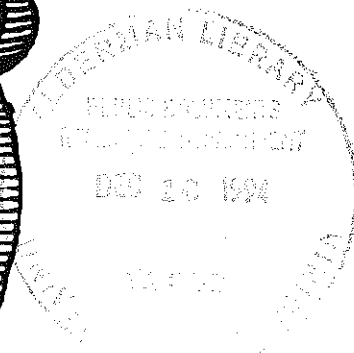
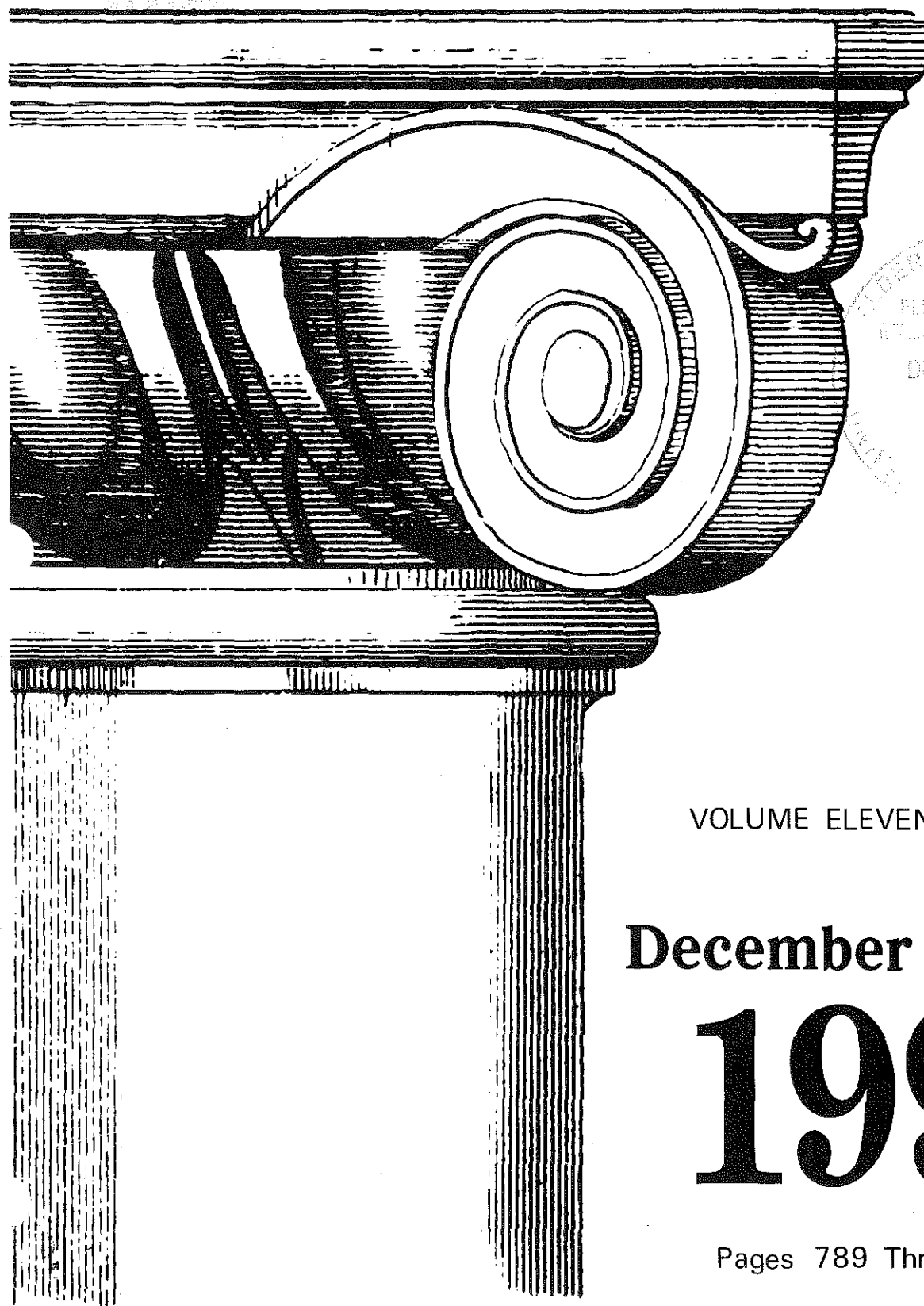


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THE VIRGINIA REGISTER

OF REGULATIONS

VA
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VOLUME ELEVEN • ISSUE SIX

December 12, 1994

1994

Pages 789 Through 962

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **13 V.A.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the *Virginia Register* issued on November 12, 1984.

"The *Virginia Register of Regulations*" (USPS-001831) is published bi-weekly, except four times in January, April, July and October, for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the *Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The *Virginia Register of Regulations* is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for \$4 each from the Registrar of Regulations.

Members of the Virginia Code Commission: Joseph V. Gartlan, Jr., Chairman, W. Tayloe Murphy, Jr., Vice Chairman; Russell M. Carneal; Bernard S. Cohen; Frank S. Ferguson; L. Cleaves Manning; E. M. Miller, Jr.; Theodore V. Morrison, Jr.; William F. Parkerson, Jr.; Jackson E. Reasor, Jr.

Staff of the Virginia Register: Joan W. Smith, Registrar of Regulations; Jane D. Chaffin, Assistant Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

October 1994 through September 1995

MATERIAL SUBMITTED BY
Noon Wednesday

PUBLICATION DATE

Volume 11

Sept. 14, 1994	Oct. 3, 1994
Sept. 28	Oct. 17
Oct. 12	Oct. 31
Oct. 26	Nov. 14
Nov. 9	Nov. 28
Nov. 22 (Tuesday)	Dec. 12
Dec. 7	Dec. 26
Index 1 - Volume 11	

Dec. 20, 1994 (Tuesday)	Jan. 9, 1995
Jan. 4, 1995	Jan. 23
Jan. 18	Feb. 6
Feb. 1	Feb. 20
Feb. 15	Mar. 6
Mar. 1	Mar. 20
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Mar. 15, 1995	April 3, 1995
Mar. 29	April 17
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Symbol Key †

† Indicates entries since last publication of the Virginia Register

BOARD OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

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

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

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

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

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

Alternatives:

1. Draft revisions to the existing regulation VR 215-02-00 and provide the regulated community with increased flexibility through the use of expanded engineering technologies and administrative procedures, and improve consistency with other regulatory requirements affecting stormwater management programs.

2. Take no action to amend the regulations. However, if the board does not amend the regulation, it will not fulfill the legislative intent to periodically modify regulations and incorporate new engineering technologies. Additionally, the regulated community will not benefit from flexibility and consistency of regulatory requirements currently available for stormwater management programs.

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

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

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

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

Notices of Intended Regulatory Action

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

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

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

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

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

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

DEPARTMENT OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

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

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

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

1 of Title 10.1 of the Code of Virginia.

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

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

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

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

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

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

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

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

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

Notices of Intended Regulatory Action

DEPARTMENT OF EDUCATION (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider promulgating regulations entitled: **Regulations Governing Guidance and Counseling in the Public Schools of Virginia**. The purpose of the proposed action is to promulgate regulations that address parental involvement and consent relative to school guidance and counseling programs. The agency intends to hold a public hearing on the proposed regulation after publication in The Virginia Register.

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

Written comments may be submitted until December 28, 1994.

Contact: H. Douglas Cox, Director, Office of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2402.

VA.R. Doc. No. R95-111; Filed November 9, 1994, 11:55 a.m.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993**. The purpose of the proposed action is to provide the minimum and least intrusive standards for reducing noise levels in residential buildings located in areas adjacent to airports. The board will hold a public hearing regarding this regulatory action to replace the existing emergency regulation with the permanent regulation.

Statutory Authority: § 36-99.10:1 of the Code of Virginia.

Written comments may be submitted until January 13, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. Second St., Richmond, VA 23219, telephone (804) 371-7170.

VA.R. Doc. No. R95-146; Filed November 22, 1994, 11:35 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1940, Methods and Standards for Establishing Payment Rates - Long Term Care Services** and **VR 460-04-4.1940:1, Nursing Home Payment System (Smaller Nursing Facility Reimbursement)**. The purpose of the proposed action is to comply with the mandate of Chapter 966 of the 1994 Acts of Assembly, Item 396(K), which required DMAS to effect an increase in the indirect patient care operating per diem ceiling for small nursing facilities. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until January 11, 1995, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

VA.R. Doc. No. R95-134; Filed November 17, 1994, 11:53 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **VR 480-03-19. Coal Surface Mining Reclamation Regulations**. The purpose of the proposed action is to modify requirements for backfilling highwalls on coal mine sites. The department will hold a public hearing for the purpose of receiving comments on the proposed regulations.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Written comments may be submitted until January 11, 1995.

Contact: Danny R. Brown, Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

VA.R. Doc. No. R95-144; Filed November 22, 1994, 11:24 a.m.

Notices of Intended Regulatory Action

BOARD OF PROFESSIONAL COUNSELORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-02. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed regulation is to establish an application and prescribed fee for the certification of any person who was actively engaged in providing rehabilitation services on January 1, 1994, and to establish grounds for disciplinary action against the certificate of a provider. There will be a public hearing during the 60-day comment period following the publication of the proposed regulations.

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

Written comments may be submitted until January 12, 1995.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9912.

VA.R. Doc. No. R95-145; Filed November 22, 1994, 11:01 a.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

AUCTIONEERS BOARD

Title of Regulation: VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board (REPEALING).

Title of Regulation: VR 150-01-2:1. Rules and Regulations of the Virginia Auctioneers Board.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Public Hearing Date: January 13, 1995 - 2:30 p.m.

Written comments may be submitted until February 12, 1995.

(See Calendar of Events section for additional information)

Basis: Sections 54.1-201 and 54.1-602 of the Code of Virginia provide the Virginia Auctioneers Board with the legal authority to promulgate these regulations. Such promulgation in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) is necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

Purpose: Pursuant to §§ 54.1-201 and 54.1-602 of the Code of Virginia, the Auctioneers Board proposes to repeal its existing regulations governing auctioneers and auction firms and promulgate new regulations for the implementation of a licensure program necessary for the preservation of the health, safety, and welfare of the public in the Commonwealth of Virginia. These regulations will assure consistency and compliance with the amendments enacted to § 54.1-603 of the Code of Virginia which abolished the certification and registration program and allowed for the development of a licensure program. The proposed regulation establishes auctioneering terms, requirements for licensure, renewal, reinstatement, and standards of practice and conduct for auctioneers and auction firms.

Also, the board is adjusting fees for application, examination, and renewal in order to assure that the variance between revenues and expenditures for the board does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia. These regulations apply to approximately 1,313 licensed auctioneers and 190 licensed auction firms.

Substance: Legislative changes enacted to § 54.1-603 of the Code of Virginia allowed for the institution of a single licensure program and abolished the registration and

certification program originally required for auctioneers. The implementation of the proposed regulations will assure consistency and compliance with amendments enacted to § 54.1-603 of the statute.

Issues: The proposed licensure program addresses the following areas: entry requirements for licensure to include successful completion of auctioneering school, licensure examinations, licensure by reciprocity, standards of practice for auctioneers regarding advertising, contracts, escrow accounts, documentation, records, and the disciplinary actions for auctioneers and auctioneer firms violating the standards of conduct. By establishing such necessary and reasonable provisions, the public will be protected from those practitioners who may be in violation of the regulations.

The implementation of the new provisions will have a minimal impact on those auctioneers and auction firms currently licensed.

No potential disadvantages to the entities regulated or to the public have been identified.

Estimated Impact:

A. Numbers and types of regulated entities/persons affected.

These regulations apply to approximately 1,313 licensed auctioneers and 190 auction firms.

No localities particularly affected by the proposed regulations have been identified.

B. Projected costs to state for implementation and enforcement.

Costs are shown in the regulations in the form of fees for initial application, examination, renewal and reinstatement of licenses. The fees were established in accordance with § 54.1-113 of the Code of Virginia and were based on the current regulated population with approximately a 95% biennial renewal rate. The fees have been set to ensure sufficient revenues to cover expenses including administrative costs.

Cost of implementation of the new regulations is estimated to be limited to the costs of printing and mailing of the proposed and final regulations to those currently licensed and to those on the Public Participation Guidelines list. The board will notify all regulated entities and interested parties regarding the proposed regulations, the public hearing, and comment period by mail and will

Proposed Regulations

forward a copy of the proposal upon request. The final regulations will be distributed to all affected parties. The estimated total cost for printing and mailing is \$2,450.

C. Projected costs to regulated entities.

Fee increases include the following:

Fee Type	Increase
Application for (Individual/Reciprocal) License	\$. 70
Application for a Firm License	\$ 70
Examination Fee	\$ 70
Reexamination Fee	\$ 70
Renewal Fee (Individual)	\$ 60
Renewal Fee (Firm)	\$ 60
Late Renewal Fee (Individual)	\$ 60
Late Renewal Fee (Firm)	\$ 60
Reinstatement Fee (Individual)	\$120
Reinstatement Fee (Firm)	\$ 90

The board has also proposed a bad check fee (\$25) for those individuals whose checks are dishonored by the financial institutions and a certificate of licensure fee (\$25) for a licensee requesting a letter of good standing from the board. Currently, the board and the department absorb this cost.

D. Sources of funds to address fiscal impacts.

This program is fully supported through licensing and renewal fees.

New requirements for examination/licensure qualifications took effect July 1991. The requirements for certification registration have been abolished.

Summary:

The proposed regulations allow for the implementation of a licensure program for auctioneers and auction firms. The regulations provide definitions of auctioneering terms such as absolute auction, estate auction, reserve auction, regular business and owner which are applicable to the auctioneer industry. In addition, the proposed regulations establish entry requirements for licensure, which include successfully completing a course of study at a school of auctioneering approved by the board or having conducted at least 25 auctions within the past eight years at which the applicant has called the bids; passing the auctioneers examination administered by

the board; and providing evidence of a surety bond executed by a surety company authorized to do business in Virginia. The regulations allow individuals residing outside of Virginia to obtain a license by reciprocity provided an agreement has been established with that state and the requirements and standards under which the license was issued are substantially equivalent to Virginia's. Application procedures and examination content are also outlined in the proposed regulation.

Fees for initial application, examination, renewal and reinstatement of licenses have been established in accordance with § 54.1-113 of the Code of Virginia and are based on the current regulated population. Procedures regarding renewal, late renewal and reinstatement are addressed. Regarding renewal, licenses will be staggered and will expire two years from the date the license was issued. Verification of current surety bond will be required and must be provided to the board at the time of renewal.

