard lease in Exhibit B will vary depending on the size and location of the premises, but the chart reflects a typical range of payments for Belmont's standard 6-day franchise outlet, including payment of one month's rent as a security deposit. (Lease Section ____) The only other security Belmont requires is a personal guarantee of the lease by you and your spouse or by all the shareholders of your corporation. (Lease Section ____) The lease can be prepaid without penalty at any time during its term. (Lease Section ____) If you do not make a rent payment on time, Belmont has the right to collect the unpaid rent plus an additional two months rent, as liquidated damages. (Lease Section ____) Belmont can also obtain court costs and attorney's fees if a collection action is necessary. (Lease Section ____) If you are late with your rent more than three times during the lease term, Belmont has the right to terminate the lease, take over the premises, and terminate your franchise. If Belmont guarantees your lease, Belmont will require you to sign the guarantee agreement in Exhibit F (Lease Section ____). This gives Belmont the same legal rights as the sublease but requires you to give Belmont the right to approve your lease and pay the rent for you if you fail to pay on time. (Lease Section ____)

NOTE 3 - If you want to lease the pipe bending machine and other equipment you need, Belmont has arranged an equipment lease (see Exhibit C) from USA Credit Corporation of Las Vegas, Nevada. If you choose this option, you will pay $100 a month for 60 months (5 years) at an APR of 15% based on a cash price of $5,000, with no money down. (Equipment Lease Section ____) At the end of the lease term, you may purchase the equipment with a one-time payment of $2,500. (Equipment Lease Section ____) USA Credit requires a personal guarantee from you and your spouse or from all the shareholders of your corporation and retains a security interest in the equipment. (Equipment Lease Section ____) The equipment lease can be prepaid at any time, but the interest you might otherwise save will be reduced by application of the Rule of 78's for computing finance charges. (Equipment Lease Section ____) If you do not make a payment on time, USA Credit can demand payment of all past due payments, remove the equipment, and charge you $1,000 as liquidated damages. (Equipment Lease Section ____)

USA Credit can also recover its costs of collection, including court costs and attorney's fees. (Equipment Lease Section ____) While Belmont does not know USA Credit's policies, USA Credit may discount the lease to a third party who may be immune under the law to claims or defenses you may have against USA Credit, the equipment manufacturer or Belmont. Belmont receives a referral fee of $500 from USA Credit for every franchisee who leases equipment from it.

NOTE 4 - If you prefer, Belmont will sell you the pipe bending machine and other necessary equipment on time (Equipment Purchase Agreement Section ____). Belmont requires a 25% down payment of $1,250. (Equipment Purchase Agreement Section ____) Belmont will finance the remainder over a 2-7 year period at your option at an APR of 15%. (Equipment Purchase Agreement Section ____) Payments range from $228.11 a month over 7 years to $821.58 a month over 2 years. (Equipment Purchase Agreement Section ____) Belmont's standard equipment financing note in Exhibit D must be personally guaranteed by you and your spouse or by all the shareholders of your corporation, and Belmont will retain a security interest in the equipment. (Equipment Purchase Agreement Section ____) You may purchase the equipment at any time during the lease period by paying the remainder of the principal plus a $500 prepayment penalty. (Equipment Purchase Agreement Section ____) If you do not make a payment on time, Belmont can demand all overdue payments, repossess the equipment, and terminate your franchise. Belmont can also recover its costs of collection, including court costs and attorney's fees. (Equipment Purchase Agreement Section ____)

Except as disclosed in Note 1, Belmont does not offer financing that requires you to waive notice, confess judgment or waive a defense against Belmont or the lender, although you may lose your defenses against Belmont and others in a collection action on a note that is sold or discounted, as disclosed in Notes 2 and 3.

Except as disclosed in Note 3, Belmont does not arrange financing from other sources.

Except as disclosed in Notes 1 and 3, commercial paper from franchisees has not been and is not sold or assigned to anyone, and Belmont has no plans to do so.

Except as disclosed in Note 3, Belmont does not receive direct or indirect payments for placing financing.

Except as disclosed in Note 2, Belmont does not guarantee your obligations to third parties.

Item 11
FRANCHISOR'S OBLIGATIONS

DISCLOSE THE FOLLOWING:

A. *THE OBLIGATIONS THAT THE FRANCHISOR WILL PERFORM BEFORE THE FRANCHISE BUSINESS OPENS. CITE BY SECTION THE PROVISIONS OF THE AGREEMENT REQUIRING PERFORMANCE.*

Item 11A Instructions:

i. *Begin the disclosure by stating: "Except as listed below, (the franchisor) need not provide any assistance to you."*

ii. *Pre-opening obligations include assistance to:*

   a) *Locate a site for the franchised business and negotiate the purchase or lease of this site. State whether the franchisor generally owns the premises and leases it to the franchisee;*

   b) *Conform the premises to local ordinances and building codes and obtain the required permits (i.e. health, sanitation, building, driveway, utility and sign permits);*

   c) *Construct, remodel or decorate the premises for the franchised business;*

   d) *Purchase or lease equipment, signs, fixtures, opening inventory and supplies. Disclose whether the franchisor provides these items directly or merely the names of approved suppliers. Disclose whether the franchisor provides written specifications for these items. Disclose whether the franchisor delivers or installs these items. (The franchisor may cross reference Item 8 for details); and*

   e) *Hire and train employees.*

iii. *After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses. Use this format throughout this Item.*

B. *THE OBLIGATIONS TO BE MET BY THE FRANCHISOR DURING THE OPERATION OF THE FRANCHISE BUSINESS.*

Item 11B Instructions:

i. *Include assistance in:*

   a) *Products or services to be offered by the franchisee to its customers;*

   b) *Hiring and training of employees;*

   c) *Improvements and developments in the franchised business;*

   d) *Pricing;*

   e) *Administrative, bookkeeping, accounting and inventory control procedures; and*

   f) *Operating problems encountered by the franchisee.*

ii. *For the Franchisor's advertising program for the product or service offered by the franchisee:*

   a) *Disclose the media in which the advertising may be disseminated (for example, print, radio, or television).*

b) Disclose whether the coverage of the media is local, regional, or national in scope.

c) Disclose the source of the advertising. (for example, in-house advertising department, a national or regional advertising agency).

d) Disclose the conditions when the franchisor permits franchisees to use their own advertising material.

e) If there is an advertising council composed of franchisees that advises the franchisor on advertising policies, disclose:

(1) How members of the council are selected.

(2) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(3) Whether the franchisor has the power to form, change, or dissolve the advertising council.

f) If the franchisee must participate in a local or regional advertising cooperative, disclose:

(1) How the area or membership of the cooperative is defined.

(2) How the franchisee's contribution to the cooperative is calculated (may reference Item 6).

(3) Who is responsible for administration of the cooperative (for example, franchisor, franchisees, advertising agency).

(4) Whether cooperatives must operate from written governing documents and whether the documents are available for review by the franchisee.

(5) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(6) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved or merged.

g) If applicable, for each advertising fund not described in above subpart (f), disclose:

(1) Who contributes to each fund (for example, franchisees, franchisor, franchisor-owned units, outside vendors or suppliers);

(2) Whether the franchisor-owned units must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(3) How much the franchisee must contribute to the advertising fund(s) (may reference Item 6) and whether other franchisees are required to contribute at a different rate (it is not necessary to disclose the specific rates).

(4) Who administers the fund(s). Whether the fund is audited and when, and whether financial statements of the fund are available for review by the franchisee.

(5) Use of the fund(s) in the most recently concluded fiscal year, the percentages spent on production, media placement, administrative expenses, and other (with a description of what constitutes "other"). Totals should equal 100%.

(6) Whether the franchisor or an affiliate receives payment for providing goods or services to an advertising fund.

h) State whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

i) If all advertising fees are not spent in the fiscal year in which they accrue, explain how the franchisor uses the remaining amounts. Indicate whether franchisees will receive a periodic accounting of how advertising fees are spent.

j) Disclose the percentage of advertising funds, if any, used for advertising that is principally a solicitation for the sale of franchises.

k) Cross reference Items 6, 8 and 9.

iii. If the franchisor requires that franchisees buy or use electronic cash register or computer systems, provide a general description of the systems in non-technical language:

a) Identify each hardware component and software program by brand, type and principal functions.

1) If the hardware component or software program is the proprietary property of the franchisor, an affiliate or a third party, state whether the franchisor, an affiliate or a third party has the contractual right or obligation to provide ongoing maintenance, repairs, upgrades or updates. Disclose the current annual cost of any optional or required maintenance and support contracts, upgrades and updates.

2) If the hardware component or software program is the proprietary property of a third party, and no compatible equivalent component or program has been approved by the franchisor for use with the system to perform the same functions, identify the third party by name, business address and telephone number, and state the length of time the component or program has been in continuous use by the franchisor and its franchisees.

3) If the hardware component or software program is not proprietary, identify compatible equivalent components or programs that perform the same functions and indicate whether they have been approved by the franchisor.

b) *State whether the franchisee has any contractual obligation to upgrade or update any hardware component or software program during the term of the franchise, and if so, whether there are any contractual limitations on the frequency and cost of the obligation.*

c) *For each electronic cash register system or software program, describe how it will be used in the franchisee's business, and the types of business information or data that will be collected and generated. State whether the franchisor will have independent access to the information and data, and if so, whether there are any contractual limitations on the franchisor's right to access the information and data.*

iv. *After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses.*

v. *Disclose if the franchisor is not obligated to provide or to assist the franchisee to obtain the above items or services.*

vi. *Do not repeat, but do cross reference disclosure made in Item 6.*

vii. *Disclose the table of contents of the operating manual(s) provided to the franchisee as of the franchisor's last fiscal year end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. Alternatively, this disclosure may be omitted if the prospective franchisee views the manual before purchase of the franchise.*

C. *THE METHODS USED BY THE FRANCHISOR TO SELECT THE LOCATION OF THE FRANCHISEE'S BUSINESS.*

Item 11C Instructions:

i. *Disclose whether the franchisor selects the site or approves an area within which the franchisee selects a site. Disclose how and whether the franchisor must approve a franchisee selected site.*

ii. *Disclose the factors which the franchisor considers in selecting or approving sites (for example general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings and lease terms).*

iii. *Disclose the time limit for the franchisor to locate or to approve or disapprove the site. Disclose the consequences if the franchisor and franchisee cannot agree on a site.*

iv. *Disclosures made in response to Item 11A need not be repeated or cross-referenced in the response to Item 11C.*

D. *THE TYPICAL LENGTH OF TIME BETWEEN THE SIGNING OF THE FRANCHISE AGREEMENT OR THE FIRST PAYMENT OF CONSIDERATION FOR THE FRANCHISE AND THE OPENING OF THE FRANCHISEE'S BUSINESS.*

Item 11 D Instructions:

i. *Disclosure may be a range of times if the range is specific.*

ii. *Describe the factors which may affect the time period such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures and signs.*

E. *THE TRAINING PROGRAM OF THE FRANCHISOR AS OF THE FRANCHISOR'S LAST FISCAL YEAR END OR A MORE RECENT DATE INCLUDING:*

(1) *THE LOCATION, DURATION AND GENERAL OUTLINE OF THE TRAINING PROGRAM;*

(2) *HOW OFTEN THE TRAINING PROGRAM WILL BE CONDUCTED;*

(3) *THE EXPERIENCE THAT THE INSTRUCTORS HAVE WITH THE FRANCHISOR;*

(4) *CHARGES TO BE MADE TO THE FRANCHISEE AND WHO MUST PAY TRAVEL AND LIVING EXPENSES OF THE ENROLLEES IN THE TRAINING PROGRAM;*

(5) *IF THE TRAINING PROGRAM IS NOT MANDATORY, THE PERCENTAGE OF NEW FRANCHISEES THAT ENROLLED IN THE TRAINING PROGRAM DURING THE PRECEDING 12 MONTHS; AND*

(6) *WHETHER ANY ADDITIONAL TRAINING PROGRAMS AND/OR REFRESHER COURSES ARE REQUIRED.*

Item 11 F Instructions:

i. *Use a table to state the subjects taught and the number of hours of classroom and "on the job training" devoted to each subject in the franchisor's training program. Use footnotes to explain.*

ii. *For each subject disclose the training location and how often training classes are held.*

iii. *Describe the location or facility where the training is held (for example, company, home, office, company owned store.)*

iv. *State how long after the signing of the agreement or before the opening date of the business the franchisee must complete the required training.*

v. *Describe the nature of instructional material. Disclose the minimum experience of the instructors. Disclose only experience that is relevant to the subject taught and the franchisor's operations.*

vi. *State who may and who is required to attend the training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction.*

vii. *Charges for training or training materials should be disclosed in Item 5 if the obligation to pay arises before the franchise location opens.*

viii. Disclose who pays the travel and living expenses of the persons receiving the training.

Sample Answer 11

Except as disclosed below, Belmont need not provide any assistance to you.

Before you open your business, Belmont will:

1) Designate your exclusive territory (Franchise Agreement - paragraph 2).

2) Assist you in selecting a business site. Your site must be at least __ square feet in area, have _ parking spaces, and an average of __ cars per hour driving by. We must approve or disapprove your site within 20 days after we receive notice of the location.

3) Within 30 days of your signing the Franchise Agreement, assist you to find and negotiate the lease or purchase of a location for your muffler shop (Franchise Agreement - paragraph _). Your store location will be purchased or leased by you from independent third parties.

4) Within 60 days of your signing the Franchise Agreement, provide written specifications for store construction or remodeling and for all required and replacement equipment, inventory and supplies (Franchise Agreement - paragraph _). See Item 8 of this offering circular.

5) Within 60 days of your signing the Franchise Agreement, provide blueprints for your store construction or remodeling and obtain health, sanitation, building, utility and sign permits for your premises. You pay for the construction or remodelling. (Franchise Agreement - paragraph _).

6) Within 60 days of your signing the Franchise Agreement, train you and one other person as follows:

SUBJECT	TIME BEGUN	INSTRUCTIONAL MATERIAL	HOURS OF CLASSROOM TRAINING	HOURS OF ON THE JOB TRAINING	INSTRUCTOR

Belmont does not charge for this training or service, but you must pay the travel and living expenses for you and your employees. All training occurs at Belmont's Jackson, Minnesota headquarters.

During the operation of the franchised business, Belmont will:

1) Develop new products and methods and provide you with information about developments. (Franchise Agreement - paragraph _.)

2) Loan you a copy of our operations manual which contains mandatory and suggested specifications, standards and procedures. This manual is confidential and remains our property. Belmont will modify this manual, but the modification will not alter your status and rights under the Franchise Agreement. (Franchise Agreement - paragraph .) The table of contents is as follows:

Each week for the first 90 days after you open your shop, Belmont will telephone to discuss your operational problems.

Belmont will hold annual conferences to discuss sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, advertising programs and merchandising procedures. There is no conference fee, but you must pay all your travel and living expenses. These elective conferences are held at our Jackson, Minnesota headquarters or at a location chosen by a majority vote of all franchisees.

Belmont provides advertising materials and services to you through a national advertising fund (the "National Fund"). Materials provided by the National Fund to all franchisees include video and audio tapes, mats, posters, banners and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies you must pay duplication costs.

You may develop advertising materials for your own use, at your own cost. Belmont must approve the advertising materials in advance and in writing.

Belmont occasionally provides for placement of advertising on behalf of the entire Belmont system, including franchisees. However, most placement is done on a local basis, typically by local advertising agencies hired by individual franchisees or advertising cooperatives. Belmont reserves the right to use advertising fees from the Belmont system to place advertising in national media (including broadcast, print or other media) in the future. In the past Belmont has used an outside advertising agency to create and place advertising. Neither Belmont nor its affiliate receives payment from the National Fund. Advertising funds are used to promote the product sold by the franchisee and are not used to sell additional franchises.

The National Fund is a nonprofit corporation which collects advertising fees from all franchisees. Each franchisor owned store of Belmont contributes to the National Fund on the same basis as franchisees. All payments to the National Fund must be spent on advertising, promotion and marketing of goods and services provided by Belmont Muffler Shops. You must contribute the amounts described in Item 6, under the heading "Advertising Fees and Expenses."

