



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission of Administrative Rules (JCAR) or the appropriate standing committee of each house 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 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for 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 provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not 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 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

February 2008 through December 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
INDEX 2 Volume 24		April 2008
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
INDEX 3 Volume 24		July 2008
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
FINAL INDEX Volume 24		October 2008
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 (Tuesday)	December 8, 2008

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
1 VAC 55-30-10 through 1 VAC 55-30-90	Erratum	24:7 VA.R. 940	--
Title 2. Agriculture			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-580-10 through 2 VAC 5-580-310	Repealed	24:2 VA.R. 72	10/16/07
2 VAC 5-585-10 through 2 VAC 5-585-4070	Added	24:2 VA.R. 72-133	10/16/07
Title 3. Alcoholic Beverages			
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Amended	24:6 VA.R. 638	1/1/08
4 VAC 5-36-60	Amended	24:6 VA.R. 644	1/1/08
4 VAC 5-36-70	Amended	24:6 VA.R. 645	1/1/08
4 VAC 5-36-90	Amended	24:6 VA.R. 647	1/1/08
4 VAC 5-36-100	Amended	24:6 VA.R. 649	1/1/08
4 VAC 5-36-110	Amended	24:6 VA.R. 654	1/1/08
4 VAC 5-36-120	Amended	24:6 VA.R. 655	1/1/08
4 VAC 5-36-130	Amended	24:6 VA.R. 656	1/1/08
4 VAC 5-36-140	Amended	24:6 VA.R. 657	1/1/08
4 VAC 5-36-150	Amended	24:6 VA.R. 659	1/1/08
4 VAC 5-36-200	Amended	24:6 VA.R. 662	1/1/08
4 VAC 5-36-210	Amended	24:6 VA.R. 670	1/1/08
4 VAC 5-36-220	Amended	24:6 VA.R. 675	1/1/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-200-10	Amended	24:6 VA.R. 676	10/26/07

* Objection to Fast-Track Rulemaking 24:1

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-270-40	Amended	24:6 VA.R. 676	7/1/08
4 VAC 15-270-80	Added	24:6 VA.R. 676	10/26/07
4 VAC 15-270-90	Added	24:6 VA.R. 677	1/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 20-20-50	Amended	24:5 VA.R. 555	11/1/07
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Erratum	24:5 VA.R. 621	--
4 VAC 20-720-40 through 4 VAC 20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-755-10	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-20	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-30	Amended	24:2 VA.R. 136	9/1/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-910-45	Amended	24:5 VA.R. 556	11/1/07
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
Title 5. Corporations			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
Title 6. Criminal Justice and Corrections			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 35-180-10 through 6 VAC 35-180-170	Added	24:5 VA.R. 557-561	1/1/08
6 VAC 35-190-10 through 6 VAC 35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 8. Education			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-190-10	Repealed	24:5 VA.R. 562	1/1/08
8 VAC 20-500-10	Repealed	24:5 VA.R. 563	1/1/08
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
Title 9. Environment			
9 VAC 5-20-203	Amended	24:5 VA.R. 564	12/12/07
9 VAC 5-20-204	Amended	24:5 VA.R. 565	12/12/07
9 VAC 5-40-20	Amended	24:5 VA.R. 566	12/12/07
9 VAC 5-50-20	Amended	24:5 VA.R. 570	12/12/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-50-400	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-50-410	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-60-60	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-90	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-92	Added	24:5 VA.R. 579	12/12/07
9 VAC 5-60-95	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-100	Amended	24:5 VA.R. 580	12/12/07
9 VAC 5-91-20	Amended	24:5 VA.R. 587	12/12/07
9 VAC 5-140-1061	Added	24:6 VA.R. 679	12/26/07
9 VAC 5-140-1062	Added	24:6 VA.R. 680	12/26/07
9 VAC 5-140-2061	Added	24:6 VA.R. 681	12/26/07
9 VAC 5-140-2062	Added	24:6 VA.R. 682	12/26/07
9 VAC 5-140-3061	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3062	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3400	Amended	24:5 VA.R. 594	12/12/07
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-120	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-125	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9 VAC 20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 20-130-200	Erratum	24:6 VA.R. 889	--
9 VAC 25-20-10	Amended	24:6 VA.R. 701	1/1/08
9 VAC 25-20-20	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-30	Repealed	24:6 VA.R. 702	1/1/08
9 VAC 25-20-40	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-50	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-60	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-90	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-100	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-110	Amended	24:6 VA.R. 705	1/1/08
9 VAC 25-20-120	Amended	24:6 VA.R. 706	1/1/08
9 VAC 25-20-130	Amended	24:6 VA.R. 708	1/1/08
9 VAC 25-20-146	Added	24:6 VA.R. 708	1/1/08
9 VAC 25-20-147	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-148	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-149	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-100	Amended	24:6 VA.R. 711	1/1/08
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-31-220	Amended	24:6 VA.R. 731	1/1/08
9 VAC 25-31-290	Amended	24:6 VA.R. 735	1/1/08
9 VAC 25-31-460	Amended	24:6 VA.R. 738	1/1/08
9 VAC 25-31-475	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-485	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-505	Added	24:6 VA.R. 739	1/1/08
9 VAC 25-32 (Forms)	Amended	24:11 VA.R. 1316	--
9 VAC 25-32-40	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-60	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-80	Amended	24:6 VA.R. 740	1/1/08
9 VAC 25-32-100	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-140	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-210	Amended	24:6 VA.R. 744	1/1/08
9 VAC 25-32-220	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-240	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-300	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-310 through 9 VAC 25-32-760	Added	24:6 VA.R. 746-781	1/1/08
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-30	Amended	24:2 VA.R. 139	9/11/07
9 VAC 25-260-30	Amended	24:2 VA.R. 140	9/11/07
9 VAC 25-260-30	Amended	24:7 VA.R. 908	**
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08

** Effective upon filing notice of U.S. EPA approval with Registrar.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
9 VAC 25-790-10	Amended	24:6 VA.R. 784	1/1/08
9 VAC 25-790-50	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-60	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-120	Amended	24:6 VA.R. 788	1/1/08
9 VAC 25-790-130	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-150	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-180	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-200	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-240	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-540	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-550	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-570	Amended	24:6 VA.R. 795	1/1/08
9 VAC 25-790-580	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-590	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-600	Amended	24:6 VA.R. 798	1/1/08
9 VAC 25-790-660	Amended	24:6 VA.R. 799	1/1/08
9 VAC 25-790-880	Amended	24:6 VA.R. 799	1/1/08
Title 11. Gaming			
11 VAC 10-45-10	Amended	24:5 VA.R. 595	12/12/07
11 VAC 10-45-25	Added	24:5 VA.R. 596	12/12/07
Title 12. Health			
12 VAC 5-31-2300 through 12 VAC 5-31-2970	Added	24:6 VA.R. 806-818	1/1/08
12 VAC 5-40-10 through 12 VAC 5-40-190	Repealed	24:6 VA.R. 806	1/1/08
12 VAC 5-90-80 emer	Amended	24:5 VA.R. 597	10/24/07-10/23/08
12 VAC 5-125-10 through 12 VAC 5-125-180	Added	23:23 VA.R. 3904-3919	9/1/07
12 VAC 5-421-10	Amended	24:2 VA.R. 149	10/16/07
12 VAC 5-421-90	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-100	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-120	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-140	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-160	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-170	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-180	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-190	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-200	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-230	Amended	24:2 VA.R. 160	10/16/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-250	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-270	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-295	Added	24:2 VA.R. 160	10/16/07
12 VAC 5-421-300	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-330	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-340	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-350	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-360	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-430	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-440	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-450	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-460	Added	24:2 VA.R. 162	10/16/07
12 VAC 5-421-500	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-520	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-530	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-550	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-560	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-570	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-580	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-590	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-600	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-620	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-670	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-680	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-700	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-720	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-760	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-765	Added	24:2 VA.R. 166	10/16/07
12 VAC 5-421-780	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-790	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-800	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-820	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-830	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-840	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-850	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-860	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-870	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-880	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-890	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-900	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-910	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-920	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-930	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-940	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-950	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-960	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-970	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-990	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1000	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1010	Amended	24:2 VA.R. 173	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-1020	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1030	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1040	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1070	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1090	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1120	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1200	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1260	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1270	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1300	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1310	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1320	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1330	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1340	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1350	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1360	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1370	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1460	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1510	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1520	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1530	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1540	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1620	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1640	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1660	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1670	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1680	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1690	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1700	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1710	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1720	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1730	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1750	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1760	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1780	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1810	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1820	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1880	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1890	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1900	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1960	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2010	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2080	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2190	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2200	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2210	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2270	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2310	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2320	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2520	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2630	Amended	24:2 VA.R. 182	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-2680	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2710	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2790	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2810	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2820	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2840	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2850	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2870	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2880	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2930	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2990	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3040	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3120	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3200	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3210	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3230	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3310	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3370	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3380	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3450	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3510	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3560	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3580	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3590	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3620	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3660	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3700	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3750	Amended	24:2 VA.R. 187	10/16/07
12 VAC 5-421-3760	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3800	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3815	Added	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3860	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3900	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3960	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-3970	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4000	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4035	Added	24:2 VA.R. 190	10/16/07
12 VAC 5-421-4050	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-421-4070	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-585-70	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-510	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-600	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-610	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-620	Amended	24:5 VA.R. 612	12/17/07
12 VAC 5-585-630	Amended	24:5 VA.R. 614	12/17/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-1500 through 12 VAC 30-120-1550	Added	24:6 VA.R. 819-829	12/26/07
12 VAC 30-135-100 through 12 VAC 30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-90	Erratum	24:6 VA.R. 889	--
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
Title 13. Housing			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-40-20	Amended	24:7 VA.R. 911	11/13/07
13 VAC 10-40-60	Amended	24:7 VA.R. 914	11/13/07
13 VAC 10-40-80	Amended	24:7 VA.R. 915	11/13/07
13 VAC 10-40-100	Amended	24:7 VA.R. 916	11/13/07
13 VAC 10-40-110	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-120	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-130	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-170	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-190	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-210	Amended	24:7 VA.R. 921	11/13/07
13 VAC 10-40-230	Amended	24:7 VA.R. 921	11/13/07
Title 14. Insurance			
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-420-10 through 14 VAC 5-420-60	Added	24:7 VA.R. 926-931	2/15/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
Title 18. Professional and Occupational Licensing			
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 65-10-10 through 18 VAC 65-10-80	Amended	24:2 VA.R. 226-228	11/15/07
18 VAC 65-10-100	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-110	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-120	Amended	24:2 VA.R. 228	11/15/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-40-100	Amended	24:6 VA.R. 831	1/11/08
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07
18 VAC 95-10-10 through 18 VAC 95-10-80	Amended	24:2 VA.R. 231-232	11/15/07
18 VAC 95-10-100	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-110	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-120	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-30-10 through 18 VAC 95-30-210	Added	24:6 VA.R. 832-837	1/2/08
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-40-10 through 18 VAC 110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18 VAC 120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18 VAC 120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 130-20-10	Amended	24:6 VA.R. 838	1/1/08
18 VAC 130-20-30	Amended	24:6 VA.R. 842	1/1/08
18 VAC 130-20-60	Amended	24:6 VA.R. 843	1/1/08
18 VAC 130-20-110	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-170	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-180	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-210	Amended	24:6 VA.R. 846	1/1/08
18 VAC 130-20-220	Amended	24:6 VA.R. 847	1/1/08
18 VAC 130-20-230	Amended	24:6 VA.R. 847	1/1/08
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
Title 19. Public Safety			
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-170-15	Amended	24:2 VA.R. 233	10/1/07
19 VAC 30-170-50	Amended	24:2 VA.R. 233	10/1/07
Title 20. Public Utilities and Telecommunications			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
Title 21. Securities and Retail Franchising			
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
Title 22. Social Services			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-72-55	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-367	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-375-10 through 22 VAC 40-375-60	Repealed	24:5 VA.R. 616	12/12/07
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
22 VAC 42-10-10 through 22 VAC 42-10-1000	Repealed	24:6 VA.R. 849	12/28/07
22 VAC 42-11-10 through 22 VAC 42-11-1090	Added	24:6 VA.R. 850-885	12/28/07
Title 23. Taxation			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07
Title 24. Transportation and Motor Vehicles			
24 VAC 20-120-10 through 24 VAC 20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24 VAC 27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-45-10	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-20	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-30	Added	24:2 VA.R. 244	10/1/07
24 VAC 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

NOTICES OF INTENDED REGULATORY ACTION

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending the following regulations: **3VAC5-50, Retail Operations**. The purpose of the proposed action is to prohibit nudity on premises licensed for the sale of mixed beverages, and conform 3VAC5-50-140 with a decision of the Fourth Circuit U. S. Court of Appeals by exempting performances involving serious literary, artistic, scientific, or political expression from the regulation's nudity prohibitions.

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

Statutory Authority: §§4.1-103 and 4.1-111 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 5, 2008.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

VA.R. Doc. No. R08-924; Filed January 9, 2008, 9:20 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending the following regulations: **3VAC5-50, Retail Operations**. The purpose of the proposed action is to set out specific types of dangerous activity that alcoholic beverage licensees may not allow, or fail to take reasonable steps to prevent, control, or end on their licensed premises. The amendments will prohibit a licensee from operating a licensed establishment where violations of the criminal law are so frequent and serious as to constitute a continuing threat to public safety.

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

Statutory Authority: §§4.1-103 and 4.1-111 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 5, 2008.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone

(804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

VA.R. Doc. No. R08-925; Filed January 9, 2008, 9:21 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to consider Louisa County's petition to add nutrient waste load allocations (WLAs) for its Zion Crossroads wastewater plant.

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

Statutory Authority: §62.1-44.15 of the Code of Virginia; 33 USC 1313(e) of the Clean Water Act.

Public Comments: Public comments may be submitted until 5 p.m. on March 10, 2008.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email jmkenney@deq.virginia.gov.

VA.R. Doc. No. R07-210; Filed January 9, 2008, 12:25 p.m.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider amending the following regulations: **11VAC15-22, Charitable Gaming Rules and Regulations**. The purpose of the proposed action is to (i) amend the definitions to reflect changes made by Chapters 160, 226 and 347 of the 2007 Acts of Assembly and (ii) amend the Conduct of Games section (a) regarding the sale of instant bingo, (b) to address paid callers and managers, (c) to remove the annual report being allowed as a substitute for a quarterly report if the organization had no further charitable gaming income during the reporting period, and (d) to change the late

Notices of Intended Regulatory Action

penalty from \$25 per day until the report is filed, to a maximum of 30 days.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §18.2-340.19 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 5, 2008.

Agency Contact: Harry M. Durham, Interim Director, Department of Charitable Gaming, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2598, FAX (804) 786-1079, or email harry.durham@dcg.virginia.gov.

VA.R. Doc. No. R08-960; Filed January 15, 2008, 12:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider amending the following regulations: **11VAC15-31, Supplier Regulations.** The purpose of the proposed action is to define "last sale game" and "bingo jackpots" to clarify those terms as used in Chapters 196 and 790 of the 2007 Acts of Assembly.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §18.2-340.19 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 5, 2008.

Agency Contact: Harry M. Durham, Interim Director, Department of Charitable Gaming, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2598, FAX (804) 786-1079, or email harry.durham@dcg.virginia.gov.

VA.R. Doc. No. R08-961; Filed January 15, 2008, 12:48 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulations: **12VAC 5-66, Regulations Governing Durable Do Not Resuscitate Orders.** The purpose of the proposed action is to improve processes and ensure consistent care throughout the health care continuum with regard to do not resuscitate orders. Intended amendments include, but are not limited to (i)

clarifications to ensure that patient's wishes regarding do not resuscitate orders are honored as provided for in §54.1-2987.1 of the Code of Virginia and (ii) amendments to increase the availability of the authorized Durable Do Not Resuscitate Order Form.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public Comments: Public comments may be submitted until 5 p.m. on March 7, 2008.

Agency Contact: Michael Berg, Compliance Director, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7615, FAX (804) 864-7580, or email michael.berg@vdh.virginia.gov.

VA.R. Doc. No. R08-1132; Filed January 11, 2008, 11:30 a.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating the following regulations: **16VAC25-73, Regulation Applicable to Tree Trimming Operations.** The purpose of the proposed action is to reduce or eliminate employee injuries and fatalities by considering for adoption a comprehensive regulation to address nonlogging, arborist/tree trimming and cutting operations on residential and commercial work sites.

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

Statutory Authority: §40.1-22 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 6, 2008.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, TTY (804) 786-2376, or email regina.cobb@doli.virginia.gov.

VA.R. Doc. No. R08-1044; Filed January 7, 2008, 3:27 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating the following regulations: **16VAC25-185, Confined Space Standard for Agriculture.**

Notices of Intended Regulatory Action

The purpose of the proposed action is to reduce or eliminate injuries, illnesses and fatal accidents associated with confined space hazards in agriculture, and to provide agricultural employees and employers with protective measures to use before and during entry into agricultural confined spaces to prevent entrants from being exposed to toxic or low oxygen atmospheres, hazardous chemicals and engulfment hazards.

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

Statutory Authority: §40.1-22 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 6, 2008.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, TTY (804) 786-2376, or email regina.cobb@doli.virginia.gov.

VA.R. Doc. No. R08-1045; Filed January 7, 2008, 3:29 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending the following regulations: **16VAC25-60, Administrative Regulation for the Virginia Occupational Safety and Health Program.** The purpose of the proposed action is to provide Virginia Occupational Safety and Health (VOSH) personnel with procedures on how to exercise the commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

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

Statutory Authority: §40.1-22 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on March 6, 2008.

Agency Contact: John J. Crisanti, Policy and Planning Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

VA.R. Doc. No. R08-1046; Filed January 7, 2008, 3:26 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Emergency Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-140).**

Statutory Authority: §§4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: January 9, 2008, through January 8, 2009.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

Preamble:

On August 2, 2007, Judge Walter D. Kelley, Jr., of the United States District Court for the Eastern District of Virginia entered a preliminary injunction, enjoining the Alcoholic Beverage Control Board and its agents from enforcing 3 VAC 5-50-140, as well as those portions of §§ 4.1-225, 4.1-226, and 4.1-325 of the Code of Virginia which prohibit lewd conduct on licensed premises and nudity and topless entertaining at mixed beverage establishments in Virginia. The court found that these provisions of the law were facially unconstitutional because they are overbroad. This ruling follows the decision of the United States Court of Appeals for the Fourth Circuit in the case of Carandola v. Fox, 470 F.3d 1074 (2006), which held similar North Carolina laws overbroad because the statute did not contain an exemption for legitimate artistic expression. In its order enjoining enforcement of the current Virginia laws and regulation, the District Court indicated that the Alcoholic Beverage Control Board could move for dissolution of the preliminary injunction should the Commonwealth enact a statute or regulation that complies with the standards set forth in Carandola.

There is convincing documented evidence that sexually-oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding areas adjacent to them, causing crime and other adverse effects on the health, safety and welfare of the public. Without the enjoined Code and regulation provisions, there is currently no state law or

regulation governing sexually oriented entertainment at establishments licensed for the sale of alcoholic beverages, presenting an imminent threat to public health and safety.

This emergency action will make three substantive changes to 3 VAC 5-50-140 to conform it to the Carandola decision and restore the status quo with respect to the regulation of nudity and sexually oriented behavior in licensed establishments. First, it will add an exemption to the restrictions for legitimate theatrical performances and other performances involving serious literary, artistic, scientific, or political expression. Second, it will prohibit nudity on mixed beverage licensed premises, as currently prohibited by the enjoined statutory provisions. Finally, it will define the term "reasonably separated" as used in the existing portion of the regulation, to more clearly define the separation which must be maintained between nude entertainers and patrons in licensed establishments.

3VAC5-50-140. ~~Lewd or disorderly~~ Prohibited conduct on licensed premises.

~~While not limited thereto, the board shall consider the A.~~ The following conduct upon any licensed premises to constitute lewd or disorderly conduct is prohibited:

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2;
2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;
3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or
4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer may come in contact with any portion of the body of a patron.