The standards of practice section of the proposed regulation deals with advertising, contracts, conduct at auctions, documentation, escrow funds, record retention, the display of licenses, and procedures regarding changes of address. In reference to contracts, the regulations will require all auctioneers agreeing to conduct an auction to include the following in their contracts: a detailed list of the property received for sale; specific information on the auctioneer; the date, time and place of the auction; the fee or percentage of gross sales charged to the seller and what services are included in the fee; statement as to availability of the clerk sheets; and a statement as to the acceptance of the terms of the contract. Once the contract is executed a legible copy shall be given to the seller. In addition, auctioneers will be required to deposit proceeds in an auctioneer escrow account if they are not disbursed to the seller on auction day. Proceeds due to the seller shall be disbursed no later than 30 days after the date of each auction. If the goods are not sold at a single auction, then the auctioneer shall give notice as to the date of auction of the remaining personal or real property. The regulations outline in greater detail the specifics of auctioneer escrow accounts.

Finally, the proposed regulations address the standards of conduct for auctioneers and the boards means for fining, revoking, or suspending an individual or firm license for violating such provisions.

VR 150-01-2:1. Rules and Regulations for the Virginia Auctioneers Board.

PART I. DEFINITIONS.

§ 1.1. Definitions.

Proposed Regulations

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

"Absolute auction" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.

"Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or more favorable offer.

"Auctioneer" means any person who conducts or offers to conduct an auction.

"Auction firm" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.

"Board" means the Auctioneers Board.

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

"Estate auctions" means the liquidation at auction of real or personal property of a specified person.

"Owner" means the bona fide owner of the real or personal property being offered for sale; in the case of a corporation, partnership, or other entity, except a sole proprietorship, an authorized officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

"Person" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.

"Regular business" means recurring, routine, planned activities performed for profit by those persons, corporations, partnerships, entities, charitable, religious, fraternal or political and all other profit or nonprofit organizations who do not meet the exemptions of § 54.1-601 of the Code of Virginia.

"Reserve auction" means the auctioneer reserves the right to reject any and all bids.

PART II ENTRY REQUIREMENTS.

§ 2.1. Licensure.

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a

licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been convicted within the past five years of a criminal offense related to auction activity in Virginia or any other jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.
3. Successfully complete a course of study at a school of auctioneering which has obtained course approval from the board, or an equivalent course or conducted at least 25 auctions within the past eight years at which the applicant has called the bids; and has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.

§ 2.2. Bond required.

All applicants shall submit evidence that a surety bond, executed by a surety company authorized to do business in the Commonwealth and in at least the amount of \$10,000, has been obtained. Proof of current bond must be submitted in order to obtain or renew the license. Bonds shall be for a term of two years and run concurrently with the two-year term of the license.

§ 2.3. License by reciprocity.

The board may issue a license to any applicant or active officer in a firm holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia.

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

§ 2.4. Application.

A. All applicants, corporations, firms, or active officers seeking licensure by reciprocity or examination shall submit a fully executed and notarized application with the appropriate fee or fees attached. Incomplete applications will be returned to the applicant. Applications for licensure by examination must be received by the Department of Professional and Occupational Regulation 45 days prior to

Proposed Regulations

a scheduled examination in order to be eligible to sit for that examination.

B. If a corporation, the application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign corporation, a certificate of authority issued by the State Corporation Commission.

C. All applications will be reviewed by the Auctioneers Board staff to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation. No applicant will be approved for licensure unless all requirements of this part of these regulations are met.

D. Applicants may appeal the initial application review to the board in writing within 60 days of the staff's determination.

§ 2.5. Examination.

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.
2. The Virginia statutes entitled Auctioneers' Licensure Act, §§ 54.1-600 through 54.1-606 of the Code of Virginia; bulk transfers, §§ 8.6-101 through 8.6-111 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the rules and regulations of the board.

§ 2.6. Fees.

Fees are nonrefundable and shall not be prorated.

The following fees shall apply:

1. Individual auctioneer license\$170
2. Auctioneer firm license\$195
3. Examination\$140
4. Reexamination fee\$140
5. Renewal for individual auctioneer's license\$170
6. Renewal for firm or corporation license\$195
7. Late renewal for an individual auctioneer's license\$340
8. Late renewal for an auction firm or corporate license\$390
9. Reinstatement of the individual auctioneer's

- license\$340
10. Reinstatement of the firm or corporate license\$390
 11. Bad Check Fee\$25
 12. Certificate of Licensure (letter of good standing)\$25

PART III. RENEWAL/REINSTATEMENT.

§ 3.1. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the amount due and procedures for renewal. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under these regulations shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in § 2.2 of these regulations.

§ 3.2. Failure to renew.

A. Any individual or firm licensee who fails to renew a license within one calendar month after the license expires, shall be required to pay a late renewal fee which shall be equal to twice the regular renewal fee.

B. Any individual or firm licensee who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the Department of Professional and Occupational Regulation a reinstatement application and fee.

C. The date the renewal application is received by the Department of Professional and Occupational Regulation or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

D. Auctioneer individual and firm licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued as indicated on the license.

PART IV. STANDARDS OF PRACTICE.

§ 4.1. Advertising.

A. All advertising must be truthful. Advertising shall contain no false, misleading or deceptive statements, with respect to types or conditions of merchandise offered at

auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. In all advertisements relating to an auction, the auctioneer's name and Virginia license number or the auction firm's name and Virginia license number shall be clearly displayed.

§ 4.2. Contracts.

When an auctioneer agrees to conduct an auction, a contract shall be drawn setting forth the particulars of the terms and conditions under which the auctioneer received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. A detailed list of the real or personal property received for sale. If a list cannot be made at the time of signing of the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day.
2. The name, address, telephone number, and license number of the Virginia auctioneer or auction firm.
3. The name, address and telephone number of the seller.
4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned.
5. The fee or percentage of gross sales the auctioneer or auction firm will charge the seller and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.
6. By what date the seller is to be paid and the name of the individual who is responsible for disbursing the funds.
7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or made available for inspection by the seller on a daily basis.
8. The following statement above the seller's signature line: "I have read and accepted the terms of this contract."
9. A legible executed copy of the contract shall be given to the seller at the time of execution.

§ 4.3. Conduct at auctions.

A. No auctioneer shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer shall not bid on the seller's behalf

nor knowingly accept a bid made by the seller or made on the seller's behalf unless notice has been given that liberty for such bidding has been reserved.

B. If a licensed Virginia auctioneer or auction firm contracts with a nonlicensed (in Virginia) auctioneer, corporation or firm to conduct auctions in Virginia, the Virginia auctioneer, corporation or firm shall be considered the principal and shall assume full responsibility for the auction and auctioneers subcontracted.

§ 4.4. Display of license.

Auctioneers shall carry their pocket cards on their person and shall produce them upon request. Auction firms shall display their license in a conspicuous location at the address of record. The address of record shall not be a post office box as detailed in § 4.8 C.

§ 4.5. Documentation.

Upon completion of the auctioneer's or auction firm's service, each seller shall be given legible copies of bills of sale, clerk sheets, consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

§ 4.6. Escrow funds.

A. Proceeds of a personal property auction not disbursed to the seller on auction day shall be deposited in an auction escrow account by the auctioneer no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.

B. Auctioneers shall use federally insured depositories in the Commonwealth of Virginia.

C. Proceeds due shall be disbursed to the seller no later than 30 days after the date of each auction.

D. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

E. If the sellers' personal or real property is not sold in a single auction, proceeds due shall be disbursed to the seller within 30 days after each auction. Notice must be given to the seller of tentative date of auction of the remaining personal or real property.

F. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the sellers behalf shall not be considered commingling of funds. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the

Proposed Regulations

seller:

§ 4.7. Records.

The contract drawn with each seller; auction records, including but not limited to lists of buyers and their addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers shall be retained for a period of four years from the date of settlement. These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.

§ 4.8. Change of address.

A. An auctioneer's or auction firm's license shall not be transferable and shall bear the same name and physical address as the business.

B. Written notice shall be given within 30 days to the board by each individual or firm licensee of any change of physical business address or location, whereupon the board shall issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is not an acceptable physical business address.

PART V. STANDARDS OF CONDUCT.

§ 5.1. Discipline.

A. The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board at any time after a hearing is conducted pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained or renewed through fraud or misrepresentation;
2. The licensed auctioneer or firm has been found guilty by the board or by a court of any criminal offense or material misrepresentation in the course of performing his auctioneer duties;
3. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his auctioneering duties;
4. The license auctioneer or firm violated or induced another person to violate any provisions of Chapters 1, 2, 3, and 6 of Title 54.1 of the Code of Virginia, or any provisions of these regulations; or

5. The licensee, auction firm, or firm owner refuses or fails, upon request or demand, to produce to the board or any of its agents any document, book, or copy thereof in licensee's or owner's possession concerning the performance of auctioneering duties.

B. The board, in its discretion, may refuse to grant or renew a license of any person for any of the reasons specified in subsection A of this section.

PART VI. SCHOOLS OF AUCTIONEERING.

§ 6.1. Application for course approval.

Schools seeking approval of their courses shall file a request with the board. The request shall include the following information:

1. Name and address of the school;
2. Locations where classes will be held;
3. Length of the course and total number of hours of instruction;
4. Subjects covered together with number of instruction hours assigned;
5. Names and qualifications of instructors (area of expertise and experience).

§ 6.2. Requirements for course approval.

To receive course approval the institution must offer a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements and ethics. There must be at least five instructors who have been licensed or certified auctioneers for at least five years and who specialize in different fields of the auction business.

VA.R. Doc. Nos. R95-139 and R95-140; Filed November 21, 1994, 3:14 p.m.



Commonwealth of Virginia
Auctioneers Board

Department of Professional & Occupational Regulation
P. O. Box 11066
Richmond, Virginia 23230-1106
(804) 367-8554

FOR OFFICE USE ONLY	
Perd. #	_____
Fee	_____
Class	_____
Lic. #	_____
Date	_____
Code	_____

APPLICATION FOR A VIRGINIA AUCTIONEERS LICENSE

Please check one and submit appropriate fee: License by Reciprocity - \$170
 Firm License - \$195
 License by Examination - \$310

Make check or money order payable to the *Treasurer of Virginia*. All fees are nonrefundable.

PART I: TO BE COMPLETED BY ALL APPLICANTS

A. FULL NAME _____
 STREET ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 RESIDENCE PHONE _____ BUSINESS PHONE _____
 DATE OF BIRTH _____ BIRTHPLACE _____
 SOCIAL SECURITY NUMBER _____ - _____ - _____
 RESIDENT OF _____ U.S. CITIZEN YES NO
 MAILING ADDRESS _____
 (if different from above)

PART II: COMPLETE THIS SECTION IF APPLYING FOR A FIRM LICENSE

A. FIRM'S LEGAL NAME _____
 If firm is incorporated, a copy of the certificate of authority from the State Corporation Commission (SCC) must be submitted with this application.
 TRADING-AS-NAME (if applicable) _____
 B. BUSINESS ADDRESS (location) _____
 C. BUSINESS PHONE _____ EMPLOYER ID# _____

D. List below, the name(s) of the Auctioneer(s) affiliated with your firm. Those listed must be Virginia licensed Auctioneers before a firm license will be issued.

NAME	LICENSE NUMBER
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____

PART III: ALL APPLICANTS SHALL RESPOND TO THE FOLLOWING QUESTIONS

- Have you ever held an auctioneer or firm license in Virginia or in another jurisdiction? Yes No
 If yes, indicate below:
 As auctioneer _____
 State From Mo./Yr. To Mo./Yr.
 As firm _____
 State From Mo./Yr. To Mo./Yr.
- Are you an applicant for license by reciprocity? Yes No
 If yes, attach a letter from your State Licensing Board certifying that you are currently licensed as an auctioneer and in good standing. A copy of your license or pocket card is not acceptable.
 If no, attach a copy of diploma or certificate of completion from an approved school of auctioneering.
- Have you ever been denied an auctioneer license in the state of Virginia or any other state or jurisdiction? Yes No If yes, attach a separate statement giving complete details.
- Have you ever had an auctioneer license suspended, revoked or surrendered or have you ever been disciplined by the licensing authorities in Virginia or in any other state or jurisdiction? Yes No If yes, attach a separate sheet with complete details.
- Have you ever had any other business or professional license of any type suspended, revoked or surrendered in Virginia or in any other state or jurisdiction? Yes No If yes, attach a separate sheet giving complete details.
- Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of any criminal offense related to auction activity or is there any criminal charge now pending against you? Yes No If yes, attach a separate statement giving complete details.

Part III (cont.)

7. List present employer:

1. _____
 Name of Company Street City State

Position: _____
 Duties: _____

8. Do you have an application for an auctioneer license pending before the Licensing Board? Yes No

9. Do you presently hold an auction firm license in the Commonwealth of Virginia or have you applied for one?
 Yes No

If yes, give: Name of Firm: _____
 License Number: _____

10. HAVE YOU READ THE COMMONWEALTH OF VIRGINIA CODE AND REGULATIONS OF THE AUCTIONEER LICENSING BOARD? Yes No

ALL APPLICANTS MUST HAVE THE BOND FORM, AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY AND ACKNOWLEDGEMENT OF PRINCIPAL ON THE FOLLOWING PAGES (PARTS IV-VI) EXECUTED BY A SURETY COMPANY.

PART IV: BOND FORM

Bond No. _____
 Effective Through: _____

KNOW ALL MEN BY THESE PRESENTS that _____
 _____ (name of auctioneer or firm)
 located at _____, as
 Principal or Principals jointly and severally, and _____
 _____ (bond company), a corporation of _____
 _____, as surety are held and firmly bound unto the Commonwealth of Virginia in the full sum of Ten Thousand and No/100 Dollars (\$10,000.00), for which sum well and truly paid, said Principal(s) and Surety bind themselves, their heirs, executors, administrators, successors and assignees jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas, the Principal(s) have requested the licensure from the Virginia Auctioneers Board (the Board) pursuant to Virginia Code § 54.1-603 for the purpose of engaging in the business of conducting auctions, as defined in Virginia Code § 54.1-600 within the Commonwealth of Virginia;

NOW, THEREFORE, if the Principal(s) shall, during the period that this license is in effect, faithfully observe and honestly comply with the provisions of Title 54.1, Chapter 6, Code of Virginia (1950), as amended, regulations auctioneers; and if the Principal(s) shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit of the Principal(s) or their agents or employees, then this obligation shall become void; otherwise it shall remain in force and effect; provided, however, that this Bond is issued subject to the following conditions and privileges:

1. (a) The surety shall have the right to cancel this bond at any time by written notice to the Board at the address of the Department of Professional and Occupational Regulation, at 3600 West Broad Street, Richmond, Virginia 23230, and to each Principal at the address given above.
- (b) The written notice shall state the effective date of the cancellation, and shall be personally served or sent by registered mail, return receipt requested.
- (c) The notice shall be served upon or received by the Board and the Principal(s) at least 60 days prior to the effective date of the cancellation.
2. (a) Should the notice of cancellation not be received by the Board and the Principal(s) at least 60 days prior to the effective date of cancellation, the cancellation shall become effective 60 days from the date of receipt by the Board and the Principal(s).

(Bond Form cont.)