The National Fund is administered by Belmont's accounting and marketing personnel under the direction of the Advertising Council. An annual audited financial statement of the National Fund is available to any franchisee upon request. During the last fiscal year of the National Fund (ending on December 31, 1990), the National Fund spent 39% of its income on the production of advertisements and other promotional materials, 36% for media placement, 18% for general and administrative expenses, and 7% for other expenses (the purchase of glassware given to customers of Belmont shops as part of a promotional campaign).

The Advertising Council acts as the board of directors of the National Fund. The Advertising Council has 8 members: the President, Treasurer, Vice President-Marketing, and Vice President-Operations of Belmont; and 4 franchisee representatives who are elected by the governing board of the Belmont Franchisee Association.

Once your shop opens, you must participate in the local advertising cooperative established in the Area of Dominant Influence (ADI) where your store is located. The amount of your contribution to the local advertising cooperative is described in Item 6 under the heading "Advertising Fees and Expenses."

Each local advertising cooperative must adopt written governing documents. A copy of the governing documents of the cooperative (if one has been established) for your ADI is available upon request. Each cooperative may determine its own voting procedures; however, each company-owned Belmont Shop will be entitled to one vote in any local advertising cooperative. The members and their elected officers are responsible for administration of the cooperative. Advertising cooperatives must prepare quarterly and annual financial statements. The annual financial statement must be prepared by an independent CPA and be made available to all franchisees in that advertising cooperative.

You select your business site within your exclusive area subject to our approval. Belmont assists in site selection by telling you the number of new car registrations, population density, traffic patterns and proximity of the proposed site to other Belmont Muffler Shops.

Franchisees typically open their shops 4 to 7 months after they sign a franchise agreement. The factors that affect this time are the ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, and delayed installation of equipment fixtures and signs.

Item 12
TERRITORY

DESCRIBE ANY EXCLUSIVE TERRITORY GRANTED THE FRANCHISEE. CONCERNING THE FRANCHISEE'S LOCATION (WITH OR WITHOUT EXCLUSIVE TERRITORY), DISCLOSE WHETHER:

A. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH ANOTHER FRANCHISEE WHO MAY ALSO USE THE FRANCHISOR'S TRADEMARK.

B. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH A COMPANY-OWNED OUTLET OR OTHER CHANNELS OF DISTRIBUTION USING THE FRANCHISOR'S TRADEMARK.

Item 12 Instructions:

i. As used in Item 12, trademark includes names, trademarks, logos and other commercial symbols.

ii. If appropriate, describe the minimum area granted to the franchisee. The franchisor may use an area encompassed within a specific radius, a distance sufficient to encompass a specified population or another specific designation.

iii. State whether the franchise is granted for a specific location or a location to be approved by the franchisor.

iv. If appropriate, state the conditions under which the franchisor will approve the relocation of the franchised business or the establishment of additional franchised outlets.

v. Describe restrictions on the franchisor regarding operating company owned stores or on granting franchised outlets for a similar or competitive business within the defined area.

vi. Describe restrictions on franchisees from soliciting or accepting orders outside of their defined territories.

vii. Describe restrictions on the franchisor from soliciting or accepting orders inside the franchisee's defined territory. State compensation that the franchisor must pay for soliciting or accepting orders inside the franchisee's defined territories.

viii. Describe franchisee options, rights of first refusal or similar rights to acquire additional franchises within the territory or contiguous territories.

ix. If the franchisor does not grant territorial rights, use Sample Answer 12-1.

C. THE FRANCHISOR OR ITS AFFILIATE HAS ESTABLISHED OR MAY ESTABLISH OTHER FRANCHISES OR COMPANY-OWNED OUTLETS OR ANOTHER CHANNEL OF DISTRIBUTION SELLING OR LEASING SIMILAR PRODUCTS OR SERVICES UNDER A DIFFERENT TRADEMARK.

Item 12C Instructions

i. "Similar products and services" includes competing, interchangeable or substitute products but not products or services which are not part of the same product or service market.

ii. If the franchisor or an affiliate operates, franchises or has present plans to operate or franchise a business under a different trademark and that business sells goods or services similar to those to be offered by the franchisee, describe:

a) The similar goods and services;

b) The trade names and trademarks;

c) Whether outlets will be franchisor owned or operated;

d) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory;

e) A timetable for the plan;

f) How the franchisor will resolve conflicts between the franchisor and the franchisees and between the franchisees of each system regarding territory, customers or franchisor support; and

g) If appropriate, disclose the principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address disclosed in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

D. CONTINUATION OF THE FRANCHISEE'S TERRITORIAL EXCLUSIVITY DEPENDS ON ACHIEVEMENT OF A CERTAIN SALES VOLUME, MARKET PENETRATION OR OTHER CONTINGENCY AND UNDER WHAT CIRCUMSTANCES THE FRANCHISEE'S TERRITORY MAY BE ALTERED.

Item 12D Instructions:

i. Disclose conditions for the franchisee's keeping its territorial rights (for example, sales quotas or the opening of additional business outlets). Specify the quotas or conditions and the franchisor's rights if the franchisee fails to meet the requirements.

ii. Disclose other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise within the area.) Disclose the effect on the franchisee's rights.

Sample Answer 12-1

You will not receive an exclusive territory. Belmont may establish other franchised or company owned outlets that may compete with your location.

Sample Answer 12-2

You will receive an exclusive territory with a minimum population of 50,000 people. You will operate from one location and must receive Belmont's permission before relocating. Belmont will not operate stores or grant franchises for a similar or competitive business within your area. Except when advertising cooperatively with appropriate franchisees, neither Belmont nor you can advertise or solicit orders within another franchisee's territory. You and Belmont can accept orders from outside your territory without special payment.

You do not receive the right to acquire additional franchises within your area.

There is no minimum sales quota. You maintain rights to your area even though the population increases.

Item 13
TRADEMARKS

DISCLOSE THE PRINCIPAL TRADEMARKS TO BE LICENSED TO THE FRANCHISEE INCLUDING:

Item 13 Instructions:

i. As used in Item 13, "Principal trademarks" means the primary trademarks, service marks, names, logos and symbols to be used by the franchisee to identify the franchised business. It does not include every trademark owned by the franchisor.

ii. The franchisor may limit Item 13 disclosure to information that is relevant to the state where the franchised business will be located. The franchisor may include all states to eliminate the need for multiple disclosure in Item 13 but must amend its offering circular to reflect any material change in the list.

A. WHETHER THE PRINCIPAL TRADEMARKS ARE REGISTERED WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE. FOR EACH REGISTRATION [,] STATE THE REGISTRATION DATE AND NUMBER AND WHETHER THE REGISTRATION IS ON THE PRINCIPAL OR SUPPLEMENTAL REGISTER.

Item 13A Instructions:

i. Identify each principal trademark which the franchisee may use. The franchisor may reproduce these trademarks in this Item.

ii. State the date and identification number of each trademark registration or registration application listed. State whether the franchisor has filed all required affidavits. State whether any registration has been renewed.

iii. State whether the principal trademarks are registered on the principal or supplemental register of the U.S. Patent and Trademark Office, and if not, whether an "intent to use" application or an application based on actual use has been filed with the U.S. Patent and Trademark Office. If the principal trademark to be used by the franchisee is not registered on the Principal Register of the U.S. Patent and Trademark Office, state:

By not having a Principal Register federal registration for (name or description of symbol), (Name of Franchisor) does not have certain presumptive legal rights granted by a registration.

B. DISCLOSE CURRENTLY EFFECTIVE MATERIAL DETERMINATIONS OF THE PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD, THE TRADEMARK ADMINISTRATOR OF THIS STATE OR ANY COURT; PENDING INFRINGEMENT, OPPOSITION OR CANCELLATION; AND PENDING MATERIAL LITIGATION INVOLVING THE PRINCIPAL TRADEMARKS.

Item 13B Instructions:

i. Litigation or an action is material if it could significantly affect the ownership or use of a trademark listed under Item 13. Describe how the determination affects the ownership, use or licensing. Describe any decided infringement, cancellation or opposition proceedings. Include infringement, opposition or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor.

ii. For pending material federal or state litigation regarding the franchisor's use or ownership rights in a trademark [,] disclose:

a) The forum and case number;

b) The nature of claims made opposing the franchisor's use or by the franchisor opposing another person's use; and

c) *Any effective court or administrative agency ruling concerning the matter.*

iii. *Do not repeat disclosure made in response to Item 13A.*

iv. *The franchisor need not disclose historical challenges to registrations of trademarks listed in Item 13 that were resolved in the franchisor's favor.*

v. *The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.*

C. *DISCLOSE AGREEMENTS CURRENTLY IN EFFECT WHICH SIGNIFICANTLY LIMIT THE RIGHTS OF THE FRANCHISOR TO USE OR LICENSE THE USE OF TRADEMARKS LISTED IN ITEM 13 IN A MANNER MATERIAL TO THE FRANCHISE.*

Item 13C Instructions:

For each agreement disclose:

i. *The manner and extent of the limitation or grant;*

ii. *The agreement's duration;*

iii. *The parties to the agreement;*

iv. *The circumstances under which the agreement may be cancelled or modified; and*

v. *All other material terms.*

D. *WHETHER THE FRANCHISOR MUST PROTECT THE FRANCHISEE'S RIGHT TO USE THE PRINCIPAL TRADEMARKS LISTED IN ITEM 13, AND MUST PROTECT THE FRANCHISEE AGAINST CLAIMS OF INFRINGEMENT OR UNFAIR COMPETITION ARISING OUT OF THE FRANCHISEE'S USE OF THEM.*

Item 13D Instructions:

i. *Disclose the franchisee's obligation to notify the franchisor of the use of or claims of rights to a trademark identical to or confusingly similar to a trademark licensed to the franchisee.*

ii. *State whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims. Identify who has the right to control administrative proceedings or litigation.*

iii. *State whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.*

iv. *Disclose the franchisee's rights under the franchise if the franchisor requires the franchisee to modify or discontinue the use of a trademark as a result of a proceeding or settlement.*

E. *WHETHER THE FRANCHISOR ACTUALLY KNOWS OF EITHER SUPERIOR PRIOR RIGHTS OR INFRINGING USES THAT COULD MATERIALLY AFFECT THE FRANCHISEE'S USE OF THE PRINCIPAL TRADEMARKS IN THIS STATE OR THE STATE IN WHICH THE FRANCHISED BUSINESS IS TO BE LOCATED.*

Item 13E Instructions:

For each use of a principal trademark that the franchisor believes constitutes an infringement that could materially affect the franchisee's use of a trademark, state:

i. *The location(s) where the infringement is occurring;*

ii. *To the extent known, the length of time of the infringement; and*

iii. *Action taken by the franchisor.*

If the franchisor knows of a use of a trademark by another in a geographic area relevant to the franchisee which is or is likely to be based on a claim of superior prior rights to the franchisor's, state the nature of the use by the other person and the place or area where it is occurring.

Sample Answer 13

Belmont grants you the right to operate a shop under the name Belmont Muffler Shop. You may also use our other current or future trademarks to operate your shop. By trademark Belmont means trade names, trademarks, service marks and logos used to identify your shop. Belmont registered the below trademark on the United [~~State~~ States] Patent and Trademark Office principal register:

You must follow our rules when you use these marks. You can not use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which Belmont licenses to you. You may not use Belmont's registered name in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by Belmont.

On June 4, 1973, the United States Patent and Trademark Office rejected Belmont's application to register the mark "Super Mufflers" because the mark was found to be confusingly similar to a registered mark. Belmont's inability to register this mark on a federal level permits others to establish rights to use the mark. This use will not be in areas where our franchisees are operating, or advertising under the mark, or in the natural zone of expansion for Belmont's shops. In addition, these users must act in good faith and without actual knowledge of Belmont's prior use of the mark. However, if others establish rights to use Belmont's mark, Belmont may not be able to expand into these areas using the mark.

No agreements limit Belmont's right to use or license the use of Belmont's trademarks.

You must notify Belmont immediately when you learn about an infringement of or challenge to your use of our trademark. Belmont will take the action we think appropriate. While

Belmont is not required to defend you against a claim against your use of our trademark, Belmont will reimburse you for your liability and reasonable costs in connection with defending Belmont's trademark. To receive reimbursement you must have notified Belmont immediately when you learned about the infringement or challenge.

You must modify or discontinue the use of a trademark if Belmont modifies or discontinues it. If this happens, Belmont will reimburse you for your tangible costs of compliance (for example, changing signs). You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

Belmont does not know of any infringing uses that could materially affect your use of Belmont's trademark.

or

John E. Jones, 4231 Main Street, Reno, Nevada is currently doing business as Belmont Muffler Shoppe at 4231 Main Street, Reno, Nevada. We believe that this is an infringing use of our federally registered trademark "Belmont Muffler Shop," and we have filed an action to enjoin Mr. Jones and to recover damages. If the court holds that Mr. Jones' use is not infringing, Belmont may not be able to use Belmont's trademark in Mr. Jones' immediate area. (Belmont Muffler Shop v. Belmont Muffler Shoppe-cite)

Item 14
PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

IF THE FRANCHISOR OWNS RIGHTS IN PATENTS OR COPYRIGHTS THAT ARE MATERIAL TO THE FRANCHISE, DESCRIBE THESE PATENTS AND COPYRIGHTS AND THEIR RELATIONSHIP TO THE FRANCHISE. INCLUDE THEIR DURATION AND WHETHER THE FRANCHISOR CAN AND INTENDS TO RENEW THE COPYRIGHTS. TO THE EXTENT RELEVANT, DISCLOSE THE INFORMATION REQUIRED BY ITEM 13 CONCERNING THESE PATENTS AND COPYRIGHTS. IF THE FRANCHISOR CLAIMS PROPRIETARY RIGHTS IN CONFIDENTIAL INFORMATION OR TRADE SECRETS, DISCLOSE THEIR GENERAL SUBJECT MATTER AND THE TERMS AND CONDITIONS FOR USE BY THE FRANCHISEE.

Item 14 Instructions:

i. State the patent number, issue date and title for each patent. State the serial number, filing date and title of each patent application. Describe the type of patent or patent application (for example mechanical, process, or design). State the registration number and date of each copyright.

ii. Describe the relationship of the patent, patent application or copyright to the franchised business.

iii. Describe any current determination of the Patent and Trademark Office, Copyright Office (Library of Congress) or court regarding the patent or copyright. Include the forum, case number and effect on the franchised business.

iv. State the forum, case number, claims asserted, issues involved and effective determinations for any proceedings pending in the Patent and Trademark Office or the Court of Appeals for the Federal Circuit.

v. If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion about patent or copyright issues discussed in this Item.

vi. If an agreement limits the use of the patent, patent application or copyright, state the parties to and duration of the agreement, the extent to which the franchisee may be affected by the agreement, and other material terms of the agreement.

vii. Disclose the franchisor's obligation to protect the patent, patent application or copyright. State:

a) Whether franchisee must notify the franchisor of claims or infringements or if the action is discretionary.

b) Whether the franchisor must take affirmative action when notified of infringement or if the action is discretionary.

c) Who has the right to control litigation.

d) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application or copyright licensed to the franchisee.

e) Requirements that the franchisee modify or discontinue use of the subject matter covered by the patent or copyright.

f) Franchisee's rights if the franchisor requires the franchisee to modify or discontinue the use of the subject matter covered by the patent or copyright.

viii. If the franchisor actually knows of an infringement that could materially affect the franchisee, state:

a) The nature of the infringement.

b) The location(s) where the infringement is occurring.

c) The length of time of the infringement.

d) Action taken or anticipated by the franchisor.

ix. State whether the franchisor intends to renew the copyright when the registration expires.

x. Discuss in general terms other proprietary information communicated to the franchisee (for example, whether there is a formula or recipe considered to be a trade secret.)

xi. Use Sample Answer 14-1 if no patents or copyrights are material to the franchise.