B. No mixed beverage licensee shall permit any person to enter or remain on the premises with less than a fully-opaque covering of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola.

C. The provisions of this section shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

VA.R. Doc. No. R08-924; Filed January 9, 2008, 9:20 a.m.

Emergency Regulation

Title of Regulation: **3VAC5-50. Retail Operations (adding 3VAC5-50-145).**

Statutory Authority: §§4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: January 9, 2008, through January 8, 2009.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

Preamble:

On August 2, 2007, Judge Walter D. Kelley, Jr., of the United States District Court for the Eastern District of Virginia entered a preliminary injunction, enjoining the Alcoholic Beverage Control Board and its agents from enforcing that portion of §4.1-225 of the Code of Virginia which prohibits alcoholic beverage licensees from allowing disorderly conduct on licensed premises in Virginia. With enforcement of this Code section enjoined, the board has no provision of law or regulation to address serious public safety issues on licensed premises. Approximately 20 pending disciplinary cases involving violations of peace and good order had to be continued generally or dismissed because of the injunction. In just the first weekend following the injunction's issuance, three persons were injured, two seriously, in violent events at two of the licensed premises operated by plaintiffs in the lawsuit resulting in the injunction. The emergency regulation lists specific types of dangerous activity which licensees may not allow, or fail to take reasonable steps to prevent, control, and/or end on their licensed premises. It also prohibits a licensee from operating a licensed establishment where violations of the criminal law are so frequent and serious as to constitute a continuing threat to public safety.

3VAC5-50-145. Dangerous and illegal conduct.

A. No licensee shall permit, or fail to take reasonable steps to prevent, control, and/or end, the following conduct on its licensed premises:

- 1. Fighting;
- 2. Conduct involving an unreasonable risk of bodily harm to participants or others;
- 3. Conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or
- 4. Violations of the criminal laws of the Commonwealth.

B. No licensee shall operate an establishment where violations of the criminal law on or immediately adjacent to the premises are so frequent and serious as to be deemed a continuing threat to public safety.

VA.R. Doc. No. R08-925; Filed January 9, 2008, 9:21 a.m.



TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-20, 5VAC5-20-140, 5VAC5-20-150, 5VAC5-20-170, 5VAC5-20-240).**

Statutory Authority: §§12.1-13 and 12.1-25 of the Code of Virginia.

Effective Date: February 15, 2008.

Agency Contact: William H. Chambliss, General Counsel, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email william.chambliss@scc.virginia.gov.

Summary:

The amendments expand the rules pertaining to electronic filing requirements to (i) include permitting the electronic filing of documents suitable for public disclosure less than 100 pages in length and (ii) describe the process for

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submitting large exhibits in hardcopy to accompany electronic filings.

In response to comments filed by interested parties, the commission made several revisions from the proposed version of the regulation. The commission will now accept electronic filings at any time and the submission will be deemed filed on the date and at the time the electronic document is received by the commission's database. If the document is filed electronically after the close of business or on a weekend or holiday, the document will be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document is received by the commission's database. Another change permits electronic service on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order.

AT RICHMOND, JANUARY 15, 2008

COMMONWEALTH OF VIRGINIA, [ex rel.](#)

STATE CORPORATION COMMISSION

CASE NO. CLK-2007-00005

Ex parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

FINAL ORDER REVISING STATE CORPORATION COMMISSION RULES OF PRACTICE AND PROCEDURE

The State Corporation Commission's ("Commission") Rules of Practice and Procedure, now codified at 5 VAC 5-20-10 et seq. ("Rules"), were last revised in 2001 in Case No. CLK-2000-00311.[1] Since then, changes have occurred in the industries and businesses subject to the regulatory authority of the Commission, including advancement in technology and increased reliance on electronic methods of communication in standard business practices.

By Order entered on August 10, 2007, the Commission issued a proposed revision to the Rules ("Proposed Rules") which incorporated a procedure for electronic filing of documents with the Commission in lieu of paper copies. This August 10, 2007 Order invited interested parties to comment upon and suggest modifications or supplements to, or request a hearing on, the Proposed Rules. The Proposed Rules were published in the Virginia Register of Regulations and were made available at the Office of the Clerk of the Commission and the Commission's website. Interested parties were given until September 25, 2007, to file comments, proposals, or requests for hearing with the Clerk of the Commission in the proceeding.

Nine parties submitted comments on the Proposed Rules, each supporting the concept of permissible electronic filings

while suggesting some amendments to the Proposed Rules and the procedure for electronic filing. No requests for a hearing on the Proposed Rules were submitted. The parties submitting comments were: Cox Virginia Telcom, Inc.; Central Telephone Company of Virginia and United Telephone-Southeast, Inc.; Office of the Attorney General, Division of Consumer Counsel; Appalachian Power Company; The Conrad Firm; Brian R. Greene, Esquire; Virginia Electric and Power Company; Hunton & Williams L.L.P; and Columbia Gas of Virginia, Inc.

NOW THE COMMISSION, upon consideration of the Proposed Rules and the comments and proposed modifications suggested by the interested parties, is of the opinion and finds that the revised Proposed Rules, as set forth in Attachment A hereto, should be adopted effective February 15, 2008. The Commission has considered all of the comments filed herein and made some revisions to the original Proposed Rules attached to the August 10, 2007 Order. Said revisions are apparent from the tracked modifications captured in Attachment B, the version of the revised proposed rules filed with the Virginia Register of Regulations.

The Commission acknowledges that a number of commenters have requested that a document submitted electronically be considered filed when the Commission receives the document, rather than having to wait for the manual date stamp process to occur. The Commission will now accept electronic filings at any time. The submission will be deemed filed on the date and at the time the electronic document is received by the Commission's database. If a document is filed electronically after the close of business or on a weekend or holiday, the document will be deemed filed on the next regular business day. Additionally, for the convenience of users of the electronic filing system, a filer will receive an electronic notification identifying the date and time the document is received by the Commission's database.

The Commission believes that these changes to its Rules and filing processes will benefit the public generally and regular practitioners before the Commission specifically. We are also modifying the filing and service Rule (Rule 140) to permit electronic service on all parties and staff in cases where all parties and staff have agreed to such service, or where the Commission has provided for such service by order.

Accordingly, IT IS ORDERED THAT:

(1) The current Rules of Practice and Procedure as set forth in 5 VAC 5-20-10 et seq. are hereby revised and changed, effective February 15, 2008, and are adopted in the form as reflected in Attachment A to this Order.

(2) A copy of this Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) This case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: E. Ford Stephens, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Brian R. Greene, Esquire, SeltzerGreene, PLC, Bank of America Center, 1111 East Main Street, Suite 1720, Richmond, Virginia 23219; Edward Phillips, Esquire, Embarq, Mailstop NCWKFR0313, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Anthony J. Gambardella, Jr., Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219; JoAnne L. Nolte, Esquire, The Conrad Firm, P.C., 1520 West Main Street, Suite 204, Richmond, Virginia 23220; M. Renae Carter, Esquire, Dominion Resources Services, Inc., Law Department, P.O. Box 26532, Richmond, Virginia 23261; T. Borden Ellis, Esquire, Senior Attorney, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Kiva Bland Pierce, Assistant Attorney General, Office of the Attorney General, Insurance and Utilities Regulatory Section, 900 East Main Street, Richmond, Virginia 23219; and the Commission's Office of General Counsel.

[1] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2000-00311, 2001 S.C.C. Ann. Rpt. 55.

5VAC5-20-20. Good faith pleading and practice.

Every pleading, written motion, or other [paper document] presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address and telephone number, and where available, telefax number and email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other paper document, and shall state the individual's mailing address and telephone number. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other paper document, and shall state the partnership's mailing address and telephone number. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of a qualified officer or agent. The pleadings need not be under oath unless so required by statute. ~~The commission may provide, by order, a manner for acceptance of electronic signatures in particular cases.~~

The commission allows electronic filing. Before filing electronically, the filer shall complete an electronic document filing authorization form, [~~receive establish~~] a filer authentication [~~identification number from~~ password with] the Clerk of the [State Corporation] Commission and otherwise comply with the electronic filing procedures adopted by the commission. [Upon establishment of a filer authentication password, a filer may make electronic filings in any case.] All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance.

The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other paper document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other paper document will not be accepted for filing by the Clerk of the Commission if not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5VAC5-20-140. Filing and service.

A formal pleading or other related document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt. ~~The commission may by order make provision for electronic filing of documents, including facsimile.~~

Electronic filings may be submitted at any time [= ~~However, to ensure timely filing on the specific day of submission, the document must be received at least one hour before the close of business of the clerk's office. A document submitted electronically shall be printed by the Clerk of the Commission and shall be considered filed with the commission when the document is time and date stamped by the Clerk of the Commission and will be deemed filed on the date and at the time the electronic document is received by the commission's database; provided, that if a document is received when the clerk's office is not open for public~~

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business, the document shall be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document is received by the commission's database. An electronic document may be rejected if it is not submitted in compliance with these rules].

When a filing would otherwise be due on a day when the clerk's office is not open for public business, the filing will be timely if made on the next regular business day when the office is open to the public. When a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service of a formal pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail properly addressed and stamped, on or before the date of filing. Service on a party may be made by service on the party's counsel. [Alternatively, electronic service shall be permitted on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order.] At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required. [The commission may, by order, provide for electronic service of documents, including facsimile.] Notices, findings of fact, opinions, decisions, orders, or other paper documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with §12.1-27 of the Code of Virginia, shall be attested and served in compliance with §12.1-19.1 or §12.1-29 of the Code of Virginia.

5VAC5-20-150. Copies and format.

Applications, petitions, responsive pleadings, briefs, and other documents must be filed in an original and 15 copies. Except as otherwise stated in [this chapter these rules], submissions filed electronically are exempt from the copy requirement.

One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, and must be capable of being reproduced in copies of archival quality. Submissions filed electronically shall be made [as a in] portable document format (PDF) [file].

Pleadings shall be bound or attached on the left side and contain adequate margins. Each page following the first page

~~must~~ shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Submissions filed electronically may not exceed 100 pages of [printed text of] 8-1/2 by 11 inches [in dimension].

Pleadings containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. [Each Such] exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement.

The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this [rule ~~section~~] .

5VAC5-20-170. Confidential information.

A person who proposes in a formal proceeding that information to be filed with or submitted to the commission be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, or otherwise submit the information under seal to the commission staff as may be required. One copy of all such information also shall be submitted under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

Upon challenge, the filing party shall demonstrate to the satisfaction of the commission that the information should be withheld from public disclosure. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order.

Whenever a document is filed with the clerk under seal, an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information [cannot shall not] be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information [shall must] be filed in hardcopy and in accordance with all requirements of [this chapter these rules].

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the materials. In considering such [a] motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

5VAC5-20-240. Prepared testimony and exhibits.

Following the filing of an application dependent upon complicated or technical proof, the commission may direct the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. In all proceedings in which an applicant is required to file testimony, respondents shall be permitted and may be directed by the commission or hearing examiner to file, on or before a date certain, testimony and exhibits by which they expect to establish their case. Any respondent that chooses not to file testimony and exhibits by that date may not thereafter present testimony or exhibits except by leave of the commission, but may fully participate in the proceeding and engage in cross-examination of the testimony and exhibits of commission staff and other parties. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission and unless a timely objection is made, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing, unless, with the consent of the commission, the staff and all parties stipulate the introduction of testimony without need for verification. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice, or unless the testimony and exhibits are filed electronically and otherwise comply with [this chapter these rules]. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance,

but shall be described and made available for pretrial examination.

VA.R. Doc. No. R07-780; Filed January 16, 2008, 11:15 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-10, 12VAC5-220-110, 12VAC5-220-130, 12VAC5-220-200).**

Statutory Authority: §§32.1-12 and 32.1-102.2 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone 804-367-2157, FAX 804-527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

In conformance with Chapter 502 of the 2007 Acts of the Assembly, the amendments increase the threshold for capital expenditure projects from \$5 million to \$15 million and adjust such projects needing only registration from \$1 million/\$5 million to \$5 million/\$15 million. An exception is added allowing the State Health Commissioner to approve cost overruns greater than 20% when an applicant can demonstrate that the increases are reasonable and do not result from any material expansion of the project.

In addition, the definitions of clinical health services, health planning region, medical care facility, project, regional health planning agency, and state medical facilities plan are amended for conformity with §32.1-101.1 of the Code of Virginia.

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12VAC5-220-10. Definitions.

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

"Acquisition" means an expenditure of \$600,000 or more that changes the ownership of a medical care facility. It shall also include the donation or lease of a medical care facility. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock. See 12VAC5-220-120.

"Amendment" means any modification to an application that is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in this chapter. An amendment shall not include a modification to an application that serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Application fees" means fees required for a project application and application for a significant change. Fees shall not exceed the lesser of 1.0% of the proposed capital expenditure or cost increase for the project or \$20,000.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Such expenditure shall also include a series of related expenditures during a 12-month period or a financial obligation or a series of related financial obligations made during a 12-month period by or in behalf of a medical care facility. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of "person."

"Certificate of public need" means a document that legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure ~~or a series of such procedures that may be separately identified for billing and accounting purposes as defined in §32.1-102.1 of the Code of Virginia.~~

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities that are proposed for the same planning district or medical service area and which are in the same review cycle. See 12VAC5-220-220.

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means that a project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the Virginia Department of Health.

"Designated medically underserved areas" means (i) areas designated as medically underserved areas pursuant to §32.1-122.5 of the Code of Virginia; (ii) federally designated Medically Underserved Areas (MUA); or (iii) federally designated Health Professional Shortage Areas (HPSA).

"Ex parte" means any meeting that takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Gamma knife surgery" means stereotactic radiosurgery, where stereotactic radiosurgery is the noninvasive therapeutic procedure performed by directing radiant energy beams from any source at a treatment target in the head to produce tissue destruction. See definition of "project."

"Health planning region" means a contiguous geographical area of the Commonwealth ~~with a population base of at least 500,000 persons that is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts as defined in §32.1-102.1 of the Code of Virginia.~~

"Informal fact-finding conference" means a conference held pursuant to §2.2-4019 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facility" means any institution, place, building, or agency, ~~at a single site, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of this chapter, only the following medical care facility classifications shall be subject to review: as defined in §32.1-102.1 of the Code of Virginia.~~

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

~~4. Intermediate care facilities, except those intermediate care facilities established for the mentally retarded that have no more than 12 beds and are in an area identified as in need of residential services for people with mental retardation in any plan of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

5. Extended care facilities.

6. Mental hospitals.

~~7. Mental retardation facilities.~~

~~8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.~~

~~9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, nuclear medicine imaging except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the board by regulation.~~

~~10. Rehabilitation hospitals.~~

~~11. Any facility licensed as a hospital.~~

For purposes of this chapter, the following medical care facility classifications shall not be subject to review:

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

3. Any intermediate care facility for the mentally retarded that has no more than 12 beds and is in an area identified as in need of residential services for people with mental retardation in any plan of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

4. Any physician's office, except that portion of the physician's office which is described in subdivision 9 of the definition of "medical care facility," excluding that portion dedicated to providing nuclear cardiac imaging.

5. The Woodrow Wilson Rehabilitation Center of the Virginia Department of Rehabilitative Services.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the

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initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility that, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. See definition of "owner."

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in this chapter.

"Owner" means any person who has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the following:

1. The applicant for a certificate of public need;
2. The regional health planning agency for the health planning region in which the proposed project is to be located;
3. Any resident of the geographic area served or to be served by the applicant;
4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;
5. Any facility or health maintenance organization (HMO) established under §38.2-4300 et seq. of the Code of Virginia that is located in the health planning region in which the project is proposed and that provides services similar to the services of the medical care facility project under review;
6. Third party payors who provide health care insurance or prepaid coverage to 5.0% or more patients in the health planning region in which the project is proposed to be located; and
7. Any agency that reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-

based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office. See definition of "medical care facility."

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development as set forth in §15.2-4202 of the Code of Virginia, except that for purposes of this chapter, Planning District 23 shall be divided into two planning districts: Planning District 20, consisting of the counties of Isle of Wight and Southampton and the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk and Virginia Beach; and Planning District 21, consisting of the counties of James City and York and the cities of Hampton, Newport News, Poquoson and Williamsburg.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Primary medical care services" means first-contact, whole-person medical and health services delivered by broadly trained, generalist physicians, nurses and other professionals, intended to include, without limitation, obstetrics/gynecology, family practice, internal medicine and pediatrics.

"Progress" means actions that are required in a given period of time to complete a project for which a certificate of public need has been issued. See 12VAC5-220-450, Demonstration of progress.

"Project" means: any plan or proposal as defined in §32.1-102.1 of the Code of Virginia that is subject to Certificate of Public Need approval.

- ~~1. The establishment of a medical care facility. See definition of "medical care facility."~~
- ~~2. An increase in the total number of beds or operating rooms in an existing or authorized medical care facility.~~
- ~~3. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in §32.1-132 of the Code of Virginia.~~
- ~~4. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in §32.1-123 of the Code of Virginia.~~
- ~~5. The introduction into an existing medical care facility of any new cardiac catheterization, computed tomography~~

~~(CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care services, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, organ or tissue transplant service, radiation therapy, nuclear medicine imaging except for the purpose of nuclear cardiac imaging, psychiatric or substance abuse treatment, or such other specialty clinical services as may be designated by the board by regulation, which the facility has never provided or has not provided in the previous 12 months.~~

~~6. The conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds.~~

~~7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, or other specialized service designated by the board by regulation.~~

~~8. Any capital expenditure of \$5 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures between \$1 million and \$5 million shall be registered with the commissioner.~~

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application that is the subject of the proceeding and for which a verbatim record is made. See subsection A of 12VAC5-220-230.

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency, ~~including the regional health planning board, its staff and any component thereof, that performs health planning activities within a health planning region as defined in §32.1-102.1 of the Code of Virginia.~~

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the United States Department of Commerce, Economics and Statistics Administration.

"Schedule for completion" means the timetable that identifies the major activities required to complete a project as identified by the applicant and set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

1. Changes the site;
2. Increases the capital expenditure amount authorized by the commissioner on the certificate of public need issued for the project by 10% or more;
3. Changes the service(s) proposed to be offered;
4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See 12VAC5-220-440 and 12VAC5-220-450.

"Standard review process" means the process utilized in the review of all certificate of public need requests with the exception of:

1. Certain bed relocations as specified in 12VAC5-220-280;
2. Certain projects that involve an increase in the number of beds in which nursing facility or extended care services are provided as specified in 12VAC5-220-325.

~~"State Medical Facilities Plan" means the planning document adopted by the Board of Health that includes, but is not limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. The most recent applicable State Medical Facilities Plan shall remain in force until any such chapter is amended, modified or repealed by the Board of Health as contained in Article 1.1 (§32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, used to make medical care facilities and services needs decisions.~~

Part II General Information

12VAC5-220-110. Requirements for registration of certain capital expenditures of \$1 million or more but less than \$5 million.

At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is ~~\$4~~ \$5 million or more but is less than ~~\$5~~ \$15 million and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in this chapter shall register in writing such expenditure with the commissioner. The format for registration shall include information concerning the purpose of such expenditure and projected impact that the

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expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure. See definition of "project."

12VAC5-220-130. Significant change limitation.

No significant change in a project for which a certificate of public need has been issued shall be made without prior written approval of the commissioner. Such request for a significant change shall be made in writing by the owner to the commissioner with a copy to the appropriate regional health planning agency. The owner shall also submit the application fee to the department if applicable at the time the written request is made. The written request shall identify the nature and purpose of the change. The regional health planning agency shall review the proposed change and notify the commissioner of its recommendation with respect to the change within 30 days from receipt of the request by both the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the 30-day period shall constitute a recommendation of approval. The commissioner shall act on the significant change request within 35 days of receipt. A public hearing during the review of a proposed significant change request is not required unless determined necessary by the commissioner. The commissioner shall not approve a significant change in cost for a project which exceeds the authorized capital expenditure by more than 20%. The commissioner shall not extend the schedule for completion of a project beyond three years from the date of issuance of the certificate or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater, except when delays in completion of a project have been caused by events beyond the control of the owner and the owner has made substantial and continuing progress toward completion of the project.