- (b) Should the notice be received on different dates by the parties to this bond, the date of receipt by the Department of Professional and Occupational Regulation, as documented by the Postal Service, shall control the state of cancellation.
- 3. (a) This bond shall remain in full force and effect until cancelled as provided above.
- (b) It is expressly agreed and understood that the surety shall remain fully liable and default of breach under the terms of this Bond occurring at any time prior to the expiration of the Bond.
- 4. Any person aggrieved by any act of the Principal(s) in violation of the provisions of Title 54.1, Chapter 6, Code of Virginia (1950), as amended, may proceed against the Principal(s), or Surety, or both, to recover damages not in excess of the penalty of the bond.
- 5. In no event shall the Surety be liable for damages greater than the sum of this Bond.

IN WITNESS WHEREOF, the Principal(s) have hereunder affixed their signature(s) and seal, and the Surety has caused this document to be executed by _____, and is duly authorized Attorney-in-Fact, this _____ day of _____, 19 _____.

(Corporate Principal)

BY _____
(Individual Principal)

(Title)

(Corporate Surety)

BY _____
(Attorney-in-Fact)

(Title)

PART V: AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY

STATE OF _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ that _____ personally appeared before me in my _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____, and recorded in the Clerk's office of the _____ of _____ in Deed Book No. _____, Page _____, that said power of attorney has not been revoked; that the said company has complied with all requirements of law regulating the admission of such companies to transact business in the State of Virginia; that said company is solvent and fully able to meet promptly all of its obligations, and the said _____ thereupon, in the name and on behalf of the said company, acknowledged and foregoing writing as its act and deed.

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

Signature of Notary Public: _____
My commission expires: _____

PART VI: ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF: _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the Commonwealth of Virginia, do certify that _____, whose names(s) is/are signed to the above bond, dated _____, 19 _____, personally appeared before me at _____, and acknowledged the same.

Sworn and subscribed to before me this _____ day of _____, 19 _____.

Signature of Notary Public: _____
My commission expires: _____

PART VII: IRREVOCABLE DESIGNATION OF AGENT FOR SERVICE OF PROCESS

ALL NON-RESIDENT APPLICANTS MUST COMPLETE THIS SECTION!

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, _____ (Auctioneer/owner of firm), being an applicant for licensure as a non-resident Auctioneer of the Commonwealth of Virginia, does hereby irrevocably designate and appoint the Director of the Virginia Department of Professional and Occupational Regulation, as his (her, its) agent for the purpose of accepting service of any and all processes issued by any court located in the Commonwealth of Virginia, as well as service of all pleadings and other papers, relating in any way to any action, suit or legal proceeding arising out of or pertaining to the (her, its) duties or responsibilities as an Auctioneer in Virginia. The undersigned further consents, stipulates and agrees that any lawful process served upon aforesaid agent shall have the same legal force and validity as if served upon the undersigned personally with the State of _____ and that the authority contained herein shall continue in force and effect so long as any liability against the undersigned remains outstanding in the Commonwealth of Virginia.

This _____ day of _____, 19 _____.

Signature of Auctioneer/Owner of Firm

(If a corporation, a corporate seal must be affixed and a certified copy of the resolution by the proper officers or managing board, authorizing the member or office to execute the consent must be attached.)

PART VIII - AFFIDAVIT (To be executed by applicant before a notary public)

STATE OF _____
CITY/COUNTY OF _____

The undersigned, in making this application to the Virginia Auctioneers Board, swears or affirms that he or she is the applicant named herein and that the answers and information contained herein are true to the best of his or her knowledge and belief, that he/she has not withheld or suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

Signature of applicant: _____
Signature of notary public: _____
Subscribed and sworn to before me this _____ day of _____, 19 _____.
My commission expires: _____
(SEAL)

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-30-001. Minimum Standards for Jails and Lockups.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-131 of the Code of Virginia.

The Board of Corrections is **WITHDRAWING** the proposed amendments to "VR 230-30-001, Minimum Standards for Jails and Lockups," which were published in 10:16 VA.R. 4187-4202 May 2, 1994. Since the proposed publication, the board reviewed written and oral comments and drafted final standards. Because the final draft appeared substantially different from the proposed version, the board voted to withdraw the currently proposed regulations with the intent of republishing the proposed regulation. By republishing the regulation, the board will allow affected entities another opportunity to view and comment on the additional changes to the standards. It is estimated that the new proposed regulation will be ready for publication in the next few months.

VA.R. Doc. No. R95-135; Filed November 17, 1994, 4:03 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

PART I. GENERAL PROVISIONS.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-01-004. Regulations for Human Subject Research.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Effective Date: January 12, 1995.

Summary:

The Human Subject Research Regulations establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162.16 et seq. of the Code of Virginia. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research review committees which review and approve all human research activities. These regulations apply to the Department of Corrections, and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research using human participants.

Changes made to the regulation since the proposed version include only those prompted by public comment. The changes include a revision of the definition of human research so that the definition complies with Code of Virginia requirements, a clarification that the regulations pertain to both inmates and employees of the department, a clarification to the applicability of the regulations, and a change in time frame for committee reviews of research proposals. Other changes are technical in nature.

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

Agency Contact: Copies of the regulation may be obtained from Amy Miller, Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3119. There may be a charge for copies.

VR 230-01-004. Regulations for Human Subject Research.

§ 1.1. Definitions.

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

"Board" means the Board of Corrections.

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Human research" means any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs. [The term does not include:

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice;
2. Epidemiological investigations; or
3. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life.]

"Legally authorized representative" means (i) the parent or parents having custody of a prospective subject, (ii) the legal guardian of a prospective subject, or (iii) any person or judicial body authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research. For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, organizational unit or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the organizational unit or agency conducting or

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authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition or the human subject.

"Participant" or "human participant" means a living individual [whether personnel or inmate, probationer, or parolee] about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. "Intervention" includes both physical procedures by which data are gathered and manipulations of the participant or participant's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and participant. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public. Private information must be individually identifiable in order for obtaining the information to constitute research involving human participants.

"Research" means the systematic development of knowledge essential to effective planning and rational decision making. It involves the assessment of current knowledge on conceptual problems selected, statement of those problems in researchable format, design of methodologies appropriate to the problems, and the application of appropriate analytical techniques to the data. Research findings should provide valuable information to management for policy options.

"Researcher" means an individual who has professional standing in the pertinent field or is supervised directly by such an individual.

"Research project" means the systematic collection of information, analysis of data, and preparation of a report of findings.

"Voluntary informed consent" means the knowing consent of an individual so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion. With regard to the conduct of human research, the basic elements of information necessary to such voluntary informed consent shall include:

1. A fair explanation to the individual of any procedures to be followed and their purposes, including identification of any procedures which are experimental;

2. A description of any attendant discomforts and risks reasonably to be expected;

3. A description of any benefits reasonably to be expected;

4. A disclosure of any appropriate alternative procedures that might be advantageous for the individual;

5. An offer to answer any inquiries by the individual concerning the procedure; and

6. An instruction that the individual is free to withdraw his voluntary informed consent and to discontinue participation in the human research at any time without prejudice to him.

§ 1.2. Applicability.

These regulations shall apply to [any individual, group, or agency conducting research which uses human participants within] the Department of Corrections, [and to including] any facility, program or organization owned, operated, funded, or licensed by the department [~~which conducts or which proposes to conduct or authorize research which uses human participants~~] .

§ 1.3. Policy.

A. No human research may be conducted without informing the participant or his legally authorized representative in writing of the risks, procedures, and discomforts of the research. The voluntary informed consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by signature of a witness not involved in the conduct of the research, except as provided in § 2.6 F of these regulations. Arrangements shall be made for those who need special assistance in understanding the consequences of participating in the research.

B. Each human research review activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete and professional review of human research activities.

C. Nontherapeutic research using institutionalized participants shall be prohibited unless it is determined by the research review committee that such nontherapeutic research will not present greater than minimal risk.

D. The individuals conducting the research shall be required to notify all participants of research of the risks

caused by the research which are discovered after the research has concluded.

E. Department of Corrections studies, program evaluations, and routine data analyses for management purposes are exempt from this policy.

F. The burden of proof for review by any committee shall be with the principal researcher.

PART II HUMAN RESEARCH REVIEW COMMITTEES.

§ 2.1. Certification process.

A. Organizational units seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a human research review committee. Organizational units shall report annually to the director giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their organizational unit affiliation and a copy of the minutes of committee meetings.

B. Prior to the initiation of a human research project, organizational units shall also send to the director a one-page summary containing the following information:

1. Name, address, telephone numbers, and title and affiliation of principal researcher;
2. Name of person who will supervise the project, if different from the principal researcher;
3. Funding source, if any;
4. Date the proposal was submitted to the [appropriate human research review] committee;
5. Title of project;
6. An objectives statement of the proposed project with anticipated results;
7. Methodology describing in a concise manner the research design, sampling strategy, and analytical techniques to be used and indicating the effects of the research methodology, if any, on existing programs and organizational unit operations;
8. The voluntary informed consent statement;
9. Time frame indicating proposed beginning and ending dates;
10. Department resources required, including personnel, supplies and materials; equipment, workspaces, access to participants and files, and any other resources that the researcher will require from

the department or its subsidiaries; and

11. Project endorsement for student research. Letters or other documents must be attached to indicate endorsement of the project by the academic advisor or other appropriate persons.

C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with any organizational unit having a committee, and such human research shall be subject to review and approval by the committee in the manner set forth in this section.

D. The director may inspect the records of the committee.

E. The chairman of the committee shall report as soon as possible to the head of the organizational unit and to the director any violation of the research protocol which led the committee to either suspend or terminate the research.

§ 2.2. Composition of research review committees.

A. Each committee shall have at least five members, appointed by the organizational unit head, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the organizational unit. The committee shall be sufficiently qualified through the experience and diversity of its members, including consideration of race, gender and cultural background. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of organizational unit commitments and regulations, if applicable by law; standards of professional conduct and practice; and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of men or women, or entirely of members of one profession. At least one member shall be an individual whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy). At least three members shall be individuals who are not otherwise connected with the department.

C. Each committee shall include at least one member who is not otherwise affiliated with the organizational unit and who is not part of the immediate family of a person who is affiliated with the organizational unit.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member has a conflict of interest (defined as

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having direct involvement in or department approval authority over the proposed human research or otherwise having a conflict of interest under applicable Virginia law). The committee has responsibility for determining whether a member has a conflicting interest.

E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas. If a quorum cannot be established (or cannot meet within the established time frames) from the existing committee, the organizational unit head may replace temporarily an active committee member with an alternate to the degree needed to establish a quorum.

G. One member of the committee shall be designated as secretary of the committee and shall take and prepare formal minutes of each meeting.

H. The committee and the organizational unit shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

§ 2.3. Elements of each committee's review process.

A. No human research shall be conducted or authorized by an organizational unit or agency unless such committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
2. The degree of the risk and, if the research is nontherapeutic, whether it presents greater than minimal risk;
3. Whether the rights and welfare of the participants are adequately protected;
4. Whether the risks to the participants are outweighed by the potential benefits to them;
5. Whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate, and whether the written consent form is adequate and appropriate in both content and language for both the research and participants of the research;
6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;

7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;

8. Whether the research conforms with such other requirements as the board may establish; and

9. Whether appropriate studies in the nonhuman systems have been conducted prior to the involvement of human participants.

B. Each committee shall review and approve projects to ensure conformity with the approved proposal at least annually.

C. Research shall be approved by the committee which has jurisdiction over the participant. When cooperating organizational units conduct some or all of the research involving some or all of the participants, each cooperating organizational unit is responsible for safeguarding the rights and welfare of human participants and for complying with these regulations, except that in complying with these regulations organizational units may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider [completed] research proposals within [45 60] days after submission to the committee's chairman. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators and the organizational unit in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written procedure to be followed by a participant who has a complaint about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

§ 2.4. Kinds of research exempt from committee review.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of these

regulations:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:

- a. Research on regular and special education instructional strategies; or
- b. Research on the effectiveness of, or the comparison among, instructional techniques, curriculum or classroom management methods.

2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified directly or through identifiers linked to the participants.

3. Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:

- a. The participants' responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participants' financial standing, employability, or reputation; or
- b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct or family planning.

4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:

- a. The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or
- b. The research deals with sensitive aspects of the participant's own behavior such as sexual behavior, drug or alcohol use, illegal conduct or family planning.

5. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available or if the information taken from these sources is recorded in such a manner that participants cannot be identified directly or through identifiers linked to the participants.

6. Research involving solely a combination of any of the activities described in this section.

§ 2.5. Expedited review procedures for certain kinds of research involving no more than minimal risk.

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the review may be carried out by the committee chairperson or one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 2.3 of these regulations.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the involvement of human participants will only be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

1. The study of existing data in the form of records on department personnel or [clients, inmates, probationers, or parolees,] automated or other records.
2. Research on individual or group behavior or characteristics of individuals, such as studies of perception, attitudes or interaction patterns, where the investigator does not manipulate participants' behavior and the research will not involve stress to participants.

§ 2.6. Informed consent.

A. No human research may be conducted in the absence of voluntary informed consent subscribed to in writing by the participant or by the participant's legally authorized representative except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent shall be subscribed to by both the minor and his legally authorized representative. An investigator shall seek such consent only under circumstances that (i) provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and (ii) minimize the possibility of coercion or undue

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influence. The information that is given to the participant or the representative shall be in understandable language.

B. No individual shall participate in research unless subsection A of this section is met for each individual. The consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution, agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any research project. Each participant shall be given a copy of the signed consent form required by § 1.3 A of these regulations, except as provided for in subsection F of this section.

C. No legally authorized representative may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the participant.

D. The committee may approve a consent procedure which omits or alters some or all of the elements of informed consent set forth in § 1.1 of these regulations, or waives the requirement to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;
2. The omission, alteration or waiver will not adversely affect the rights and welfare of the participants;
3. The research could not practicably be performed without the omission, alteration or waiver; and
4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 1.1 of these regulations. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or
2. A short form written consent document stating that the elements of informed consent required by § 1.1 of these regulations have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall

be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the participant or the representative in addition to a copy of the short form.

F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and that the principal risk would be potentially harmful resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement explaining the research.

§ 2.7. Committee records.

A. Documentation of all committee activities shall be prepared and maintained and shall include the following:

1. Copies of all research proposals reviewed evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by researchers, reports of injuries to participants, and correspondence related to the research;
2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions, including the number of members voting for, against, and abstaining; the basis for requiring changes in or for disapproving research; and a written summary of the discussion of controversial issues and their resolution;
3. Records of continuing review activities;
4. Copies of all correspondence between the committee and the investigators;
5. A list of committee members;
6. Written procedures for the committee; and
7. Statements of significant new findings provided to the participants.

B. The records required by this regulation shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All record.

shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

§ 2.8. Mandatory reporting.

Each research review committee shall submit to the Governor, the General Assembly, and the director or his designee at least annually a report on the human research projects reviewed and approved by the committee, including significant deviations from the proposals as approved.