Sample Answer 14-1

No patents or copyrights are material to the franchise.

Sample Answer 14-2

You do not receive the right to use an item covered by a patent or copyright, but you can use the proprietary information in Belmont's Operations Manual. The Operations Manual is described in Item 11. Although Belmont has not filed an application for a copyright registration for the Operations Manual, it claims a copyright and the information is proprietary. Item 11 describes limitations on the use of this manual by you and your employees. You must also promptly tell us when you learn about unauthorized use of this proprietary information. Belmont is not obligated to take any action but will respond to this information as we think appropriate. Belmont will indemnify you for losses brought by a third party concerning your use of this information.

Sample Answer 14-3

U.S. Patent 3999442 was issued on December 14, 1980. It describes a process for exhaust system installation. The process describes the steps in making a straight length of exhaust pipe, bending this pipe, coating the inside and outside of this pipe with our Pipe Protector and installing the exhaust pipe on a motor vehicle. You will use equipment utilizing this process.

On December 15, 1970, Belmont obtained a copyright registration for its Operations Manual under Registration A41139. Amendments to the manual were registered on January 7, 1983 (Reg. A521,371) and June 6, 1974 (Reg. A 541,333). Belmont intends to renew these copyrights. Item 11 of this Offering Circular describes the Operations Manual and the manner in which you are permitted to use it.

Belmont's right to use or license these patents and copyrighted items is not materially limited by any agreement or known infringing use.

You must tell us immediately if you learn about an infringement or challenge to our use of these patents or copyrights. Belmont will take the action that Belmont thinks appropriate. You must also agree not to contest Belmont's interest in these or our other trade secrets.

If Belmont decides to add, modify or discontinue the use of an item or process covered by a patent or copyright, you must also do so. Belmont's sole obligation is to reimburse you for the tangible cost of complying with this obligation.

Although Belmont is not obligated to defend your use of these items or processes, Belmont will reimburse you for damages and reasonable costs incurred in litigation about them.

Item 15
OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

DISCLOSE THE FRANCHISEE'S OBLIGATION TO PARTICIPATE PERSONALLY IN THE DIRECT OPERATION OF THE FRANCHISE BUSINESS AND WHETHER THE FRANCHISOR RECOMMENDS PARTICIPATION.

Item 15 Instructions:

i. Include obligations arising from written agreement (including personal guaranty, confidentiality agreement or noncompetition agreement) or from the franchisor's practice.

ii. If personal "on premises" supervision is not required:

a) If the franchisee is an individual, state whether the franchisor recommends "on-premises" supervision by the franchisee;

b) State limitations on whom the franchisee can hire as an on-premises supervisor;

c) Whether this "on-premises" supervisor must successfully complete the franchisor's training program; and

d) If the franchisee is a business entity, state the amount of equity interest that the "on premises" supervisor must have in the franchise.

iii. Disclose the restrictions which the franchisee must place on its manager (for example, maintain trade secrets, non-competition).

iv. The franchisor may reference Items 14 and 17 in its answer.

Sample Answer 15-1

If you are an individual, you must directly supervise the franchised business on its premises. If you are a corporation the direct, on-site supervision must be done by a person who owns at least 1/3 of the corporate equity.

Sample Answer 15-2

Belmont does not require that you personally supervise the franchised business. The business must be directly supervised "on-premises" by a manager who has successfully completed Belmont's training program. The on-premises manager can not have an interest or business relationship with any of Belmont's business competitors. The manager need not have an ownership interest in a corporate or partnership franchisee. The manager must sign a written agreement to maintain confidentiality of the trade secrets described in Item 14 and to conform with the covenants not to compete described in Item 17.

Each individual who owns a 5% or greater interest in the franchisee entity must sign an agreement (Exhibit ____) assuming and agreeing to discharge all obligations of the "Franchisee" under the Franchise Agreement.

Item 16
RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

DISCLOSE RESTRICTIONS OR CONDITIONS IMPOSED BY THE FRANCHISOR ON THE GOODS OR SERVICES THAT THE FRANCHISEE MAY SELL OR THAT LIMIT THE CUSTOMERS TO WHOM THE FRANCHISEE MAY SELL GOODS OR SERVICES.

Item 16 Instructions:

i. *Describe the franchisee's obligation to sell only goods and services approved by the franchisor.*

ii. *Disclose any franchisee obligation to sell all goods and services authorized by the franchisor. Disclose whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor's right to make changes.*

iii. *If the franchisee is restricted regarding customers, disclose the restrictions.*

iv. *The applicant may cross reference disclosures made in Items 8, 9, and 12.*

v. *Use Sample Answer 16-1 for a negative response.*

Sample Answer 16-1

Belmont does not restrict the type of goods or services that you may offer.

Sample Answer 16-2

Belmont requires you to offer and sell only those goods and services that Belmont has approved (see Item 9).

You must offer all goods and services that Belmont designates as required for all franchisees. These required services are muffler inspection, repair and replacement. Parts, supplies, and equipment used in your Belmont Muffler business must be approved by Belmont (see Item 8).

Belmont has the right to add additional authorized services that the franchisee is required to offer. There are no limits on Belmont's right to do so except that the investment required of a franchisee (for equipment, supplies and initial inventory) will not exceed $5,000 per year.

Belmont also designates some services as optional for qualified franchisees. Current optional services are brake inspection, repair and replacement, tire rotation, wheel balancing, and alignment and rustproofing. To offer optional goods or services, you must be in substantial compliance with all material obligations under your Franchise Agreement. In addition, Belmont may require you to comply with other requirements (such as training, marketing, insurance) before Belmont will allow you to offer certain optional services.

As long as you meet your annual agreed sales quotas (see Item 12), Belmont will not restrict you from soliciting any customers, no matter who they are or where they are located. If you do not meet your annual sales quota, Belmont may deny you the right to receive any further fleet business referrals from Belmont and may either keep the fleet business referrals for itself or give them to another franchisee. Failure to meet your annual sales quota is a default under your Franchise Agreement and grounds for termination of your franchise (see Item 17).

Item 17
RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

SUMMARIZE THE PROVISIONS OF THE FRANCHISE AND OTHER AGREEMENTS DEALING WITH TERMINATION, RENEWAL, TRANSFER, DISPUTE RESOLUTION AND OTHER IMPORTANT ASPECTS OF THE FRANCHISE RELATIONSHIP.

Item 17 Instructions:

i. *Begin Item 17 disclosure with the following statement:*

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

ii. *Respond in tabular form. Refer to the section of the agreement which covers each subject.*

iii. *Use a separate table for any other significant franchise-related agreements. If a provision in any other agreement affects the provisions of the franchise or franchise-related agreements disclosed in this Item (for example, the term of the franchise will be equal to the term of the lease), disclose that provision in the applicable category in the table.*

iv. *The table should contain a "summary" column to summarize briefly the disclosed provision. The summary is intended to provide a concise overview of the provision in no more than a few words or a sentence. Do not specify in detail all matters covered by a provision.*

v. *The table should respond to each category listed below. Do not change the names of the categories. List all contractual provisions relevant to each category in the table. If the response to any category is that the agreement does not contain the relevant provision, the table should so state. If the agreement is silent concerning a category but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, a footnote should describe this policy and state whether the policy is subject to change. The categories are:*

a. *Length of the term of the franchise*

b. *Renewal or extension of the term*

c. *Requirements for franchisee to renew or extend*

d. *Termination by franchisee*

e. *Termination by franchisor without cause*

f. *Termination by franchisor with "cause"*

g. *"Cause" defined - curable defaults*

h. *"Cause" defined - defaults which cannot be cured*

i. *Franchisee's obligations on termination/non-renewal*

j. *Assignment of contract by franchisor*

k. *"Transfer" by franchisee - defined*

l. *Franchisor approval of transfer by franchisee*

m. *Conditions for franchisor approval of transfer*

n. *Franchisor's right of first refusal to acquire franchisee's business*

o. *Franchisor's option to purchase franchisee's business*

p. *Death or disability of franchisee*

q. *Non-competition covenants during the term of the franchise*

r. *Non-competition covenants after the franchise is terminated or expires*

s. *Modification of the agreement*

t. *Integration/merger clause*

u. *Dispute resolution by arbitration or mediation*

v. *Choice of forum*

w. *Choice of law*

Sample Answer 17

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

	Provision	Section in Franchise Agreement	Summary
a.	Term of the franchise	Section 1, (also Section 1 of Lease, Exhibit F)	Term is equal to lease term - 10 years
b.	Renewal or extension of the term	Section 20	If you are in good standing you can add additional term equal to renewal term of lease (10 years max.)
c.	Requirements for you to renew or extend	Section 20	Sign new agreement, pay fee, remodel and sign release
d.	Termination by you	None	
e.	Termination by Belmont without cause	None	
f.	Termination by Belmont with cause	Section 21	Belmont can terminate only if franchisee defaults
g.	"Cause" defined - defaults which can be cured	Section 21B	You have 30 days to cure: non-payment of fees, sanitation problems, non submission of reports and any other default not listed in Section 21A.
h.	"Cause" defined - defaults which cannot be cured	Section 22	Non-curable defaults: conviction of felony, repeated defaults even if cured, abandonment, trademark misuse and unapproved transfers
i.	Your obligations on termination/nonrenewal	Section 22	Obligations include complete deidentification and payment of amounts due (also see r, below)
j.	Assignment of contract by Belmont	Section 18	No restriction on Belmont's right to assign
k.	"Transfer" by you - definition	Section 19A	Includes transfer of contract or assets or ownership change
l.	Belmont's approval of transfer by franchisee	Section 19B	Belmont has the right to approve all transfers but will not unreasonably withhold approval
m.	Conditions for Belmont approval of transfer	Section 19C	New franchisee qualifies, transfer fee paid, purchase agreement approved, training arranged, release signed by you and current agreement signed by new franchisee (also see r, below)
n.	Belmont's right of first refusal to acquire your business	Section 19F	Belmont can match any offer for the franchisee's business
o.	Belmont's option to purchase your business	None, but see policy described in Note 1	

p.	Your death or disability	Section 19D	Franchise must be assigned by estate to approved buyer in 6 months
q.	Non-competition covenants during the term of the franchise	Section 11	No involvement in competing business anywhere in U.S.
r.	Non-competition convenants after the franchise is terminated or expires	Sections 19C and 22C	No competing business for 2 years within 20 miles of another Belmont franchise (including after assignment)
s.	Modification of the agreement	Section 8A	No modifications generally but Operating Manual subject to change
t.	Integration/merger clause	Section 29	Only the terms of the franchise agreement are binding (subject to state law). Any other promises may not be enforceable
u.	Dispute resolution by arbitration or mediation	Section 24	Except for certain claims, all disputes must be arbitrated in _____, _____
v.	Choice of forum	Section 27	Litigation must be in _____
w.	Choice of law	Section 28	_____ law applies

Note 1 - Franchisor is not obligated by the Agreement to do so, but, if the franchise is terminated, franchisor's policy is to buy back inventory at fair market value. This policy is subject to change at any time.

These states have statutes which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise: ARKANSAS (Stat. Section 70-807), CALIFORNIA (Bus. & Prof. Code Sections 20000-20043), CONNECTICUT (Gen. Stat. Section 42-133e et seq.), DELAWARE (Code, tit.), HAWAII (Rev. Stat. Section 482E-1), ILLINOIS (Rev. Stat. Chapter 121 1/2 par 1719-1720), INDIANA (Stat. Section 23-2-2.7), IOWA (Code Sections 523H.1-523H.17), MICHIGAN (Stat. Section 19.854(27)), MINNESOTA (stat. Section 80C.14), MISSISSIPPI (Code Section 75-24-51), MISSOURI (Stat. Section 407.400), NEBRASKA (Rev. Stat. Section 87-401), NEW JERSEY (Stat. Section 56:10-1), SOUTH DAKOTA (Codified Laws Section 37-5A-51), VIRGINIA (Code 13.1-557-574-13.1-564), WASHINGTON (Code Section 19.100.180), WISCONSIN (Stat. Section 135.03). These and other states may have court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

Item 18
PUBLIC FIGURES

DISCLOSE THE FOLLOWING:

A. COMPENSATION OR OTHER BENEFIT GIVEN OR PROMISED TO A PUBLIC FIGURE ARISING FROM:

(1) THE USE OF THE PUBLIC FIGURE IN THE FRANCHISE NAME OR SYMBOL OR

(2) THE ENDORSEMENT OR RECOMMENDATION OF THE FRANCHISE TO PROSPECTIVE FRANCHISEES.

B. THE EXTENT TO WHICH THE PUBLIC FIGURE IS INVOLVED IN THE ACTUAL MANAGEMENT OR CONTROL OF THE FRANCHISOR.

C. THE TOTAL INVESTMENT OF THE PUBLIC FIGURE IN THE FRANCHISOR.

Item 18 Instructions:

i. A "public figure" is a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

ii. Disclose the compensation paid or promised for the endorsement or use of the name of the public figure.

iii. Describe the public figure's position and duties in the franchisor's business structure.

iv. State the amount of the public figure's investment. Describe the extent of the amount contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

v. Use sample answer 18-1 for a negative response.

Sample Answer 18-1

Belmont does not use any public figure to promote its franchise.

Sample Answer 18-2

Belmont has paid Ralph Doister $50,000 for the use of his name in promoting the sale of our franchise. The right expires December 31, 1992. Belmont has produced newspaper ads, a brochure and a video which feature Mr. Doister. Mr. Doister does not manage or own an interest in Belmont.

ITEM 19
EARNINGS CLAIMS

A. *AN EARNINGS CLAIM MADE IN CONNECTION WITH AN OFFER OF A FRANCHISE MUST BE INCLUDED IN FULL IN THE OFFERING CIRCULAR AND MUST HAVE A REASONABLE BASIS AT THE TIME IT IS MADE. IF NO EARNINGS CLAIM IS MADE, ITEM 19 OF THE OFFERING CIRCULAR MUST CONTAIN THE NEGATIVE DISCLOSURE PRESCRIBED IN THE INSTRUCTION.*

Item 19A Instructions:

i. *Definition: "Earnings claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level or range of actual or potential sales, costs, income or profit from franchised or non-franchised units may be easily ascertained.*

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) is an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

ii. *Supplemental earnings claim: If a franchisor has made an earnings claim in accordance with this Item 19, the franchisor may deliver to a prospective franchisee a supplemental earnings claim directed to a particular location or circumstance, apart from the offering circular. The supplemental earnings claim must be in writing, explain the departure from the earnings claim in the offering circular, be prepared in accordance with this item 19, and be left with the prospective franchisee.*

iii. *Scope of requirement: An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this Item 19. If an earnings claim is not made, then negative disclosure 19 (below) must be used.*

iv. *Claims regarding future performance: A statement or prediction of future performance that is prepared as a forecast or projection in accordance with the statement on standards for accountants' services on prospective financial information (or its successor) issued by the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.*

v. *Burden of proof: The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.*

(NEGATIVE DISCLOSURE 19)

REPRESENTATIONS REGARDING EARNINGS CAPABILITY

Belmont does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of (a Belmont muffler shop). Actual results vary from unit to unit and Belmont cannot estimate the results of any particular franchise.

B. *EARNINGS CLAIM SHALL INCLUDE A DESCRIPTION OF ITS FACTUAL BASIS AND THE MATERIAL ASSUMPTIONS UNDERLYING ITS PREPARATION AND PRESENTATION.*

Item 19B Instructions:

i. *FACTUAL BASIS: The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend. This includes for example, economic or market conditions which are basic to a franchisee's operation and encompass matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.*

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor or franchisees of that person; provided that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

ii. *Basic Disclosures: The earnings claim must state:*

(a) *Material assumptions, other than matters of common knowledge, underlying the claim (see Definition iii under Item 3 for the definition of "material");*

(b) *A concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;*

(c) *A conspicuous admonition that a new franchisee's individual financial results are likely to differ from the result stated in the earnings claim; and*

(d) *A statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.*

Item 20
LIST OF OUTLETS

DISCLOSE THE FOLLOWING:

A. THE NUMBER OF FRANCHISES OF A TYPE SUBSTANTIALLY SIMILAR TO THOSE OFFERED AND THE NUMBER OF FRANCHISOR OWNED OR OPERATED OUTLETS AS OF THE CLOSE OF EACH OF THE FRANCHISOR'S LAST 3 FISCAL YEARS. SEGREGATE FRANCHISES THAT ARE OPERATIONAL FROM FRANCHISES NOT YET OPERATIONAL. SEGREGATE DISCLOSURE BY STATE. TOTAL EACH CATEGORY.