Exception: The commissioner may approve a significant change in cost for an approved project that exceeds the authorized capital expenditure by more than 20%, provided the applicant has demonstrated that the cost increases are reasonable and necessary under all the circumstances and do not result from any material expansion for the project as approved.

12VAC5-220-200. One hundred ninety-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 190-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12VAC5-220-220.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/Obstetrical Services/Neonatal Special Care Services	Feb. 10 Aug. 10	Aug. 18 Feb. 16
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	Sep. 16 Mar. 19
C	Psychiatric Facilities/Substance Abuse Treatment/Mental Retardation Facilities	Apr. 10 Oct. 10	Oct. 17 Apr. 18
D/F	Diagnostic Imaging Facilities/Services Selected Therapeutic Facilities/Services	May 10 Nov. 10	Nov. 16 May 19
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Dec. 17 Jun. 18
D/F	Selected Therapeutic Facilities/Services Diagnostic Imaging Facilities/Services	July 10 Jan. 10	Jan. 16 Jul. 18
G	Nursing Home Beds at Retirement Communities/Bed Relocations/Miscellaneous Expenditures by Nursing Homes	Jan. 10 Mar. 10 May 10 July 10 Sep. 10 Nov. 10	Jul. 18 Sep. 16 Nov. 16 Jan. 16 Mar. 19 May 19

Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$\$~~ \$15 million or more (see 12VAC5-220-280).
4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services that the facility has not provided in the previous 12 months.
5. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.
3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services that the facility has not provided in the previous 12 months.
4. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization.
5. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
6. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, that is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
2. An increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse

treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~\$\$~~ \$15 million or more (see 12VAC5-220-280).

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service that the facility has not provided in the previous 12 months.
6. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D/F through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.
7. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A through B or Batch Groups D/F through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.
2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging services, except for the purpose of nuclear cardiac imaging that the facility has not provided in the previous 12 months.
3. The addition by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning.
4. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except that portion of a physician's office dedicated to providing nuclear cardiac imaging.

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5. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.
2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.
3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility that is not a dedicated medical rehabilitation hospital.
4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$\$~~ \$15 million or more (see 12VAC220-280).
5. The introduction into an existing medical care facility of any new medical rehabilitation service that the facility has not provided in the previous 12 months.
6. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical rehabilitation hospital.
7. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical care facility, that is primarily related to the provision of medical rehabilitation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services that the facility has not provided in the previous 12 months.
3. The addition by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
4. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

5. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.
2. The establishment of a nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.
3. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.
4. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.
5. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~\$\$~~ \$15 million or more (see 12VAC5-220-280).
6. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, which does not increase the total number of beds of the facility.
7. Any capital expenditure of ~~\$\$~~ \$15 million or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a medical care facility, that is primarily related to the provision of nursing home, intermediate care, or extended care services, and does not increase the number of beds of the facility.

VA.R. Doc. No. R08-983; Filed January 16, 2008, 10:05 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-150).**

Statutory Authority: §§32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendments comply with Chapters 163 and 1229 of the 2007 Acts of the Assembly by requiring nursing facilities to register with the Criminal Records Bureau of the Virginia State Police to receive notice of the registration of any sex offender within the same or a contiguous zip code as the nursing facility and to ascertain whether a potential resident is a registered sex offender.

12VAC5-371-150. Resident rights.

A. The nursing facility shall develop and implement policies and procedures that ensure resident's rights as defined in §§32.1-138 and 32.1-138.1 of the Code of Virginia.

B. The procedures shall:

1. Not restrict any right a resident has under law;
2. Provide staff training to implement resident's rights; and
3. Include grievance procedures.

C. The name and telephone number of the complaint coordinator of the OLC, the Adult Protective Services toll-free telephone number, and the toll-free telephone number for the State Ombudsman shall be conspicuously posted in a public place.

D. Copies of resident rights shall be given to residents upon admittance to the facility and made available to residents currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

E. The nursing facility shall have a plan to review resident rights with each resident annually, or with the responsible

family member or responsible agent at least annually, and have a plan to advise each staff member at least annually.

F. The nursing facility shall certify, in writing, that it is in compliance with the provisions of §§32.1-138 and 32.1-138.1 of the Code of Virginia, relative to resident rights, as a condition of license issuance or renewal.

G. The nursing facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located pursuant to §9.1-914 of the Code of Virginia.

H. Prior to admission, each nursing facility shall determine if a potential resident is a registered sex offender when the potential resident is anticipated to have a length of stay:

1. Greater than three days; or
2. In fact stays longer than three days.

VA.R. Doc. No. R08-982; Filed January 16, 2008, 10:06 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-381. Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-10 through 12VAC5-381-40, 12VAC5-381-60 through 12VAC5-381-100, 12VAC5-381-120, 12VAC5-381-140, 12VAC5-381-150, 12VAC5-381-240, 12VAC5-381-280).**

Statutory Authority: §§32.1-12 and 32.1-162.12 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone 804-367-2157, FAX 804-527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

In July 2006 the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health changed its name to the Office of Licensure and Certification. The amendments reflect that name change.

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12VAC5-381-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform personal care tasks in order to live independently.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a client by (i) a practitioner or by his authorized agent and under his direction or (ii) the client at the direction and in the presence of the practitioner as defined in §54.1-3401 of the Code of Virginia.

"Administrator" means a person designated in writing by the governing body as having the necessary authority for the day-to-day management of the organization. The administrator must be an employee of the organization. The administrator, the director of nursing, or other clinical director may be the same individual if that individual is dually qualified.

"Available at all times during operating hours" means an individual is readily available on the premises or by telecommunications.

"Barrier crimes" means certain offenses, specified in §32.1-162.9:1 of the Code of Virginia, that automatically bar an individual convicted of those offenses from employment with a home care organization.

"Chore services" means assistance with nonroutine, heavy home maintenance for persons unable to perform such tasks. Chore services include minor repair work on furniture and appliances; carrying coal, wood and water; chopping wood; removing snow; yard maintenance; and painting.

"Client record" means the centralized location for documenting information about the client and the care and services provided to the client by the organization. A client record is a continuous and accurate account of care or services, whether hard copy or electronic, provided to a client, including information that has been dated and signed by the individuals who prescribed or delivered the care or service.

"Client's residence" means the place where the individual or client makes his home such as his own apartment or house, a relative's home or an assisted living facility, but does not include a hospital, nursing facility or other extended care facility.

"Commissioner" means the State Health Commissioner.

"Companion services" means assisting persons unable to care for themselves without assistance. Companion services include transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Contract services" means services provided through agreement with another agency, organization, or individual on behalf of the organization. The agreement specifies the services or personnel to be provided on behalf of the organization and the fees to provide these services or personnel.

"Criminal record report" means the statement issued by the Central Criminal Record Exchange, Virginia Department of State Police.

"Department" means the Virginia Department of Health.

"Discharge or termination summary" means a final written summary filed in a closed client record of the service delivered, goals achieved and final disposition at the time of client's discharge or termination from service.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Drop site" means a location that HCO staff use in the performance of daily tasks such as obtaining supplies, using fax and copy machines, charting notes on care or services provided, and storing client records. These locations may also be called charting stations, workstations, or convenience sites.

"Employee" means an individual who has the status of an employee as defined by the U.S. Internal Revenue Service.

"Functional limitations" means the level of a client's need for assistance based on an assessment conducted by the supervising nurse. There are three criteria to assessing functional status: (i) the client's impairment level and need for personal assistance, (ii) the client's lack of capacity, and (iii) how the client usually performed the activity over a period of time. If a person is mentally and physically free of impairment, there is not a safety risk to the individual, or the person chooses not to complete an activity due to personal preference or choice, then that person does not need assistance.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the home care organization.

"Home attendant" means a nonlicensed individual performing skilled, pharmaceutical and personal care services, under the supervision of the appropriate health professional, to a client in the client's residence. Home

attendants are also known as certified nurse aides or CNAs, home care aides, home health aides, or personal care aides.

"Home care organization" or "HCO" means a public or private entity providing an organized program of home health, pharmaceutical or personal care services, according to §32.1-162.1 of the Code of Virginia in the residence of a client or individual to maintain the client's health and safety in his home. A home care organization does not include any family members, relatives or friends providing caregiving services to persons who need assistance to remain independent and in their own homes.

"Home health agency" means a public or private agency or organization, or part of an agency or organization, that meets the requirements for participation in Medicare under 42 CFR 440.70 (d), by providing skilled nursing services and at least one other therapeutic service, e.g., physical, speech or occupational therapy; medical social services; or home health aide services, and also meets the capitalization requirements under 42 CFR 489.28.

"Homemaker services" means assistance to persons with the inability to perform one or more instrumental activities of daily living. Homemaker services may also include assistance with bathing areas the client cannot reach, fastening client's clothing, combing hair, brushing dentures, shaving with an electric razor, and providing stabilization to a client while walking. Homemaker services do not include feeding, bed baths, transferring, lifting, putting on braces or other supports, cutting nails or shaving with a blade.

"Infusion therapy" means the procedures or processes that involve the administration of injectable medications to clients via the intravenous, subcutaneous, epidural, or intrathecal routes. Infusion therapy does not include oral, enteral, or topical medications.

"Instrumental activities of daily living" means meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. A client's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Licensed practical nurse" means a person who holds a current license issued by the Virginia Board of Nursing or a current multistate licensure privilege to practice nursing in Virginia as a licensed practical nurse.

"Licensee" means a licensed home care provider.

"Medical plan of care" means a written plan of services, and items needed to treat a client's medical condition, that is prescribed, signed and periodically reviewed by the client's primary care physician.

"Nursing services" means client care services, including, but not limited to, the curative, restorative, or preventive aspects

of nursing that are performed or supervised by a registered nurse according to a medical plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that is responsible for the day-to-day administrative management and operation of the organization.

"Organization" means a home care organization.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a home care organization.

"Personal care services" means the provision of nonskilled services, including assistance in the activities of daily living, and may include instrumental activities of daily living, related to the needs of the client, who has or is at risk of an illness, injury or disabling condition. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform the tasks of daily living in order to live independently.

"Primary care physician" means a physician licensed in Virginia, according to Chapter 29 (§54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the client as having the primary responsibility in determining the delivery of the client's medical care. The responsibility of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Qualified" means meeting current legal requirements of licensure, registration or certification in Virginia or having appropriate training, including competency testing, and experience commensurate with assigned responsibilities.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of client care and services, pursue opportunities to improve client care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing health care services to meet the needs of clients and others.

"Registered nurse" means a person who holds a current license issued by the Virginia Board of Nursing or a current multistate licensure privilege to practice nursing in Virginia as a registered nurse.

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"Service area" means a clearly delineated geographic area in which the organization arranges for the provision of home care services, personal care services, or pharmaceutical services to be available and readily accessible to persons.

"Skilled services" means the provision of the home health services listed in 12VAC5-381-300.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, documented, face-to-face guidance and instruction.

"Surety bond" means a consumer safeguard that directly protects clients from injuries and losses resulting from the negligent or criminal acts of contractors of the home care organization that are not covered under the organization's liability insurance. A fidelity type of surety bond, which covers dishonest acts such as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction or willful misapplication, will meet the requirements of surety bond coverage for the purposes of this chapter.

"Sworn disclosure statement" means a document disclosing an applicant's criminal convictions and pending criminal charges occurring in Virginia or any other state.

~~"The center" means the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health.~~

12VAC5-381-20. License.

A. A license to operate a home care organization is issued to a person. Persons planning to seek federal certification or national accreditation pursuant to §32.1-162.8 of the Code of Virginia must first obtain state licensure.

B. The commissioner shall issue or renew a license to establish or operate a home care organization if the commissioner finds that the home care organization is in compliance with the law and this regulation.

C. A separate license shall be required for home care organizations maintained at separate locations, even though they are owned or are operated under the same management.

D. Every home care organization shall be designated by an appropriate name. The name shall not be changed without first notifying the center OLC.

E. Licenses shall not be transferred or assigned.

F. Any person establishing, conducting, maintaining, or operating a home care organization without a license shall be guilty of a Class 6 felony according to §32.1-162.15 of the Code of Virginia.

12VAC5-381-30. Exemption from licensure.

A. This chapter is not applicable to those individuals and home care organizations listed in §32.1-162.8 of the Code of

Virginia. Organizations planning to seek federal certification as a home health agency or national accreditation must first obtain state licensure and provide services to clients before applying for national accreditation or federal certification.

In addition, this chapter is not applicable to those providers of only homemaker, chore or companion services as defined in 12VAC5-381-10.

B. A licensed organization requesting exemption must file a written request and pay the required fee stated in 12VAC5-381-70 D.

C. The home care organization shall be notified in writing if the exemption from licensure has been granted. The basis for the exemption approval will be stated and the organization will be advised to contact the center OLC to request licensure should it no longer meet the requirement for exemption.

D. Exempted organizations are subject to complaint investigations in keeping with state law.

12VAC5-381-40. License application; initial and renewal.

A. The center OLC provides precicensure consultation and technical assistance regarding the licensure process. The purpose of such consultation is to explain the regulation and the survey process. Precicensure consultations are arranged after a completed initial application is on file with the center OLC.

B. Licensure applications are obtained from the center OLC. The center OLC shall consider an application complete when all requested information and the appropriate fee, stated in 12VAC5-381-70, is submitted. If the center OLC finds the application incomplete, the applicant will be notified in writing.

C. The activities and services of each applicant and licensee shall be subject to an inspection by the center OLC to determine if the organization is in compliance with the provisions of this chapter and state law.

D. A completed application for initial licensure must be submitted at least 60 days prior to the organization's planned opening date to allow the center OLC time to process the application. An incomplete application shall become inactive six months after it is received by the center OLC. Applicants must then reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.

E. Licenses are renewed annually. The center OLC shall make renewal applications available at least 60 days prior to the expiration date of the current license.

F. It is the home care organization's responsibility to complete and return a renewal application to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect

provided a complete and accurate application was filed on time.

12VAC5-381-60. Changes to or reissue of a license.

A. It is the responsibility of the organization's governing body to maintain a current and accurate license. Licenses that are misplaced or lost must be replaced.

B. An organization shall give written notification 30 working days in advance of any proposed changes that may require the reissuance of a license. Notices shall be sent to the attention of the ~~Director~~ director of the ~~Center for Quality Health Care Services and Consumer Protection~~ OLC.

The following changes require the reissuance of a license and payment of a fee:

1. Operator;
2. Organization name; or
3. Address.

C. The ~~center~~ OLC will evaluate written information about any planned changes in operation that affect the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the organization during the process of evaluating a proposed change.

D. The organization will be notified in writing whether a new application is needed.

12VAC5-381-70. Fees.

A. The ~~Center~~ OLC shall collect a fee of \$500 for each initial and renewal license application. Fees shall accompany the licensure application and are not refundable.

B. An additional late fee of \$50 shall be collected for an organization's failure to file a renewal application by the date specified.

C. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the written request for reissuance or replacement.

D. A one time processing fee of \$75 for exemption from licensure shall accompany the written exemption request.

12VAC5-381-80. On-site inspections.

A. ~~A center~~ An OLC representative shall make periodic unannounced on-site inspections of each home care organization as necessary but not less often than biennially. The organization shall be responsible for correcting any deficiencies found during any on-site inspection. Compliance with all standards will be determined by the ~~center~~ OLC according to applicable law.

B. The home care organization shall make available to the ~~center's~~ OLC's representative any necessary records and shall allow access to interview the agents, employees, contractors,

and any person under the organization's control, direction or supervision.

C. After the on-site inspection, the ~~center's~~ OLC's representative shall discuss the findings of the inspection with the administrator or his designee.

D. The administrator shall submit, within 15 working days of receipt of the inspection report, an acceptable plan for correcting any deficiencies found. The plan of correction shall contain:

1. A description of the corrective action or actions to be taken and the personnel to implement the corrective action;
2. The expected correction date;
3. A description of the measures implemented to prevent a recurrence of the violation; and
4. The signature of the person responsible for the validity of the report.

E. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.

F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

G. Completion of corrective actions shall not exceed 45 working days from the last day of the inspection.

12VAC5-381-90. Home visits.

A. As part of any inspection, ~~a center~~ an OLC representative may conduct home visits.

B. The home care organization shall be responsible for arranging in-home visits with clients, family members, and caregivers for the ~~center's~~ OLC representative.

C. The organization shall explain clearly to the client, family or caretaker that the permission for the representative's home visit is voluntary and that consent to the home visit will not affect the client's care or other health benefits.

12VAC5-381-100. Complaint investigations conducted by the center OLC.

A. The ~~center~~ OLC has the responsibility to investigate any complaints regarding alleged violations of this chapter and applicable law.

B. Complaints may be received in writing or orally and may be anonymous.

C. When the investigation is complete, the licensee and the complainant, if known, will be notified of the findings of the investigation.

D. As applicable, the administrator shall submit, within 15 working days of receipt of the complaint report, an acceptable

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plan of correction for any deficiencies found during a complaint investigation. The plan of correction shall contain:

1. A description of the corrective action or actions to be taken and the personnel to implement the corrective action;
2. The expected correction date;
3. A description of the measures implemented to prevent a recurrence of the violation; and
4. The signature of the person responsible for the validity of the report.

E. The administrator will be notified in writing whenever any item in the plan of correction is determined to be unacceptable.

F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12VAC5-381-120. Variances.

A. The ~~center~~ OLC can authorize variances only to its own licensing regulations, not to regulations of another agency or to any requirements in federal, state, or local laws.

B. A home care organization may request a variance to a particular regulation or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of clients. The request for a variance must describe how compliance with the current regulation is economically burdensome and constitutes a special hardship to the home care organization and to the clients it serves. When applicable, the request should include proposed alternatives to meet the purpose of the requirements that will ensure the protection and well-being of clients. At no time shall a variance approved for one individual be extended to general applicability. The home care organization may at any time withdraw a request for a variance.

C. The ~~center~~ OLC shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations provided safety, client care and services are not adversely affected.

D. The ~~center~~ OLC may rescind or modify a variance if (i) conditions change; (ii) additional information becomes known that alters the basis for the original decision; (iii) the organization fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of clients.

E. Consideration of a variance is initiated when a written request is submitted to the Director, ~~Center for Quality Health Care Services and Consumer Protection~~ OLC. The ~~center~~ OLC shall notify the home care organization in writing of the receipt of the request for a variance. The ~~center~~ OLC may

attach conditions to a variance to protect the safety and well-being of the client.

F. The licensee shall be notified in writing if the requested variance is denied.

G. If a variance is denied, expires, or is rescinded, routine enforcement of the regulation or portion of the regulation shall be resumed.

H. The home care organization shall develop procedures for monitoring the implementation of any approved variances to assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the ~~center~~ OLC.

12VAC5-381-140. Return of a license.

A. Circumstances under which a license must be returned include, but are not limited to (i) transfer of ownership and (ii) discontinuation of services.

B. The licensee shall notify its clients and the ~~center~~ OLC, in writing, 30 days before discontinuing services.

C. If the organization is no longer operational, or the license has been suspended or revoked, the license shall be returned to the ~~center~~ OLC within five working days. The licensee shall notify its clients and the ~~center~~ OLC where all home care records will be located.

Part II Administrative Services

12VAC5-381-150. Management and administration.

A. No person shall establish or operate a home care organization, as defined in §32.1-162.7 of the Code of Virginia, without having obtained a license.

B. The organization must comply with:

1. This chapter (12VAC5-381);
2. Other applicable federal, state or local laws and regulations; and
3. The organization's own policies and procedures.

C. The organization shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

D. The organization shall permit representatives from the ~~center~~ OLC to conduct inspections to:

1. Verify application information;
2. Determine compliance with this chapter;
3. Review necessary records and documents; and
4. Investigate complaints.