PART III. ROLE OF THE DEPARTMENT, DIRECTOR, AND THE BOARD.

§ 3.1. Role of the department, director, and the board.

A. The director shall establish and maintain records of organizational unit assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The director shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of rights of human research participants. The board shall be kept informed.

C. The director shall arrange for the printing and dissemination of copies of these regulations.

PART IV. APPLICABILITY OF STATE AND FEDERAL POLICIES.

§ 4.1. Applicability of state policies.

No statement in these regulations shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board pursuant to §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

§ 4.2. Applicability of federal policies.

Human research which is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempted from these regulations. Annual certification shall be made to the director and the board that exempted projects have complied with the policies and regulations of federal agencies.

V.A.R. Doc. No. R95-150; Filed November 22, 1994, 11:28 a.m.

* * * * *

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Corrections will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 230-30-007. Supervision Fee Rules, Regulations, and Procedures (REPEALED).

Statutory Authority: § 53.1-150 of the Code of Virginia.

Effective Date: January 12, 1995.

Summary:

Section 53.1-150 of the Code of Virginia has been amended to repeal supervision fees in favor of a cost of confinement supervision or participation. Previously, offenders were required to make supervision payments directly to the supervising officer or Community Diversion Incentive (CDI) case manager. Under the new law, offenders are required to make cost payments to the clerk of the sentencing court. Consequently, § 53.1-150 of the Code of Virginia no longer requires the Board of Corrections to promulgate supervision fee regulation.

V.A.R. Doc. No. R95-149; Filed November 22, 1994, 11:28 a.m.

BOARD FOR GEOLOGY

Title of Regulation: VR 335-01-2. Rules and Regulations for the Virginia Board for Geology.

Statutory Authority: § 54.1-1402 of the Code of Virginia.

Effective Date: February 1, 1995.

Summary:

The revisions are limited to an adjustment of fees in § 1.3 to comply with § 54.1-113 of the Code of Virginia; the addition of language to § 1.3 3 to allow the examination fee to be adjusted in accordance with contracts competitively negotiated under the Virginia Public Procurement Act; the addition of three new \$25 fees to cover administrative costs to produce duplicate wall certificates, to produce certifications of licensure and to offset costs associated with fees paid by "bad" checks; and the addition of § 1.6 to clearly establish the status of a regulant during the period after certification expiration and prior to reinstatement.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating

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agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Joan L. W. McMichael, Board Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8307. There may be a charge for copies.

VR 335-01-2. Rules and Regulations for the Virginia Board for Geology.

PART I. GENERAL.

§ 1.1. Definitions.

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

“Board” means the Board for Geology.

“Geologist” means a person engaged in the public practice of geology.

“Geology” means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases and other natural materials.

“Practice of geology” means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

“Qualified geologist” means an uncertified person who possesses all the qualifications specified in this chapter § 54.1-1403 of the Code of Virginia for certification.

“Virginia certified professional geologist” means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the board through certification.

§ 1.2. Determining qualifications for applicants.

In determining the qualifications of an applicant for certification, a majority vote of members of the board shall be required.

§ 1.3. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be \$100.

2. The fee for renewal of certification shall be \$ 100 110 .

3. The fee for taking the examination or reexamination for certification shall be \$ 75 100 . [*This examination fee is subject to fees charged to the department by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act. Fees may be adjusted and charged to the candidate in accordance with this contract. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.]*

4. The penalty fee for late renewal shall be \$ 50 55 in addition to the renewal fee.

5. The reinstatement fee shall be \$ 200 220 .

6. The fee for duplicate wall certificates shall be \$25.

[*7. The fee for a Certificate of Licensure shall be \$25.]*

[*8. 7.] The fee for paying any of the above fees with a check or other instrument not honored by the bank or other financial institution upon which it is drawn shall be \$25.*

§ 1.4. Expiration, renewal and fee of certificate holders.

A. Certificates issued under these regulations shall expire on August 31 of the odd-numbered year following the date of issuance. Certificate holders shall be notified by mail of the fee and the procedure for certificate renewal at least 45 days before the certificate expires. Each certificate holder desiring to renew his certificate shall submit the renewal notice with the appropriate fee before the certificate expires.

B. There shall be a penalty fee for late renewal assessed in addition to the renewal fee for any certificate holder failing to renew the certificate within 30 days following the date of expiration.

C. Failure to receive written notice from the Department of ~~Commerce~~ *Professional and Occupational Regulation* does not relieve the regulant from the requirement to renew his certificate. If the certificate holder fails to receive the renewal notice, a copy of the certificate may be submitted with the required fee.

D. The date a fee is received by the Department of ~~Commerce~~ *Professional and Occupational Regulation* , or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a certificate i

applicable.

E. Revoked or suspended certificates are not renewable until reinstated by the board.

§ 1.5. Reinstatements.

If the certificate holder fails to renew the certificate within six months following the expiration date, the certificate holder will be required to apply for reinstatement of the certificate. The applicant will be required to present reasons that the certificate was allowed to expire, and the board may grant reinstatement of the certificate, or require requalification or reexamination, or both. The application fee for reinstatement of a certificate shall be an amount equal to twice the renewal fee.

§ 1.6. Status of certification during the period prior to reinstatement.

A. Reinstated certifications shall continue to have the same certification number and shall be assigned an expiration date two years from the previous expiration date of the certification.

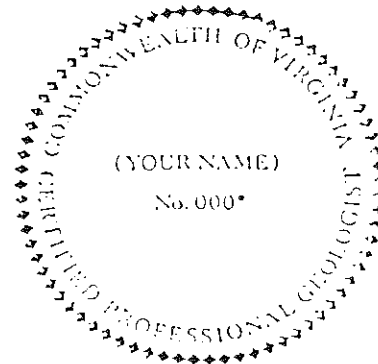
B. Reinstated certifications shall be regarded as having been continuously licensed without interruption. Therefore, the holder of the reinstated certification shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

C. Certifications which are not renewed or reinstated shall be regarded as expired from the date of the expiration forward.

§ 1.6. 1.7. Use of seal.

A certified professional geologist may apply a rubber stamp or preprinted seal to final and complete cover sheets and to each original sheet of plans or drawings prepared or reviewed and approved by the regulant. The seal may be applied to the cover sheet of technical reports and specifications prepared or reviewed and approved by the regulant.

1. All seal imprints on final documents shall be signed.
2. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.
3. The seal shall conform in detail and size to the design illustrated below:



* The number referred to is the number, usually three or four digits, as shown on the wall certificate and is the license renewal number issued each biennium as indicated on the licensee's pocket card. The number will not change every two years, but is permanent.

PART II. ENTRY.

§ 2.1. Qualifications for certification.

Each applicant for certification as a certified professional geologist in Virginia shall meet the education, experience and examination requirements as specified in § 54.1-1403 of the Code of Virginia.

§ 2.2. Certification by reciprocity.

Any person certified, registered or licensed in another state, jurisdiction or territory of the United States may be granted a Virginia certificate without written examination, provided that:

1. The applicant meets all the requirements for certification in Virginia; and
2. The applicant holds a currently valid license in good standing in another jurisdiction based upon successful completion of a comparable exam.

PART III. STANDARDS OF PRACTICE AND CONDUCT.

§ 3.1. Disclosure.

A certified professional geologist:

1. Shall not submit any false statements or fail to disclose any facts requested concerning his or another's application for certification.
2. Shall not falsely or maliciously attempt to injure the reputation or business of another.
3. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting or in providing professional services.

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4. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, or other documents not prepared or reviewed and approved by the certificate holder.

5. Shall make full disclosure to all parties of:

a. Any transaction involving payments made to any person for the purpose of securing a contract, assignment, or engagement; or

b. Any monetary, financial or beneficial interest he may have in any contract or entity providing goods or services, other than his professional services, to a project or engagement.

6. Shall express an opinion only when it is founded on adequate knowledge of established facts at issue, on a background of technical competence in the subject matter, and on an honest conviction of the accuracy of the testimony when serving as an expert or technical witness before any court, commission, or other tribunal.

7. Shall provide adequate representation of his qualifications and scope of responsibilities for all previous experience claimed when negotiating with prospective clients.

§ 3.2. Compliance with other laws.

A certified professional geologist:

1. Shall comply with all federal, state, and local building, fire, safety, real estate, or mining codes, as well as any other laws, codes, ordinances, or regulations pertaining to the practice of geology.

2. Shall not violate any state or federal criminal statute involving fraud, misrepresentation, embezzlement, bribery, theft, forgery, or breach of fiduciary duty relating to his professional practice.

3. Shall immediately notify the client or employer and the appropriate regulatory agency if his professional judgment is overruled and not adhered to in circumstances of a serious threat to the public health, safety, or welfare. If appropriate remedial action is not taken within a reasonable amount of time after making the report, he shall notify the appropriate governmental authority of the specific nature of the public threat.

4. Shall give written notice to the board, and shall cooperate with the board and the department in furnishing any further information or assistance needed, if he knows or believes that another geologist/firm may be violating any of the provisions of Chapter 14 ; (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia, or these regulations.

§ 3.3. Conflicts of interest.

A certified professional geologist shall not:

1. Accept any work on any project or other professional engagement when a duty to a client or to the public would conflict with his personal interest or the interest of another client, unless immediate disclosure of all material facts of the conflict is made to each client related to the project or engagement.

2. Accept compensation for services related to the same project or professional engagement from more than one party without making prior full disclosure to all parties involved.

3. Offer, either directly or indirectly, any commission, political contribution, or other consideration in seeking work except to secure a salaried position through employment agencies.

§ 3.4. Competence for assignments.

A certified professional geologist:

1. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge and skills ordinarily applied by practicing geologists.

2. Shall not accept any professional assignment or engagement that he is not competent to perform by way of education, technical knowledge, or experience. An assignment requiring education or experience outside his field of competence may be accepted provided:

a. His professional services are restricted to those phases of the project in which he is qualified; and

b. All other phases of the project are performed by qualified associates, consultants, or employees.

§ 3.5. Grounds for suspension, revocation, or denial to renew or grant certification.

A. The board may suspend, revoke, or refuse to renew the certification of any geologist who, after a hearing as provided in the Administrative Process Act (~~Virginia Code § 9-6.14:1 through 9-6.14:21~~ et seq. of the Code of Virginia), is found to have committed:

1. Fraud or deceit in obtaining certification (See § 54-1.20(5) of the Code of Virginia) ; or

2. Any violation of Part III - Standards of Practice and Conduct, other regulations of the board, or governing statutes of the board; or

3. An act or acts of negligence, incompetence, or misconduct in the practice of geology as a certifie

professional geologist.

B. A person shall not be refused a certificate based solely on the prior conviction of a crime unless that conviction directly relates to the geology profession.

§ 3.6. Reissuance of certificate after revocation.

An individual whose certificate has been revoked in accordance with § 3.5 above shall file a new application and obtain approval of the board to regain the certificate.

VA.R. Doc. No. R95-129; Filed November 16, 1994, 11:54 a.m.

For office use only
 Lic# _____
 Date _____
 Code _____

COMMONWEALTH OF VIRGINIA
 DEPT. OF PROFESSIONAL AND
 OCCUPATIONAL REGULATION
 POST OFFICE BOX 11066
 RICHMOND, VIRGINIA 23230-1066



APPLICATION FOR CERTIFICATION AS A
 VIRGINIA CERTIFIED PROFESSIONAL GEOLOGIST

A. GENERAL INFORMATION

NAME IN FULL: _____ SSN: _____

FIRM NAME: _____

BUSINESS ADDRESS: STREET: _____
 CITY: _____ STATE: _____ ZIP: _____
 PHONE NUMBER: (____) _____

RESIDENCE ADDRESS: STREET: _____
 CITY: _____ STATE: _____ ZIP: _____
 PHONE NUMBER: (____) _____

ADDRESS FOR CORRESPONDENCE: RESIDENCE _____ BUSINESS _____

CITIZENSHIP: BIRTH _____ NATURALIZED _____

BIRTHDATE: _____ PLACE: _____

B. EDUCATION: (List in chronological order the name and location of institution, beyond high school, time attended, year of graduation.)

NAME OF INSTITUTION	YEARS ATTENDED	DEGREE RECEIVED	GRADUATE WORK COMPLETED	MAJOR

NOTE: Applicant must use this form, a resume cannot be substituted.

APPLICANT'S NAME _____

C. TRAINING AND EXPERIENCE: Record your professional practice in sequence, starting with your most recent position. Attach an additional sheet if needed.

(1) NAME AND ADDRESS OF EMPLOYER, POSITION TITLE & BRIEF JOB DESCRIPTION	(2) DATE MONTH/YEAR FROM TO	(3) TIME SPENT YEARS & MONTHS	(4) SIGNATURE OF THE PERSON OR SUPERVISOR, INCLUDE TYPEWRITTEN NAME, ADDRESS, PHONE NUMBER.

Concurrent engagement in graduate study and employment will not be counted for more than the educational requirement unless the applicant can adequately provide evidence to support full time employment in addition to the graduate hours submitted for consideration.

APPLICANT'S NAME _____

1. Are you currently registered/certified/licensed as a geologist in any other jurisdiction? (yes or no) _____
If yes, what state? _____

2. In which state(s) was your registration/certification/licensed granted on the basis of a written examination? _____
(Please have the state involved submit a verification of certification.)

3. Has any state denied you registration/certification/license, revoked or declined same? _____
If yes, please explain on a separate sheet.

4. Have you ever been convicted of a felony or misdemeanor? (other than traffic infractions) (yes or no) _____
If yes, please explain on a separate sheet.

5. How do you wish to qualify for certification?
Reciprocity _____ Examination _____ Waiver _____

6. REFERENCES. At least one reference must be from qualified or certified geologist. A total of three references are required.

NAME, ADDRESS AND PHONE NUMBER	CURRENTLY CERTIFIED	
	yes	no
A. _____	_____	_____
B. _____	_____	_____
C. _____	_____	_____

7. Name EXACTLY as you want it to appear on your certificate: _____

D. AFFIDAVIT

State of _____ County or City of _____

The undersigned being duly sworn says that he is the person who executed this application, that the statements herein contained are true, that he has not withheld or suppressed any information that might affect this application, and that he has read and understands this affidavit.

Signature of Applicant: _____

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

Signature of Notary Public: _____

My commission expires: _____



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation
3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230-4917

RAY ALLEN, JR.
DIRECTOR

DEPUTY DIRECTORS:
THOMAS A. GELOZIN
ADMINISTRATION AND FINANCE
PEGGY S. McCHENEY
REGULATORY PROGRAMS
JAMES L. GUFFEY
INVESTIGATION AND ADJUDICATION

VIRGINIA BOARD FOR GEOLOGY
APPLICANT CHECK-OFF FORM

Dear Applicant:

Please review your application and qualifications prior to making application, since your application fee is not refundable. The following check-off sheet is provided for your convenience (not to be returned to the Board) as your application package cannot be reviewed by the Board without the appropriate information.