B. THE NAMES OF ALL FRANCHISEES AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL OF THEIR OUTLETS. THE FRANCHISOR MAY LIMIT ITS DISCLOSURE TO ALL FRANCHISEE OUTLETS IN THE STATE, BUT IF THESE FRANCHISEE OUTLETS TOTAL FEWER THAN 100, DISCLOSE FRANCHISEE OUTLETS FROM ALL CONTIGUOUS STATES AND THEN THE NEXT CLOSEST STATE(S) UNTIL AT LEAST 100 FRANCHISEE OUTLETS ARE LISTED.

C. THE ESTIMATED NUMBER OF FRANCHISES TO BE SOLD DURING THE 1 YEAR PERIOD AFTER THE CLOSE OF THE FRANCHISOR'S MOST RECENT FISCAL YEAR.

D. THE NUMBER OF FRANCHISEE OUTLETS IN THE FOLLOWING CATEGORIES THAT, FOR THE 3-YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF FRANCHISOR'S MOST RECENT FISCAL YEAR HAVE:

(1) TRANSFERRED CONTROLLING OWNERSHIP;

(2) BEEN CANCELLED OR TERMINATED BY THE FRANCHISOR;

(3) NOT BEEN RENEWED BY THE FRANCHISOR;

(4) BEEN REACQUIRED BY THE FRANCHISOR; OR

(5) BEEN REASONABLY KNOWN BY THE FRANCHISOR TO HAVE OTHERWISE CEASED TO DO BUSINESS IN THE SYSTEM.

E. THE NAME AND LAST KNOWN HOME ADDRESS AND TELEPHONE NUMBER OF EVERY FRANCHISEE WHO HAS HAD AN OUTLET TERMINATED, CANCELLED, NOT RENEWED, OR OTHERWISE VOLUNTARILY OR INVOLUNTARILY CEASED TO DO BUSINESS UNDER THE FRANCHISE AGREEMENT DURING THE MOST RECENTLY COMPLETED FISCAL YEAR OR WHO HAS NOT COMMUNICATED WITH THE FRANCHISOR WITHIN 10 WEEKS OF THE APPLICATION DATE.

Item 20 Instructions:

i. Do not include a transfer when beneficial ownership of the franchise does not change.

ii. List an outlet that is reacquired by the franchisor in that column whether or not it also fits another category.

iii. Other than the franchisee names, addresses, and telephone numbers, disclose Item 20 information in tabular form. Use footnotes or a "remarks" column to elaborate on information in the table or to disclose caveats. Disclose the number of franchised and franchisor owned outlets sold, opened and closed. Disclose the total number of franchised and franchisor owned outlets open at the end of each year. Disclose information for each of the last 3 fiscal years.

iv. If an outlet has been operated by more than one franchisee, disclose each transfer in the transfer column.

v. Disclose information about franchisor owned outlets that are substantially similar to the franchised outlets. In this Item "franchisor owned" outlets include outlets owned by the franchisor and by its affiliates. Use a separate table with a format similar to the format for franchised outlets. The same table may be used if the franchisor owned outlets are separated from franchised outlets.

vi. For franchisees operating within the system disclose franchisee business addresses and telephone numbers. List outlets owned by the persons listed in Item 2 and their immediate families or by business entities owned by them as franchisor owned outlets. These outlets can be identified in the table by an asterisk.

vii. Separate information by state. List all states for which franchisor has information responsive to this Item.

viii. When the requirement states "most recent fiscal year," the franchisor may use a more recent date if it discloses that date and uses that date for all disclosures in this Item.

ix. When the requirement states "most recent fiscal year," the state may require a more recent date.

Sample Answer 20

FRANCHISED STORE STATUS SUMMARY FOR YEARS 1992/1991/1990

STATE	TRANSFERS	CANCELLED OR TERMINATED	NOT RENEWED	REACQUIRED BY FRANCHISOR	LEFT THE SYSTEM OTHER	TOTAL FROM LEFT COLUMNS (2)	FRANCHISES OPERATING AT YEAR END
Alaska							2/0/0
Arizona	2/1/0					2/1/0	8/6/2
Arkansas							6/4/2

California					1/1/0	1/1/0	4/0/0
Colorado							3/3/3
Connecticut							5/3/1
Delaware		1/0/0				1/0/0	6/4/0
Florida							2/0/0
Georgia							2/0/0
Idaho							2/0/0
Totals	2/1/0	1/0/0	0/0/0	0/0/0	1/0/0	4/2/0	40/20/8

1) Note: All numbers are as of December 31 for each year.

2) The numbers in the "Total" column may exceed the number of stores affected because several events may have affected the same store. For example, the same store may have had multiple owners.

STATUS OF COMPANY OWNED STORES FOR YEARS 1992/1991/1990

STATE	STORES CLOSED DURING YEAR	STORES OPENED DURING YEAR	TOTAL STORES OPERATING AT YEAR END
Alaska			
Arizona			
Arkansas			
California			
Colorado			
Connecticut			
Delaware			
Florida			
Georgia			
Idaho			
	0/0/0	0/0/0	0/0/0

Note: Belmont no longer operates company owned stores.

PROJECTED OPENINGS AS OF DECEMBER 31, 1992

STATE	FRANCHISE AGREEMENTS SIGNED BUT STORE NOT OPEN (1)	PROJECTED FRANCHISED NEW STORES IN THE NEXT FISCAL YEAR	PROJECTED COMPANY OWNED OPENINGS IN NEXT FISCAL YEAR
Alaska	1	1	
Arizona			
Arkansas			
California			
Colorado			
Connecticut		2	
Delaware			
Florida			
Georgia			
Idaho	1		0
Totals	2	3	

Note (1) As of December 31, 1992

Item 21
FINANCIAL STATEMENTS

PREPARE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THESE FINANCIAL STATEMENTS MUST BE AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UNAUDITED STATEMENTS MAY BE USED FOR INTERIM PERIODS. INCLUDE THE FOLLOWING FINANCIAL STATEMENTS.

A. THE FRANCHISOR'S BALANCE SHEETS FOR THE LAST TWO FISCAL YEAR ENDS BEFORE THE APPLICATION DATE. IN ADDITION INCLUDE STATEMENTS OF OPERATIONS, OF STOCKHOLDERS EQUITY AND OF CASH FLOWS FOR EACH OF THE FRANCHISOR'S LAST THREE FISCAL YEARS. IF THE MOST RECENT BALANCE SHEET AND STATEMENT OF OPERATIONS ARE AS OF A DATE MORE THAN 90 DAYS BEFORE THE APPLICATION DATE, THEN ALSO SUBMIT AN UNAUDITED BALANCE SHEET AND STATEMENT OF OPERATIONS AS OF A DATE WITHIN 90 DAYS OF THE APPLICATION DATE.

B. AFFILIATED COMPANY STATEMENTS. INSTEAD OF THE DISCLOSURE REQUIRED BY ITEM 21A, THE FRANCHISOR MAY INCLUDE FINANCIAL STATEMENTS OF ITS AFFILIATED COMPANY IF THE AFFILIATED COMPANY'S FINANCIAL STATEMENTS

SATISFY ITEM 21A AND THE AFFILIATED COMPANY ABSOLUTELY AND UNCONDITIONALLY GUARANTEES TO ASSUME THE DUTIES AND OBLIGATIONS OF THE FRANCHISOR UNDER THE FRANCHISE AGREEMENT.

C. *CONSOLIDATED AND SEPARATE STATEMENTS:*

(1) *WHEN A FRANCHISOR OWNS A DIRECT OR BENEFICIAL, CONTROLLING FINANCIAL INTEREST IN ANOTHER CORPORATION, ITS FINANCIAL STATEMENTS SHOULD REFLECT THE FINANCIAL CONDITION OF THE FRANCHISOR AND ITS SUBSIDIARIES.*

(2) *IF THE APPLICANT IS A SUBFRANCHISOR INCLUDE SEPARATE FINANCIAL STATEMENTS FOR THE FRANCHISOR AND SUBFRANCHISOR RELATED ENTITY.*

(3) *PREPARE CONSOLIDATED AND SEPARATE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.*

Item 21 Instructions:

i. *Financial statements additional to those listed in this Item may be required.*

ii. *A company controlling 80% or more of a franchisor may be required to include its financial statements.*

iii. *Present required financials in a format of columns which compare at least 2 fiscal years.*

iv. *In Item 21A, the required financial statements for a franchisor with a calendar fiscal year end and a July 15, 1989 application filing date are:*

a) *Unaudited balance sheet as of either April 30, May 31 or June 30, 1989 with an unaudited income statement for the period from January 1, 1989 to the date of the balance sheet;*

b) *Balance sheets, statements of operations, of stockholders equity and of cash flow. The balance sheets should be audited and as of December 31, 1987 and 1988. The remaining statements should be audited and should be for periods ending December 31, 1986, 1987 and 1988; and*

c) *If the franchisor has never had an audit, it need not supply the financial statement required by (b) if it supplies either an audit as of its last fiscal year end or the statements required by (a) in an audited form.*

v. *In the Item 21B response, the affiliate's guarantee need cover only the franchisor's obligations to the franchisee. The guarantee need not extend to third parties. For a sample guarantee refer to Form F.*

vi. *Disclose the existence of a guarantee.*

Item 22
CONTRACTS

ATTACH A COPY OF ALL AGREEMENTS PROPOSED FOR USE OR IN USE IN THIS STATE REGARDING THE OFFERING OF A FRANCHISE, INCLUDING, THE FRANCHISE AGREEMENT, LEASES, OPTIONS AND PURCHASE AGREEMENTS.

Item 22 Instructions:

i. *Copies of agreements attached to the offering circular under Item 22 are part of the offering circular. Each offering circular delivered to a prospective franchisee must include copies of all agreements to be offered.*

ii. *The franchisor may cross reference Item 10 for financing agreements.*

Item 23
RECEIPT

THE LAST PAGE OF THE OFFERING CIRCULAR IS A DETACHABLE DOCUMENT ACKNOWLEDGING RECEIPT OF THE OFFERING CIRCULAR BY THE PROSPECTIVE FRANCHISEE. IT MUST CONTAIN THE FOLLOWING STATEMENT IN BOLDFACE TYPE:

THIS OFFERING CIRCULAR SUMMARIZES CERTAIN PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF ____ OFFERS YOU A FRANCHISE, ____ MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

(1) *THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR*

(2) *TEN BUSINESS DAYS BEFORE THE SIGNING OF A BINDING AGREEMENT; OR*

(3) *TEN BUSINESS DAYS BEFORE A PAYMENT TO ____.*

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN A FRANCHISE AGREEMENT.

IF ____ DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY).

Item 23 Instructions:

1. *Place the name of the franchisor in the blank and in the case of a multi-state offering, the state agency may be included as an exhibit.*

2. *Make two copies of the Receipt: one for retention by the franchisee and one by the franchisor.*

3. *Disclose the name, principal business address and telephone number of the subfranchisor or franchise broker offering the franchise in this state.*

4. *List the title of all attached exhibits.*

5. *Effective Date: (Leave blank until notified of effectiveness by state regulatory authority. [( ] In a multi-state offering the effective date may refer to an exhibit.)*

6. *The name and address of the franchisor's registered agent authorized to receive service of process if not disclosed in Item 1.*

Sample Answer 23

RECEIPT

THIS OFFERING CIRCULAR SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF BELMONT OFFERS YOU A FRANCHISE, BELMONT MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

(1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR

(2) TEN BUSINESS DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR

(3) TEN BUSINESS DAYS BEFORE ANY PAYMENT TO BELMONT.

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.

IF BELMONT DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY).

Belmont authorizes Legal Process Corp at 448 West Washington Avenue, City, State to receive service of process for Belmont.

I have received a Uniform Franchise Offering Circular dated _____. This offering circular included the following Exhibits:

A. License Agreement

B. Equipment Lease

C. Lease for Premises

D. Loan Agreement

_____

Date *Franchisee*

Form A - Facing Page

7/1/95

UNIFORM FRANCHISE REGISTRATION APPLICATION

(Insert file number of previous filings of Applicant)

FEE: _____

[( ] *Enclosed when application is initially filed)*

APPLICATION FOR (Check only one):

_____ *REGISTRATION OF AN OFFER AND SALE OF FRANCHISES*

_____ *REGISTRATION RENEWAL STATEMENT OR ANNUAL REPORT*

AMENDMENT NUMBER ____ *TO APPLICATION*

_____ *POST-EFFECTIVE* *FILED UNDER SECTION* _____

_____ *PRE-EFFECTIVE* *DATED* _____

1. *Name of Franchisor. (If applicant is subfranchisor, the name of the subfranchisor.)*

   Name under which the Franchisor is doing or intends to do business.

2. *Franchisor's principal business address.*

   Name and address of Franchisor's agent in the State of (Name of State) authorized to receive process.

3. *Name, address and telephone number of subfranchisors, if any, for this state.*

4. *Name, address and telephone number of person to whom communications regarding this application should be directed.*

Form B - Supplemental Information

7/1/95

SUPPLEMENTAL INFORMATION

1. *Disclose:*

   A. *The states in which this proposed registration application is effective.*

   B. *The states in which this proposed registration application is or will be shortly on file.*

   C. *The states that have refused to register this franchise offering.*

   D. *The states that have revoked or suspended the right to offer franchises.*

   E. *The states in which this proposed registration of these franchises has been withdrawn within the last five years, and the reasons for revocation or suspension.*

2. *Source of Funds for Establishing New Franchises*

   Disclose franchisor's total costs for performing its pre-opening obligations to provide goods or services in connection with establishing each franchise, including real estate, improvements, equipment, inventory, training and other items stated in the offering. State separately the sources of all required funds.

Form C - Certification

7/1/95

I certify under penalty of law that I have read and know the contents of this application and the documents attached as exhibits and incorporated by reference and that the statements in all these documents are true and correct.

Executed at _____, _____, *19*___

(Signature(s) of Franchisor and/or Subfranchisor)

By _____

(Seal) *Title* _____

STATE OF)

) *ss.*

COUNTY OF)

Personally appeared before me this _____ *day of* _____, *19* _____ *the above-named* _____ _____ *and* _____ *to me known to be the person(s) who executed the foregoing application (as* _____ *and* _____ *respectively, of the above-named applicant) and (each), being first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true and correct.*

_____

_____

(Notary)

CORPORATE ACKNOWLEDGMENT

STATE OF)

) ss.

COUNTY OF)

On this _____ day of _____, 19 _____, before me _____
(Name of Notary)

the undersigned officer, personally appeared _____ and _____ known personally to me to be the _____ President and _____ Secretary, respectively, of the above-named corporation, and that they, as such officers, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

_____
(Notary Public)

(NOTARIAL SEAL) *My commission expires: _____*

INDIVIDUAL [~~OF~~ OR] PARTNERSHIP ACKNOWLEDGMENT

STATE OF)

) ss.

COUNTY OF)

On this _____ day of _____, 19_____, before me, _____, the undersigned officer, personally appeared _____ to me personally known and known to me to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

_____
(Notary Public)

(NOTARIAL SEAL) *My commission expires: _____*

Form D

7/1/95

UNIFORM CONSENT TO SERVICE OF PROCESS

_____, *(a corporation organized under the laws of the State of* _____*) (a partnership) (an individual)* _____ _____, *irrevocably appoints the* _____ *(regulatory authority) and the successors in office, its attorney in the State of* _____ *for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of* _____, *and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within* _____ *by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of* _____ *and had lawfully been served with process in* _____. *It is requested that a copy of any notice, process or pleading served this consent be mailed to:*

_____

(Name and address)

_____

Dated: _____, *19*___.