E. The organization shall notify the ~~center~~ OLC 30 days in advance of changes affecting the organization, including the:

1. Service area;
2. Mailing address of the organization;
3. Ownership;
4. Services provided;
5. Operator;
6. Administrator;
7. Organization name; and
8. Closure of the organization.

F. The current license from the department shall be posted for public inspection.

G. Service providers or community affiliates under contract with the organization must comply with the organization's policies and this chapter.

H. The organization shall not use any advertising that contains false, misleading or deceptive statements or claims, or false or misleading disclosures of fees and payment for services.

I. The organization shall have regular posted business hours and be fully operational during such business hours. In addition, the organization shall provide or arrange for services to their clients on an on-call basis 24 hours a day, seven days a week.

J. The organization shall accept a client only when the organization can adequately meet that client's needs in the client's place of residence.

K. The organization must have a prepared plan for emergency operations in case of inclement weather or natural disaster to include contacting and providing essential care to clients, coordinating with community agencies to assist as needed, and maintaining a current list of clients who would require specialized assistance.

L. The organization shall encourage and facilitate the availability of flu shots for its staff and clients.

12VAC5-381-240. Handling complaints received from clients.

A. The organization shall establish and maintain complaint handling procedures that specify the:

1. System for logging receipt, investigation and resolution of complaints; and
2. Format of the written record of the findings of each complaint investigated.

B. The organization shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;
2. Investigation of the complaint;
3. Review of the investigation of findings and resolution for the complaint; and
4. Notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

C. The client or his designee shall be given a copy of the complaint procedures at the time of admission to service. The organization shall provide each client or his designee with the name, mailing address, and telephone number of the:

1. Organization contact person;
2. State Ombudsman; and
3. ~~Center for Quality Health Care Services and Consumer Protection~~ Complaint Unit of the OLC.

D. The organization shall maintain documentation of all complaints received and the status of each complaint from date of receipt through its final resolution. Records shall be maintained from the date of last inspection and for no less than three years.

12VAC5-381-280. Client record system.

A. The organization shall maintain an organized client record system according to accepted standards of practice. Written policies and procedures shall specify retention, reproduction, access, storage, content, and completion of the record.

B. The client record information shall be safeguarded against loss or unauthorized use.

C. Client records shall be confidential. Only authorized personnel shall have access as specified by state and federal law.

D. Provisions shall be made for the safe storage of the original record and for accurate and legible reproductions of the original.

E. Policies shall specify arrangements for retention and protection of records if the organization discontinues operation and shall provide for notification to the ~~center~~ OLC and the client of the location of the records.

F. An accurate and complete client record shall be maintained for each client receiving services and shall include, but shall not be limited to:

1. Client identifying information;
2. Identification of the primary care physician;
3. Admitting information, including a client history;

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4. Information on the composition of the client's household, including individuals to be instructed in assisting the client;
5. An initial assessment of client needs to develop a plan of care or services;
6. A plan of care or service that includes the type and frequency of each service to be delivered either by organization personnel or contract services;
7. Documentation of client rights review; and
8. A discharge or termination of service summary.

In addition, client records for skilled and pharmaceutical services shall include:

9. Documentation and results of all medical tests ordered by the physician or other health care professional and performed by the organization's staff;
 10. A medical plan of care including appropriate assessment and pain management;
 11. Medication sheets that include the name, dosage, frequency of administration, possible side effects, route of administration, date started, and date changed or discontinued for each medication administered; and
 12. Copies of all summary reports sent to the primary care physician.
- G. Signed and dated notes on the care or services provided by each individual delivering service shall be written on the day the service is delivered and incorporated in the client record within seven working days.
- H. Entries in the client record shall be current, legible, dated and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing.
- I. Originals or reproductions of individual client records shall be maintained in their entirety for a minimum of five years following discharge or date of last contact unless otherwise specified by state or federal requirements. Records of minors shall be kept for at least five years after the minor reaches 18 years of age.

VA.R. Doc. No. R08-985; Filed January 16, 2008, 10:07 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-391. **Regulations for the Licensure of Hospice (amending 12VAC5-391-10, 12VAC5-391-30 through 12VAC5-391-100, 12VAC5-391-120, 12VAC5-391-130, 12VAC5-391-150, 12VAC5-391-160, 12VAC5-391-250, 12VAC5-391-280).**

Statutory Authority: §§32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone 804-367-2157, FAX 804-527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

In July 2006 the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health changed its name to the Office of Licensure and Certification. The amendments reflect that name change.

12VAC5-391-10. Definitions.

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

"Activities of daily living" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his supervision or (ii) the patient at the direction and in the presence of the practitioner as defined in §54.1-3401 of the Code of Virginia.

"Administrator" means a person designated, in writing, by the governing body as having the necessary authority for the day-to-day management of the hospice program. The administrator must be a member of the hospice staff. The administrator, director of nursing, or another clinical director may be the same individual if that individual is dually qualified.

"Attending physician" means a physician licensed in Virginia, according to Chapter 29 (§54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent

state and identified by the patient as having the primary responsibility in determining the delivery of the patient's medical care. The responsibilities of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Available at all times during operating hours" means an individual is available on the premises or by telecommunications.

"Barrier crimes" means certain offenses specified in §32.1-162.9:1 of the Code of Virginia that automatically bar an individual convicted of those offenses from employment with a hospice program.

"Bereavement service" means counseling and support offered to the patient's family after the patient's death.

"Commissioner" means the State Health Commissioner.

"Coordinated program" means a continuum of palliative and supportive care provided to a terminally ill patient and his family, 24 hours a day, seven days a week.

"Core services" means those services that must be provided by a hospice program. Such services are: (i) nursing services, (ii) physician services, (iii) counseling services, and (iv) medical social services.

"Counseling services" means the provision of bereavement services, dietary services, spiritual and any other counseling services for the patient and family while the person is enrolled in the program.

"Criminal record report" means the statement issued by the Central Criminal Records Exchange, Virginia Department of State Police.

"Dedicated hospice facility" means an institution, place, or building providing room, board, and appropriate patient care 24 hours a day, seven days a week to individuals diagnosed with a terminal illness requiring such care pursuant to a physician's orders.

"Dispense" means to deliver a drug to the ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery as defined in §54.1-3401 of the Code of Virginia.

"Employee" means an individual who is appropriately trained and performs a specific job function for the hospice program on a full or part-time basis with or without financial compensation.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the hospice program.

"Home attendant" means a nonlicensed individual performing personal care and environmental services, under the supervision of the appropriate health professional, to a patient in the patient's residence. Home attendants are also known as certified nursing assistants or CNAs, home care aides, home health aides, and personal care aides.

"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs that are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available 24 hours a day, seven days a week.

"Inpatient" means services provided to a hospice patient who is admitted to a hospital or nursing facility on a short-term basis for the purpose of curative care unrelated to the diagnosed terminal illness. Inpatient does not mean services provided in a dedicated hospice facility.

"Interdisciplinary group" means the group responsible for assessing the health care and special needs of the patient and the patient's family. Providers of special services, such as mental health, pharmacy, and any other appropriate associated health services may also be included on the team as the needs of the patient dictate. The interdisciplinary group is often referred to as the IDG.

"Licensee" means a licensed hospice program provider.

"Medical director" means a physician currently licensed in Virginia, according to Chapter 29 (§54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, and responsible for the medical direction of the hospice program.

"Medical record" means a continuous and accurate documented account of services provided to a patient, including the prescription and delivery of the treatment or care.

"Nursing services" means the patient care performed or supervised by a registered nurse according to a plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity responsible for the day-to-day administrative management and operation of the hospice.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress

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of the dying process. Palliative care means treatment to enhance comfort and improve the quality of a patient's life during the last phase of his life.

"Patient" means a diagnosed terminally ill individual, with an anticipated life expectancy of six months or less, who, alone or in conjunction with designated family members or representatives, has voluntarily requested admission and been accepted into a licensed hospice program.

"Patient's family" means the hospice patient's immediate kin, including spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the patient's family by mutual agreement among the patient, the relation or individual.

"Patient's residence" means the place where the individual or patient makes his home.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a hospice.

"Plan of care" means a written plan of services developed by the interdisciplinary group to maximize patient comfort by symptom control to meet the physical, psychosocial, spiritual and other special needs that are experienced during the final stages of illness, during dying, and bereavement.

"Primary caregiver" means an individual that, through mutual agreement with the patient and the hospice program, assumes responsibility for the patient's care.

"Progress note" means a documented statement contained in a patient's medical record, dated and signed by the person delivering the care, treatment or service, describing the treatment or services delivered and the effect of the care, treatment or services on the patient.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of care and services, pursue opportunities to improve care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing services to meet the needs of patients and their families.

"Staff" means an employee who receives financial compensation.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular face-to-face guidance and instruction.

"Terminally ill" means a medical prognosis that life expectancy is six months or less if the illness runs its usual course.

~~"The Center" means the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health.~~

"Volunteer" means an employee who receives no financial compensation.

12VAC5-391-30. License.

A. A license to operate a hospice program is issued to a person.

B. The State Health Commissioner shall issue or renew a license to establish or operate a hospice program if the commissioner finds that the hospice program is in compliance with the law and this chapter.

C. A separate license shall be required for hospice programs maintained at separate locations, even though they are owned or are operated under the same management.

D. Every hospice program shall be designated by an appropriate name. The name shall not be changed without first notifying the ~~center~~ OLC.

E. Licenses shall not be transferred or assigned.

F. Any person establishing, conducting, maintaining, or operating a hospice program without a license shall be guilty of a Class 1 misdemeanor according to §32.1-27 of the Code of Virginia.

12VAC5-391-40. Exemption from licensure.

A. According to §32.1-162.2 of the Code of Virginia, this chapter is not applicable to a hospice established or operated for the practice of religious tenets of any recognized church or denomination that provides care and treatment for the sick by spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation. Such a hospice shall comply with the statutes and regulations governing environmental protection and life safety.

B. The hospice program must file a request for exemption from licensure in writing to the ~~Director~~ director of the ~~Center for Quality Health Care Services and Consumer Protection~~ OLC. The request shall contain documentation explaining the hospice program's relationship to the practice of religious tenets of a recognized church or denomination.

C. The hospice program shall be notified in writing that the exemption from licensure has been registered.

D. Exempt hospice programs shall remain subject to complaint investigations in keeping with state law.

12VAC5-391-50. License application; initial and renewal.

A. The ~~center~~ OLC will provide precensure consultation and technical assistance to any person regarding the licensure process. The purpose of such consultation is to explain the regulation and to review an applicant's proposed hospice program plans, forms, and other documents, as they relate to

the regulation. Prelicensure consultations can be arranged after an initial application has been filed.

B. Licensure applications are obtained from the ~~center~~ OLC. The ~~center~~ OLC shall consider an application complete when all requested information and the appropriate fee, stated in 12VAC5-391-70, are submitted. If the ~~center~~ OLC finds the application incomplete, the applicant will be notified in writing of the incomplete application.

An incomplete application shall become inactive six months after it is received by the ~~center~~ OLC. Applicants must reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.

C. A completed application for initial licensure must be submitted at least 60 days prior to the hospice program's planned opening date to allow the ~~center~~ OLC time to act on the application.

D. The activities and services of each applicant or licensee of a hospice license shall be subject to an inspection by the ~~center~~ OLC to determine if the hospice program is in compliance with the provisions of this chapter and state law. Hospice programs submitting an initial application shall receive an announced inspection prior to accepting patients.

E. Licenses are renewed annually. The ~~center~~ OLC shall make renewal applications available at least 60 days prior to the expiration date of the current license.

F. The hospice program shall submit the completed renewal application form along with any required attachments and the application fee by the date indicated in the cover letter. Providers operating dedicated hospice facilities shall include a copy of the facility deficiency report and plan of correction from their latest facility licensure inspection when applying to renew their hospice program license.

G. It is the hospice program's responsibility to complete and return the renewal application to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided a complete and accurate application was filed on time.

H. Providers operating a dedicated hospice facility shall maintain compliance with the applicable licensure regulations described in 12VAC5-391-120. Failure to maintain compliance may be taken into consideration in the ~~center's~~ OLC decision to renew a hospice program license.

12VAC5-391-60. Changes to or reissuance of a license.

A. It is the responsibility of the hospice program's governing body to maintain a current and accurate license, including appropriate facility licensure if the hospice program operates a dedicated hospice facility.

B. A hospice program shall give written notification 30 working days in advance of any proposed changes that may require the reissuance of the license. Notices shall be sent to the attention of the ~~Director~~ director of the ~~Center for Quality Health Care Services and Consumer Protection~~ OLC.

The following circumstances require the reissuance of a license and payment of a fee:

1. A change in ownership or operator;
2. A change in hospice program name; or
3. Relocation of the hospice program's administrative office.

C. The ~~center~~ OLC will evaluate written information about any planned changes in operation that affect the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the hospice program during the process of evaluating a proposed change.

D. The hospice program will be notified in writing whether a license can be reissued or a new application is needed.

12VAC5-391-70. Fees.

A. The ~~center~~ OLC shall collect a fee of \$500 for each initial and renewal license. Fees shall accompany the licensure application and are not refundable.

B. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the written request for reissuance or replacement.

C. In addition, a late fee of \$50 shall be collected for a hospice program's failure to file a renewal application by the date specified.

12VAC5-391-80. On-site inspections.

A. A ~~center~~ OLC representative shall make periodic unannounced on-site inspections of the hospice program as necessary, but not less often than biennially. The hospice program shall be responsible for correcting any deficiencies found during any on-site inspection, including deficiencies found during announced initial inspections. Compliance with all standards will be determined by the ~~center~~ OLC according to applicable law. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.

B. The hospice program shall make available to the ~~center~~ OLC representative any necessary records and shall allow access to interview the agents, employees, contractors, and any person under its control, direction or supervision.

C. After the on-site inspection, the ~~center~~ OLC representative shall discuss the findings of the inspection with the administrator or designee.

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D. The administrator shall submit, within 15 working days from the date of the deficiency report, an acceptable plan for correcting any deficiencies found during an on-site inspection. The plan of correction shall contain:

1. A description of the corrective action or actions to be taken and the personnel to implement and monitor the corrective action;
2. The expected correction date;
3. A description of the measures implemented to prevent a recurrence of the violation; and
4. The signature of the hospice program's administrator.

E. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

F. Completion of corrective actions shall not exceed 45 working days from the last day of the inspection.

12VAC5-391-90. Home visits.

A. As part of any inspection, ~~a center~~ an OLC representative may conduct home visits subject to obtaining consent from the patient and the patient's family or caretaker.

B. The hospice program shall be responsible for arranging in-home visits with patients, family members, and caregivers for the ~~center~~ OLC representative.

C. The hospice program shall explain clearly to the patient, patient's family or caretaker, that a home visit is voluntary and that refusal to consent to a home visit will in no way affect the patient's care.

12VAC5-391-100. Complaint investigation.

A. The ~~center~~ OLC has the responsibility to investigate any complaints regarding alleged violations of this chapter and applicable law.

B. Complaints may be received in written or oral form and may be anonymous.

C. When the investigation is complete, the licensee and the complainant, if known, will be notified in writing of the findings of the investigation.

D. The administrator shall submit an acceptable plan for correcting any deficiencies found during a complaint investigation.

E. The administrator will be notified in writing whenever any aspect of the plan of correction is determined to be unacceptable.

F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12VAC5-391-120. Dedicated hospice facilities.

A. Providers seeking to operate a dedicated hospice facility shall comply with the appropriate facility licensing regulation as follows:

1. Up to five patient beds, facilities shall be licensed as:
 - a. An assisted living facility pursuant to 22VAC40-71;
 - b. A hospital pursuant to 12VAC5-410; or
 - c. A nursing facility pursuant to 12VAC5-371; or
2. Six or more patient beds, facilities shall be licensed as:
 - a. An assisted living facility, pursuant to 22VAC40-71 with a classified Use Group of I-2;
 - b. A hospital pursuant to 12VAC5-410; or
 - c. A nursing facility pursuant to 12VAC5-371.

Facilities to be licensed as a hospital or a nursing facility shall obtain the applicable Certificate of Public Need (COPN).

B. Only patients diagnosed terminally ill shall be admitted to a dedicated hospice facility. The facility shall admit only those patients whose needs can be met by the accommodations and services provided by the facility.

C. Admission to a dedicated hospice facility shall be the decision of the patient in consultation with the patient's physician. No patient shall be admitted to a hospice facility at the discretion of, or for the convenience of, the hospice provider.

D. No dedicated hospice facility shall receive for care, treatment, or services patients in excess of the licensed bed capacity. However, facilities licensed as a nursing facility may provide temporary shelter for evacuees displaced due to a disaster. In those cases, the facility may exceed the licensed capacity for the duration of that emergency only provided the health, safety, and well being of all patients is not compromised and the ~~center~~ OLC is notified.

E. No dedicated hospice facility provider shall add additional patient beds or renovate facility space without first notifying the ~~center~~ OLC and the applicable facility licensing authority. ~~Center OLC~~ notifications must be in writing to the ~~Director~~ director of the ~~Center for Quality Health Care Services and Consumer Protection~~ OLC.

F. The ~~center~~ OLC will not accept any requests for variances to this section.

12VAC5-391-130. Variances.

A. The ~~center~~ OLC can authorize variances only to its own licensing regulations, not to regulations of another agency or to any requirements in federal, state, or local laws.

B. A hospice program may request a variance to a particular regulation or requirement contained in this chapter when the standard or requirement poses a special hardship and when a variance to it would not endanger the safety or well-being of patients. The request for a variance must describe the special hardship to the hospice program and to the patients it serves. When applicable, the request should include proposed alternatives to meet the purpose of the requirements that will ensure the protection and well-being of patients. At no time shall a variance approved for one individual be extended to general applicability. If a variance is denied, expires, or is rescinded, routine enforcement of the regulation or portion of the regulation shall be resumed. The hospice program may at any time withdraw a request for a variance.

C. The ~~center~~ OLC shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations provided safety, patient care and services are not adversely affected. The ~~center~~ OLC may attach conditions to the granting of the variance in order to protect persons in care.

D. The ~~center~~ OLC may rescind or modify a variance when (i) conditions change; (ii) additional information becomes known that alters the basis for the original decision; (iii) the hospice program fails to meet any conditions attached to the variance; or (iv) results of the variance jeopardize the safety, comfort, or well-being of persons in care.

E. Consideration of a variance is initiated when a written request is submitted to the ~~Director~~ director of the ~~Center for Quality Health Care Services and Consumer Protection~~ OLC. The ~~center~~ OLC shall notify the hospice program in writing of the receipt of the request for a variance.

F. The licensee shall be notified in writing if the requested variance is denied.

G. The hospice program shall develop procedures for monitoring the implementation of any approved variance to assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the ~~center~~ OLC.

12VAC5-391-150. Return of a license.

A. The circumstances under which a license must be returned include, but are not limited to (i) change in ownership or operator, (ii) change in hospice program name, (iii) relocation of the administrative office, (iv) discontinuation of any core services, and (v) establishment of a dedicated hospice facility.

B. The licensee shall notify its patients and the ~~center~~ OLC in writing 30 days prior to discontinuing any services.

C. If the hospice program is no longer operational, or the license is revoked or suspended, the license shall be returned to the ~~center~~ OLC within five working days. The licensee is

responsible for notifying its patients and the ~~center~~ OLC where all medical records will be located.

Part II
Administrative Services

12VAC5-391-160. Management and administration.

A. No person shall establish or operate a hospice program, as defined in §32.1-162.1 of the Code of Virginia, without having obtained a license.

B. The hospice program must comply with:

1. This chapter (12VAC5-391);
2. Other applicable federal, state or local laws and regulations; and
3. The hospice program's own policies and procedures.

When applicable regulations are similar, the more stringent regulation shall take precedence.

C. The hospice program shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

D. The hospice program shall permit representatives from the ~~center~~ OLC to conduct inspections to:

1. Verify application information;
2. Determine compliance with this chapter;
3. Review necessary records and documents; and
4. Investigate complaints.