Prior to mailing my application package to the Board, I have made certain that the following items were complete and appropriate:

- 1. Application fee of \$100.00 made payable to the Treasurer of Virginia.
2. Completed and notarized application form.
3. Sent verification of my registration if registered in another state.
4. Requested completion of Form G-4 and transcripts reflecting all college course work and verification of my degree.
5. All experience listed under Item C of the application verified.
6. Three references in sealed envelopes from qualified geologists, certified geologists, or professional engineers.

COMMONWEALTH OF VIRGINIA
BOARD FOR PROFESSIONAL GEOLOGISTS
APPLICATION FOR CERTIFICATION AS A
VIRGINIA CERTIFIED PROFESSIONAL GEOLOGISTS

INSTRUCTIONS

- 1. All applicants must have a thorough knowledge of the Rules and Regulations of the Board.
2. Forms shall be typewritten or printed legibly in their entirety except for signatures. The applicant shall assume full responsibility for filing all required documentation, references, and verifications.
3. RECIPROCIITY: If you are registered or certified in another jurisdiction, list all states in item 1 (DPOR form G-2). List all states in Item 2 in which you took a written examination. Have DPOR Form G-3 completed by each state in which you are registered. You should enclose a stamped, addressed envelope with the DPOR Form G-3 for return directly to this Board.
4. EDUCATION: Your degree(s) must be verified by each school attended (DPOR Form G-4). A transcript of all college courses for which credit is sought must also be submitted.
5. REFERENCES: One copy of DPOR Form G-5 shall be supplied to each of the references listed in Item 5 (DPOR Form G-2). All references must be professional associates or acquaintances. One reference must be from an eligible or certified soil scientist. All references must have known the applicant for at least one year. All completed references must be returned to the applicant in a sealed envelope signed by the person supplying the reference, or may be returned directly to the Board. References must be submitted to the Board in the original sealed envelope. Persons verifying experience in Item C (DOC Form G-2) cannot also supply personal references.
6. TRAINING AND EXPERIENCE RECORD: Under Item C (Form G-2) record all training and experience. Use SEPARATE SHEETS IF NECESSARY. Make concise and explicit statements giving a description of your tasks, duties and nature of work performed for each period of employment. List your experience in chronological order with the most recent engagement first. Each period of employment must be verified by a signature in column F. This includes period of self-employment, which may be verified by an associate or client. This may be done by copying the completed form and submitting that copy with the required signature. All verifications must accompany the initial application form.
7. FEES: Each application must be accompanied by an application fee. Checks must be made payable to the Treasurer of Virginia and returned in the enclosed envelope. All fees are not refundable.
8. All supplementary papers accompanying the application must be identified with the applicant's name.
9. EXAMINATION: Completed applications must be received in this office at least 45 days prior to the exam. You will be notified within 45 days as to whether you have been approved for the exam. Should you have any further questions, please call the Board office at (804) 367-8595.

APPLICATION NOT COMPLETED IN ACCORDANCE WITH THESE INSTRUCTIONS WILL BE PROMPTLY RETURNED TO THE APPLICANT

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VIRGINIA BOARD FOR GEOLOGY
 DEPARTMENT OF PROFESSIONAL AND
 OCCUPATIONAL REGULATION
 1600 WEST BROAD STREET
 RICHMOND, VIRGINIA 23230-1066

(To be completed by applicant):

Name: Last _____ First _____ Middle _____

Address: _____

To the Referencer: _____

An application for certification as a Virginia Certified Professional Geologist has been filed with the Board by the above named applicant. The Virginia Board for Geology requests that you, a Geologist or Professional Engineer, provide complete information with regard to the character of the applicant in order that the Board might better assess his/her qualifications.

Please return the completed form to the applicant in a sealed envelope with your signature on the outside in order that he/she may include it with application to the Board, or you may return it directly to the Board at the above address.

1. Applicant's name _____ Approx. Age _____
2. Your business/personal relationship to the applicant _____

3. Number of years you have known him/her _____

4. Do you have knowledge of the applicant's participation in professional misconduct? If "Yes", please explain _____

5. How long has he/she been engaged in geological work? _____

6. In your professional opinion, has this applicant demonstrated competence and knowledge in the geology profession? Please explain _____

7. Your comments and recommendations _____

Signature _____ Occupation _____

Name _____ Reg. No. _____

Address _____ State _____

Date _____

(SEAL)

VIRGINIA BOARD FOR GEOLOGY
 DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
 1600 WEST BROAD STREET
 RICHMOND, VIRGINIA 23230

VERIFICATION OF DEGREE GRANTED AND COURSE WORK COMPLETED

(APPLICANT SHALL COMPLETE THE UPPER PORTION OF THIS FORM)

Name in full _____

Residence Address _____

Business Address _____

Birth Date _____ Social Security Number _____

College or University Attended _____

Applicant's Signature _____

After completion of the above, applicant shall send this form to the college or university from which he/she obtained a degree. Please request that the following certificate be completed and that this form be returned with a transcript directly to the Board at the above address.

CERTIFICATE

I hereby certify that the above named applicant has been graduated from this institution with a degree of:

on _____ MAJOR _____

Signature _____

Official Position _____

Institution _____

Date _____

OFFICIAL SEAL

APPLICANT: Enclose a stamped, address envelope for return directly to the Virginia Board.

VIRGINIA BOARD FOR GEOLOGY
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL REGULATION
1800 WEST BROAD STREET
RICHMOND, VIRGINIA 23260
VERIFICATION OF REGISTRATION

(The applicant should complete this portion.)

TO: _____

Please provide verification on the following individual:

Applicant's Name _____ Soc. Sec. No. _____
Applicant's Address _____

This portion should be completed by the State Board listed.

I. The above named person was registered as:

Certificate No. _____ Date License Issued _____ Expiration Date _____

Geologist _____

II. Minimum Requirements were:

A. _____ Years of education, _____ years of experience.
B. _____ Written Examination

Please specify:

- 1. Name of examination _____
 - 2. Date of examination _____
 - 3. Number of hours _____
 - 4. Score _____
 - 5. Cut-off score _____
- _____ National Date of Other (Specify) _____ Group Data _____

C. _____ Oral Examination. _____ hours.

D. _____ Reciprocity with _____

E. _____ Other: Please give actuals below: _____

F. Is the applicant in good standing? _____

III BY: _____

Title: _____ BOARD SEAL

Date: _____

APPLICANT: Enclose a stamped, addressed envelope for return directly to the Virginia Board.

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VIRGINIA HOUSING DEVELOPMENT AUTHORITY

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

Title of Regulation: VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

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

Effective Date: November 16, 1994.

Summary:

The amendment changes the requirement that the authority reexamine and redetermine the income and eligibility of occupants of multi-family dwelling units from every two years to every three years.

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

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986. There may be a charge for copies.

VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

§ 1. Definitions.

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

"Act" means the Virginia Housing Development Authority Act, being Chapter 1.2 (§ 36-55.24 et seq.) of Title 36 of the Code of Virginia.

"Adjusted family income" means the total annual income of a person or all members of a family residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings, less the total of the credits applicable to such person or family, computed in accordance with the following: (i) a credit in an amount equal to \$1,000 for each dependent family member other than such a family member qualifying under (vi) below; (ii) a credit in an amount equal to the lesser of \$1,000 or 10% of such total annual income; (iii) a credit in an amount equal to all income of such person or any such family member of an unusual or temporary nature and not related to such person's or family member's regular employment, to the extent approved by the executive director; (iv) a credit in an amount equal to

all earnings of any family member who is a minor under 18 years of age or who is physically or mentally handicapped, as determined on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; (v) a credit in an amount equal to such person or family's medical expenses, not compensated for or covered by insurance, in excess of 3.0% of such total annual income; and (vi) a credit in an amount equal to 1/2 of the total annual income of all family members over 18 years of age who are secondary wage earners in the family, provided, however, that such credit shall not exceed the amount of \$2,500. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may own or occupy a single family dwelling unit or multi-family residential housing development, the authority may provide in its rules and regulations that the adjusted family income shall be computed, for the purpose of determining eligibility for ownership or occupancy of such single family dwelling unit or the dwelling units in such multi-family residential housing development (or, if so provided in the applicable rules and regulations of the authority, only those dwelling units in such development which are subject to such federal income limitations), in the manner specified by such federal law or rules and regulations (subject to such modifications as may be provided in or authorized by the applicable rules and regulations of the authority) rather than in the manner provided in the preceding sentence.

"Applicant" means an individual, corporation, partnership, limited partnership, joint venture, trust, firm, association, public body or other legal entity or any combination thereof, making application to receive an authority mortgage loan or other assistance under the Act.

"Application" means a request for an authority mortgage loan or other assistance under the Act.

"Authority" means the Virginia Housing Development Authority.

"Authority mortgage loan" or "mortgage loan" means a loan which is made or financed or is to be made or financed, in whole or in part, by the authority pursuant to these rules and regulations and is secured or is to be secured by a mortgage.

"Board" means the Board of Commissioners of the authority.

"Dwelling unit" or "unit" means a unit of living accommodations intended for occupancy by one person or family.

"Executive director" means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board.

"FHA" means the Federal Housing Administration and

any successor entity.

"For-profit housing sponsor" means a housing sponsor which is organized for profit and may be required by the authority to agree to limit its profit in connection with the sponsorship of authority financed housing in accordance with the terms and conditions of the Act and these rules and regulations and subject to the regulatory powers of the authority.

"Gross family income" or *"gross income"* means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay ; plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income ; plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

"Household" means, in the context of the financing of a single family dwelling unit, two or more individuals living together on the premises as a single nonprofit housekeeping unit.

"Multi-family dwelling unit" means a dwelling unit in multi-family residential housing.

"Nonprofit housing sponsor" means a housing sponsor which is organized not for profit and may be required by the authority to agree not to receive any limited dividend distributions from the ownership and operation of a housing development.

"Person" means:

1. An individual who is 62 or more years of age;
2. An individual who is handicapped or disabled, as determined by the executive director on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; or
3. An individual who is neither handicapped nor disabled nor 62 or more years of age; provided that the board may from time to time by resolution (i) limit the number of, fix the maximum number of bedrooms contained in, or otherwise impose restrictions and limitations with respect to single family dwelling units that may be financed by the authority for occupancy by such individuals and (ii) limit the percentage of multi-family dwelling units within a multi-family residential housing development that may be made available for occupancy by such individuals or otherwise impose restrictions and

limitations with respect to multi-family dwelling units intended for occupancy by such individuals.

"Rent" means the rent or other occupancy charge applicable to a dwelling unit within a housing development operated on a rental basis or owned and operated on a cooperative basis.

"Reservation" means the official action, as evidenced in writing, taken by the authority to designate a specified amount of funds for the financing of a mortgage loan on a single family dwelling unit.

"Single family dwelling unit" means a dwelling unit in single family residential housing.

The foregoing words and terms, when used in any other rules and regulations of the authority, shall have the same meaning as set forth above, unless otherwise defined in such rules and regulations. Terms defined in the Act and used and not otherwise defined herein shall have the same meaning ascribed to them in the Act.

§ 2. Eligibility for occupancy.

A. The board shall from time to time establish, by resolution or by rules and regulations, income limitations with respect to single family dwelling units financed or to be financed by the authority. Such income limits may vary based upon the area of the state, type of program, the size and circumstances of the person or household, the type and characteristics of the single-family dwelling unit, and any other factors determined by the board to be necessary or appropriate for the administration of its programs. Such resolution or rules and regulations shall specify whether the person's or household's income shall be calculated as adjusted family income or gross income. To be considered eligible for the financing of a single family dwelling unit, a person or household shall not have an adjusted family income or gross income, as applicable, which exceeds the applicable limitation established by the board. It shall be the responsibility of each applicant for the financing of a single family dwelling unit to report accurately and completely his adjusted family income or gross income, as applicable, household composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority with verification thereof.

B. To be considered eligible for occupancy of a multi-family dwelling unit financed by an authority mortgage loan, a person or family shall not have an adjusted family income greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November 15, 1991, seven times the total annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the board may from time to time establish, by resolution or by rules and regulations, lower income limits for occupancy of such dwelling unit; and provided further that in the case of any dwelling unit for which no

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amounts are payable by or on behalf of such person or family or the amounts payable by or on behalf of such person or family are deemed by the board not to be rent, the income limits shall be established by the board by resolution or by rules and regulations; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above.

C. It shall be the responsibility of the housing sponsor to examine and determine the income and eligibility of applicants for occupancy of multi-family dwelling units, report such determinations to the authority in such form as the executive director may require, reexamine and redetermine the income and eligibility of all occupants of such dwelling units every ~~two~~ three years or at more frequent intervals if required by the executive director, and report such redeterminations to the authority in such form as the executive director may require. It shall be the responsibility of each applicant for occupancy of a multi-family dwelling unit, and of each occupant of such dwelling units, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the housing sponsor and the authority with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

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

is a cooperative is so required to be removed from the housing development, such person or family shall be discharged from any liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy in such cooperative and any additional sums payable to such person or family in accordance with a schedule prescribed or approved by the authority, subject however to the terms of any instrument or agreement relating to such cooperative or the occupancy thereof.

§ 3. Forms.

Forms of documents, instruments and agreements to be employed with respect to the processing of applications, the making or financing of loans under these rules and regulations, the issuance and sale of authority notes and bonds, and any other matters relating to such loans and the implementation and administration of the authority's programs shall be prepared, revised and amended from time to time under the direction and control of the executive director.

§ 4. Interest rates.

The executive director shall establish the interest rate or rates to be charged in connection with any loan made or financed under these rules and regulations. To the extent permitted by the documents relating to the loan, the executive director may adjust at any time and from time to time the interest rate or rates charged on such loan. Without limiting the foregoing, the interest rate or rates may be adjusted if such adjustment is determined to be necessary or appropriate by the executive director as a result of any allocation or reallocation of such loan to or among the authority's note or bond funds or any other funds of the authority. Any interest rate or rates established pursuant to this § 4 shall reflect the intent expressed in subdivision 3 of subsection A of § 36-55.33:1 of the Code of Virginia.

§ 5. Federally assisted loans.

When a housing development or dwelling unit financed by a loan under these rules and regulations or otherwise assisted by the authority is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government or where the authority assists in the administration of any federal program, the applicable federal law and rules and regulations shall be controlling over any inconsistent provision hereof.

§ 6. Administration of state and federal programs; acceptance of aid and guarantees.

A. The board by resolution may authorize the authority to operate and administer any program to provide loans or other housing assistance for persons and families of low

and moderate income and, in furtherance thereof, to enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof, any municipality or any other persons or entities and to take such other action as shall be necessary or appropriate for the purpose of operating and administering, on behalf of or in cooperation with any of the foregoing, any such program.