_____

By _____

Title _____

(SEAL)

By _____

Title _____

FORM E
7/1/95

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
Division of Securities and Retail Franchising

Affidavit of Compliance -- Franchise Amendment/Renewal

STATE OF)
) *ss.*
COUNTY OF)

_____, *being duly sworn, deposes and says:*

1. *This affidavit is submitted in connection with an application to amend/renew the effective franchise registration of* _____ *in accordance with [~~Rule S.VRFA 6 or 7~~ § 4 or 5].*
(Name of Franchisor/Subfranchisor)

2. *To the best of my knowledge, the franchisor/subfranchisor on whose behalf the application to amend/renew is made:*

   a. *Has not, since the effective date of its most recent application, been convicted of any crime or been held liable in a civil action by final judgment involving a felony, an act of fraud, a misdemeanor involving a franchise, or a knowing or willful violation of the Virginia Retail Franchising Act; and*

   b. *Is not insolvent or in danger of becoming insolvent, either in the sense that its liabilities exceed its assets (determined in accordance with Generally Accepted Accounting Principles) or in the sense that it cannot meet its obligations as they mature.*

3. *The revised franchise disclosure document submitted in connection with the application to amend/renew is, to the best of my knowledge, in compliance with the requirements of [~~Rule S. VRFA 12~~ §§ 8 and 9].*

Executed at _____, _____ *19* _____

_____
Name of Franchisor/Subfranchisor

By: _____*(SEAL)*

Title: _____

Select Amendment Effective Date

____ *Immediately Upon Request*

____ _____ *19* ____

Select Renewal Effective Date

_____ *Immediately Upon Receipt*

____ _____ *19* ____

Note: When a renewal application includes amendments, a selection should be made for both the amendments and the renewal. If no selection is made, the effectiveness will be immediately upon receipt by the Commission.

Subscribed and sworn to before me, a Notary Public, this _____ *day of* _____, *19*___.

_____ *My Commission Expires:* _____ *(NOTARY'S SEAL)*
(NOTARY PUBLIC)

Form F

7/1/95

GUARANTEE OF PERFORMANCE

For value received _____ *located at*

_____, *absolutely and unconditionally*
(Address)

guarantees the performance by _____ *located at*

_____ *of all of the obligations of*
(Address)

under its franchise registration in the State of _____ *dated*
(Name of state or province)

_____ *and of its Franchise Agreement.*
(Effective date of renewal)

This guarantee continues until all obligations of _____ *under the franchise registration and franchise agreement are satisfied.* _____ *is not discharged from liability if a claim by the [* ~~*franchise*~~ *franchisee] against* _____ *remains outstanding. Notice of acceptance is waived. Notice of default on the part of* _____ *is not waived. This guarantee is binding on* _____ *and on its successors and assignees.*

_____ *executes this guarantee at*
[~~*(Parent)*~~ *(Affiliate)]*

_____ *on the* ____ *day of* _____ *19* ____.

_____
[~~*(Parent)*~~ *(Affiliate)]*

By: _____

Title: _____

FORM G

7/1/95

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

DIVISION OF SECURITIES AND RETAIL FRANCHISING

FRANCHISOR'S SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the State Corporation Commission has required _____ _____ to furnish a surety bond as a condition of registration (or renewal of registration) of its franchises as defined in Title 13.1, Chapter 8, Code of Virginia (1950), as amended, and conditioned as provided by law.

NOW, THEREFORE, _____, as principal and _____, as surety, acknowledge themselves indebted and firmly bound unto the COMMONWEALTH OF VIRGINIA in the penal sum of _____ thousand dollars to the payment of, which will and truly be made, they jointly and severally bind themselves, their successors and assigns, firmly by these presents.

THE CONDITIONS of this obligation are such that if the principal satisfies all criminal and civil penalties, or either, provided in Title 13.1, Chapter 8, Code of Virginia (1950), as amended, for which said principal may become liable, then this obligation shall be null and void; otherwise to be and remain in full force and effect.

IT IS AGREED that this obligation is to remain in force until cancelled by the surety by thirty days written notice to the principal and the State Corporation Commission.

WITNESS the following signatures and seals this _____ day of _____, 19___.

_____*(SEAL)*
Principal

_____*(SEAL)*
Surety

_____
by Attorney-in-fact

Countersigned:

_____
Name of Agency

by: _____
Registered Virginia Agent

Commentary Dated June 21, 1994 On The Uniform Franchise Offering Circular

INTRODUCTION

On April 25, 1993, the North American Securities Administrators Association ("NASAA") adopted amendments to the Uniform Franchise Offering Circular ("new UFOC"). Adoption followed several years of work by the NASAA Franchise and Business Opportunities Committee ("NASAA Committee").

After adoption of the new UFOC, members of the Franchise Advisory Committee ("Advisory Committee") and other interested parties brought to the NASAA Committee's attention certain issues under the new UFOC where they believed additional interpretation and clarification would be helpful.

In response to the concerns of the Advisory Committee, which consulted with the NASAA Committee during the process of drafting the new UFOC, the NASAA Committee agreed that a "Commentary" to the new UFOC would be valuable to franchisors drafting offering circulars pursuant to the new UFOC and to franchise examiners and enforcement agencies reviewing offering circulars. The Commentary is not intended to change any substantive requirements of the new UFOC and, therefore, does not require formal approval by NASAA or by the Federal Trade Commission.

The NASAA Committee and the Advisory Committee met in Richmond, Virginia in January of 1994 to discuss these interpretational concerns. This Commentary is a result of the Richmond meeting and additional discussions and drafting since the meeting. The Commentary is intended to clarify and provide interpretations of specific provisions of the new UFOC. The issues covered by the Commentary are presented in a question-and-answer format.

Issue #1 - Instruction 265 - Phase-In

The new UFOC is effective 6 months after the last franchise regulatory state (or the FTC) approves it, but no later than January 1, 1995. Can a franchisor begin using the new format in a state which has approved the new UFOC (and after FTC approval) but before the national effective date?

Answer

A circular prepared in accordance with the new UFOC may be used in a state after that state and the FTC have approved the new format. (FTC approval was given on December 30, 1993.) Thus, after state and FTC approval, either a new or old format circular may be used in that state. After the national effective date, only a new UFOC may be used in connection with an initial filing or renewal.

Issue #2 - Instruction 265 - Amendments

If a franchisor files an amendment (for example, to change personnel in Item 2 or add litigation in Item 3) after the national effective date but before its next renewal date, is it required to change-over the entire UFOC to the new format at that time?

Answer

An amendment filing is not required to be on the new format until after the franchisor submits a new UFOC in its first renewal (or annual report) after the national effective date (however, see FTC Staff Advisory Opinion 94-1 CCH Business Franchise Guide ¶6457).

It may be advisable, but is not required, for a franchisor to amend its registration before the national effective date to change-over to the new UFOC (to avoid potential delays in review and approval during 1995). Because of the nature of this type of amendment filing (that is, an amendment only for the purpose of changing over to the new UFOC), a franchisor should not have to stop offering franchises during the review period.

Issue #3 - Instruction 265 - "Re-Registration"

The word "re-registration" appears in Instruction 265. What does it mean?

Answer

The word "re-registration" was intended to cover a franchisor who had been registered in the past but whose registrations have since lapsed and now is filing to become registered again.

Issue #4 - Instruction 265 - Phase-In for Non-Registration States

If a franchisor has not registered its offering in any state, when is it required to convert to the new UFOC?

Answer

The FTC phase-in requirements will apply.

Issue #5 - Item 1 - "Predecessor"

Is the definition of "predecessor" in instruction iii of Item 1 applicable to Item 1 only or is it applicable throughout the UFOC, for example, to the use of "predecessor" in Items 3 and 4?

Answer

The definition of predecessor in instruction iii to Item 1 should be applied throughout the UFOC.

Issue #6 - Item 1 - Predecessor Disclosure Period

Is the ten year period regarding predecessor disclosure in instruction iv to Item 1 applicable to Item 1 only or is it also applicable to predecessor information in Items 3 and 4?

Answer

The ten year period referred to instruction iv of Item 1 is also applicable to predecessor disclosure in Items 3 and 4.

Issue #7 - Item 1 - "Affiliate"

What definition of "affiliate" should be used in the new UFOC?

Answer

As a general rule in the new UFOC, an "affiliate" is "a person (other than a natural person) controlled by, controlling or under common control with the franchisor". This definition applies to all Items unless a particular Item defines it differently or limits its use. For example, Item 1, instruction v, limits the general definition to an affiliate "which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor". Also, Item 3, instruction i, limits the general definition to an affiliate "offering franchises under the franchisor's principal trademarks".

Issue #8 - Item 1 - Government Regulations

Item 1E, instruction vi, refers to "regulations specific to the industry in which the franchise business operates." How broadly does this extend? How much detail is required about these regulations? For example, a restaurant franchisor might refer to food service health and sanitation codes since those are industry-focused. Child labor laws, while not industry-specific, impact on the fast food business. Should they be mentioned and, if so, what about other general laws that have a significant impact on a particular type of business format?

Answer

The instruction states that it is unnecessary to refer to laws that "apply to businesses generally". A fast food franchisor, therefore, would not be required to refer to child labor laws or other general categories of laws even if those laws have a substantial or disproportionate impact on the business being franchised. In addition, generally-applicable regulations such as local signage restrictions, no-fault liability insurance requirements, business licensing laws (as opposed to professional licensing laws), tax regulations and labor laws need not be disclosed. Only laws that pertain solely and directly to the industry sector of which the franchised business is a part must be disclosed in this Item. Examples include:

- *A real estate brokerage franchisor should disclose that broker licensing laws will apply to the franchisee.*
- *An optical products franchisor should disclose the existence of applicable optometrist/optician staffing regulations and licensing requirements.*
- *A lawn care franchisor should disclose that certain laws regulating pesticide application to residential lawns will require that franchisees post notices on treated lawns.*

In any case where industry-specific laws are disclosed, statutory citation and identification are unnecessary; the disclosure should state that a specific type of regulation exists and that the prospective franchisee should investigate the matter further.

Issue #9 - Item 3 - Confidential Settlements

Under the old UFOC, franchisors were not required to disclose the terms of confidential settlements. Are the terms of confidential settlements required to be disclosed under the new UFOC?

Answer

If a settlement agreement must be disclosed under Item 3B of the new UFOC, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, because of difficulties in retrieving information and/or obtaining releases from confidentiality agreements, for confidential settlements entered into before April 25, 1993 (the date of NASAA's approval of the new UFOC), a franchisor may disclose only the information required under the old UFOC.

Issue #10 - Item 3 - Dismissals

Based on the last sentence of section ii of Item 3, Definitions, may actions which are dismissed in the context of a settlement be omitted from Item 3?

Answer

The last sentence of section ii of Item 3, Definitions, allows the omission of an action which is dismissed as a result of a concluded adversarial proceeding, but is not intended to cover dismissal of an action in connection with a settlement. The standards for determining whether a settlement must be disclosed (or may be omitted) are described in section iv of Item 3, Definitions.

Issue #11 - Item 3 - Other Material Actions

Are only actions of the types enumerated in Item 3 required to be disclosed?

Answer

The requirement that a franchisor disclose actions which include allegations of violations of franchise, antitrust or securities law, or fraud, unfair or deceptive practices, or comparable allegations should not be narrowly construed in drafting disclosure for Item 3. Most franchise laws generally prohibit, among other things, omissions of material fact. The courts have generally interpreted "material facts" or "materiality" to include information which a reasonable investor would deem to be significant when making an investment decision. Franchisors should not limit disclosure solely to those items enumerated in Item 3 if a materiality analysis requires disclosure of an action.

Issue #12 - Item 3 - Foreign Litigation

Are franchisors required to disclose foreign (outside the United States) actions in Item 3 of the UFOC?

Answer

Item 3 is not limited to disclosure of actions which have been filed in the United States. Franchisors must disclose all material litigation, even if the actions are in a foreign court or arbitration forum.

Issue #13 - Item 4 - Bankruptcy

Item 4 requires disclosure of bankruptcy information about "officers." Does this include everyone listed in Item 2?

Answer

Only "officers" are required to make bankruptcy disclosures in Item 4, not every person listed in Item 2. "Officers" includes those individuals whose duties include some or all of the duties typically performed by the chief executive and chief operating, financial, franchise marketing, training and service officers. It also includes "de facto" officers, those individuals who have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by the offering circular but whose title does not reflect the nature of the position. A member of the Board of Directors who is not also an officer (as described above) is not covered by this disclosure.

Issue #14 - Item 5 - Initial Fees Paid to Affiliates

If the franchisee makes any payments to affiliates of the franchisor before the franchisee's business opens, must this be disclosed as an "initial fee"?

Answer

"Initial fees" includes all fees and payments received by the franchisor and its affiliates before the franchisee's business opens.

Issue #15 - Item 7 - Initial Phase

The new UFOC requires disclosure of certain information during the "initial phase" of operation of the franchised business and indicates that it is ordinarily 3 months. Is the initial phase always 3 months? Or must a franchisor use a longer period if that is typical in its industry? Also, does the "initial phase" requirement apply to any line item in Item 7 other than "additional funds"?

Answer

A franchisor may use either a 3 month initial phase, or an initial phase longer than 3 months if the length of time is a "reasonable period for the industry" and if earnings claims problems can be avoided (for example, by complying with Item 19).

Only the additional funds line item is covered by the "initial phase" requirement, but it may also be appropriate in some cases to disclose real estate costs during the initial phase. In addition, fees paid to the franchisor during the initial phase may be disclosed, so long as earnings claims problems can be avoided (for example, by complying with Item 19). All other expenditures, such as for inventory, should only be stated through the franchise opening date.

Issue #16 - Item 8 - Scope

A variety of terminology is used throughout Item 8 to refer to a wide range of sourcing restrictions. For example, although the requirements refer to all sourcing restrictions, reference is made in Instruction iii to "required purchases" and in Instruction vii to "designated" suppliers. What is the scope of Item 8?

Answer

Item 8 requires disclosure of all restrictions on the freedom of the franchisee to obtain goods, real estate, services, etc. from sources of the franchisee's choosing, and of all means by which a franchisor may derive revenue as a result of franchisee purchases or leases of goods and services. As a result, for example, Instruction iii encompasses all revenues a franchisor (or its affiliates) derives from purchases and leases of products and services to franchisees. Also, Instruction vii requires the disclosure of all rebates paid by designated suppliers, approved suppliers and suppliers whose goods and services meet specifications.

Issue #17 - Item 8 - Rebates for Advertising

If a supplier makes payments to an advertising fund or advertising co-op, must this be reported?

Answer

If the payments are made to an independent advertising co-op, disclosure is not required. Payments to an advertising fund directly or indirectly controlled by the franchisor must be reported.

Issue #18 - Item 8 - Rebates from Other Parties

If the supplier of goods to franchisees is a distributor who buys from a manufacturer and the manufacturer pays rebates to the franchisor, must this be disclosed?

Answer

Rebates paid by all third parties involved in the product distribution process must be disclosed.

Issue #19 - Item 8 - Rebates to Affiliates

If rebates are paid by suppliers to an affiliate of the franchisor, must these rebates be disclosed?

Answer

Rebates paid by suppliers to the franchisor's affiliates must be disclosed.

Issue # 20 - Item 8 - Rebates - Identity of Suppliers

Although the sample answer identifies suppliers who pay rebates, the instruction does not require such identification. Must the franchisor identify by name suppliers who pay rebates?

Answer

Franchisors are not required to identify by name any suppliers who pay rebates.

Issue #21 - Item 8 - Product Discounts

Instruction vii indicates that a franchisor who pays less than its franchisees for products bought from a common source has received a "payment" from a supplier. Is this intended to encompass every situation where a franchisor pays less than a franchisee?