E. The hospice program shall notify the ~~center~~ OLC 30 working days in advance of changes effecting the hospice program, including the:

1. Location of the administrative office or mailing address of the hospice program;
2. Ownership or operator;
3. Services provided;
4. Administrator;
5. Hospice program name;
6. Establishment of a dedicated hospice facility; and
7. Closure of the hospice program.

F. The current license from the department shall be posted for public inspection.

G. Service providers or individuals under contract must comply with the hospice program's policies and this chapter, as appropriate.

H. The hospice program shall not use any advertising that contains false, misleading or deceptive statements or claims,

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or false or misleading disclosures of fees and payment for services.

I. The hospice program shall have regular posted business hours and be fully operational during business hours. Patient care services shall be available 24 hours a day, seven days a week. This does not mean that a hospice program must accept new clients on an emergency basis during nonbusiness hours.

J. The hospice program shall accept a patient only when the hospice program can adequately meet that patient's needs.

K. The hospice program must have an emergency preparedness plan in case of inclement weather or natural disaster to include contacting and providing essential care to patients, coordinating with community agencies to assist as needed, and maintaining current information on patients who would require specialized assistance.

12VAC5-391-250. Complaints.

A. The hospice program shall establish and maintain complaint handling procedures that specify the:

1. System for logging receipt, investigation and resolution of complaints;
2. Format of the written record;
3. Method in which the adult protective services unit of the local social services department is to be informed and for what complaints; and
4. Description of the appeal rights if a complainant is not satisfied with the resolution.

B. The hospice program shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;
2. Investigation of the complaint;
3. Review of the investigation of findings and resolution of the complaint; and
4. Written notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

C. The patient or his designee shall be given a copy of the hospice program's procedures for filing a complaint at the time of admission to service. The hospice program shall provide each patient or his designee with the name, mailing address, and telephone number of the:

1. Hospice program contact person;
2. State Ombudsman; and
3. ~~Center for Quality Health Care Services and Consumer Protection~~ Complaint Unit of the OLC.

D. The hospice program shall maintain documentation of all complaints received and the status of each complaint from date of receipt through its final resolution. Records shall be maintained from the date of the last licensure inspection and for no less than three years.

12VAC5-391-280. Medical record system.

A. The hospice program shall maintain an organized medical record system according to accepted standards of practice. Written policies and procedures shall specify retention, reproduction, access, storage, content, and completion of the record.

B. Medical record information shall be safeguarded against loss or unauthorized use.

C. Medical records shall be confidential. Only authorized personnel shall have access as specified in state and federal law.

D. Provisions shall be made for the safe storage of the original record and for accurate and legible reproductions of the original.

E. Policies shall specify arrangements for retention and protection of records if the hospice program discontinues operation and shall provide for notification to the ~~center~~ OLC and the patient of the location of the records.

F. An accurate and complete medical record shall be maintained for each patient receiving services and shall include, but shall not be limited to:

1. Patient identifying information;
2. Identification of the attending physician;
3. Admitting information, including a patient history;
4. A psychosocial and spiritual assessment, including information regarding composition of the household, safety issues in the physical environment, coping skills of the family and the patient, and identification of the individuals to be instructed in the care of the patient;
5. Physical assessment;
6. Documentation and results of all medical tests ordered by the physician or other health care professionals and performed by the hospice program's staff;
7. Physician's orders;
8. The plan of care including, but not limited to, the type and frequency of each service to be delivered by hospice program or contract service personnel and appropriate assessment and management of pain;
9. Medication sheets that include the name, dosage, frequency of administration, route of administration, date started, changed or discontinued for each medication, and possible side effects;

- 10. Copies of all summary reports sent to the attending physician;
- 11. Documentation of patient rights review;
- 12. Services provided, including any volunteer services; and
- 13. A discharge summary that includes continuing symptom management needs.

G. Signed and dated progress notes by each individual delivering service shall be written on the day the service is delivered and incorporated in the medical record within seven working days.

H. All services provided to the patient by the hospice program shall be documented in the patient's medical record.

I. Entries in the medical record shall be current, legible, dated and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing.

J. Verbal orders shall be documented within 24 hours in the medical record by the health care professional receiving the order and shall be countersigned by the health professional initiating the order according to the procedures of the hospice program.

K. Originals or reproductions of individual patient medical records shall be maintained in their entirety for a minimum of five years following discharge or date of last contact unless otherwise specified by state or federal requirements. Records of minors shall be kept for at least five years after the minor reaches 18 years of age.

VA.R. Doc. No. R08-987; Filed January 16, 2008, 10:07 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-230).

Statutory Authority: §§32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Carrie Eddie, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA

23233, telephone (804) 367-2157, FAX (804) 527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

In response to Chapter 516 of the 2007 Acts of Assembly, this amendment requires that hospitals include in their visitation policies that adult patients may designate who is authorized to visit them while such patient is in the hospital.

12VAC5-410-230. 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. Each hospital shall establish a protocol relating to the rights and responsibilities of patients based on Joint Commission on Accreditation of Healthcare Organizations' 2000 Hospital Accreditation Standards, January 2000. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities. Patients shall be given a copy of their rights and responsibilities upon admission.

D. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state statutes.

1. Hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, may accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians and other persons lawfully authorized by state statute to give patient orders.

2. As specified in the hospital's medical staff bylaws, rules and regulations, or hospital policies and procedures, emergency telephone and other verbal orders shall be signed within a reasonable period of time not to exceed 72 hours, by the person giving the order, or, when such person is not available, cosigned by another physician or other person authorized to give the order.

E. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

F. Each hospital shall include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including, but not limited to, the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

VA.R. Doc. No. R08-981; Filed January 16, 2008, 10:07 a.m.

Regulations

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Final Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver and Residential Brain Injury Services (adding 12VAC35-105-115).**

Statutory Authority: §37.2-203 of the Code of Virginia.

Effective Date: March 5, 2008.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone 804-371-6885, FAX 804-692-0066, or email leslie.anderson@co.dmhmrzas.virginia.gov.

Summary:

The amendment establishes a process for issuing an order of summary suspension of a license for group home or other residential services for adults in cases of immediate threat to the health, safety, and welfare of residents. It also includes provisions for scheduling and conducting an administrative hearing, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court.

Summary of Public Comments and Agency's 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.

12VAC35-105-115. Summary suspension.

A. In conjunction with any proceeding for revocation, denial or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate any group home or residential facility for adults when he believes the operation of the home or facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and
4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the group home or residential facility for adults or its designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation, and (ii) notice that the group home or residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that any other legal guardians or responsible family members are informed of the pending action.

VA.R. Doc. No. R07-93; Filed January 9, 2008, 12:33 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) pursuant to §2.2-4002 A 4; however, under the provisions of §2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-10, 13VAC10-180-50, 13VAC10-180-60).**

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

Effective Date: February 4, 2008.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540 or email judson.mckellar@vhda.com.

Summary:

The amendments (i) increase the minimum construction cost to receive credits from \$7,500 to \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments, (ii) increase the point category for developments located in a revitalization area from 25 to 30 points, (iii) add the Rural Development 538 program interest credit funding as an option to qualify for points in the subsidized funding category, (iv) limit points for subsidized financing if an identity of interest exists between the owner and the applicant, (v) revise the amenity category for high efficiency heat pumps and gas furnaces, (vi) delete the three-point amenity category for an STC rating of 52 or more between floors, (vii) beginning on January 1, 2009, add a five-point amenity category if all units have hot water heaters that meet the EPA's Energy Star qualified program, (viii) add U.S. Green Building Council "LEED" Certification as an additional option to EarthCraft Certification and increase this point category from 15 to 30 points, (ix) add a 25-point category for developers that agree to use a VHDA-certified property management company to manage the development, (x) add a 15-point category for units that meet Universal Design standards, (xi) add a five-point category for Architects of Record who have attended an EarthCraft training seminar, (xii) allow a credit adjustment for the

credit-per-unit point category calculation for developments receiving a bonus in credits that are located in both a Revitalization Area and also are in either a QCT or DDA, (xiii) allow the executive director to substitute credits when a development is delayed by lawsuit, (xiv) revise the requirements for the 15% Northern Virginia noncompetitive preservation pool, and (xv) make other miscellaneous administrative clarification changes.

Summary of Public Comments and Agency's 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.

13VAC10-180-10. Definitions.

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

"Applicant" means an applicant for credits under this chapter 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.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act (42 USC §3601 et seq.).

"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.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development ("HUD").

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multi-family rental project has owned or participated in the ownership of such project, all as more fully described hereinbelow. The person who is the owner of the proposed development or multifamily rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case

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of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"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.

"Revitalization area" means any area for which the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located certifies as follows: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions—dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty or inadequate design, quality or condition or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such

area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§36-1 et seq.) of Title 36 of the Code of Virginia shall be deemed a revitalization area without any such certification. Any such revitalization area must either (i) ~~have established boundaries at least a year old at the time applications are submitted and~~ include discussions from the locality of the type of developments that will be encouraged, the potential sources of funding, and services to be offered in the area; or (ii) be subject to a plan using Hope VI funds from HUD. A comprehensive plan does not qualify as certification of a revitalization area.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments. When scoring the applications, the executive director will award points to those applications that submit the form correctly within the deadlines established by the executive director, award no points to those applications that submit the form incorrectly within the deadlines established by the executive director and subtract points from those applications that fail to submit the form by such deadlines.

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 (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should 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, if applicable, needs to be included in the application to determine the feasible credit amount: 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 costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$7,500 [~~\$15,000 per unit~~ \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments] .

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

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 for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. 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. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), [~~the any~~] site control document

[subject to approval of the partners of the seller] does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under §42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should 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

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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.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the director.

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.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application.

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 may be indicated on the application form, instructions or other communication available to the public.

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. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a [~~ten-point~~ 10-point] scoring penalty per item.

After receipt of the applications, if necessary, 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.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; 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) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) 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 (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) 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; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, 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 paid 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, 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, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities 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 (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools 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 any such applications in such nonprofit pools 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 to make such reservations) shall be assigned to such other pool 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 a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools 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 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 pool or pools as the executive director shall designate reservations therefore 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 the inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools 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 any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

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. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points;

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applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline 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 b (1) above) nor opposition (as described in subdivision b (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 is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed

development is an integral part of the local government's plan for revitalization of the area. ~~(25~~ (30 points)

d. If the proposed development is located in a qualified census tract as defined in §42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) 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 or (ii) on section 8 (as defined in 13VAC10-180-90) 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; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on [the] loan financing [to the applicable federal rate the proposed development]; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support 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.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. ~~(20 points)~~ points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of ~~9.0~~ 8.2 or more and a variable speed air handling unit or thru-the-wall heat pump equipment that has an EER

rating of ~~12.0~~ 11.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more and a variable speed air handling unit, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

~~(g) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)~~

~~(h)~~ (g) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

~~(i)~~ (h) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

~~(j)~~ (i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(j) [~~From~~ Beginning January 1, 2009, if] all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

(a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (3 points)

(b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 60 points.

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c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus lines. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such EarthCraft certification. ~~(45~~ (30 points)

h. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

i. If units are constructed to meet the authority's universal design standards. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

i. Evidence that the proposed development's architect has attended the authority's Universal Design symposium and the certificate of attendance is attached with the architect's certification. (5 points)

j. Evidence that the proposed development's architect has attended an EarthCraft Virginia multifamily professional training seminar and the certificate of attendance is attached with the architect's certification. (5 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 standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. 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 standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable

standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) 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.

7. Bonus points.

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. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent 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. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

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c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

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 that is assigned a total number of points less than a threshold amount of 300 points (250 points for developments financed with tax-exempt bonds) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

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 shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under §42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, 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, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above 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) a reservation of credits.

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 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. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

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 and tier, 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 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 at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. 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 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.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

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 move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of §42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with 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, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable 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 is less than the total amount of credits made available therein

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during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate 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.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without

limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with

credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

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 this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

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 this chapter. 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, this chapter 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 this section). 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, this chapter 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

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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, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. 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 this chapter, 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 this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development [~~intended to serve people with disabilities and that~~] (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD

regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director [for at least 50% of the units in the development]. Any such reservations made in any calendar year may be up to [~~3.0%–6.0%~~] of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development ~~within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City~~ that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, ~~and~~ (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. ~~Applicants and the principals of such applicant applying for credits under this paragraph may not submit an application for credits for the same development under the competitive scoring process in this section.~~

VA.R. Doc. No. R07-272; Filed January 16, 2008, 12:34 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) pursuant to §2.2-4002 A 4; however, under the provisions of §2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-60, 13VAC10-180-100).**

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

Effective Date: February 4, 2008.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

Summary:

The amendments (i) add a 15-point category identified as high priority for rehabilitation by Rural Development, (ii) add a 20-point category for smaller developments, (iii) increase the threshold score requirement, and (iv) restrict developments financed by tax-exempt bonds from receiving tax credits if more than 50% of the tax-exempt bonds are retired prior to the end of the seventh credit year.

Summary of Public Comments and Agency's 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.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; 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) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in

the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) 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 (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) 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; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, 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 paid 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, 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, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities 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

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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 (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools 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 any such applications in such nonprofit pools 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 to make such reservations) shall be assigned to such other pool 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 a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools 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 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 pool or pools as the executive director shall designate reservations therefore 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 the inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools 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 any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

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. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)
 - b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)
2. Housing needs characteristics.
 - a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)
 - b. (1) A letter dated within three months prior to the application deadline 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 b (1) above) nor opposition (as described in subdivision b (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 is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (25 points)

d. If the proposed development is located in a qualified census tract as defined in §42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) 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 or (ii) on section 8 (as defined in 13VAC10-180-90) 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; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local

government. (The amount of such financing or dollar value of local support 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.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

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- (a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)
 - (b) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)
 - (c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)
 - (d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)
 - (e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)
 - (f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 9.0 or more or thru-the-wall heat pump equipment that has an EER rating of 12.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)
 - (g) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)
 - (h) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)
 - (i) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)
 - (j) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)
- (2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:
- (a) If all cooking ranges have front controls. (1 point)
 - (b) If all units have an emergency call system. (3 points)
 - (c) If all bathrooms have an independent or supplemental heat source. (1 point)
 - (d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)
- (3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:
- (a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass

must have a 10-year warranty against breakage of the seal. (3 points)

(b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 60 points.

c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus lines. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

g. Any development for which the applicant agrees to obtain EarthCraft certification prior to the issuance of an IRS Form 8609 with the proposed development's

architect certifying in the application that the development's design will meet the criteria for such EarthCraft certification. (15 points)

h. Any development in which the applicant proposes to produce [~~up to~~ less than] 100 low-income housing units. ([~~25-20~~] points for producing [~~one~~ 50] low-income housing [~~unit~~ units or less] , minus [~~25-41~~] points for each additional low-income housing unit produced down to [~~25 points for 100 low income housing units and~~] 0 points for any development that produces [~~over~~] 100 [or more] low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

i. Evidence that the proposed development's architect has attended the authority's Universal Design symposium and the certificate of attendance is attached with the architect's certification. (5 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 standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the

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authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

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. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent 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. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a

10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

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~~ Any] application that is assigned a total number of points less than a threshold amount of 300 [~~500~~ 450] points [~~250 points for developments financed with tax exempt bonds~~] [for calendar year 2008, and 500 points after January 1, 2009 (425 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder for calendar year 2008, and 475 points for such developments after January 1, 2009),] shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

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 shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under §42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, 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, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above 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) a reservation of credits.

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 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. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

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 and tier, 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 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 at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. 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 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

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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.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

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 move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of §42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with 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, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable 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 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 for reservation and allocation in any subsequent round or rounds or (ii)

redistribute such unreserved credits to such other pool or pools as the executive director may designate 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.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the

entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's

or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

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 this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

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

Regulations

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 this chapter. 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, this chapter 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 this section). 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, this chapter 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, this chapter 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 this chapter, 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 this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development intended to serve people with disabilities and (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director. Any such reservations made in any calendar year may be up to 3.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit

year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, and (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Applicants and the principals of such applicant applying for credits under this paragraph may not submit an application for credits for the same development under the competitive scoring process in this section.

13VAC10-180-100. 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, prior to the issuance of the bonds, an application for allocation of credits and supporting information and documents as described in 13VAC10-180-70, and such other information and documents as the executive director may require (including a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed buildings or development). 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 under the ranking system described in 13VAC10-180-60, ~~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~~ as more fully described in 13VAC10-180-70, and (iii) premature retirement of any of the tax-exempt bonds or principal portion thereof issued to finance the buildings or development (including any tax-exempt bonds issued solely for the purpose of satisfying the requirement in §42(h)(4)(B) of the IRC) shall be neither required by the terms of the bonds nor anticipated by the applicant during the period commencing on the date of issuance of such bonds and ending on the date seven years thereafter. For the purpose of clause (iii) above, premature retirement shall be any total reduction in the principal amount of such bonds or portion thereof during such seven-year period in excess of 50% of the original principal amount of such bonds or portion thereof. The principal of any bonds that are defeased or for which funds (and any investments thereof) are otherwise determined by the authority to be available during such seven-year period for payment of principal thereof shall be deemed to be reduced by the principal amount so defeased or by the amount of such available funds during such seven-year period. Compliance with clause (iii) above shall be determined by the authority based upon the substance of the transactions and without regard to any artifice or device intended to evade the requirement prohibiting the premature retirement of bonds as described in clause (iii) above. Notwithstanding anything contained herein, the requirement in clause (iii) above shall not apply to tax-exempt bonds, not exceeding \$3,000,000 in original principal amount, issued for the rehabilitation of any development secured by a Rural Development 515 loan, provided such tax-exempt bonds are issued with the intent to preserve the Rural Development 515 loan.

The owner of the buildings or development shall, as required by the executive director, pay such fees as described in 13VAC10-180-50, and such good faith deposits as described in 13VAC10-180-70. 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 13VAC10-180-70 and all requirements for compliance monitoring as described in 13VAC10-180-90.

VA.R. Doc. No. R08-968; Filed January 16, 2008, 12:34 p.m.



Regulations

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-30. Rules Governing Life Insurance and Annuity Replacements (amending 14VAC5-30-30).

Statutory Authority: §§12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comments: Public comments may be submitted until 5 p.m. on February 29, 2008.

Agency Contact: Althelia Battle, Assistant Deputy Commissioner, Life and Health Division, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, 5th Floor, P.O. Box 1157, Richmond, VA 23219, telephone (804) 371-9154, FAX (804) 371-9944, or email al.battle@scc.virginia.gov.

Summary:

The proposed amendments add language in subdivision A 4 of 14VAC5-30-30 dealing with exemptions. The additional language provides an exemption from the rules for term conversions where the existing insurer and the replacing insurer are corporate affiliates. This revision is consistent with the most recent National Association of Insurance Commissioners (NAIC) "Life Insurance and Annuities Replacement Model Regulation."

AT RICHMOND, JANUARY 14, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2007-00298

Ex Parte: In the matter of
Adopting Revisions to the
Rules Governing Life Insurance
and Annuity Replacements

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposed amendment to Chapter 30 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Life Insurance and Annuity Replacements," which amends the Rules at 14 VAC 5-30-30.

The amended Rules add additional language in Subdivision A 4 of 14 VAC 5-30-30 dealing with Exemptions. The additional language provides an exemption from the Rules for term conversions where the existing insurer and the replacing insurer are corporate affiliates. This revision is consistent with the most recent National Association of Insurance Commissioners (NAIC) "Life Insurance and Annuities Replacement Model Regulation." The Commission is of the opinion that the amended Rules submitted by the Bureau of Insurance should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

- (1) The amended Rules entitled "Rules Governing Life Insurance and Annuity Replacements," at 14 VAC 5-30-30, be attached hereto and made a part hereof.
- (2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of the amended Rules shall file such comments or hearing request on or before February 29, 2008, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2007-00298. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.
- (3) If no request for a hearing on the adoption of the amended Rules is filed on or before February 29, 2008, the Commission, upon consideration of any comments submitted in support of or in opposition to the amended Rules, may adopt the Rules as amended by the Bureau of Insurance.
- (4) AN ATTESTED COPY hereof, together with a copy of the amended Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy

Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the amended Rules by mailing a copy of this Order, together with the proposed amendments, to all companies licensed by the Commission to write life insurance, variable life insurance, annuities, or variable annuities in Virginia.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amendments, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14VAC5-30-30. Exemptions.