B. The board by resolution may authorize the acceptance by the authority of gifts, grants, loans, contributions or other aid, including insurance and guarantees, from the federal government, the Commonwealth of Virginia or any agency thereof, or any other source in furtherance of the purposes of the Act, do any and all things necessary in order to avail itself of such aid, agree and comply with such conditions upon which such gifts, grants, loans, contributions, insurance, guarantees or other aid may be made, and authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate to implement any such gifts, grants, loans, contributions, insurance guarantees or other aid.

C. Without limitation on the provisions of subsection B of this section, the board by resolution may authorize the acceptance by the authority of any insurance or guarantee or commitment to insure or guarantee its bonds or notes and any grant with respect to such bonds or notes, whether insured, guaranteed or otherwise, and may authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate with respect thereto.

§ 7. Assistance of mortgage lenders.

The authority may, at its option, utilize the assistance and services of mortgage lenders in the processing, originating, disbursing and servicing of loans under these rules and regulations. The executive director is authorized to take such action and to execute such agreements and documents as he shall deem necessary or appropriate in order to procure, maintain and supervise such assistance and services. In the case of authority mortgage loans to be financed from the proceeds of obligations issued by the authority pursuant to § 36-55.37:1 of the Code of Virginia, the authority shall be required to, *if and to the extent required thereby*, utilize such assistance and services of mortgage lenders in the origination and servicing of such authority mortgage loans.

§ 8. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans from mortgage lenders. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem

necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds.

C. At or before the purchase of any mortgage loan pursuant to this section, the mortgage lender shall certify to the authority that the mortgage loan would in all respects be a prudent investment and that the proceeds of the purchase of the mortgage loan shall be invested as provided in subsection B of this section or invested in short-term obligations pending such investment.

D. The purchase price for any mortgage loan to be purchased by the authority pursuant to this section shall be established in accordance with subdivision (2) of § 36-55.35 of the Code of Virginia.

§ 9. Waiver.

The executive director may for good cause in any particular case waive or vary any of the provisions of these rules and regulations to the extent not inconsistent with the Act or with other applicable provisions of law.

§ 10. Amendment.

These rules and regulations may be amended and supplemented by the board at such times and in such manner as it may determine, to the extent not inconsistent with the Act or with other applicable provisions of law.

§ 11. Separability.

If any clause, sentence, paragraph, section or part of these rules and regulations shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

V.A.R. Doc. No. R95-130; Filed November 16, 1994, 12:24 p.m.

Final Regulations

* * * * *

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

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

Effective Date: November 16, 1994.

Summary:

The amendments (i) provide for changes in the processing of multi-family loan applications, (ii) eliminate regulatory provisions which are no longer necessary or required in the processing of such applications, (iii) simplify various provisions, and (iv) make minor clarifications and corrections. Processing changes in the amendments include (a) earlier action by the authority's board on multi-family loan proposals, (b) eliminating unnecessary provisions regarding solicitation of proposals, (c) providing for greater flexibility in the approval of mortgage loan increases, (d) deleting references to the housing management handbook, which is no longer maintained by the authority, (e) eliminating the requirement for general partners in a partnership mortgagor to retain a 10% interest in net proceeds from any sale, refinancing or other disposition of a development, (f) removing detailed descriptions of those documents to be submitted with loan applications, and (g) deleting authorization to establish occupancy criteria and priorities.

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

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986. There may be a charge for copies.

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

§ 1. Purpose and applicability.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent financing of multi-family housing developments (including any such developments to be owned and operated on a cooperative basis) intended for occupancy by persons and families of low and moderate income ("development" or "developments"). These rules and regulations shall be applicable to the making of such mortgage loans directly by the authority to mortgagors, the purchase of such mortgage loans, the participation by the authority in such mortgage loans with mortgage lenders and any other manner of financing of such mortgage loans under the

Act. These rules and regulations shall not, however, apply to any developments which are subject to any other rules and regulations adopted by the authority. If any mortgage loan is to provide either the construction or permanent financing (but not both) of a development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. If any development is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision. Furthermore, if the mortgage loan on any development is to be insured by the federal government, the provisions of these rules and regulations shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. Developments shall include housing intended to be owned and operated on a cooperative basis. The term "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

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

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

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the initial closing documents as described in § 7 6 of these rules and regulations.

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

multi-family housing program or programs.

§ 2. Income limits and general restrictions.

Under the authority's rules and regulations, to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined therein) greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November 15, 1991, seven times the annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the authority's rules and regulations authorize its board to establish from time to time by resolution and by rules and regulations lower income limits for initial occupancy; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. Income limits are established below in these rules and regulations in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above.

In the case of developments for which the authority has agreed to permit the mortgagor to establish and change rents without the prior approval of the authority (as described in, and subject to the provisions of, §§ ~~11 and 14~~ 10 and 13 of these rules and regulations), at least 20% of the units in each such development shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed 80% of the area median gross income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed (i) in the case of units for which the board has approved the mortgage loan prior to November 15, 1991, 150% of such area median gross income as so determined or (ii) in the case of units for which the board has approved the mortgage loan on or after November 15, 1991, 115% of such area median gross income as so determined. The income limits applicable to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy shall be as set forth in (i) or (ii), as applicable, in the preceding sentence (or, in the case of units described in (i) in the preceding sentence, such lesser income limit equal to seven times the annual rent, including utilities except telephone, applicable to such dwelling units).

The board may establish, in the resolution authorizing any mortgage loan to finance a development under these rules and regulations, income limits lower than those

provided herein or in the authority's rules and regulations for the occupants of the units in such development.

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

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

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

§ 3. Terms of mortgage loans.

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

Mortgage loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the mortgage loan commitment or such percentage of the

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housing development costs of the development as is established in such commitment, but in no event to exceed 95%; and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the minimum principal amount specified in the mortgage loan commitment or such percentage of the housing development costs of the development as is established in such commitment, but in no event to exceed 100%.

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

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

development costs shall be certified to the authority in accordance with these rules and regulations and the cost certification guide, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the mortgage loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and terms of the deed of trust note. The authority shall charge a *processing fee and a financing fee equal to 2.5%* of the mortgage loan amount, unless the executive director shall for good cause require the *payment of a different financing fee in such amounts as the executive director determines to be reasonable*. Such fee fees shall be payable at such times as hereinafter provided or at such other times as required by the executive director shall for good cause require .

§ 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. 4. Application and acceptance for processing.

Application for a mortgage loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority ; including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial

status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the mortgagor (if existing); the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

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

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

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

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

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

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

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

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

6. The design of the proposed development is attractive and esthetically appealing, will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefitted by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. 2. Subject to further review and evaluation by the authority's staff under § 6 5 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. 3. Subject to further review and evaluation by the authority's staff under § 6 5 of these rules and

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regulations, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.

9. 4. The applicant and general contractor have has the experience, ability and financial capacity necessary to carry out their respective its responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations.

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

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

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satisfies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

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

and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these rules and regulations. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and shall present his recommendation to the board. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board that the application be approved and that the mortgage loan and issuance of the commitment therefor be authorized subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to the further review in § 5 of these rules and regulations and such terms and conditions as the board shall require in such resolution.

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

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

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto and may require the payment by the sponsor of a nonrefundable processing fee of 0.25% of the estimated mortgage loan amount. Such fee shall be applied at initial closing toward the payment of the authority's financing

fee. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

§ 6. 5. Feasibility and commitment.

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

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;

2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;

3. The applicant's (i) best estimates of the housing development costs and the components thereof; (ii) proposed mortgage loan amount; (iii) proposed rents; (iv) proposed annual operating budget and the individual components thereof; (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident; and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

4. The applicant's proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and

(v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.

5. The applicant's management and marketing plans, including description and analysis of strategies, techniques and procedures to be followed in marketing and managing the units; and

6. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

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

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

The authority staff shall review and evaluate the application, the documents and information received or obtained pursuant to § 4 and this § 6 5. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;

2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends

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and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the management, marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

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

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

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

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

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

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions,

vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any environmental or other defects which would have a materially adverse effect on such construction and operation.

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

5. The design of the proposed development will contribute to the marketability of the proposed development; make use of materials to reduce energy and maintenance costs; provide for a proper mix of units for the residents intended to be benefited by the authority's program; provide for units with adequate, well-designed space; include equipment and facilities customarily used or enjoyed in the area by the contemplated residents; and will otherwise provide a safe, habitable and pleasant living environment for such residents.

~~1. 6. Based on the data and information received or obtained pursuant to this § 6 5 , no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 4 of these rules and regulations.~~

~~2. 7. The applicant's estimates of housing development costs: (i) include all costs necessary for the development and construction of the proposed development; (ii) are reasonable in amount; (iii) are based upon valid data and information; and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.~~

~~3. 8. Subject to review by the authority at final closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the authority's cost certification guide or under such other requirements as shall be agreed to by the authority.~~

~~4. 9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.~~

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

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

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

8- 13. The units will be occupied by persons and families intended to be served by the proposed development and qualified hereunder and under the Act, the authority's rules and regulations, and any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other required reserves and escrows) within the usual and customary time for a development for its size, nature, location and type, and without any delay in the commencement of amortization; and (ii) will continue to be self-sufficient for the full term of the mortgage loan.

9- 14. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with item 8- 13 above.

10- 15. The architectural drawings, plans and specifications or other description of the work to be performed shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the

contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6 5 .

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

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

13- 18. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken such that: (i) the dwelling units in the proposed development will be occupied in accordance with item 8- 13 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development; (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin; and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures ~~(including any occupancy criteria and priorities established pursuant to § 11 of these rules and regulations)~~ to be applied by the mortgagor in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

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

15- 20. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to

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finance the proposed development; and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

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

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

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

19. Subject to a final determination by the board, the financing of the proposed development will meet the applicable requirements set forth in § 36-55.30 of the Code of Virginia.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval of the application and issuance of the commitment, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a mortgage loan commitment be issued *approve the issuance of a commitment*, subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. Prior to the presentation of his recommendations to the board, the executive director may require the payment by the applicant of a nonrefundable processing fee in an amount equal to 0.5% of the then

estimated mortgage loan amount less any processing fees previously paid by the applicant. Such fee shall be applied at initial closing toward the payment of the authority's financing fee.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to such terms and conditions as the board shall require in such resolution.

The term of the mortgage loan, the amortization period, the estimated housing development costs, the principal amount of the mortgage loan, the terms and conditions applicable to any equity contribution by the applicants, any assurances of successful completion and operational stability of the proposed development, and other terms and conditions of such mortgage loan shall be set forth in the board's resolution authorizing such mortgage loan or in the commitment issued on behalf of the authority pursuant to such resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed development, the marketing and occupancy of the proposed development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the mortgage loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the proposed development and a schedule of the estimated housing development costs. Such a resolution authorizing a mortgage loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with § 9 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with § 9 of these rules and regulations.

A mortgage loan shall not be authorized by the board unless the board by resolution shall make the applicable findings required by § 36-55.30 of the Code of Virginia; provided, however, that the board may in its discretion authorize the mortgage loan without making the finding, if applicable, required by subsection B of § 36-55.30 of the Code of Virginia, subject to the condition that such finding

be made by the board prior to the financing of the mortgage loan.

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

§ 7. 6. Initial closing.

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

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

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

§ 8. 7. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of mortgage loan disbursements requested by the mortgagor. Such

inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of mortgage loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 9. 8. Completion of construction and final closing.

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

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

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

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

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the final closing.

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

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

§ 10. 9. Mortgage loan increases.

Prior to initial closing, the principal amount of the mortgage loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction and operation of the proposed development, can be funded from available proceeds of the authority's notes or bonds, and is not inconsistent with the provisions of the Act or these rules and regulations. Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve a mortgage loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;
2. Where cost increases are incurred as a direct result of a failure by the authority during processing of the development to properly perform an act for which the authority is solely responsible;
3. Where a mortgage loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or
4. Where the authority has entered into an agreement with the mortgagor prior to initial closing to provide a mortgage loan increase if certain cost overruns occur

in agreed line items, but only to the extent set forth in such agreement.

In the event that a person or entity acceptable to the authority is prepared to provide financing on a participation basis on such terms and conditions as the authority may require, the authority will consider and, where appropriate, approve an increase in its mortgage loan subsequent to initial closing to the extent of the financing by such person or entity in any of the following instances:

1. One or more of the instances set forth in subdivision 1 through 4 above; or
2. Where costs are incurred which are:
 - a. In excess of the original total contract sum set forth in the authority's mortgage loan commitment;
 - b. The direct result of necessary and substantial changes approved by the authority in the original plans and specifications;
 - c. Evidenced by change orders in accordance with the original contract documents or by other documentation acceptable to the authority; and
 - d. Approved by the authority for inclusion within the total development cost in accordance with the Act, these rules and regulations and the authority's cost certification guide.

Any such mortgage loan increase to be financed on a participation basis shall be granted only to the extent that such costs cannot be funded from mortgage loan proceeds, any income from the operation of the development approved by the authority for application thereto, and other moneys of the mortgagor available therefor. As used herein, the term "other moneys of the mortgagor" shall include moneys received or to be received as a result of the sale or syndication of limited partnership interest in the mortgagor. In the event that any limited dividend mortgagor shall have sold or syndicated less than 90% of the partnership interests, such term shall include the amount, as determined by the authority, which would have been received upon the sale or syndication of 90% of such interest under usual and customary circumstances.

Any such increase in the mortgage loan subsequent to initial closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the mortgage loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to a mortgage loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such mortgage loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the mortgage loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development.

4. A determination by the authority that the mortgage loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the authority's cost certification guide and as approved by the authority) as is established in the resolution authorizing the mortgage loan in accordance with § 3 of these rules and regulations.

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the mortgage loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and these rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the mortgage loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the mortgage loan set forth in the commitment, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

The authority may consider and, where appropriate, approve a mortgage loan increase if determined by the authority to be in its best interests in protecting its security for the mortgage loan. Any such mortgage loan increase shall require the approval of the board and shall be subject to such terms and conditions as the board or the executive director may require. Nothing contained in this § 10 9 shall impose any duty or obligation on the authority to increase any mortgage loan, as the decision as to whether to grant a mortgage loan increase shall be within the sole and absolute discretion of the authority.

§ 11: 10. Operation, management and marketing.

The development shall be subject to a regulatory agreement entered into at initial closing between the authority and the mortgagor. Such regulatory agreement shall govern the rents, operating budget, occupancy, marketing, management, maintenance, operation, use and disposition of the development and the activities and operation of the mortgagor, as well as the amount of assets or income of the development which may be distributed to the mortgagor. The mortgagor shall execute

such other documents with regard to the regulation of the development and the mortgagor as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

Except as otherwise agreed by the authority pursuant to § 14 13 hereof, only rents established or approved on behalf of the authority pursuant to the regulatory agreement may be charged for dwelling units in the development. Notwithstanding the foregoing, in the case of any developments financed subsequent to January 1, 1986, the authority may agree with the mortgagor that the rents may be established and changed by the mortgagor without the prior approval of the authority, subject to such restrictions in the regulatory agreement as the authority shall deem necessary to assure that the rents shall be affordable to persons and families intended to be served by the development and subject to compliance by the mortgagor with the provisions in § 2 of these rules and regulations.