Answer

If a franchisor receives a "special deal" on the purchase of products that a vendor also supplies to franchisees, this constitutes a "payment" to the franchisor for purposes of this disclosure. It is not a payment, however, if a franchisor takes advantage of a volume discount or other program which the supplier makes available to all other buyers, including franchisees.

Issue #22 - Item 8 - Rebate Reporting

Can a franchisor choose to report either the dollar amount of the rebates or the percentage paid on purchases by franchisees?

Answer

A franchisor can choose to report rebates in either of 2 formats: the actual dollar amounts paid or the percentage rebate based on franchisee purchases. Thus, if a number of suppliers pay rebates and a franchisor chooses the latter reporting method, its circular might state that it received rebates from suppliers ranging from 1% to 5% of the amount of purchases by franchisees from such suppliers.

Issue #23 - Item 8 - Cooperatives

Must cooperatives be identified under Item 8F?

Answer

If a franchisee is required to participate in a purchasing or distribution cooperative, it must be identified. If participation is voluntary, it need not be identified but the franchisor must disclose that one or more cooperatives exist.

Issue #24 - Item 11 - Advertising

A franchisor must account for its use of monies in the advertising fund by providing a disclosure which allocates dollars to production, media costs, administrative expenses and other. If franchisor personnel are involved in production activities, can such expenses be allocated to production rather than administration?

Answer

A franchisor's internal costs associated with production of advertising materials may properly be characterized as production expenses. However, the franchisor must have a reasonable basis for claiming the allocation at the time the disclosure is made.

Issue #25 - Item 11 - Operating Manuals

Can the table of contents (which may be lengthy if there are multiple manuals) be disclosed in an exhibit rather than in the body of text to Item 11? Also, can a franchisor require that a franchisee sign a confidentiality agreement in connection with the "viewing" of a manual? If so, must the confidentiality agreement be attached as an exhibit to the UFOC and do the FTC waiting periods apply?

Answer

Tables of contents can be incorporated as an exhibit to the UFOC. A confidentiality agreement must be disclosed in the UFOC and the franchisor cannot require that it be signed until 10 business days have elapsed from delivery of the offering circular and 5 business days have elapsed from delivery of the execution copy of the confidentiality agreement.

Issue #26 - Item 15 - Agreements by Owners

Does Item 15 require the disclosure of all agreements that apply to the franchisee's owners?

Answer

All agreements relating to the franchise that are binding on the franchisee's owners must be disclosed in this Item.

Issue #27 - Item 20 - Subfranchise/Area Development Statistics

Does Item 20 require disclosure of data regarding area development, master franchise, subfranchise and similar arrangements in addition to unit/outlet franchise statistics?

Answer

All area development, master franchise, subfranchise or similar arrangements must be disclosed in Item 20 of the franchisor's offering circular. If there are only a few arrangements like this in a system, the disclosure may be provided in the text or in a subordinate table rather than in the main chart. Whatever format is used, it must include all of the information which would be required in the chart.

Issue #28 - Item 20 - System Statistics in Subfranchisor Offering Circulars

In an offering circular prepared by a subfranchisor in a particular region, must its Item 20 also reflect national statistics for the franchisor in addition to the statistics from the subfranchisor's region?

Answer

In the example, Item 20 must contain 2 sets of charts: one set for statistics from the subfranchisor's region and one set reflecting national data for the franchise being offered by the franchisor and other subfranchisors.

Issue #29 - Item 20 - Former Franchisees

Item 20E requires a list of home addresses and phone numbers of former franchisees. Can a franchisor answer this to the best of its knowledge? If the former franchisee is a corporation, is the corporate headquarters a home address?

Answer

A franchisor must disclose the last known home address of a former franchisee. Where the former franchisee is a corporation, the franchisor must disclose either the business address of the corporation or the address of a principal officer of the corporation.

CONCLUSION

This Commentary is intended to be a living document which provides interpretative assistance to all members of the franchise community and regulatory authorities. As the need arises at reasonable intervals in the future, the NASAA Committee may consider additions, deletions and amendments to the Commentary.

The NASAA Committee acknowledges the assistance of many segments of the franchise community for their contributions to this Commentary and, in particular, its Advisory Committee, whose current members are as follows:

Dennis Wieczorek, Chair	*Mark Hamer*
Rupert Barkoff	*H. Bret Lowell*
Anita Blair	*George Rummel*
Patrick Carter	*Andrew Selden*
James Conohan	*Neil Simon*
Mark Forseth	*Leonard Swartz*

Eileen Harrington (Federal Trade Commission) ex officio

The Advisory Committee provided substantial assistance in the drafting of the new UFOC and has helped to educate the franchise community and ease the transition to the new format. The Commentary is a product of the cooperative efforts of the NASAA Committee and the Advisory Committee, and we look forward to increased cooperation in the future.

NASAA Franchise and Business Opportunities Committee

Steve Maxey, Chair (Virginia)
Delia Burke (Maryland)
Martin Cordell (Washington)
Patricia Struck (Wisconsin)
Jim Turner (Alberta)
Jocelyn Whittey (North Dakota)

VA.R. Doc. No. R95-556; Filed June 12, 1995, 9:46 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF CORRECTIONS (BOARD OF)

Title of Regulation: **VR 230-30-006. Jail Work/Study Release Program Standards (REPEALED).**

Governor's Comment:

I do not object to the repeal of the board's regulations governing jail work and study release programs since the provisions of this regulation are being incorporated into the "Minimum Standards for Jails and Lockups." However, my final approval will be contingent upon a review of the public's comments.

/s/ George Allen
Governor
Date: June 12, 1995

VA.R. Doc. No. R95-560; Filed June 15, 1995, 2:55 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.

DEPARTMENT OF CONSERVATION AND RECREATION

Pursuant to Executive Order 15(94), notice is hereby given that the Department of Conservation and Recreation will review the following Virginia Soil and Water Conservation Board regulation by July 1, 1996:

VR 625-02-00. Erosion and Sediment Control Regulations.

With publication of this schedule, the public comment period is open on this regulation. The agency is specifically seeking comment on the regulation to ensure the following: (i) that it is mandated by state or federal law or regulation, is essential to protect the health, safety and welfare of citizens, or is essential for the efficient and economical performance of an important governmental function; (ii) that it offers the least burdensome and most reasonable alternative solution that will satisfy any applicable state and federal legal requirements and achieve the essential purpose for which the regulatory action has been undertaken; and (iii) that it is clearly written and easily understandable by the individuals and entities affected.

Written comments should be sent to Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219, FAX (804) 786-6124. Comments should be submitted by the close of business on Friday, September 15, 1995.

The department will use an ad hoc committee and a public meeting to enhance the public comment period. Notices of the ad hoc committee meeting and the public meeting will be published in the Virginia Register of Regulations and sent to interested parties under the Virginia Soil and Water Conservation Board's regulatory mailing list.

All comments received will be considered by the agency during the review of the regulation. In addition, a summary of the comments received will be included in the agency's report to the Secretary of Natural Resources. Anyone desiring further information concerning this process or to review the regulation listed should contact Leon E. App at the address above or by phone at (804) 786-4570.

VIRGINIA DEPARTMENT OF HEALTH

PLAN FOR THE COMPREHENSIVE REVIEW OF ALL EXISTING HEALTH REGULATIONS

Timetable for Review

The 66 regulations for the State Board of Health and the Virginia Health Planning Board are divided into four groups. Each group shall be reviewed within a period of six months. From the start date, review should comply with the following timetable:

First 2 Weeks	Staff develops written statement of regulation's statutory authority and intended purpose. Regulated parties are detailed. Existing advisory committee is notified of the review, or an ad hoc advisory group is formed to participate in the review, if appropriate.
By Week 2	Notification of review and public comment period is identified and filed with the Registrar for publication in the Register. Public comment period shall be no less than 60 days.
By Month 3	Review of regulation is begun with advisory groups. Public comment is received and analyzed; shared with advisory group. Development of report is underway.
End Month 5	Draft report with recommendation is presented to the commissioner. If consensus on recommendation is not present, staff provides oral briefing to review unresolved issues. Revisions made to the report.
End Month 6	Final report is presented to Secretary James and copied to members of the State Board of Health or Virginia Health Planning Board.

The review periods for the four groups are as follows:

	Begin by	End
Group I	September 15, 1994	March 15, 1995
Group II	December 1, 1994	June 1, 1995
Group III	July 15, 1995	January 15, 1996
Group IV	December 1, 1995	June 1, 1996

This schedule will facilitate staff compliance with the requirement that 1/2 of the regulations be evaluated by July 1, 1995 and the remaining by July 1, 1996.

The following table details the dates assigned to each of the regulations for completion of the comprehensive review. In addition, the VDH program area with primary responsibility for accomplishing the review is identified.

	REGULATION TITLE AND VR NUMBER	DUE DATE	PROGRAM RESPONSIBLE
1	VR 355-01-100. Public Participation Guidelines.	3/15/95	Office of Public Affairs
2	VR 355-01-400. Human Research.	6/1/95	Office of Public Affairs

3	VR 355-05-01. Registration of Cremators.	1/15/96	Office of Vital Records and Health Statistics
4	VR 355-11-200. Newborn Screening and Treatment.	6/1/96	Office of Family Health Services
1	VR 355-12-01. Virginia's Hearing Impairment Identification and Monitoring System.	3/15/95	Office of Family Health Services
2	VR 355-12-02. Children's Specialty Services Program (Plan).	6/1/95	Office of Family Health Services
2	VR 355-17-01. Regulations for Marinas and Boat Moorings (4th Revision).	6/1/95	Office of Water Programs
4	VR 355-17-02. Sewerage Regulations.	6/1/96	Office of Water Programs
3	VR 355-18-000. Waterworks Regulations.	1/15/96	Office of Water Programs
3	VR 355-18-014. Waterworks Operations Fee.	1/15/96	Office of Water Programs
1	VR 355-19-02 Notices and Descriptions of Shellfish Area Condemnations (Each Condemnation Notice is VR-numbered separately; review will occur for process of condemnation.)	3/15/95	Office of Water Programs
4	VR 355-19-04. Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities.	6/1/96	Office of Water Programs
3	VR 355-19-05. Rules and Regulations Governing the Sanitary Control of Oysters, Clams and or Shellfish.	1/15/96	Office of Water Programs
4	VR 355-19-06. Regulations Governing the Sanitary Control of the Picking, Packing and Marketing of Crab Meat.	6/1/96	Office of Water Programs
1	VR 355-19-07. Regulations Prohibiting the Taking of Fish for Human Consumption from the North Fork of the Holston River.	3/15/95	Office of Epidemiology
2	VR 355-20-01. Virginia's Radiation Protection Regulations.	6/1/95	Office of Epidemiology
2	VR 355-20-02. Virginia's Radiation Protection Regulations Fee Schedule.	6/1/95	Office of Epidemiology
3	VR 355-28-100. Rules and Regulations for the Reporting and Control of Diseases.	1/15/96	Office of Epidemiology
4	VR 355-28-02. Rules Governing Virginia Tumor Registry.	6/1/96	Office of Epidemiology
3	VR 355-28-300. Regulations Governing the Immunization of School Children.	1/15/96	Office of Epidemiology
4	VR 355-29-01. Regulations Governing Vital Records and Health Statistics.	6/1/96	Office of Vital Records and Health Statistics
1	VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Regulations.	3/15/95	Office of Resources Development
1 2 3 4	VR 355-30-100 - VR 355-30-114 STATE MEDICAL FACILITIES PLAN (The 13 sets of regulations will be divided among the 4 review groups.)	3/15/95 6/1/95 1/15/96 6/1/96	Office of Resources Development
1	VR 355-32-01. Rules and Regulations Governing Emergency Medical Services.	3/15/95	Office of Emergency Medical Services
2	VR 355-32-02. Regulations Governing Financial Assistance for EMS.	6/1/95	Office of Emergency Medical Services
3	VR 355-32-500. EMS-Do Not Resuscitate.	1/15/96	Office of Emergency Medical Services
4	VR 355-33-01. Rules and Regulations for the Licensure of Convalescent and Nursing Homes.	6/1/96	Office of Health Facilities Regulation
2	VR 355-33-02. Regulations for the Licensure of Home Health Agencies.	6/1/95	Office of Health Facilities Regulation
3	VR 355-33-03. Regulations for the Licensure of Hospices.	1/15/96	Office of Health Facilities Regulation
1	VR 355-33-04. Rules and Regulations Governing the Practice of Midwifery.	3/15/95	Office of Family Health Services
3	VR 355-33-500. Rules and Regulations for Licensure of Hospitals.	1/15/96	Office of Health Facilities Regulation

1	VR 355-34-100. Private Well Regulations.	3/15/95	Office of Environmental Health
2	VR 355-34-02. Regulations Governing Sewage Handling and Disposal.	6/1/95	Office of Environmental Health
4	VR 355-34-03. Regulations Governing Application Fee for Construction Permits for Onsite Disposal Systems and Private Wells.	6/1/96	Office of Environmental Health
3	VR 355-34-400. Alternative Discharging Sewage Treatment Services.	1/15/96	Office of Environmental Health
1	VR 355-35-01. Regulations Governing Restaurants.	3/15/95	Office of Environmental Health
2	VR 355-35-200. Transient Lodging and Hotel Sanitation in Virginia.	6/1/95	Office of Environmental Health
3	VR 355-35-300. Regulations Governing the Sanitation of Summer Camps.	1/15/96	Office of Environmental Health
3	VR 355-35-400. Rules and Regulations Governing Campgrounds.	1/15/96	Office of Environmental Health
4	VR 355-35-500. Regulations Governing Tourist Establishment Swimming Pools and other Public Pools.	6/1/96	Office of Environmental Health
2	VR 355-35-06. Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps.	6/1/95	Office of Environmental Health
4	VR 355-35-700. Public Swimming Pool Regulations.	6/1/96	Office of Environmental Health
1	VR 355-39-100. Regulations Governing Eligibility Standards and Charges for Medical Care Services.	3/15/95	Office of Finance and General Services
1	VR 355-39-200. Charges Schedule.	3/15/95	Office of Finance and General Services
1	VR 355-40-02. Guidelines for the General Assembly Nursing Scholarship Program.	3/15/95	Office of Public Health Nursing
1	VR 355-40-03. Regulations Governing the State Dental Scholarship Program.	3/15/95	Office of Dental Services
2	VR 355-40-400. Regulations Governing the Virginia Medical Scholarships Programs.	6/1/95	Office of Primary Care Development
3	VR 355-40-500. Regulations for the Identification of Medically Underserved Areas in Virginia.	1/15/96	Office of Primary Care Development
4	VR 355-40-700. Regulations Governing Nurse Practitioner Scholarship Program.	6/1/96	Office of Public Health Nursing
	VIRGINIA HEALTH PLANNING BOARD		
1	VR 359-01-01. Guidelines for Public Participation in Developing Regulations.	3/15/95	Health Policy
1	VR 359-02-01. Regulations for Designating Health Planning Regions.	3/15/95	Health Policy
2	VR 359-02-02. Regulations Governing the Regional Health Planning Boards.	6/1/95	Health Policy
2	VR 359-02-03. Regulations for Designating Regional Health Planning Agencies.	6/1/95	Health Policy
1	VR 359-03-01. Administration of State Funding for Regional Health Planning.	3/15/95	Health Policy

The public comment is being sought for the regulations assigned to Group III review from July 10, 1995 through September 8, 1995. The public comment period for the remaining review cycle will be published at the beginning of the cycle. In addition, comment will be received on Group IV regulations during the July 10 to September 8, 1995 period.

Comments should be sent to:

Office of the Commissioner
Virginia Department of Health
P. O. Box 2448
Richmond, Virginia 23218
FAX: (804) 786-4616

Please indicate the name of the regulation and VR number on your correspondence.

GENERAL NOTICES/ERRATA

Symbol Key
† Indicates entries since last publication of the *Virginia Register*

DEPARTMENT OF HEALTH

† Thirty-Day Comment Period Notice for Certain Provisions Contained in the Biosolids Use Regulations (VR 355-17-200)

In accordance with Sections 9-6.14:7.1 J and 9-6.14:18 of the Code of Virginia, comments are being sought on selected provisions of the Biosolids Use Regulations (VR 355-17-200).