A. Unless otherwise specifically included, this chapter shall not apply to:

1. Credit life insurance;
2. Group life insurance or group annuities where there is no direct solicitation of individuals by an agent. Direct solicitation shall not include any group meeting held by an agent solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 14VAC5-30-70;
3. Group life insurance and annuities used to fund prearranged funeral contracts;
4. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a plan filed and approved by the commission, or when a term conversion privilege is exercised among corporate affiliates;
5. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
6. a. Policies or contracts used to fund (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act (ERISA) (29 USC §1001 et seq.); (ii) a plan described by 26 USC

§§401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; (iii) a governmental or church plan defined in 26 USC §414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under 26 USC §457 of the Internal Revenue Code; or (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

b. Notwithstanding subdivision a of this subsection, this chapter shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an agent for the purchase of a policy or contract. As used in this subsection, direct solicitation shall not include any group meeting held by an agent solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

7. Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
8. Existing life insurance that is a nonconvertible term life insurance policy that will expire in five years or less and cannot be renewed;
9. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter; or
10. Structured settlements.

B. Registered contracts shall be exempt from the requirements of 14VAC5-30-51 A 2 and 14VAC5-30-55 B with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

VA.R. Doc. No. R08-1121; Filed January 15, 2008, 8:46 a.m.

Regulations

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-200. Rules Governing Long-Term Care Insurance (amending 14VAC5-200-185).

Statutory Authority: §§12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Agency Contact: Althelia Battle, Assistant Deputy Commissioner, Life and Health Division, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, 5th Floor, Richmond, VA 23219, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9154, FAX (804) 371-9944, or email al.battle@scc.virginia.gov.

Summary:

The proposed amendment corrects errors in subsection E of 14VAC5-200-185 making references to subdivisions in subsection D.

AT RICHMOND, JANUARY 14, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00002

Ex Parte: In the matter of
Adopting Revisions to the
Rules Governing Long-Term
Care Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules

Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-185.

The proposed amendments to the Rules are necessary to correct errors in subsection E making reference to subdivisions in subsection D.

The Commission is of the opinion that the proposed amendments to 14 VAC 5-200-185 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-185, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed amendments shall file such comments or hearing request on or before February 29, 2008, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00002. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) If no written request for a hearing on the proposed amendments is filed on or before February 29, 2008, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments, may adopt the amendments proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the amendments by mailing a copy of this Order, together with the proposed amendments, to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, including all fraternal benefit societies, health maintenance organizations, and health services plans licensed in Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amendments, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14VAC5-200-185. Nonforfeiture benefit requirement.

A. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of §38.2-5210 of the Code of Virginia:

1. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection E of this section; and

2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

When a group long-term care insurance policy is issued, the offer required in §38.2-5210 of the Code of Virginia shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in §38.2-3522.1 of the Code of Virginia other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificateholder.

C. If the offer required to be made under §38.2-5210 of the Code of Virginia is rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in subdivision D 4 of this section shall still apply.

D. 1. After rejection of the offer required under §38.2-5210 of the Code of Virginia, for individual and group policies without nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse.

2. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%

Regulations

86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in subdivision 6 b of this subsection is 40% or more. Unless otherwise required, policyholders shall be notified at least 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

This provision shall be in addition to the contingent benefit provided by subdivision 3 of this subsection, and where both are triggered, the benefit provided shall be at the option of the insured.

5. On or before the effective date of a substantial premium increase as defined in subdivision 3 of this subsection, the insurer shall:

- a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;
- b. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection E of this section. This option may be elected at any time during the 120-day period referenced in subdivision 3 of this subsection; and
- c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 3 of this subsection shall be deemed to be the election of the offer to convert in subdivision 5 b of this subsection unless the automatic option in subdivision 6 c of this subsection applies.

6. On or before the effective date of a substantial premium increase as defined in subdivision 4 of this subsection, the insurer shall:

- a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;
- b. Offer to convert the coverage to a paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in subdivision 4 of this subsection; and
- c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 4 of this subsection shall be deemed to be the election of the offer to convert in subdivision 6 b of this subsection if the ratio is 40% or more.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subdivision D 4 3 but not subdivision D 5 4 of this section, are described in this subsection:

1. For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least 1.0% per year prior to age 50, and at least 3.0% per year beyond age 50.
2. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision 3 of this subsection.
3. The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection F of this section.
4. a. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

b. Notwithstanding subdivision 4 a of this subsection, except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of: (i) the end of the tenth year following the policy or certificate issue date; or (ii) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

H. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of 14VAC5-200-150 or 14VAC5-200-153, whichever is applicable, treating the policy as a whole.

I. To determine whether contingent nonforfeiture upon lapse provisions are triggered under subdivision D 3 or D 4 of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

J. A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

1. The nonforfeiture provision shall be appropriately captioned;
2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commission for the same contract form; and
3. The nonforfeiture provision shall provide at least one of the following:
 - a. Reduced paid-up insurance;

- b. Extended term insurance;
- c. Shortened benefit period; or
- d. Other similar offerings approved by the commission.

VA.R. Doc. No. R08-1119; Filed January 15, 2008, 8:46 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Final Regulation

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22; adding 18VAC85-20-226).**

18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-35; adding 18VAC85-40-67).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-35; adding 18VAC85-50-61).

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-26; adding 18VAC85-80-73).

18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18VAC85-101-25; adding 18VAC85-101-153).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-35; adding 18VAC85-110-161).

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

Effective Date: March 5, 2008.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4621, FAX 804-527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 881 of the 2006 Acts of Assembly, the Board of Medicine has established a restricted volunteer license. This license allows temporarily or permanently retired health care practitioners to volunteer their services at free clinics throughout the Commonwealth without having to pay all fees and obtain all of the continuing education required for active licensure.

Regulations

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.

D. The fee for a temporary authorization to practice medicine pursuant to §54.1-2927 B (i) and (ii) of the Code of Virginia shall be \$25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine and podiatry and \$105 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to §54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to §54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be \$382 for licensure in medicine, osteopathic medicine and podiatry and \$367 for licensure in chiropractic in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure to another jurisdiction shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

~~M. N.~~ The fee for a returned check shall be \$35.

Part II

Standards of Professional Conduct

18VAC85-20-226. Restricted volunteer license.

A. Any doctor of medicine, osteopathic medicine, podiatry or chiropractic who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a doctor of medicine, osteopathic medicine, podiatry or chiropractic shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-20-22.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-20-22.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to 30 hours obtained during the two years immediately preceding renewal with at least 15 hours of Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession and no more than 15 hours of Type 2 activities or courses.

18VAC85-40-35. Fees.

The following fees are required:

1. The application fee, payable at the time the application is filed, shall be \$130.
2. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month.
3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.

4. The fee for reinstatement of a license issued by the Board of Medicine pursuant to §54.1-2904 of the Code of Virginia, which has lapsed for a period of two years or more, shall be \$180 and must be submitted with an application for licensure reinstatement.

5. The fee for reinstatement of a license pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.

6. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

7. The fee for a returned check shall be \$35.

8. The fee for a letter of good standing/verification to another jurisdiction shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

Part II

Requirements For Licensure As A Respiratory Care Practitioner

18VAC85-40-67. Restricted volunteer license.

A. A respiratory care practitioner who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a respiratory care practitioner shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-40-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-40-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education as approved and documented by a sponsor recognized by the AARC or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.

Part IV Scope of Practice

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be \$130.

2. The biennial fee for renewal of an active license shall be \$135 and for renewal of an inactive license shall be \$70, payable in each odd-numbered year in the birth month of the licensee.

3. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of §54.1-2951.3 of the Code of Virginia.

5. The fee for review and approval of a new protocol submitted following initial licensure shall be \$15.

6. The fee for reinstatement of a license pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

8. The fee for a returned check shall be \$35.

9. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

Part II

Requirements for Practice as a Physician's Assistant

18VAC85-50-61. Restricted volunteer license.

A. A physician assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a physician assistant shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-50-35.

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C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-50-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 50 hours of continuing education during the biennial renewal period with at least 25 hours in Type 1 and no more than 25 hours in Type 2 as acceptable to the NCCPA.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be \$130.
2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be \$180.
3. The fee for active license renewal shall be \$135 and for inactive license renewal shall be \$70 and shall be due in the birth month of the licensed therapist in each even-numbered year.
4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50.
5. The fee for a letter of good standing or verification to another state for a license shall be \$10.
6. The fee for reinstatement of licensure pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a returned check shall be \$35.
8. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

Part II

Requirements of Licensure as an Occupational Therapist

18VAC85-80-73. Restricted volunteer license.

A. An occupational therapist who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery

of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18VAC85-80-71.

18VAC85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist licensure shall be \$130.
2. The application fee for the radiologic technologist-limited licensure shall be \$90.
3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement.

1. The fee for active license renewal for a radiologic technologist shall be \$135 and for a radiologic technologist-limited shall be \$70. The fee for inactive license renewal for a radiologic technologist shall be \$70 and for a radiologic technologist-limited shall be \$35.
2. An additional fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist-limited to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.
3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 for a radiologic technologist and \$120 for a radiologic technologist-limited and shall be submitted with an application for licensure reinstatement.
4. The fee for reinstatement of a license pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.

D. Other fees.

1. The application fee for a traineeship as a radiologic technologist shall be \$25.
2. The fee for a letter of good standing or verification to another state for licensure shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.
3. The fee for a returned check shall be \$35.
4. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.
5. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

Part II

Licensure Requirements - Radiologic Technologist

18VAC85-101-153. Restricted volunteer license.

A. A licensed radiologic technologist or a radiologic technologist-limited who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a licensed radiologic technologist or a radiologic technologist-limited shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-101-25.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-101-25.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, a licensed radiologic technologist shall attest to having completed 12 hours of Category A continuing education as acceptable to and documented by the ARRT within the last biennium. A radiologic technologist-limited shall attest to having completed six hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours shall be acceptable to and documented by the ARRT or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

18VAC85-110-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as an acupuncturist shall be \$130.
2. The fee for biennial active license renewal shall be \$135; the fee for biennial inactive license renewal shall be \$70.
3. The additional fee for processing a late renewal within one renewal cycle shall be \$50.
4. The fee for reinstatement of a license which has expired for two or more years shall be \$180.
5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.
6. The fee for reinstatement of a license pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a duplicate wall certificate shall be \$15.
8. The fee for a duplicate renewal license shall be \$5.
9. The fee for a returned check shall be \$35.
10. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

Part II

Requirements for Licensure

18VAC85-110-161. Restricted volunteer license.

A. A licensed acupuncturist who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with §54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, a licensed acupuncturist shall submit an application to the board that documents compliance with requirements of §54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-110-35.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-110-35.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first

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renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 20 hours of continuing education acceptable to the NCCAOM, obtained within the last biennium.

VA.R. Doc. No. R06-337; Filed January 7, 2008, 9:32 a.m.

REAL ESTATE BOARD

Final Regulation

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-10, 18VAC135-20-30, 18VAC135-20-60, 18VAC135-20-100, 18VAC135-20-105, 18VAC135-20-160, 18VAC135-20-170, 18VAC135-20-180, 18VAC135-20-190, 18VAC135-20-210, 18VAC135-20-220, 18VAC135-20-280, 18VAC135-20-300, 18VAC135-20-360, 18VAC135-20-370, 18VAC135-20-390; adding 18VAC135-20-101, 18VAC135-20-345).**

Statutory Authority: §§54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: April 1, 2008.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

The amendments bring the regulations into compliance with Chapter 998 of the 2003 Acts of Assembly and Chapter 61 of the 2006 Acts of Assembly. Chapter 998 requires that real estate salespeople complete at least 30 hours of continuing education within two years of initial licensure (before they renew their licenses for the first time) and that brokers complete at least 16 hours of continuing education before biannual license renewal. Chapter 61 mandates that successful applicants for licensure have at least a high school diploma or its equivalent.

In addition, the amendments (i) require that salespersons licensed by reciprocity take the state portion of the real estate salesperson's exam before biennial license renewal even if they have upgraded to a broker's license in the interim; (ii) require principal brokers to report all instances where they reasonably believe that escrow accounts are being improperly maintained; (iii) require licensees who are selling a property in which they (or a friend, family member or associate) have an ownership interest, disclose that interest as soon as any substantive discussions about that property are held; (iv) allow the board to suspend, revoke or fail to renew all licenses held by an individual at once; (v) require that licensees who provide prelicensure training take a "Train the Trainer" course, specify that the experience required of these

licensees must be consecutive and "immediately prior to application" for approval as an instructor; (vi) reduce the number of years of experience that nonlicensee subject area prelicensure instructors must have in their area of expertise from five years to three years; and (vii) reword language in the fees section so that nonrevoked licenses will be valid for two calendar years.

The changes made to the proposed regulation (i) amend qualifications for renewal in the continuing education requirements, (ii) clarify language in improper brokerage commission, (iii) add language concerning submittal of course completion data to the board, and (iv) amend instructor qualifications.

Summary of Public Comments and Agency's 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.

18VAC135-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with §54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license. ["]

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by §54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is required by 18VAC135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship

and who is not performing any of the activities defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in §54.1-2130 of the Code of Virginia.

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18VAC135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact

the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of §54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.

3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

4. ~~The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of §54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information:~~

- a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and
- b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

5. The applicant shall be at least 18 years old.

6. The applicant shall have a high school diploma or its equivalent.

- ~~6.~~ 7. The applicant, within 12 months prior to making complete application for a license, shall have passed a

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written examination provided by the board or by a testing service acting on behalf of the board.

~~7.~~ 8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

~~8.~~ 9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.

18VAC135-20-60. Qualifications for licensure by reciprocity.

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

1. The applicant shall be at least 18 years of age.

2. ~~The applicant shall have a high school diploma or its equivalent.~~

~~2.~~ 3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.

~~3.~~ 4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

4. ~~5.~~ The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.

~~5.~~ 6. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~6.~~ 7. At the time of application for a salesperson's license, the applicant must have been actively engaged as defined by 18VAC135-20-10 for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. These requirements may be

waived at the discretion of the board in accordance with §54.1-2105 of the Code of Virginia.

~~7.~~ 8. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

~~8.~~ The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of §54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

9. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and

b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

~~9.~~10. Applicants for licensure who do not meet the requirements set forth in subdivisions ~~5~~ 6 and ~~8~~ 9 of this subsection may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.

18VAC135-20-100. Qualification for renewal; continuing education requirements.

[As Effective until June 30, 2008, as] a condition of renewal, and pursuant to §54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of ~~eight~~ 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of postlicense education

regardless of whether his license is active or inactive. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).

1. Providers shall be those as defined in 18VAC135-20-350.

2. ~~Four~~ Eight of the ~~eight~~ 16 required hours shall include two hours of training in fair housing laws, and a minimum of one hour each in state real estate laws and regulations, and ethics and standards of conduct, agency and contracts [for brokers. Eight of the 16 required hours shall include two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency, and contracts for salespersons]. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;
- m. Real property management;
- n. Search, examination and registration of title;
- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;

- r. Regulatory statutes;
- s. Housing legislation;
- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements;
- gg. Ethics and standards of conduct; and
- hh. Common interest ownership.

3. Licensees holding licenses in other jurisdictions must complete ~~four~~ eight hours [.] which shall include fair housing laws, state real estate laws and regulations ~~and~~ ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with §54.1-2105 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide ~~course~~ documentation of completion certification as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

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[18VAC135-20-101. Qualification for renewal; continuing education requirements.

Effective July 1, 2008, as a condition of renewal, and pursuant to §54.1-2105 of the Code of Virginia, all active salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of post-license education regardless of whether his license is active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).

1. Providers shall be those as defined in 18VAC135-20-350;

2. For salespersons, eight of the required 16 hours shall include two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency and contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency and contracts. If the licensee submits a notarized affidavit to the board that certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;

g. Liens;

h. Real property and title insurance;

i. Investment;

j. Taxes in real estate;

k. Real estate financing;

l. Brokerage and agency contract responsibilities;

m. Real property management;

n. Search, examination and registration of title;

o. Title closing;

p. Appraisal of real property;

q. Planning subdivision developments and condominiums;

r. Regulatory statutes;

s. Housing legislation;

t. Fair housing;

u. Real Estate Board regulations;

v. Land use;

w. Business law;

x. Real estate economics;

y. Real estate investments;

z. Federal real estate law;

aa. Commercial real estate;

bb. Americans With Disabilities Act;

cc. Environmental issues impacting real estate;

dd. Building codes and design;

ee. Local laws and zoning;

ff. Escrow requirements;

gg. Ethics and standards of conduct; and

hh. Common interest ownership.

3. Salespersons holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute

education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with §54.1-2105 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.]

18VAC135-20-105. Additional qualifications for renewal of a reciprocal license.

In addition to the requirements set forth in 18VAC135-20-100, all licensees, including those licensees who upgrade to broker prior to renewal, who obtained their license by reciprocity in accordance with 18VAC135-20-60 must pass a written examination provided by the board or a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.

18VAC135-20-160. Place of business.

A. Within the meaning and intent of §54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in §54.1-2100 of the Code of Virginia; and

2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be ~~available to the public~~ posted in a conspicuous place in each branch office.

D. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the

provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this subsection. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and ~~discuss contract provisions~~, approve all documents including but not limited to leases, contracts affecting the firm's clients, brokerage agreement—provisions agreements and advertising;

2. The availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:

- a. Proper handling of escrow deposits;
- b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
- c. Advertising;
- d. Negotiating and drafting of contracts, leases and brokerage agreements;
- e. Use of unlicensed individuals;
- f. Agency relationships;
- g. Distribution of information on new or changed statutory or regulatory requirements;
- h. Disclosure of matters relating to the condition of the property.
- i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;

4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;

5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office;

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6. If a supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements in this subsection; and

7. The supervising broker must maintain the records required in this subsection for three years. The records must be furnished to the board's agent upon request.

18VAC135-20-170. Maintenance of licenses.

A. Name and address.

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. The professional name shall include the licensee's first or last name and shall not include any titles.

2. Salespersons and brokers shall be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.

3. Principal brokers must at all times keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.

B. Discharge or termination of active status.

1. When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license by certified mail to the board within three business days of termination or status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it. See §54.1-2109 of the Code of Virginia

for termination relating to the death or disability of the principal broker.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments

received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) by certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit

shall not be removed from an escrow account required by the lease without the written consent of the tenant.

c. Lease transactions: rents or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

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2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;
3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;
4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and
5. ~~Failure~~ Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee has caused noncompliance with ~~subdivision 4 of this subsection~~ this section.

18VAC135-20-190. Advertising by licensees.

A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Disclosure" in the context of online advertising means (i) advertising that contains the firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license or (ii) advertising that contains the licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license. "Disclosure" in the context of other advertising means (a) advertising by the firm that contains the firm's licensed name and the firm's address or (b) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active and the firm's address.

"Institutional advertising" means advertising in which no real property is identified.

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

B. All advertising must be under the direct supervision of the principal broker or supervising broker ~~and~~, in the name of the firm and [, when applicable,] comply with the disclosure required by §54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

C. Online advertising.

1. Any online advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.

2. All online advertising that can be viewed or experienced as a separate unit (i.e., e-mail messages and web pages) must contain disclosure as follows:

a. The web. If a firm or licensee owns a webpage or controls its content, the viewable page must include disclosure or a link to disclosure.

b. E-mail, newsgroups, discussion lists, bulletin boards. All such formats shall include disclosure at the beginning or end of each message. The provisions of this subsection do not apply to correspondence in the ordinary course of business.

c. Instant messages. Disclosure is not necessary in this format if the firm or licensee provided the disclosures via another format prior to providing, or offering to provide, licensed services.

d. ~~Chat~~ Chat/Internet-based dialogue. Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same webpage that contains the chat session if the licensee controls the website hosting the chat session.

e. Voice Over Net (VON). Disclosure is required prior to advertising or the disclosure text must be visible on the same webpage that contains the VON session.

f. Banner ads. A link to disclosure is required unless the banner ad contains the disclosure.