Any costs for supportive services not generally included in the rent for similar developments shall not be funded from the rental income of the development.

If the mortgagor is a partnership, the general partner or partners shall be required to retain at least a 10% interest in the net proceeds from any sale, refinancing or other disposition of the development during the life of the mortgage loan.

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

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;

2. The status and physical condition of the housing then occupied by such applicants; and

3. Any other factors or matters which the executive director deems relevant to the effectuation of the public purposes of the authority.

In selecting eligible residents, the mortgagor shall

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comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 5 of these rules and regulations.

~~The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments. Copies of the housing management handbook shall be available upon request.~~

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

The authority shall have the power to supervise the mortgagor and the development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the initial closing documents or other agreements relating to the mortgage loans. The authority shall have the right to inspect the development, conduct audits of all books and records of the development and to require such reports as the authority deems reasonable to assure compliance with this § ~~11~~ section .

§ ~~12~~ 11. Transfers of ownership.

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

The provisions set forth in this § ~~12~~ 11 shall apply only to transfers of ownership to be made subject to the authority's deed of trust and regulatory agreement. Such provisions shall not be applicable to transfers of ownership of developments subject to FHA mortgage insurance, it being the policy of the authority to consent to any such transfer approved by FHA and permitted by the Act and applicable note or bond resolutions.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale,

conveyance or other direct or indirect transfer of the development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include: (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the mortgage loan or; (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12 month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean: (i) in the case of a transfer of a partnership interest, the owner of the development as proposed to be restructured by such transfer; and (ii) in the case of a transfer of the development, the entity which proposes to acquire the development.

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

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the development in a manner satisfactory to the authority.

2. The development's physical and financial condition must be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:

- a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;

- b. The addition of any improvements to the development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the development, will reduce the costs of operating or maintaining the development, will benefit the residents or otherwise improve the liveability of the development, or will improve the financial strength and stability of the development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

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

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

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

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

prevent the occurrence of any such adverse effect.

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

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

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

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

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

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

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

§ 13. 12. Prepayments.

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

the development subsequent to prepayment; (ii) any actual or potential termination or reduction of any federal subsidy or other assistance; (iii) the current and future need and demand for low and moderate housing in the market area of the development; (iv) the financial and physical condition of the development; (v) the financial effect of prepayment on the authority and the notes or bonds issued to finance the development; and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 13 12 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies. The provisions of this § 13 12 shall be subject to modification pursuant to § 14 13 hereof.

§ 14. 13. Modification of regulatory controls and mortgage loan.

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

1. Rents may be thereafter established and changed by the mortgagor without the prior approval of the authority, subject to (i) such restrictions as he shall deem necessary to assure that the rents shall be affordable to persons and families to be served by the development, (ii) compliance by the mortgagor with

the provisions in § 2 of these rules and regulations, and (iii) such limitations on rent increases to existing residents as he shall deem necessary to prevent undue financial hardship to such residents;

2. Subject to prior approval by the board, any limitation on annual dividend distributions may be increased or eliminated, as determined by him to be necessary to provide an adequate financial return to the mortgagor without adversely affecting the financial strength or proper operation and maintenance of the development; and

3. The mortgagor may be given the right to prepay the mortgage loan on the date 20 years after the date of substantial completion of the development as determined by the executive director (or such later date as shall be necessary to assure compliance with federal laws and regulations governing the tax exemption of the notes or bonds issued to finance the mortgage loan), provided that the mortgagor shall be required to pay a prepayment fee in an amount described in § 13 12 of these rules and regulations, and provided further that such right to prepay shall be granted only if the prepayment pursuant thereto would not, in the determination of the executive director, result in a reduction in the amount or term of any federal subsidy or assistance for the development. The executive director may require that the mortgagor grant to the authority (i) a right of first refusal upon a proposed sale of the development which would result in an exercise by the mortgagor of its right, as described above, to prepay the mortgage loan and (ii) an option to purchase the development upon an election by the mortgagor otherwise to exercise its right, as described above, to prepay the mortgage loan, which right of first refusal and option to purchase shall be effective for such period of time and shall be subject to such terms and conditions as the executive director shall require.

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

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

1. Compliance with the conditions and limitations in the Act and the authority's rules and regulations and with any applicable federal law and regulations and any agreements governing federal subsidy, assistance

or mortgage insurance;

2. The ability of the authority to sell bonds to finance any mortgage loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only if any such mortgage loan increase is to be financed by the authority from proceeds of its bonds);

3. A determination by the authority that the rents shall remain affordable to persons and families of low and moderate income to be served by the development and that the mortgage loan increase or restructuring and any increase in debt service will have no material adverse effect on the financial security of its mortgage loan or proper operation and maintenance of the development;

4. If the development receives federal subsidy or assistance or is subject to federal mortgage insurance, assurances satisfactory to the authority that such mortgage loan increase or restructuring and any increase in debt service are permissible under applicable federal law and regulations and will not adversely affect the term or amount of any federal subsidy or assistance or the coverage of any mortgage insurance and that any federal subsidy or assistance may be applied to pay any increase in debt service;

5. Such terms and conditions as the authority shall require in order to protect the security of its mortgage loan; to reimburse the authority for costs and expenses that may result from such mortgage loan increase or restructuring; to comply with covenants and agreements with, and otherwise to protect the interests of, the holders of its bonds issued to finance the mortgage loan or any increase thereof; and to carry out its public purpose.

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

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

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

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VA.R. Doc. No. R95-131; Filed November 16, 1994, 12:25 p.m.

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

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

Effective Date: November 16, 1994.

Summary:

The amendments (i) provide for changes in the processing of multi-family loan applications for such developments, (ii) eliminate regulatory provisions which are no longer necessary or required in the processing of such applications, (iii) simplify various provisions and (iv) make minor clarifications and corrections. Processing changes in the amendments include (a) earlier action by the authority's board on loan proposals for such developments, (b) eliminating unnecessary provisions regarding solicitation of proposals, (c) providing for greater flexibility in the approval of mortgage loan increases and (d) removing detailed descriptions of those documents to be submitted by loan applications.

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

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986. There may be a charge for copies.

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

§ 1. Definitions.

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

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

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

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

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

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

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

§ 2. Purpose and applicability.

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

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

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

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of

the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 8 7 of these rules and regulations.

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

§ 3. Income limits and general restrictions.

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

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

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, the occupancy of the M/D development shall comply with such limitations, and the adjusted family incomes (as defined in the authority's rules and

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

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

§ 4. Terms of mortgage loans.

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

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

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no event to exceed 100%.

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

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

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a *processing fee and a financing fee equal to 1.5%* of the M/D loan amount, *unless the executive director shall for good cause require the payment of a different financing fee in such amounts as the executive director determines to be reasonable*. Such fee fees shall be payable at such times as hereinafter provided or at such other times as the executive director shall for good cause require *required by the executive director*.

§ 5. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of M/D developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of M/D developments as he shall consider necessary or appropriate. The executive director may cause market

studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of M/D developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 6. 5. Application and review acceptance for processing .

A. Information to be submitted .

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

1. Information with respect to the status of the proposed development site and the surrounding community;
2. Any option or sales contract to acquire the site;
3. An evaluation of the need and effective demand for the proposed M/D development in the market area of such site;
4. Information regarding the legal, business and financial status and experience of the applicant;
5. Information regarding amenities and services proposed to be offered to the tenants;
6. A determination by DMHMR on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed

necessary by DMHMR for the success of a housing development intended for occupancy by persons of low and moderate income who are mentally disabled; (ii) that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled; and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMR for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMR relied in making its determination must be included);

7. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development.

8. The applicant's (i) best estimates of the housing development costs and the components thereof; (ii) proposed M/D loan amount; (iii) proposed annual operating budget and the individual components thereof; (iv) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident; and (v) amount of any subsidy or assistance, including any described in item 6 above; that the applicant is requesting for the proposed M/D development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

9. The applicant's proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) any proposed fees to be charged to the tenants; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.

10. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed M/D development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the M/D development; and

11. A nonrefundable processing fee equal to 0.5% of the proposed M/D loan amount. Such fee shall be applied at closing toward the payment of the authority's financing fee.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time; and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. Such appraisal shall not be obtained until the authority has received the processing fee required by § 6.A.11 above. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

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

B. Review of the application.

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

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant;
3. An analysis *A preliminary evaluation* of the estimates of *estimated* construction costs and the proposed operating budget and an evaluation as to the economic feasibility *design and structure* of the proposed M/D development;

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4. A review of the tenant selection plans, including its effect on the economic feasibility of the proposed M/D development and its efficacy in carrying out the programs and policies of the authority;

5. An analysis of the drawings and specifications, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed M/D development.

4. A preliminary review of the estimated operating expenses and income (including any estimated subsidy or assistance) and a preliminary evaluation of the adequacy of the estimated income to sustain the proposed M/D development based upon the assumed occupancy rate and estimated construction and financing costs; and

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

C. Requirement that application satisfy certain criteria:

Based upon the authority staff's analysis of such authority's review of the applications, documents and any additional information and any other information obtained by submitted by the applicants or obtained from other sources by the authority in its review of the proposed M/D development developments, the executive director may issue a commitment for an M/D loan to the applicant with respect to the proposed M/D development provided that shall accept for processing those applications which he has determined that all of determines satisfy the following criteria have been satisfied :

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

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

3. 1. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such

time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

2. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

3. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to sustain the operation of the proposed M/D development.

4. The applicant and general contractor have has the experience, ability and financial capacity necessary to carry out their respective its responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.

5. The application and proposed M/D development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations:

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

6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.

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

7. It appears that the proposed M/D development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these rules and regulations and that the proposed M/D development will otherwise continue to be processed through initial closing and will be completed and

operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these rules and regulations and without unreasonable delay, interruptions or expense.

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

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

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

11. The drawings and specifications shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe and habitable living accommodations and environment for the contemplated residents.

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

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

14. The prerequisites necessary for the applicant to acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and

use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed M/D development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

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

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

17. Subject to a final determination by the board, the financing of the proposed M/D development will meet the applicable requirements set forth in § 36-55-39 of the Code of Virginia. For the purposes of satisfying subsection B of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

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

A resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 9 of these

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rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

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

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

In addition, The executive director is authorized to make allocations of funds for M/D Loans to various types of housing sponsors and developments as he deems necessary or desirable to promote and accomplish the purposes set forth herein and in the Act. Any such allocation of funds may be made based upon such conditions as the executive director may require, including without limitation, one or both of the following: (i) DMHMR DMHMRSAS agrees, subject to terms and limitations acceptable to the authority, to provide funds for the developments in an amount sufficient to pay the operating costs thereof, including debt service with respect to the M/D Loan or loans applicable thereto; and (ii) the authority shall be able to finance the developments by the issuance of bonds in such amount and under such terms and conditions as the authority deems satisfactory.

§ 7. 6. Feasibility and commitment.

If the executive director determines that the foregoing criteria set forth in § 6.C above are satisfied and that he will recommend approval of the application and issuance of the commitment therefor, he shall either (i) present his recommendations to the board or (ii) if the maximum principal amount of the M/D loan does not exceed \$300,000, issue the commitment subject to the approval and ratification of the board. If the executive director determines that one or more of the foregoing criteria have

not been adequately satisfied, he may nevertheless in his discretion either (i) in the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor, recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate or (ii) in the case of a commitment to be issued by the executive director subject to ratification by the board all in accordance with these rules and regulations, issue such commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize or ratify, as applicable, the M/D loan and the issuance of a commitment therefor, subject to such terms and conditions as the board shall require in such resolution.

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

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

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

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

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D

development;

2. A review of the tenant selection plan, including its effect on the economic feasibility of the proposed development and its efficacy in carrying out the programs and policies of the authority;

3. A final review of the ability, experience and financial capacity of the applicant;

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

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

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

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

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

4. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in

amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

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

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

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

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

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

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

11. The prerequisites necessary for the members of the applicant to acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that

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are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

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

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

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

The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the ~~board's resolution authorizing or ratifying such M/D loan or in the commitment therefor issued on behalf of the authority~~. The ~~resolution or the~~ commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such ~~resolution or~~ commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs. Such a ~~resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 10 of these rules and regulations); which rate, if any, shall not be inconsistent with the provisions of the~~

Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

An M/D loan shall not be authorized or ratified by the board unless the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of Virginia; provided, however, that the board may in its discretion authorize or ratify the M/D loan without making the findings, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the M/D loan.

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

§ 8. 7. Closing.

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

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

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

accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 9: 8. Construction.

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

§ 10: 9. Completion of construction and final closing.

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

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

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

1. The total development costs, the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of

the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;

2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and

3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the M/D development as finally determined by the authority and the final principal amount of the M/D loan as to such M/D development.

§ 11: 10. Seed money loans.

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

§ 12: 11. M/D loan increases.

Prior to closing, the principal amount of the M/D loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed M/D development, is necessary or desirable to effect the successful construction and operation of the proposed M/D development, can be funded from available proceeds of the authority's notes or bonds or other available funds of the authority, and is not inconsistent with the provisions of the Act or these rules and regulations. Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to closing, the authority will consider and, where appropriate, approve an M/D loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the M/D development approved by the authority which will improve the quality or value of the M/D development or will reduce the costs of operating or maintaining the M/D development;
2. Where cost increases are incurred as a direct result of a failure by the authority during processing of the M/D development to properly perform an act for

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which the authority is solely responsible;

3. Where an M/D loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to closing to provide an M/D loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

Any such increase in the M/D loan subsequent to closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the M/D loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an M/D loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional subsidy (if the M/D development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such M/D loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the M/D loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the M/D development.

4. A determination by the authority that the M/D loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the closing documents as approved by the authority) as is established in the resolution authorizing the M/D loan in accordance with § 4 of these rules and regulations.

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the M/D loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and these rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the M/D loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the M/D loan set forth in the commitment, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

The authority may consider and, where appropriate, approve a M/D loan increase if determined by the authority to be in its best interests in protecting its security for the M/D loan. Any such M/D loan increase shall require the approval of the board and shall be subject to such terms and conditions as the board or the executive director may require. Nothing contained in this § 12 section shall impose any duty or obligation on the authority to increase any M/D loan, as the decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

§ 13. 12. Operation and management.

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

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

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 5 of these rules and regulations.

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this § 13 section .

§ 14. 13. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary

condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 14 section shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

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

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

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

following:

- a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
 - b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the M/D development, will reduce the costs of operating or maintaining the M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;
 - c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;
 - d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and
 - e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.
3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.
- C. The authority will may charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee, if any, is to be paid at the closing.
- D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the M/D loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the

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financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

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

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

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

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

§ 15. 14. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed

necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the M/D development subsequent to prepayment, (ii) any actual or potential termination or reduction of any subsidy or other assistance, (iii) the current and future need and demand for low and moderate housing for mentally disabled persons in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 15 section shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

VA.R. Doc. No. R95-132; Filed November 16, 1994, 12:25 p.m.