The Board of Health through the Acting Commissioner of Health suspends the following provisions for an additional 30-day public comment period:

- metals concentrations for selenium, cadmium, and molybdenum, found in Tables 8A and 8B; and
- the limitations of Class I biosolids use and recordkeeping requirements for Class I biosolids use set forth in § 3.11 C and D.

The suspension of these provisions of the regulations shall expire upon action by the board to readopt or modify them.

Following the public comment period, a summary of public comments, together with comments and recommendations of staff, shall be presented to the Board of Health for consideration and such action as the board deems appropriate in accordance with applicable requirements of the Administrative Process Act, §§ 9-6.14:1 through 9-6.14:25 of the Code of Virginia.

Comments may be submitted until August 9, 1995, to C. M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

DEPARTMENT OF MOTOR VEHICLES

† Motor Vehicle Dealer Board

The 1995 General Assembly adopted legislation which will transfer most of the administrative and regulatory responsibilities related to franchise (new) and independent (used) automobile dealers from the Department of Motor Vehicles (DMV) to a board composed mostly of business professionals. This rewrite of the Dealer Act (Chapter 15 of Title 46.2) establishes the composition of the 19-member, Governor-appointed, Motor Vehicle Dealer Board as follows:

- Nine Franchised Dealers.
- Seven Independent Dealers of which one must be engaged primarily in renting vehicles and another primarily engaged in the vehicle salvage business.
- One consumer.
- The Commissioner of the Department of Agriculture and Consumer Services.
- The Commissioner of the Department of Motor Vehicles, who shall serve as the chairman of the board.

The legislation adopted by the General Assembly provides for a six-month transition period. During this transition period, which will run from July through December of 1995, DMV and the board will develop and implement a transition plan. In order to ensure a smooth transition, the board and DMV staff will be meeting regularly throughout the summer and the fall. These meetings will be open to the public, and every effort will be made to publish in the Virginia Register the date, time and place of each of these meetings.

Any individual or organization wishing to be contacted concerning meetings should call, write or send a FAX as follows:

Gail Morykon
Department of Motor Vehicles
P.O. Box 27412
Room 625A
Richmond, VA 23269-0001
(804) 367-6002
FAX (804) 367-2936

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

July 18, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

An open meeting to review applications and correspondence, conduct review and disposition of enforcement cases, and discuss other matters requiring board action. A public comment period will be held 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 (804) 367-8590 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: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

ADVISORY COMMITTEE ON AGING, DISABILITY AND LONG-TERM CARE SERVICES

† July 12, 1995 - 10 a.m. -- Open Meeting
Monroe Towers Building, 101 North 14th Street, Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The purpose of this meeting is to continue the work of the Advisory Committee on the development of a plan to enhance service delivery at the local level.

Contact: Cathy Saunders, Director, Long-Term Care Policy and Development, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2912, FAX (804) 225-4512 or toll-free 1-800-343-0634/TDD☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Horse Industry Board

July 11, 1995 - 10 a.m. -- Open Meeting
† August 15, 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☎

Pesticide Control Board

July 13, 1995 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia. ♿

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate in the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Small Grains Board

† July 18, 1995 - 8:30 a.m. -- Open Meeting
† July 19, 1995 - 8:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

The board will meet to review project reports and consider project proposals. 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 Rosser Cobb at least five days before the meeting date so that suitable arrangements can be made.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

Virginia Soybean Board

† July 20, 1995 - 2:30 p.m. -- Open Meeting
Richard Andrews' Farm, 4899 White Marsh Road, Wakefield, Virginia.

The board will meet to discuss reviewing projects and other proposals. 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 Rosser Cobb at least five days before the meeting date so that suitable arrangements can be made.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

Virginia Winegrowers Advisory Board

August 8, 1995 - 10 a.m. -- Open Meeting
State Capitol, 11th Street at Capitol Square, House Room 1, Richmond, Virginia.

The board will hold elections of the chairman, vice-chairman and treasurer, hear project reports and conduct new business. Public comment will be heard following the conclusion of board business. Any person who needs any accommodations in order to participate at the meeting should contact Mary Davis-Barton at least 14 days before the meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-0481.

STATE AIR POLLUTION CONTROL BOARD

† July 17, 1995 - 7 p.m. -- Public Hearing
Bland High School Gymnasium, Bland, Virginia

A public hearing to receive comments on a permit application from CaseLin Systems, Inc. to construct and operate two medical waste incinerators in Bland County, Virginia. An informational briefing will be held at the Bland High School Gymnasium on June 19, 1995, at 7 p.m.

Contact: Cliff Musick, Environmental Engineer Senior, Department of Environmental Quality, P.O. Box 1190, Abingdon, VA 24212, telephone (703) 676-5582.

* * * * * * * * *

July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Board Chamber Room, Prince William, Virginia.

August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF -- Rule 4-4, Emission Standards for Open Burning).** The proposed regulation amendments provide for the deregulation of certain control measures at the state level while providing an administrative mechanism to assist local governments in developing their own control programs. The proposed amendments also require a summertime ban on open burning in order to reduce emissions of volatile organic compounds in Virginia's ozone nonattainment areas.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: Although any person conducting open burning will be affected by the proposed regulation, the jurisdictions within Virginia's three Volatile Organic Compound Emissions Control Areas (identified below) will experience more impact during June, July and August than jurisdictions outside these areas.

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

3. The Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of

Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

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July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Prince William, Virginia.

August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR -- Volatile Organic Compounds).** The standards require owners to reduce emissions of volatile organic compounds from specific sources, and to limit those emissions to a level resulting from the use of reasonably available control technology. The following types of sources are affected: otherwise unregulated facilities; surface cleaning and degreasing operations using nonhalogenated solvents; rotogravure/flexographic printing facilities emitting 25-100 tons per year; sanitary landfill operations; and lithographic printing operations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative

approaches), and any other supporting documents may be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski or Dr. Kathleen Sands, Policy Analysts, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4000.

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

Board for Professional Engineers

† July 28, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct review of regulations under the provisions of Executive Order 15 (94). Persons desiring to participate in the meeting and requiring special accommodations or interpretive 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 AUCTIONEERS

† July 19, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive 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 BARBERS

† August 7, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2745 or (804) 367-9753/TDD☎

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† July 21, 1995 - 10 a.m. -- Open Meeting
The Jackson Center, First Floor Conference Room, 501 North Second Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Review Board will hear administrative appeals concerning building and fire codes and other regulations of the department. The board will also issue interpretations and formalize recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Building Code Supervisor, State Building Code Office, Department of Housing and Community Development, 501 N. Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD☎

CHILD DAY-CARE COUNCIL

† July 13, 1995 - 9:30 a.m. -- Open Meeting
Theater Row Building, Lower Level Conference Room 1, 730 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss issues and concerns that impact child day centers, camps, school-age programs, and preschool/nursery schools. Public comment period will be at noon. Please call ahead of time for possible changes in meeting time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 7th Floor, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

STATE BOARD FOR COMMUNITY COLLEGES

July 19, 1995 - 1 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

Committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD☎

July 20, 1995 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD☎

COMPENSATION BOARD

July 27, 1995 - 1 p.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A routine meeting to conduct board business.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886, FAX (804) 371-0235 or (804) 786-3886/TDD☎

DEPARTMENT OF CONSERVATION AND RECREATION

July 20, 1995 - Noon -- Open Meeting
August 17, 1995 - Noon -- Open Meeting
City Hall, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD☎

BOARD FOR CONTRACTORS

July 12, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regularly scheduled quarterly meeting of the board to address policy and procedural issues; review and render decisions on applications for contractors' licenses; and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Geralde W. Morgan. 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: Geralde W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785.

August 1, 1995 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A public hearing to receive public comment on the Board for Contractors regulations and public participation guidelines in accordance with Executive Order 15(94). The comment period will end on August 28, 1995. Persons desiring to participate in the meetings and

requiring special accommodations or interpreter services should contact the board office at (804) 367-2785 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220-4917, telephone (804) 367-2785.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† August 8, 1995 - 10 a.m. -- Public Hearing
Board of Corrections, Board Room, 6900 Atmore Drive, Richmond, Virginia.

† September 8, 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 Corrections intends to adopt regulations entitled: **VR 230-01-006. Regulations for Private Management and Operation of Prison Facilities.** Section 53.1-266 of the Code of Virginia directs the Board of Corrections to promulgate regulations governing certain aspects of private management and operation of prison facilities. In compliance with the statute this regulation establishes minimum standards governing administration and operational issues within private prisons.

Contact: Amy Miller, Regulatory Coordinator, P.O. Box 26963, Richmond, Virginia 23261, telephone (804) 674-3119.

BOARD FOR COSMETOLOGY

† July 18, 1995 - 10 a.m. -- Open Meeting
Mason Governmental Center, 6507 Columbia Pike, Annandale, Virginia.

A meeting to conduct a formal hearing in re: Board for Cosmetology v. Pazazz Hair Salon. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act.

Contact: Carol A. Mitchell, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

† August 14, 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 interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: Karen W. O'Neal, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475, or (804) 367-9753/TDD

BOARD OF DENTISTRY

July 14, 1995 - 9 a.m. -- Open Meeting
July 21, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A formal hearing and informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9902 or (804) 662-7197/TDD

July 28, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9902 or (804) 662-7197/TDD

BOARD OF EDUCATION

† July 27, 1995 - 8:30 a.m. -- Open Meeting
† September 28, 1995 - 8:30 a.m. -- Open Meeting
General Assembly Building, Ninth and Broad Streets, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2924 or toll-free 1-800-292-3820.

* * * * * * * *

† August 8, 1995 - 7 p.m. -- Public Hearing
Thomas Edison High School, 5801 Franconia Road, Alexandria, Virginia.

† August 8, 1995 - 7 p.m. -- Public Hearing
E. C. Glass High School, 2111 Memorial Avenue, Lynchburg, Virginia.

† **August 8, 1995 - 7 p.m.** -- Public Hearing
Godwin High School, 2102 Pump Road, Richmond, Virginia.

† **August 8, 1995 - 7 p.m.** -- Public Hearing
Marion High School, 848 Stage Street, Marion, Virginia.

† **September 15, 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 Education intends to adopt regulations entitled: **VR 270-01-0064. Regulations Governing Guidance and Counseling Programs in the Public Schools of Virginia.** The regulations address requirements for parental notification about the programs and the conditions under which parental consent must be obtained for students to participate. The purpose of these hearings is to receive comments from the public on these proposed regulations. Registration will begin at 6:30 p.m.

Public comments may be submitted until September 15, 1995, to H. Douglas Cox, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23216-2120.

Contact: James E. Laws, Jr., Administrative Assistant for Board Relations, P.O. Box 2120, Richmond, Virginia 23216-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - ARLINGTON COUNTY/CITY OF FALLS CHURCH/WASHINGTON NATIONAL AIRPORT

July 11, 1995 - 5:30 p.m. -- Open Meeting
Arlington County Fire Station #1, 500 South Glebe Road, Training Room, Arlington, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the committee to conduct general business.

Contact: Captain Michael Kilby, Hazardous Materials Coordinator, 1020 N. Hudson St., Arlington, VA 22201, telephone (703) 358-4652, (703) 358-4644 or (703) 358-4610/TDD☎

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

July 26, 1995 - 6:30 p.m. -- Open Meeting
County Administration Office, Conference Room, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the committee to address agenda matters of orientation of new committee members, annual update of County Hazardous Materials Plan, and follow-up action from the spring emergency services exercise.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1476/TDD☎

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

† **July 17, 1995 - 1:30 p.m.** -- Open Meeting
1 County Complex Court, Potomac Conference Room, Prince William, Virginia.

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, 1 County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

† **July 17, 1995 - 8:30 a.m.** -- Open Meeting
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Nancy L. Munnikhuysen, Manager, Employee Relations and Customer Service, Virginia Employment Commission, 703 E. Main St., Richmond, VA 23219, telephone (804) 371-6004 or (804) 371-8050/TDD☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

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☎

Cost-Benefit Analysis Work Group

July 12, 1995 - 10 a.m. -- Open Meeting
August 2, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, 10th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to continue assisting the agency in developing a process for conducting cost benefit analyses for each of its regulations.

Contact: Michael P. Murphy, Director, Grants Management, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4003, FAX (804) 762-4019, toll-free 1-800-592-5482 or (804) 762-4021/TDD☎

BOARD OF FORESTRY

† July 20, 1995 - 10 a.m. -- Open Meeting
Hampton Inn, Warrenton, Virginia.

Tour of forestry projects in Northern Virginia area from Hampton Inn.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555, FAX (804) 296-2369 or (804) 977-6555/TDD☎

† July 21, 1995 - 8:30 a.m. -- Open Meeting
Hampton Inn, Warrenton, Virginia.

Official board meeting to discuss general business.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555, FAX (804) 296-2369 or (804) 977-6555/TDD☎

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 or 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

July 13, 1995 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board intends to consider regulations governing the 1995-96 migratory game birds seasons and the early resident Canada goose season, based on the framework provided by the U.S. Fish and Wildlife Service. The board will also consider the agency budget proposed for fiscal year 1995-1996. In addition, general and administrative matters may be discussed. The board may hold an executive session.

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.

† August 24, 1995 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will meet and intends to adopt regulations governing the 1995-96 migratory waterfowl seasons based on the framework provided by the U.S. Fish and Wildlife Service. The board may also propose fish and nongame wildlife regulation changes. In addition, general and administrative matters will be discussed. The board may hold an executive session.

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.

DEPARTMENT OF HEALTH

Biosolids Use Regulations Advisory Committee

July 20, 1995 - 9 a.m. -- Open Meeting
The UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia.

A meeting to discuss issues concerning implementation of the Biosolids Use Regulations relating to land application, marketing or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Biosolids Use Committee

July 20, 1995 - 1 p.m. -- Open Meeting
The UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia.

A meeting to review and evaluate specific concerns relating to land application and agricultural use of biosolids including issues related to the final Biosolids Use Regulations recently adopted by the State Board of

Health to regulate the land application, marketing or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

BOARD OF HEALTH PROFESSIONS

† July 18, 1995 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Ad Hoc Levels of Regulation Committee meeting. Brief public comment will be heard at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Deputy Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9942 or (804) 662-7197/TDD☎

† July 18, 1995 - 11 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Regulatory Research Committee meeting. Brief public comment will be heard at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Deputy Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9942 or (804) 662-7197/TDD☎

† July 18, 1995 - 11:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A full board meeting. Brief public comment will be heard at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Deputy Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9942 or (804) 662-7197/TDD☎

† July 18, 1995 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Practitioner Self-Referral Committee meeting. Brief public comment will be heard at the beginning of the meeting.

Contact: Elizabeth A. Carter, Ph.D., Deputy Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9942 or (804) 662-7197/TDD☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† July 25, 1995 - 9:30 a.m. -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting of council.

Contact: Barbara Ryder, Director of Administration, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

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

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† July 12, 1995 - 10:30 a.m. -- Open Meeting
General Assembly Building, Third Floor West Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Preservation Program Manager, 221 Governor St., Richmond, VA, telephone (804) 786-3143, FAX (804) 225-4261 or (804) 786-1934/TDD☎

VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

July 21, 1995 - 8:30 a.m. -- Open Meeting
Airport Sheraton Inn, 4700 South Laburnum Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee will focus on reprioritizing target populations for the 1996 HIV Prevention Plan.

Contact: Elaine G. Martin, Coordinator, AIDS Education, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-533-4148/TDD☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 11, 1995 - 9 a.m. -- Open Meeting
† August 1, 1995 - 9 a.m. -- Open Meeting
† September 5, 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 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

July 18, 1995 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to review and, if appropriate, (i) approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider, and, if appropriate, approve proposed amendments to the Rules and Regulations for Multi-Family Housing Developments, the Rules and Regulations for the Acquisition of Multi-Family Housing Developments and the Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons; and (v) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

LONGWOOD COLLEGE

Board of Visitors

† July 28, 1995 - 9 a.m. -- Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia.