3. All online listings advertised must be kept current and consistent as follows:

a. Online listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the online site.

b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party online listing service controls the website displaying the listing information.

c. All listing information shall indicate in a readily visible manner the date that the listing information shown was last updated.

D. The following activities shall be prohibited:

1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;

2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised and is not using the services of a licensed real estate entity;
3. Failing to include the firm's licensed name on any sign displayed outside each place of business;
4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and
5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

18VAC135-20-210. Disclosure of interest.

~~A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.~~

~~B. A licensee selling or leasing property in which he has any ownership interest must disclose that he is a real estate licensee and he has an interest in the property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.~~

18VAC135-20-220. Disclosure of brokerage relationships.

A. Purchase transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents in a brokerage relationship, as that term is defined in §54.1-2130 of the Code of Virginia.
2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of §54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.
3. A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the

transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by §54.1-2138 of the Code of Virginia.

B. Lease transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than ~~three~~ two months.

[18VAC135-20-280. Improper brokerage commission.

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation of Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;
2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, from any person except the licensee's principal broker at the time of the transaction, for ~~(i)~~ the performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker; ~~or (ii) the~~ Unless he has notified the broker in

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~~writing of the activity or activities to be pursued and obtained the prior written consent of the principal broker, no salesperson or associate broker shall (i) use of any information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the written consent of the principal broker. No licensee shall or (ii) act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC §2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm without written consent of the broker;~~

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or more principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.]

18VAC135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;

2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts

pertaining to the physical condition of the property which are actually known by the licensee;

3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;

4. Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;

6. Failing to include the complete terms and conditions of the real estate transaction ~~in~~ including but not limited to any lease, property management agreement or offer to purchase;

7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section without the prior written consent of the principals to the transaction;

9. Knowingly making any material misrepresentation or making a material misrepresentation ~~reasonably relied upon by a third party to that party's detriment;~~ and

10. Making a false promise through agents, salespersons, advertising, or other means.

18VAC135-20-345. Effect of disciplinary action on concurrent licenses.

The board shall suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes

or denies renewal of another broker's license held by the same individual.

18VAC135-20-360. Proprietary school standards, instructor qualifications and course requirements.

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in §54.1-2105 of the Code of Virginia.

B. Every applicant to the Real Estate Board for approval as an instructor for prelicense education shall have [~~completed a "train the trainer" course or its equivalent and shall have~~] one of the following qualifications:

1. Baccalaureate degree, a Virginia real estate broker's license, and two consecutive years of discipline-free active real estate experience ~~within the past five years~~ immediately prior to application;

2. Five consecutive years of discipline-free active experience acquired in the real estate field ~~in the past seven years~~ immediately prior to application and an active Virginia broker's license; or

3. Expertise in a specific field of real estate ~~who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five three years of active appraisal experience in Virginia, may be approved to teach Real Estate Appraisals that field.~~ Such applicants will teach only in the area of their expertise and will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise.

~~C.~~ D. Every applicant to the Real Estate Board for approval as an instructor for continuing education and postlicense education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of their expertise. Such applicants will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference that will verify the applicant's expertise.

~~C.~~ D. Prelicense courses must be acceptable to the board and are required to have a monitored, final written examination. Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18VAC135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;

2. Name of the course's text and any research materials used for study assignments;

3. Description of any research assignments;

4. Copies of test or quizzes;

5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with §54.1-2105 of the Code of Virginia; and

6. Information about recordkeeping for the type of course delivery.

~~D.~~ E. Providers of continuing education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

F. Approval of prelicense, continuing education and postlicense education courses shall expire on December 31 five years from the year in which the approval was issued, as indicated on the approval document.

~~E.~~ G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

~~F.~~ H. All schools must provide each student with a certificate of course completion or other ~~document~~ documentation that the student may use as proof of course completion. ~~The certificate or other document~~ Such documentation shall contain the hours of credit completed.

I. All providers of continuing education courses shall electronically transmit course completion data to the board in an approved format within five days of the completion of each individual course. The transmittal will include each student's name, license number or social security number; the date of successful completion of the course; the school's code; and the board's code.]

18VAC135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be \$190.

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B. The renewal fee for proprietary school certificates expiring ~~biennially on June 30~~ every two years from the last day of the month in which they were issued shall be \$90.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$135 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.

D. The application for an original prelicense education instructor certificate shall be \$190.

E. The renewal fee for ~~an a~~ prelicense instructor certificate expiring ~~biennially on June 30~~ every two years from the last day of the month in which it was issued shall be \$75.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$110 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

18VAC135-20-390. Withdrawal of approval.

The board may withdraw approval of any school, course or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.

5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Activate/Transfer Application, 02AT (~~1/02~~ rev. [4/07 8/07]).

Add-on Business Entity License Application, 02ADDBUS (~~1/02~~ rev. 4/07 (rev. 8/07)]).

Broker Education Requirements for Non-Reciprocal Examinees, 02BEDREQ (rev. ~~8/02~~ 6/07).

Branch Office License Application, 02BRANCH (rev. ~~8/02~~ [4/07 8/07]).

Business Entity License Application, 02BUSENT (rev. ~~1/02~~ [4/07 8/07]).

Business Entity License Transfer Application, 02BUSTR (rev. ~~1/02~~ [4/07 8/07]).

Certificate of Ownership/Individual Trading Under an Assumed or Fictitious Name Application, 02CRTOWN (~~1/02~~ (rev. ~~7/03~~ 8/07]).

Certification Request, 02CRTREQ (~~1/02~~ (rev. 4/07 8/07]).

Concurrent Broker Application, 02CONCUR (~~1/02~~ (rev. 4/07 8/07]).

Consent To Suits and Service of Process Form, 02CTS (rev. ~~8/02~~ [~~7/03~~ 8/07]).

Experience Verification Form, 02EXP (rev. ~~1/02~~ [4/07 8/07]).

Firm License Application, 02FIRM (rev. ~~1/03~~ [4/07 8/07]).

Firm Name/Address Change Form, 02FNACHG (rev. ~~1/02~~ [4/07 8/07]).

Firm Principal Broker/Officer Change Form, 02PBOCHG (rev. ~~1/02~~ [4/07 8/07]).

Principal Broker and Sole Proprietor By Exam & Upgrade License Application, 02PBSPLIC (rev. ~~8/02~~ [4/07 8/07]).

Reciprocity Applicant Instructions, 02RECINS (rev. ~~1/02~~ 5/07).

Salesperson and Associate Broker License By Reciprocity & Upgrade Application, 02SABLIC 02SABPKG (rev. ~~8/02~~ [4/07 8/07]).

Supervising Broker for Branch Office/Change Form, 02SBCHG (rev. 4/02 [4/07 8/07]).

Virginia Salesperson Upgrading to Associate Broker License by Exam Application, 02UABLIC (rev. [4/07 8/07]).

Post License Education and Continuing Education Course Approval Application, 02CRS (rev. [8/05 8/07]).

Pre-licensing Education Instructor Application, 02INSTR (rev. [10/04 8/07]).

Principal Broker and Sole Proprietor License by Reciprocity Application, 02PBPKG (rev. [5/07 8/07]).

Proprietary School Certification Application, 02SCHL (rev. [9/04 8/07]).

Salesperson License by Exam Application, 02SALIC (rev. [4/07 8/07]).

Place License Inactive Form, 02INA (rev. [4/07 8/07]).

[Supervising Broker Certification Form, 02SBCERT (eff. 4/08).]

VA.R. Doc. No. R06-222; Filed January 11, 2008, 2:40 p.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 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 State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (adding 19VAC30-20-115).**

Statutory Authority: §52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: March 6, 2008.

Agency Contact: LTC Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone 804-674-4606, FAX 804-674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The amendment exempts private motor carriers operated wholly in intrastate commerce from the provisions of 49 CFR 390.21 relating to the marking of commercial motor vehicles. This amendment brings the regulation into compliance with the governing federal regulations, 49 CFR Part 390.

19VAC30-20-115. Marking of commercial motor vehicles - §390.21.

This section does not apply to private motor carriers operated wholly in intrastate commerce.

VA.R. Doc. No. R08-1108; Filed January 8, 2008, 11:13 a.m

Final Regulation

Title of Regulation: **19VAC30-190. Regulations Relating to the Issuance of Nonresident Concealed Handgun Carry Permits (adding 19VAC30-190-10 through 19VAC30-190-140).**

Statutory Authority: §18.2-308 of the Code of Virginia.

Effective Date: March 6, 2008.

Agency Contact: Ms. Donna Tate, Firearms Manager, Department of State Police, FTC, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2292, FAX (804) 674-6704, or email dtate@vsp.state.va.us.

Summary:

The amendments establish the procedures that will be utilized to implement the provisions of §18.2-308 P 1 of the Code of Virginia, which authorized the Virginia Department of State Police to issue nonresident concealed handgun carry permits.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**CHAPTER 190
REGULATIONS RELATING TO THE ISSUANCE OF
NONRESIDENT CONCEALED HANDGUN CARRY
PERMITS**

19VAC30-190-10. Purpose.

The 2004 Virginia General Assembly amended §18.2-308 of the Code of Virginia to authorize nonresidents of Virginia to apply for a concealed handgun permit. Nonresidents of the Commonwealth 21 years of age or older may apply in writing to the Virginia State Police for a five-year permit to carry a concealed handgun. These regulations set forth the procedure for the application for and renewal of nonresident concealed handgun carry permits.

19VAC30-190-20. How to apply.

Applicants may request an application package by contacting the Virginia State Police Firearms Transaction

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Center in writing at the below address or online at nonrespermit@vsp.virginia.gov.

All written requests must include the applicant's complete name and mailing address. A telephone number is also requested. Written requests shall be sent to:

Firearms Transaction Center
Nonresident CHP Permits
Criminal Justice Information Services Division
Department of State Police
P.O. Box 85141
Richmond, VA 23285-5141

The application package will include a Concealed Handgun Permit Application, requirement and qualification information, a fingerprint card, a brochure on Virginia Firearms Safety and Laws, a checklist, and a return envelope for the completed application.

19VAC30-190-30. Application package.

Only a complete application package for a nonresident concealed handgun carry permit will be processed. A complete application package shall include:

1. Form SP-248,
2. Proof of competence with a handgun,
3. Fingerprints,
4. Two photographs,
5. Proof of identification, and
6. The application fee.

19VAC30-190-40. Application form.

The form (SP-248 Application for Concealed Handgun Permit) will be provided in the application package. Additional copies may be downloaded and printed by visiting the Virginia State Police forms page at <http://www.vsp.state.va.us>. The application shall be made under oath before a notary or other person qualified to take oaths. The application must be completed in its entirety. Illegible applications will not be processed.

19VAC30-190-50. Proof of competence with a handgun.

The applicant shall demonstrate competence with a handgun by including in his application package a photocopy of a certificate of completion of any such course or class as set forth in §18.2-308 P 1, an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall satisfy the requirement for demonstration of competence with a handgun.

19VAC30-190-60. Fingerprint cards.

The application package will contain a Virginia State Police Fingerprint Card. The applicant shall submit fingerprints on the card provided by the Virginia State Police for the purpose of obtaining the applicant's state or national criminal history record.

The Virginia State Police, Firearms Transaction Center, will submit the prints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies.

Upon submission of the fingerprint impressions, the applicant will be required to provide a telephone number of the law-enforcement individual taking the prints to facilitate this department's validation of print authenticity.

Incomplete cards will be returned to the applicant for completion. Illegible impressions will cause the cards to be returned to the applicant for reprinting purposes. All other cards shall be destroyed upon issuance of the permit.

19VAC30-190-70. Photographs.

Every applicant for a nonresident concealed handgun permit must submit two photographs for inclusion on the permit. The photographs must be:

1. 2 x 2 inches in width and height.
2. Identical.
3. Taken within the past six months.
4. Color or black and white.
5. Full face, front view with a plain white or off-white background with the head centered in the frame. The applicant's head, including both face and hair, should be shown from the crown of the head to the tip of the chin on top and bottom and from hairline side-to-side. Side or angled views are not accepted.
6. On plain white or off-white backgrounds. Photos with dark, busy, or patterned backgrounds will not be accepted.
7. Taken in normal street attire. Uniforms should not be worn in photographs except religious attire that is worn daily. The applicant should not wear a hat or headgear. If prescription glasses, a hearing device, wig or similar articles are normally worn, they should be worn for the picture. Dark glasses or nonprescription glasses with tinted lenses are not acceptable unless needed for medical reasons. A medical certificate may be required. A photograph depicting a person wearing a traditional facemask or veil that does not permit adequate identification is not acceptable.

Digitally reproduced photographs must be reproduced without discernible pixels or dot patterns.

Photocopied photographs are NOT accepted.

Photographs will not be returned in instances of denied applications.

19VAC30-190-80. Proof of identification.

The applicant must provide a legible photocopy of a valid photo-ID issued by a governmental agency of the United States or any political subdivision thereof.

19VAC30-190-90. Application fee.

All completed application packages must include a money order or cashier's check in the amount of \$100 made payable to the Virginia State Police. Receipt of the application without payment will cause the unprocessed application package to be returned to the applicant.

The application fee is nonrefundable regardless of the final determination of eligibility.

19VAC30-190-100. Permit renewal.

The renewal process is identical to the processes and costs associated with the original permit. It is suggested that all renewal application packages be submitted at least 60 days prior to expiration of the existing permit.

19VAC30-190-110. Change of address.

Permit holders are requested to notify the Virginia State Police, Firearms Transaction Center (FTC) of changes of address. Notification may be made in writing to the FTC at P.O. Box 85141, Richmond, VA 23285-5141, or online at nonrespermit@vsp.virginia.gov, and must include the permit file number or a photocopy of the permit. A change of address card will be provided to the permit holder to be retained with the original permit.

19VAC30-190-120. Replacement permits.

A replacement permit may be requested in writing and addressed to the FTC at P.O. Box 85141, Richmond, VA 23285-5141. All requests for replacement must include a cashier's check or money order in the amount of \$5.00 made payable to the Virginia State Police, and one of the following:

1. The permit file number,
2. A photocopy of the permit, or
3. A photocopy of a valid photo-ID issued by a governmental agency.

A replacement permit will have the same expiration date as the permit originally issued.

19VAC30-190-130. Revocation.

If the permittee is later found by the Virginia State Police to be disqualified, the permit shall be revoked and the person shall return the permit after being so notified by the Department of State Police.

19VAC30-190-140. Appeal process.

If the applicant is denied a nonresident concealed handgun permit and does not believe that he has a previous conviction or other disqualification that renders him ineligible, he may contact the Firearms Transaction Center to discuss the ineligible determination and/or to provide additional information deemed pertinent to the final determination of eligibility.

Any person denied a permit and not satisfied with the explanation provided by the Firearms Transaction Center may appeal such denial to the Superintendent of State Police provided that any such action is initiated within 30 days of the denial by the State Police. Such appeal must be in writing, setting forth any grounds that the applicant wishes to be considered. The Superintendent of State Police shall consider each such appeal, and will notify the applicant in writing of his decision within five business days after the day on which the appeal is received.

Any person denied a permit for inaccurate or false information may not reapply for a period of 12 months following the date of final denial determination by the Superintendent.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available to the public by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Concealed Handgun Permit, SP-248 [, eff. 7/06] .

Nonresident Concealed Handgun Permit, Application Check List, rev. 9/07.

V.A.R. Doc. No. R06-37; Filed January 2, 2008, 9:09 a.m.

FORMS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been filed by the Department of Mines, Minerals and Energy. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, VA 23219, at the department's Big Stone Gap office, 3405 Mountain Empire Road, Big Stone Gap, VA 24219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219. Copies of the forms may be obtained from David B. Spears, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, VA 23219, telephone (804) 692-3212, or email david.spears@dmme.virginia.gov.

Title of Regulation: 4 VAC 25-130. Coal Surface Mining Reclamation Regulations.

FORMS

Anniversary Notification, DMLR-PT-028 (eff. ~~9/99~~ 11/07).

Anniversary Notification, DMLR-PT-028b (eff. 11/07).

Change Order Justification, DMLR-AML-065 (eff. 8/99).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 4/96).

Applicant Violator System (AVS) Ownership Control Information, DMLR-AML-003 (rev. 1/95).

Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/98).

Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).

Consent for Right of Entry-Construction Lien Waiver, DMLR-AML-174 (rev. 3/91).

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c, (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 5/05).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 5/05).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Sediment and Pond Design Data Sheet, DMLR-CP-187 (rev. 12/85).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 2/96).

Application for Small Operator's Assistance, DMLR-OA-106 (rev. 12/85).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Application for Permit for Coal Exploration and Reclamation Operations (which Remove More Than 250 Tons) and NPDES, DMLR-PS-062 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Cognovit Note, Part I and II, DMLR-PS-095 (rev. 12/85).

Application-Coal Surface Mining Reclamation Fund, DMLR-PS-162 (rev. 7/89).

Application for Release of Bond-Estimated Cost, DMLR-PS-212 (rev. 3/88).

Application for Release of Bond-Reclamation Fund, DMLR-PS-213 (rev. 3/88).

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (eff. 8/03).

Surety Bond, DMLR-PT-013 (rev. 9/04).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 10/95).

Surety Bond Rider, DMLR-PT-013B (rev. 9/04).

Map Legend, DMLR-PT-017 (rev. 2/05).

Certificate of Deposit Example, DMLR-PT-026 (rev. 9/04).

Form Letter From Banks Issuing a CD for Mining on Federal Lands, DMLR-PT-026A (rev. 8/03).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/06).

Request for Relinquishment, DMLR-PT-027 (rev. 4/96).

Water Supply Inventory List, DMLR-PT-030 (rev. 4/96).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination Systems (NPDES), DMLR-PT-034 (rev. 2/99).

Request for DMLR Permit Data, DMLR-PT-034info (eff. 11/07).

Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. ~~8/98~~ 8/07).

Coal Exploration Notice, DMLR-PT-051 (rev. 11/98).

Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).

Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 10/95).

Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 10/95).

Road Construction Certification, DMLR-PT-098 (rev. 10/95).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95).

Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).

Pre-Blast Survey, DMLR-PT-104 (rev. 10/95).

Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. 4/96).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 10/95).

NPDES Discharge Monitoring Report, DMLR-PT-119 (rev. 2/95).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 5/95; included in DMLR-PT-119).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 4/96).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 10/95).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 8/98).

Application For Performance Bond Release, DMLR-PT-212 (rev. 4/96).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (8/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase I, DMLR-PT-225 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase II, DMLR-PT-226 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase III, DMLR-PT-227 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Incremental Bond Reduction, DMLR-PT-228 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Reduction, DMLR-PT-229 (rev. 9/95).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Release, DMLR-PT-230 (rev. 4/96).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. ~~12/98~~ 7/07).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 2/96).

Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 6/95).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 12/98).

Blasting Plan Data, DMLR-PT-103 (rev. 4/96).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. ~~2/96~~ 7/07).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 5/96).

National Pollutant Discharge Elimination System (NPDES) Short Form C-Instructions, DMLR-PT-128A (rev. 5/96).

Impoundment Inspection Report, DMLR-PT-251 (rev. 12/93).

Water Sample Tag, DMLR-TS-107 (rev. 3/83).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 2/96).

Forms

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Permit Renewal Coal Surface Mining and Reclamation Operations, DMLR-PT-034R (eff. 6/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 6/97).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Vibration Observations, DMLR-ENF-032V (eff. 9/97).

Application for Small Operator Assistance, DMLR-PT-106 (formerly CP-106) (rev. 9/97).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Blasting Plan Data, DMLR-PT-103 (rev. 10/97).

Request for Relinquishment, DMLR-PT-027 (rev. 1/98).

Written Findings, DMLR-PT-237 (rev. 1/98).

Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 9/04).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

~~DMLR-AML-312~~, Affidavit DMLR-AML-312 (eff. 7/98).

Indemnity Agreement - Self Bond, DMLR-PT-221 (eff. 12/07).

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STATE CORPORATION COMMISSION

Bureau of Insurance

January 7, 2008

Administrative Letter 2008-01

To: All Property and Casualty Insurers and Rate Service Organizations Licensed in Virginia

Re: Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007

Several provisions of the initial Terrorism Risk Insurance Act of 2002 and the Terrorism Risk Insurance Extension Act of 2005 have been amended in the 2007 extension and reauthorization. The intent of this letter is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("the 2007 Act") that may require insurers to submit a filing in this state to revise the policy forms and endorsements or associated rules and rates impacted by the Act.

One such provision is a change to the definition of a certified "act of terrorism" that eliminates the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts formerly considered "domestic" terrorism, or designated as "other acts of terrorism" or "non-certified acts of terrorism" may now be certified "acts of terrorism" under the 2007 Act.

The revised Section 102(1)(A) states, "The term 'act of terrorism' means any act that is certified by the Secretary [of the Treasury], in concurrence with the Secretary of State, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion."

Section 102(1)(B) of the 2007 Act states "No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000."

The 2007 Act also contains a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is activated.

Another change introduced in the 2007 Act is a new disclosure requirement for any policy issued after enactment. Specifically, in addition to previous disclosure requirements, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy. Such disclosure notices are not subject to review or approval in Virginia and should not be submitted.

If an insurer relies on a rate service organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for certified losses. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. No supporting documentation, other than a properly completed form COF-1, is required for such filings. Rule, rate, and loss costs multiplier filings will be accepted on a file-and-use basis, in accordance with §38.2-1906 of the Code of Virginia.

However, notwithstanding the above paragraph, insurers electing to file independent workers' compensation rates for terrorism exposures that do not rely upon the approved loss costs filed on their behalf by the National Council on Compensation Insurance are subject to the 60-day prior filing requirements of §38.1-1912 of the Code of Virginia and must include full actuarial support for their proposed rates.

Each insurer must submit for approval the policy language that it intends to use in this state to the extent that the insurer has not authorized a rate service organization to submit such filings on its behalf. Policy forms must define acts of terrorism in language consistent with the 2007 Act. Insurers should attempt to mirror, in their independent form filings, the language filed on their behalf by rate service organizations, to the extent possible, in order to expedite the review and approval of such filings. The definitions, terms and conditions should be complete and should clearly and accurately describe the coverage that will be provided in, or excluded from, the policy. Insurers must include language that clearly explains the limitations on coverage that may apply when certified losses exceed \$100 billion in the aggregate for all lines of insurance covered by the 2007 Act.

Insurers must withdraw or replace any currently-approved forms that are not in compliance with the 2007 Act, which would include any policy forms that make a distinction between acts of a foreign person or foreign interest and acts of a domestic person or domestic interest.

Given that the 2007 Act does not contain language that nullifies or preempts state laws regarding filing requirements,

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and in consideration of the time constraints in the 2007 Act, the Bureau has issued Administrative Order 11803, a copy of which is enclosed. This administrative order provides a temporary suspension of the 30-day prior approval provisions of §38.2-317 of the Code of Virginia with respect to terrorism forms or endorsements developed in compliance with the 2007 Act. Such form filings will be accepted on a file-and-use basis until the administrative order expires on April 1, 2008. The Bureau reserves the right to require any necessary corrections after a comprehensive review of the forms has been completed. Terrorism form filings received after April 1, 2008 will again be subject to the 30-day prior approval provisions of §38.2-317 of the Code of Virginia.

Insurers and rate service organizations are encouraged to accelerate filing activity in order to achieve compliance with the 2007 Act. In order to assist in this effort, the Bureau will perform an expedited review and acknowledgment of any filings required by the 2007 Act, provided the attached Expedited Filing Transmittal Document is completed, signed, and attached to the submission. In order to make use of this voluntary speed to market initiative for revised terrorism-related forms, rules, and rates, insurers must certify on the form that the filing is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of this state. We encourage filers to take advantage of the SERFF system for submitting such filings; however, expedited handling will apply to both SERFF filings and paper filings if the Expedited Filing Transmittal Document is completed and attached.

The 2007 Act is effective until December 31, 2014, unless extended by Congress. The expedited filing procedures described in this administrative letter shall take immediate effect and shall expire on April 1, 2008.

/s/ Alfred W. Gross
Commissioner of Insurance

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

AT RICHMOND, JANUARY 7, 2008

ADMINISTRATIVE ORDER NO. 11803

ORDER SUSPENDING THE REQUIREMENT FOR
PRIOR APPROVAL OF CERTAIN POLICY FORMS
OR ENDORSEMENTS REQUIRED FOR
COMPLIANCE WITH THE TERRORISM RISK
INSURANCE PROGRAM REAUTHORIZATION ACT
OF 2007 PURSUANT TO THE PROVISIONS OF
§ 38.2-317 F OF THE CODE OF VIRGINIA

WHEREAS, it appearing to the Commissioner of Insurance that the requirement under § 38.2-317 A of the Code of Virginia that policy forms or endorsements be filed for approval at least 30 days prior to their effective date is not appropriate when such forms must be used by insurers at an earlier date in order to comply with the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("the 2007 Act"), and that such requirements should be temporarily suspended in order to assist insurers in their efforts to comply with the 2007 Act;

IT IS, THEREFORE, ORDERED that the 30-day prior approval requirements of § 38.2-317 A are hereby suspended by entry of this order, pursuant to the provisions of § 38.2-317 F of the Code of Virginia, with respect to the filing of policy forms or endorsements necessary for compliance with the 2007 Act. This suspension is effective immediately and shall expire on April 1, 2008.

IT IS FURTHER ORDERED that such forms must comply with all other applicable provisions of Title 38.2 of the Code of Virginia; and the Commissioner reserves the right to require any necessary amendments and corrections after such time as a comprehensive review of the exempted forms has been performed.

AN ATTESTED COPY HEREOF shall be sent to Mary M. Bannister, Deputy Commissioner of Insurance; to all licensed rate service organizations; and to all insurance companies that are affected thereby.

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Adopted

Ed. 12/28/07

EXPEDITED FILING TRANSMITTAL DOCUMENT FOR TERRORISM RISK INSURANCE FORMS AND PRICING

This page applies to the following state(s)

Indicate Type of Filing

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
Name and address of Filer(s)	Telephone #	FAX #	e-mail
Line of Insurance (see checklists on Bureau website)			
Company Program Title (Marketing title, if applicable)			
Filing Type ** see note below			
Effective Date Requested			
Filing date			
Company Tracking Number			

	Component/Form Name /Description/Synopsis	Form # or Rate Page Include edition date	Replacement Or withdrawn?	If replacement, give form # or rate page(s) it replaces	Other Comments
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- A copy of each endorsement or policy form being filed for approval in compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- A copy of the rules, rates, loss costs multiplier, or rating plan being filed in compliance with the 2007 Act.
- A postage-paid, self-addressed envelope **large enough to accommodate the acknowledgment or approval of the filing.**

The insurer(s) submitting this filing certifies that it:

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and the laws of this state; and
- Is in compliance with the requirements of the administrative letter containing the voluntary expedited filing procedures.

Signature _____

Print Name: _____

Title: _____

Important Notes:

- Please do not submit applications, as they are not subject to review or approval in Virginia.
- Please do not submit declarations pages that do not contain terms or conditions of coverage.
- Please do not submit the disclosure forms required by the 2007 Act, as we do not review or approve notices.

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DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order - Danville Investors, LLC

Citizens may comment on a proposed consent order for a development in the City of Danville/Pittsylvania County, Virginia.

Public comment period: February 4, 2008, to March 5, 2008.

Purpose of notice: To invite the public to comment on a proposed consent order. A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the development and entered into by mutual agreement.

Consent order description: The Department of Environmental Quality (DEQ) proposes to issue a consent order to Danville Investors, LLC, to address violations of the Virginia regulations. The development is located on Rt. 41 North and Rt. 743, at the City of Danville/Pittsylvania County line. The consent order describes a settlement to resolve administrative deficiencies of the Virginia Water Protection Program during construction of an apartment development, and requires payment of a civil charge.

How a decision is made: After public comments have been considered, DEQ will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by close of business on the final day of the public comment period.

To review the consent order: The public may review the proposed consent order on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: G. Marvin Booth, III, Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6237, FAX (434) 582-5125, or email gbooth@deq.virginia.gov.

Total Maximum Daily Load - Accomack County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Holdens Creek, Sandy Bottom Branch, Unnamed Tributary to Sandy Bottom Branch, Unnamed Tributary to Pitts Creek, and Petit Branch all located in Accomack County on Wednesday, February 13, 2008.

The meeting will start at 6 p.m. in the Arcadia Middle School cafeteria located at 29485 Horsey Road in Oak Hall. The

purpose of the meeting is to provide information and discuss the study with community members and local government.

Petit Branch (VAT-D02R-01), Holdens Creek (VAT-C10E-01), Sandy Bottom Branch (VAT-C10R-02), and Unnamed Tributary to Sandy Bottom Branch (VAT-C10R-01), were identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria and do not support the Recreation Use. Segment VAT-C09R-01 of Unnamed Tributary to Pitts Creek was listed in Virginia's 1998 303(d) TMDL Priority List and Report because it did not support the Aquatic Life Use due to violations of the dissolved oxygen water quality standard.

Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Virginia Departments of Environmental Quality, Conservation and Recreation, and Health are working to identify the sources of pollution in the watersheds of these streams.

The public comment period on materials presented at this meeting will extend from February 13, 2008, to March 14, 2008. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach VA 23462, telephone (757) 518-2111, or email jshowell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load - Accotink Creek and Difficult Run

Announcement of Total Maximum Daily Load (TMDL) studies to restore water quality in parts of Accotink Creek and Difficult Run that have benthic and bacteria impairments.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation announce the third Technical Advisory Committee (TAC) meeting for the Accotink Creek and Difficult Run TMDL studies.

Technical advisory committee meeting: Tuesday, February 5, 2008 from 10 a.m. – Noon, Fairfax County Government Center, Conference Rooms 2 and 3, 12000 Government Center Parkway, Fairfax, VA 22035.

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Meeting description: This is the third technical advisory committee meeting for this project. The purpose of this meeting is to present draft allocation scenarios and the reductions required to reach TMDL goals.

Description of study: This study addresses two streams located in Fairfax County: Accotink Creek and Difficult Run.

Stream Name	Locality	Impairments	Area (miles)	Upstream Limit	Downstream Limit
Accotink Creek	Fairfax County City of Fairfax	Fecal Coliform Bacteria	7.35	Confluence of Accotink Creek with Calamo Branch	Start of the tidal waters of Accotink Bay
Difficult Run	Fairfax County City of Fairfax	E. Coli Bacteria Benthic	2.93	Confluence of Difficult Run with Captain Hickory Run	Confluence of Difficult Run with the Potomac River

This study covers portions of Accotink Creek and Difficult Run that were identified as impaired on the Clean Water Act §303(d) list for not supporting the primary contact recreation use due to elevated levels of bacteria, as well as a portion of Difficult Run that was listed on the 303(d) list for not meeting the aquatic life use due to poor health in the benthic biological community. Virginia agencies are working to identify the sources of bacteria contamination in the impaired portions of Accotink Creek and Difficult Run, and to identify the stressors that are affecting the benthic community in Difficult Run. During the study, DEQ will develop a total maximum daily load for each impaired stream segment, for each specific impaired use. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from February 5, 2008, to March 6, 2008. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, email mkconaway@deq.virginia.gov.

Restore Water Quality Upham Brook

Public meeting: Training Room, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia, on February 25, 2008, from 7 p.m. to 9 p.m. A Technical Advisory meeting also will be held on February 25, 2008 in the Training Room from 2 p.m. until 4 p.m. In case of inclement weather, check the DEQ website for a rescheduled date.

Below is a description of the impaired portions of Accotink Creek and Difficult Run that will be addressed in this study:

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the finalizing of a study to restore water quality, a public comment opportunity, a Technical Advisory Committee meeting, and public meeting.

Meeting description: Final technical advisory committee and public meetings on a study to restore water quality

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of Upham Brook and its tributaries, totalling 48.0 river miles in Henrico County and the City of Richmond. These streams are impaired for failure to meet the Primary Contact (Recreational) designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, February 25, 2008, to March 26, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mark Alling, TMDL Manager, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, FAX (804)-527-5106, email msalling@deq.virginia.gov.

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DEPARTMENT OF HEALTH Drinking Water Construction Funding

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 22, 2008 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or FAX at (804) 864-7521. If you have any questions, please call Theresa Hewlett at (804) 864-7501.

I (we) wish to attend the meeting indicated below:

- Lexington 9:00 a.m.-12:00 p.m., Tuesday, February 26, 2008 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA
- Danville 9:00 a.m.-12:00 p.m., Wednesday, February 27, 2008 at the Pittsylvania/Danville Health District's Auditorium, 326 Taylor Drive, Danville, VA
- Abingdon 9:00 a.m.-12:00 p.m., Thursday, February 28, 2008 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA
- Chesterfield 9:00 a.m.-12:00 p.m., Monday, March 3, 2008 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA
- Suffolk Area 9:00 a.m.-12:00 p.m., Tuesday, March 4, 2008 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
- Culpeper 9:00 a.m.-12:00 p.m., Wednesday, March 5, 2008 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA

There will be _____ persons in my party as follows:

Name	Address	Phone	Representing
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

* * *

We are pleased to announce several opportunities for drinking water funding. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in following cycle. As described below, funding is made possible by our Drinking Water State Revolving Fund (DWSRF) Program. We anticipate having at least \$10 million. Also the enclosed attachment describes our Water Supply Assistance Grant Fund Program. Our FY 2009 DWSRF Intended Use Plan will be developed using your input on these issues.

(1) 1452(k) Source Water Protection Initiatives - (Yellow application) Must be postmarked by March 28, 2008.

This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (1) community and non-profit noncommunity waterworks to acquire land/conservation easements and (2) to community waterworks, only, to establish local, voluntary incentive-based protection measures.

(2) Construction Funds – (Cream application) Must be postmarked by March 28, 2008.

Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the Program Design Manual, such as

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existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A Preliminary Engineering Report must be submitted if required by VDH. An instruction packet and Construction Project Schedule are included.

(3) Set-Aside Suggestion Forms – (White form) Must be postmarked by March 28, 2008.

Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(4) Planning & Design Grants – (Gray application) Must be postmarked by August 29, 2008.

Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$25,000 per project for small, rural, financially stressed, community waterworks serving fewer than 3,300 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's Program Design Manual describes the features of the above opportunities for funding. After receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed in August, the draft Intended Use Plan will describe specific details for use of the funds. A public meeting is planned for October and written comments will be accepted before we submit a final version to the USEPA for approval.

You may request the applications, set-aside suggestion form, Program Design Manual and information from and forward any comments to Dale Kitchen, P.E., FCAP Project Supervisor, by writing, calling, or faxing at the above address. The materials are also accessible on our website www.vdh.virginia.gov/drinkingwater/financial.

Funding is made possible by our Water Supply Assistance Grant Fund which is all grant funding.

The 1999 General Assembly created the Water Supply Assistance Grant (WSAG) Fund in Section 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water.

Funds are available by submitting an application postmarked on or before the dates indicated for the following:

(1) Planning Grants – Application must be postmarked by August 29, 2008.

Of available funding, \$60,000 or 16.67% will be used for planning needs. Your application cannot exceed this amount.

In ranking of applications, preference is given to those that address problems of small, rural, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF funding purposes only, up to fifty (50) extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include (but not be limited to): Capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

(2) Surface Water Development or Improvement Grants – Application must be postmarked by March 28, 2008.

Of available funding, \$200,000 or 55.55% will be used for community waterworks surface source water development or improvement activities. Your application cannot exceed this amount.

The applicant submits the current VDH construction application to VDH. In ranking of applications, preference is given to those that address problems of small, rural, community waterworks with multi-jurisdictional support.

Eligible activities may include: land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Small Project Construction Grants – Application must be postmarked by March 28, 2008.

Of available funding, \$100,000 or 27.78% will be used for small project construction that is defined as a project whose total project cost does not exceed \$50,000. Eligible activities may include (but not be limited to): upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are

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prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF purposes only, up to thirty (30) extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/ SDWA compliance projects are funded before any other eligible project.

The VDH's WSAGF Program Guidelines describes the features of the above opportunities for funding.

You may request the applications or Program Guidelines from us by writing, calling, or faxing at the above address. The applications are also accessible on our website www.vdh.virginia.gov/drinkingwater/financial.

DEPARTMENT OF JUVENILE JUSTICE

Notice of Opportunity for Public Comment - Guidelines for Determining the Length of Stay of Juveniles Indeterminately Committed to the Department of Juvenile Justice ("Length of Stay Guidelines")

NOTICE is hereby given that the Board of Juvenile Justice is considering modifications to its Guidelines for Determining the Length of Stay of Juveniles Indeterminately Committed to the Department of Juvenile Justice ("Length of Stay Guidelines") as adopted by the Board of Juvenile Justice on October 24, 2001. The board is opening a 45-day public comment period and will consider written comments submitted from February 4, 2008, through March 20, 2008.

In addition to written public comments, the board will provide a public hearing on the proposed Length of Stay Guidelines on Tuesday, April 8, 2008, from 7 p.m. to 9 p.m. at the General Assembly Building, House Room C, 9th & Broad Street, Richmond, Virginia 23219. The board will also provide a brief public comment period during its regularly scheduled business meeting on Wednesday, April 9, 2008, at 10 a.m. during the board meeting in House Room C of the General Assembly Building, 9th & Broad Street, Richmond, Virginia 23219.

Background – Statutory Authority & Mandated Solicitation of Public Comments

Except for juveniles committed as "serious juvenile offenders" under §16.1-285.1 of the Code of Virginia, commitments to the department "shall be for an indeterminate period having regard to the welfare of the juvenile and interests of the public" (Virginia Code §16.1-285). Virginia Code §66-10 gives the State Board of Juvenile Justice the authority to establish length-of-stay guidelines for juveniles indeterminately committed to the department. Virginia Code §66-10 further requires the State Board of Juvenile Justice to make the guidelines available for public comment.

Purpose and Intent of the Revision. The modifications are intended to update the Length of Stay Guidelines that were adopted in 2001. The department is granted broad discretion to determine when a juvenile should be released, and the State Board of Juvenile Justice is directed to provide "guidelines" that the department consults in making decisions concerning a ward's length of stay and release. Broadly speaking, the role of the board's guidelines is to express the factors that should be weighed in deciding when to release an indeterminately committed juvenile. The department is responsible for applying these guidelines generally and for making exceptions with regard to the welfare of the juvenile and the interests of the public.

Copies of the Proposed Length of Stay Guidelines. A copy of the 2001 Length of Stay Guidelines, which is currently in effect, is available from the Regulatory Town Hall at www.townhall.virginia.gov, Department (Board) of Juvenile Justice, Guidance Documents. The draft of the proposed Length of Stay Guidelines may be obtained (1) from the department's website at www.djj.virginia.gov; (2) from the Legislative and Regulatory Unit at the Department of Juvenile Justice 700 E. Franklin Street, 4th Floor, P.O. Box 1110, Richmond, Virginia 23218-1110; (3) by calling Janet Van Cuyk at (804) 371-4097 or email at janet.vancuyk@djj.virginia.gov; or (4) from the Regulatory Town Hall, Future Meetings, Department (Board) of Juvenile Justice, April 8, 2008.

VIRGINIA CODE COMMISSION

Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section is no longer published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at www.virginia.gov and click on the calendar on the right side of the screen. Public hearing information is still published in the Register and can be found with the corresponding proposed regulation.

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

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Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Publication: 23:25 VA.R. 4100 August 20, 2007.

Correction to Notice of Intended Regulatory Action:

Correct the Virginia Register document number printed at the bottom of the Notice of Intended Regulatory Action from "R07-805" to "R07-128."