A meeting of the Executive Committee, Finance/Facilities and Services Committee, and Academic/Student Affairs Committee to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

† July 29, 1995 - 9 a.m. -- Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia.

A meeting to conduct routine business of the Board of Visitors.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2001.

STATE LOTTERY BOARD

† July 26, 1995 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, 8th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda, which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

MARINE RESOURCES COMMISSION

† July 25, 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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 11, 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 Department of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-66.2. Medicaid Reimbursement for Administration of Vaccines under the Pediatric Immunization Program (§ 4.19m).** The purpose of this proposal is to promulgate permanent regulations for the payment of a fee for the administration of vaccines to children under the Vaccines for Children Program. The vaccines which are covered under this program are routine childhood immunizations which are given to prevent such childhood diseases as whooping cough, diphtheria, tetanus, polio, measles, mumps, and German measles.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103-66, created the Pediatric Immunization Distribution Program (more commonly known and hereafter referred to as the Vaccines for Children (VFC) Program), which took effect on October 1, 1994. Section 13631 of OBRA '93 added § 1902 (A)(62) to the Social Security Act (the Act) to require that states provide for a program for the purpose and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with § 1928 of the Act. Section 1928 required each state to establish a VFC Program (which may be administered by the State Department of Health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the costs of the vaccine. The Department of Medical Assistance Services (DMAS) has complied with this requirement with the exception of the final component, the vaccine administration fee, which is needed to complete all the necessary program elements.

The establishment of a vaccine administration fee is essential to comply with OBRA '93's Vaccines for Children (VFC) Program, which ensures that certain specified groups of children receive qualified pediatric immunizations free of charge. This vaccine administration fee is mandated in the law and is intended to provided an incentive to providers to participate in the VFC program and provide immunizations to Medicaid children. Medicaid proposes to establish a fee of $11 for the administration of such fees. The primary advantage to the Commonwealth and to providers of this regulatory action is that the federal government will provide these routine childhood vaccines free of charge. Since Medicaid recipients do not pay for such immunizations, such a change in drug distribution and payment policies is expected to be transparent to them. Actual expenditures will depend on the number of Medicaid providers who enroll in this vaccines program, the number of recipients who receive immunizations, and the number of administration fees that are actually paid to providers.

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

Public comments may be submitted until August 11, 1995, to Sally Rice, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

BOARD OF MEDICINE

July 12, 1995 - 11 a.m. -- Open Meeting
Roanoke Airport Marriott, Hershberger Road, Roanoke, Virginia.

† July 26, 1995 - 9:30 a.m. -- Open Meeting
Sheraton Resort and Conference Center, I-95 and Virginia Route 3, Fredericksburg, Virginia.

The informal conference committee composed of three members of the board will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 (a)(7) and (15) of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7665, FAX (804) 662-9943 or (804) 662-7197/TDD☎

Credentials Committee

August 12, 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 business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD☎

Executive Committee

August 11, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, Richmond, Virginia.

The committee will meet in open and closed session to review cases of files requiring administrative action, adopt amendments for approval of promulgation of

regulations as presented, and act upon certain issues as presented. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD☎

Legislative Committee

July 21, 1995 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

A meeting to review and make recommendations to the board regarding patient-physician relationship; review proposed changes to VR 465-02-01 regarding examinations for chiropractors, medical acupuncture and patient sexual contact; and such other matters that 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, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† August 16, 1995 - 10 a.m. -- Public Hearing
James Madison Building, Main Floor Conference Room, 109 Governor Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention Treatment and Community Mental Health Services Block Grant applications for federal fiscal year 1996. Copies of this application will be available for review beginning August 4, 1995, at the Office of the Director of Planning and Policy, 8th Floor, James Madison Building in Richmond and at each community services board office. Comments may be made at the hearing or in writing by no later than August 23, 1995, to the Office of Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214. Persons wishing to make a presentation may contact Sterling Deal. Copies of oral statements should be filed at the time of the hearing.

Contact: Sterling Deal, Planning Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3906 or (804) 371-8977/TDD☎

VIRGINIA MILITARY INSTITUTE

Board of Visitors

August 26, 1995 - 8:30 a.m. -- Open Meeting
Smith Hall, Virginia Military Institute, Lexington, Virginia.

A regular meeting of the Board of Visitors to elect president, make committee appointments, and receive committee reports. The board will provide an opportunity for public comment immediately after the Superintendent's comments at approximately 9 a.m.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206 or FAX (703) 464-7600.

STATE NETWORKING USERS ADVISORY BOARD

† August 9, 1995 - 10 a.m. -- Open Meeting
Jefferson-Madison Regional Library, Madison Room, 201 East Market Street, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss administrative matters.

Contact: Jean Taylor, Secretary to the State Librarian, The Library of Virginia, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

BOARD OF NURSING

July 24, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Two special conference committees will conduct informal conferences in the morning. A panel of the Board of Nursing will conduct formal hearings in the afternoon. Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD☎

July 25, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. At 1 p.m. the board will consider recommendations from the Committee of the Joint Boards of Nursing and Medicine in response to comments and act on proposed amendments to VR 495-02-01 and VR 465-07-1, Regulations Governing the Licensure of Nurse Practitioners.

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☎

July 26, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Two panels of the board will conduct formal hearings.

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 FOR OPTICIANS

† August 11, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An open meeting for regulatory review and 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 interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

BOARD OF OPTOMETRY

† July 26, 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)

Informal conference meetings. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD☎

† August 30, 1995 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general board meeting. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD☎

† August 30, 1995 - 1:30 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Formal hearings. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910 or (804) 662-7197/TDD☎

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

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 and Marriage and Family Therapists 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 and Marriage and Family Therapists 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 and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

July 13, 1995 - 7 p.m. -- Public Hearing
Roanoke City Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia. ♿

† July 19, 1995 - 4 p.m. -- Public Hearing
Norfolk City Council Chambers, 810 Union Street, 11th Floor, Norfolk, Virginia. ♿

The Board for Professional and Occupational Regulation 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 the

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 interpretive services should contact Debra L. Vought. The department fully complies with the Americans with Disabilities Act.

Contact: Debra L. Vought, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-9142, FAX (804) 367-2475 or (804) 367-9753/TDD☎

REAL ESTATE APPRAISER BOARD

† July 11, 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 interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD☎

RECYCLING MARKETS DEVELOPMENT COUNCIL

July 14, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Richmond, Virginia.

Council will 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 a.m.; council will meet from 11:30 to 12:30 p.m.; followed by a lunch break.

Contact: Paddy Katzen, Assistant to Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4488.

BOARD OF REHABILITATIVE SERVICES

July 13, 1995 - 9:30 a.m. -- Open Meeting
Woodrow Wilson Rehabilitation Center, Route 250, Fishersville, Virginia.

A meeting to conduct quarterly business.

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☎

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

July 27, 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.

BLUE RIBBON COMMISSION ON SCHOOL HEALTH

† July 13, 1995 - 2:30 p.m. -- Open Meeting
Randolph Macon Woman's College, Martin Building, Room 225, Lynchburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

This will be the third meeting of the Blue Ribbon Commission on School Health pursuant to Senate Joint Resolution No. 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.

July 12, 1995 - 7 p.m. -- Public Hearing
Salem High School, 400 Spartan Drive, Salem, Virginia.

July 18, 1995 - 7 p.m. -- Public Hearing
Thomas Eaton Middle School, 2108 Cunningham Drive, Hampton, Virginia.

The Blue Ribbon Commission on School Health plans to conduct hearings to receive comment 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, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2402.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† August 9, 1995 - 10 a.m. -- Open Meeting
† August 10, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, Senate Room A, Capitol Square, Ninth and Broad Streets, Richmond, Virginia. ♿

The board will 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: Beth B. Dubis, 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) 786-1750.

BOARD OF SOCIAL WORK

August 4, 1995 - 11 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

August 11, 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 Social Work intends to amend regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to clarify the responsibilities of a supervisor, allow candidates to be examined prior to completing experience requirements, and address problems with standards of practice.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

† July 20, 1995 - 9 a.m. -- Open Meeting
Colonial Farm Credit, Conference Room, 6526 Mechanicsville Pike, Mechanicsville, Virginia.

A bimonthly business meeting.

Contact: Linda J. Cox, Administrative Assistant, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2152 or FAX (804) 786-1798.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† July 18, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Northern Virginia District Office, 3975 Fair Ridge Drive, Fairfax, Virginia.

† July 19, 1995 - 10 a.m. -- Public Hearing
James City County Government Office Complex, Building 101-C, Mounts Bay Road, Board of Supervisors Room, James City County, Virginia.

† July 25, 1995 - 10 a.m. -- Public Hearing
Virginia Highlands Airport, 18521 Lee Highway (Off Interstate 81, between Exits 13 and 14), Abingdon, Virginia.

† July 26, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Salem District Office, 731 Harrison Avenue, Salem, Virginia.

† July 31, 1995 - 10 a.m. -- Public Hearing
Virginia Department of Transportation - Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia.

† September 8, 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 amend regulations entitled: **VR 385-01-8. Subdivision Street Requirements.** The Subdivision Street Requirements were originally adopted in 1949 to establish the requirements and administrative procedures for the addition of subdivision streets into the secondary system of Virginia's highways. The geometric standards and specifications listed or referenced in the manual are consistent with the department's criteria for the design and construction of roadway facilities which are adequate to serve the traffic projected to travel over the streets involved. The regulation does make allowances to recognize unique situations concerning street development which arise during the process of subdividing land.

The proposed amendments to the Subdivision Street Requirements reflect the findings of the department documented in response to Senate Joint Resolution 61, enacted by the 1994 General Assembly. This resolution directed the department to study the need for establishing more flexible design standards to ensure these standards reflect the special needs of historical districts, and to address the need for conservation and protection of environmentally sensitive areas. As a result of this effort, the department solicited comments from municipalities, developers, and other stakeholders before securing formal permission to revise the Subdivision Street Requirements.

The proposed amendments provide a number of benefits for participants in the subdivision/development processes: updated nomenclature, references, and titles; additional definitions to reflect new conditions or design specifications; the establishment of new or expanded responsibilities of the participants; and clarifying language to resolve procedural issues. These amendments are intended to produce a document which (i) is easier to understand; (ii) provides additional flexibility to the overall addition process; and (iii) addresses economic and environmental concerns fairly.

Public comments may be submitted until September 8, 1995, to James S. Givens, Secondary Roads Engineer, Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219.

Contact: H. Charles Rasnick, Assistant Secondary Roads Engineer, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, Virginia 23219, telephone (804) 786-7314.

July 19, 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.

July 20, 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.

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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

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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

VIRGINIA RESOURCES AUTHORITY

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

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☎

Vocational Rehabilitation Advisory Council

September 16, 1995 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request. Request must be received no later than 9/5/95 at 5 p.m.)

Council meets quarterly to advise the Virginia Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, (804) 371-3140/TDD☎, or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

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☎

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☎

July 13, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

An open meeting to continue regulatory review and other matters requiring board action will be held immediately after a public hearing on Executive Order 15(94). 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 interpretative services should contact the department 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: 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☎

LEGISLATIVE

TITLE 15.1 RECODIFICATION TASK FORCE

July 27, 1995 - 10 a.m. -- Open Meeting
August 24, 1995 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia.

A meeting to review working documents for Title 15.1 recodification.

Contact: Michelle Browning, Senior Operations Staff Assistant, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

† August 16, 1995 - 10 a.m. -- Open Meeting
† August 17, 1995 - 10 a.m. -- Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia.

A meeting to continue with the revision of Title 15.1 of the Code of Virginia and to discuss other matters as may be presented.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 11
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Emergency Planning Committee - Local, Arlington County/City of Falls Church/Washington National Airport
Higher Education for Virginia, State Council on
Hopewell Industrial Safety Council
† Real Estate Appraiser Board
Virginia Resources Authority

July 12
† Aging, Disability and Long-Term Care Services, Advisory Committee on
Contractors, Board for
Environmental Quality, Department of
- Cost-Benefit Analysis Work Group
Funeral Directors and Embalmers, Board of
† Historic Preservation Foundation, Virginia
Medicine, Board of

July 13
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Child Day-Care Council
Game and Inland Fisheries, Board of
Rehabilitative Services, Board of
† School Health, Blue Ribbon Commission on
Waterworks and Wastewater Works Operators, Board for

July 14
Dentistry, Board of
Recycling Markets Development Council, Virginia

July 15
Visually Handicapped, Department for the
- Advisory Committee on Services

July 17
† Emergency Planning Committee - Local, Prince William County, Manassas City and Manassas Park City
† Employment Commission, Virginia
- State Advisory Board

July 18
Accountancy, Board for
† Agriculture and Consumer Services, Department of
- Virginia Small Grains Board
† Cosmetology, Board for
† Health Professions, Board of
Housing Development Authority, Virginia

July 19
† Agriculture and Consumer Services, Department of
- Virginia Small Grains Board
† Auctioneers, Board for
Community Colleges, State Board for
Environmental Quality, Department of
Transportation Board, Commonwealth

July 20
† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Community Colleges, State Board for
† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- Virginia Soil and Water Conservation Board
† Forestry, Board of
Health, State Board of
- Biosolids Use Regulations Advisory Committee
- Biosolids Use Committee
Transportation Board, Commonwealth

July 21
† Building Code Technical Review Board, State
Dentistry, Board of
† Forestry, Board of
HIV Prevention Community Planning Committee, Virginia

Medicine, Board of
- Legislative Committee

July 24
Nursing, Board of

July 25
† Health Services Cost Review Council, Virginia
† Marine Resources Commission
Nursing, Board of

July 26
Emergency Planning Committee - Local, Gloucester
† Lottery Board, State
† Medicine, Board of
Nursing, Board of
† Optometry, Board of

July 27
Compensation Board
† Education, Board of
Richmond Hospital Authority
- Board of Commissioners
Title 15.1 Recodification Task Force
Waste Management Facility Operators, Board for

July 28
Dentistry, Board of
† Longwood College
- Board of Visitors
† Professional Engineers, Board for

July 29
† Longwood College
- Board of Visitors

August 1
† Hopewell Industrial Safety Council

August 2
Environmental Quality, Department of
- Cost-Benefit Analysis Work Group

August 7
† Barbers, Board for

August 8
Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Virginia Resources Authority

August 9
† Networking Users Advisory Board, State
† Sewage Handling and Disposal Appeals Review Board

August 10
† Sewage Handling and Disposal Appeals Review Board

August 11
Medicine, Board of
- Executive Committee
† Opticians, Board for

August 12
Medicine, Board of
- Credentials Committee

August 14
† Cosmetology, Board for

August 15
† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board

August 16
† Virginia Code Commission

August 17
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Virginia Code Commission
Voluntary Formulary Board, Virginia

August 24
† Game and Inland Fisheries, Board of
Title 15.1 Recodification Task Force

August 26
Military Institute, Virginia
- Board of Visitors

August 30
† Optometry, Board of

September 5
† Hopewell Industrial Safety Council

September 16
Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

September 28
† Education, Board of

PUBLIC HEARINGS

July 12
School Health, Blue Ribbon Commission on
Transportation Board

July 13
Professional and Occupational Regulation, Board for Waterworks and Wastewater Works Operators, Board for

July 17
† Air Pollution Control Board, State

July 18
School Health, Blue Ribbon Commission on
† Transportation Board, Commonwealth

July 19
† Professional and Occupational Regulation, Board for
† Transportation Board, Commonwealth

July 25
† Transportation Board, Commonwealth

July 26
Air Pollution Control Board, State
† Transportation Board, Commonwealth

July 27
Air Pollution Control Board, State

July 31
† Transportation Board, Commonwealth

August 1
Professional and Occupational Regulation, Department of

August 4
Social Work, Board of

August 8
† Corrections, Board of
† Education, Board of

August 16
† Mental Health, Mental Retardation and Substance Abuse Services, Department of