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

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

Effective Date: November 16, 1994.

Summary:

The amendments (i) provide for changes in the processing of multi-family development acquisition applications, (ii) eliminate regulatory provisions which are no longer necessary or required in the processing

of such applications, (iii) simplify various provisions and (iv) make minor clarifications and corrections. Processing changes in the amendments include (a) earlier action by the authority's board on multi-family development acquisition proposals, (b) eliminating unnecessary provisions regarding solicitation of proposals, (c) providing for greater flexibility in the approval of purchase price or mortgage loan increases, (d) deleting references to the housing management handbook, which is no longer maintained by the authority, (e) removing detailed descriptions of those documents to be submitted with multi-family development acquisition applications, and (f) deleting authorization to establish occupancy criteria and priorities.

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

Agency Contact: Copies of the regulation may be obtained from J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986. There may be a charge for copies.

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

§ 1. Purpose and applicability.

The following rules and regulations will be applicable to the acquisition, ownership and operation by the authority or by any entity formed by the authority, on its own behalf or in conjunction with other parties, of multi-family housing developments intended for occupancy by persons and families of low and moderate income ("development" or "developments"). The developments to be acquired pursuant to these rules and regulations may be existing developments or may be developments to be constructed prior to acquisition. If the authority is to acquire an existing development, the provision of these rules and regulations relating to construction shall, to the extent determined by the executive director, not be applicable to such development. These rules and regulations shall also be applicable to the making of mortgage loans by the authority (i) to finance the construction of such developments prior to the acquisition thereof by the authority (such mortgage loans are referred to herein as construction loans) and (ii) to finance the acquisition and ownership of such developments by entities formed by the authority as described herein. If any development is to be subject to federal mortgage insurance or is otherwise to be assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision herein. Furthermore, if the development is to be subject to mortgage insurance by the federal government, the provisions of these rules and regulations shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in

the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. The term "construct" or "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

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

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

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the applicant, any mortgagor, or any contractor or other members of the development team under the initial closing documents as described in § 7 6 of these rules and regulations.

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

§ 2. Income limits and general restrictions.

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

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regulations or by resolution for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the authority may, subsequent to November 15, 1991, determine to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. The income limits established below in these rules and regulations are in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above.

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

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

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

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

Notwithstanding anything to the contrary herein, all

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

§ 3. Terms of acquisition and construction loan.

The purchase price for a development to be acquired by the authority pursuant hereto shall be determined by the authority in such manner and shall be based upon such factors (including the fair market value of the development based on an appraisal thereof as well as on the estimated costs of the construction of the development, if applicable) as it deems relevant to the security of its ownership interest in the development and the fulfillment of its public purpose. The terms and conditions of such acquisition shall be contained in the commitment described in § 6 5 hereof and in the contract, if any, to acquire the development described in § 7 6 hereof.

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

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

In addition to the acquisition of developments, the authority may make or finance construction mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance the construction of such developments. The term of such a construction loan shall be equal to the period determined by the executive director to be necessary to complete construction of the development and to consummate the acquisition thereof by the authority. Such construction loans shall be made on such other terms and conditions as the authority shall prescribe in (i) the commitment described in § 6 5 hereof and (ii) any other applicable initial closing documents, described in § 7 6 hereof. Such construction loans may be made to: (i) for-profit housing sponsors in original principal amounts

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

The interest rate on the construction loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a *processing fee* and a financing fee equal to 1.0% of the construction loan amount, unless the executive director shall for good cause require the payment of a different financing fee in such amounts as the executive director determines to be reasonable. Such fee fees shall be payable at initial closing or at such other times as required by the executive director shall for good cause require.

§ 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the authority's acquisition and, if applicable, construction financing of developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of developments for acquisition and, if applicable, construction financing as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated for such acquisitions and financings and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for acquisition and, if applicable, construction financing of developments

submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. 4. Application and acceptance for processing.

Application for consideration of each proposal for the authority to acquire a development and, if applicable, to finance the construction thereof shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority; including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the owner (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

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

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant and general contractor and the qualifications of the architect, management agent and other members of the proposed development team;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary

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evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated purchase price and financing costs; and

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

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

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

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

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

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

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

6. The design of the proposed development is functional and appropriate for its intended use, will

contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. 2. Subject to further review and evaluation by the authority's staff under § 6 5 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. 3. Subject to further review and evaluation by the authority's staff under § 6 5 of these rules and regulations, the proposed rents appear to be at levels which will (i) be affordable by the persons and families intended to be assisted by the authority, (ii) permit the successful marketing of the units to such persons and families, and (iii) sustain the operation of the proposed development.

9. 4. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the construction and, prior to acquisition thereof by the authority, the ownership, operation, marketing, maintenance and management of the proposed development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations.

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

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

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

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satisfies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of acquiring developments from different sponsors throughout the Commonwealth of Virginia.

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

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these rules and regulations. If the executive director determines that the above criteria are satisfied, he will recommend further processing of the application and shall present his recommendation to the board. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board further processing of the application, subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to the further review in § 5 of these rules and regulations and such terms and conditions as the board shall require in such resolution.

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

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

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

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

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

§ 6. 5. Feasibility and commitment.

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

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;

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2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;

3. The applicant's best estimates of (i) the housing development costs and the components thereof; (ii) proposed construction loan amount (if applicable); (iii) proposed rents; (iv) proposed annual operating budget and the individual components thereof; (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident; and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

4. The proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development.

5. The applicant's marketing plan, including description and analysis of strategies, techniques and procedures to be followed in marketing the units prior to acquisition of the development by the authority; and

6. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to construct, and, prior to the acquisition by the authority of the development, to own, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time; and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

If not previously obtained, an appraisal of the proposed development will be obtained at this time or as soon as practical thereafter from an independent real estate

appraiser selected or approved by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

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

The authority staff shall review and evaluate the application, the documents and information received or obtained pursuant to § 4 and this § 6 5 . Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;

2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

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

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

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed

development, the executive director shall prepare a recommendation to the board that approve the issuance of a commitment of the authority to enter into a contract with the applicant for the acquisition of the development by the authority and, if applicable, to make a construction loan for the development be issued to the applicant only if he determines that all of the following criteria have been satisfied:

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

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

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

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

5. *The design of the proposed development will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.*

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

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

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

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

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

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

12. *The units will be occupied by persons and families intended to be served by the proposed development and eligible under the Act, these rules and regulations, and under any applicable federal laws, rules and regulations. Such occupancy of the*

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units will be achieved in such time and manner that the proposed development (i) will attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, replacement and other reserves required by the authority, and debt service on the notes or bonds issued by the authority to acquire the development, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of such notes or bonds.

8. 13. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with ~~paragraph 7 subdivision 12~~ above.

9. 14. The ~~architectural drawings, plans and specifications or other description of work to be performed~~ shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6 5 .

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

11. 16. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken prior to acquisition of the development by the authority such that (i) the dwelling units in the proposed development will be occupied in accordance with ~~paragraph 7 subdivision 12~~ above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development, (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the

selection of residents for such units. The tenant selection plan shall describe the requirements and procedures ~~(including any occupancy criteria and priorities established pursuant to § 11 of these rules and regulations)~~ to be applied by the owner in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

~~12.~~ 17. In the case of any development to be subject to mortgage insurance or otherwise to be assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

~~13.~~ 18. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the acquisition and, if applicable, the construction of the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

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

~~15.~~ 20. The proposed development will comply with all applicable state and local laws, ordinances, regulations and requirements.

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

17. Subject to a final determination by the board, the acquisition and financing of the proposed development will meet the requirements set forth in §§ 36-55-33:2 and 36-55-39 of the Code of Virginia, as applicable.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval of the application and issuance of a commitment to acquire the development and, if applicable, to finance the construction of the development, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a commitment be issued approve the issuance of a commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to such terms and conditions as the board shall require in such resolution.

If the development is to be acquired by a successor entity formed by the authority as described in § 9 hereof, the resolution shall authorize (i) the assignment to such successor entity of the authority's interest in the contract to acquire the development and (ii), if applicable, the making of a permanent loan to such successor entity in an amount set forth therein to finance the acquisition cost of the development and such other costs relating to the acquisition and ownership of the development and to the financing thereof as the authority shall deem necessary or appropriate.

The purchase price for the development, the term and principal amount of any construction loan, the terms and conditions applicable to any equity contribution by the applicant for any construction loan, any assurances of successful completion of the development, and other terms and conditions of the acquisition and construction loan shall be set forth in the board's resolution or in the commitment issued pursuant to the resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the development and construction, if applicable, and the acquisition of the proposed development, the disbursement and repayment of the construction loan, if applicable, and other matters related to the development and construction, if applicable, and, prior to the acquisition

thereof by the authority, the ownership, operation, marketing and occupancy (including any income limits or occupancy restrictions other than those set forth in these rules and regulations) of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the development and a schedule of the estimated housing development costs.

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

Neither an acquisition by the authority of a development nor a construction or permanent loan for such development pursuant to these rules and regulations shall be authorized unless the board by resolution shall make the applicable findings required by §§ 36-55-33:2 and 36-55-39, as applicable, of the Code of Virginia; provided, however, that the board may in its discretion authorize the acquisition or the construction or permanent loan in advance of the issuance of the commitment therefor in accordance herewith without making the finding, if applicable, required by subsection A of § 36-55-33:2 and subsection B of § 36-55-39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the authority's acquisition of the development and, if applicable, the financing of the construction or permanent loan for such development.

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

§ 7. 6. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the authority shall execute and deliver to the applicant a contract to acquire the development; provided, however, that in the case of the acquisition of any existing development, the applicant shall convey the development to the authority at the initial closing, and the authority shall pay the purchase price therefor to the applicant, all in accordance with the terms of the commitment. Also at the initial closing, the initial closing documents (including, in the case of an existing development, a housing management agreement between the authority and the management agent proposed by the authority or, in the case of a development to be

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constructed, an agreement between the authority and such agent to enter into a housing management agreement at final closing) shall be, where required, executed and recorded, and the applicant *will pay to the authority the balance owed on the processing and financing fees, if any*, will make any initial equity investment required by the commitment and the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. If the authority is to provide construction financing for the development, the closing of the construction loan shall also be held at this time ; ~~the financing fee of 1.0% of the construction loan amount shall be paid to the authority~~, and the initial disbursement of construction loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents. The actual interest rate on the construction loan shall be established by the executive director at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of the deed of trust note.

If a successor entity as described in § 9 8 hereof is to acquire an existing development, the sale and conveyance of such development and the making of any permanent mortgage loan to such entity by the authority, all as set forth in § 9 8 hereof, shall be consummated at the initial closing. *The successor entity shall pay to the authority at initial closing the balance owed of any processing and financing fees relating to such permanent loan.*

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

§ 8. 7. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of any construction loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. If the authority is providing construction financing, a disbursement of construction loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to

any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement by the authority shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 9. 8. Completion of construction and final closing.

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

Prior to or concurrently with final closing, the applicant, the owner, the general contractor, the management agent and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents (including the contract to acquire the development) in order to attain final completion, obtain any federal insurance, subsidy or assistance and otherwise consummate the acquisition and the final closing. The owner shall deliver to the authority a fully executed deed conveying to the authority fee simple title to the development in accordance with the contract and shall execute and deliver such other final closing documents as the authority may prescribe. The authority shall pay to the owner the purchase price specified in the contract to acquire the development. The management agreement shall be executed by the authority and the management agent at the final closing. If the authority had provided the construction loan, such loan shall be repaid in full at final closing.

Prior to or concurrently with final closing, the executive director shall, if authorized by the resolution, assign its interest in the contract to acquire the development to a successor entity formed by the authority, on its own behalf or in conjunction with other parties, pursuant to the Act. Any reference to the authority in these rules and regulations with respect to the conveyance to or the acquisition, ownership or operation by the authority of a development shall be deemed to refer also to any such successor entity of the authority. Such successor entity shall purchase the development at final closing and otherwise perform the obligations of the authority as purchaser under the contract. The applicant shall convey title to the development to such successor entity and shall perform all of its other obligations as seller under such contract. Furthermore, if authorized by the resolution, the authority shall at final closing provide to such successor entity a permanent mortgage loan secured by a first lien on the development to finance the acquisition and ownership thereof. The making of such permanent mortgage loan shall take place at final closing upon the execution, delivery and recordation of such documents as the executive director shall require. Such permanent loan shall bear such interest rate and shall be subject to such

terms and conditions as the executive director shall prescribe pursuant to and in accordance with the commitment. For the purpose of determining any maximum annual dividend distributions by any such successor entity and the maximum principal amount of the permanent mortgage loan to such successor entity permissible under the Act, the total development costs shall be the cost of the acquisition as determined by the authority and such other costs relating to such acquisition, the financing of the permanent mortgage loan and the ownership and operation of the development as the authority shall determine to be reasonable and necessary. The equity investment of any such successor entity shall be the difference between such total development costs and the principal amount of the permanent mortgage loan.

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

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

Prior to initial closing, the purchase price or the principal amount of any construction loan or both may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction of the proposed development, will not have a material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's construction loan or ownership interest in the development, can be funded from available proceeds of the authority's notes or bonds, and will not result in noncompliance with the provisions of the Act or these rules and regulations (including, without limitation, the criteria set forth in § 6 hereof). Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve an increase in the purchase price or principal amount of the construction loan or both in the following instances:

1. Cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;
2. An increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the construction loan or its ownership interest to be acquired in the development; or

3. The authority has entered into an agreement with the mortgagor prior to initial closing to provide an increase if certain cost overruns occur, but only to the extent set forth in such agreement.

Any such increase in the construction loan or purchase price subsequent to initial closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following, as applicable:

1. The ability of the authority to sell bonds to finance the increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an increase to be financed from the proceeds of the authority's notes or bonds);
2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service on the authority's notes and bonds to be paid as a result of any such increase in the purchase price, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations;
3. A determination by the authority that the increase in the purchase price will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's ownership interest to be acquired in the development.
4. A determination by the authority that the construction loan, as increased, does not exceed such percentage of the estimated total development cost as is established in the resolution authorizing the construction loan, as applicable, in accordance with § 3 of these rules and regulations.
5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the construction loan and its ownership interest to be acquired in the development, to comply with covenants and agreements with the holders of its bonds, if any, issued to finance the construction loan or the acquisition of the development, to comply with the Act and these rules and regulations, and to carry out its public purpose.

In the event of any increase in the purchase price pursuant hereto, the authority may also increase the principal amount of any permanent mortgage loan to be provided to any successor entity.

The executive director may, without further action by the board, increase the purchase price, the principal amount of the construction loan or the principal amount of

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the permanent loan at any time by an amount not to exceed 2.0% thereof, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

The authority may consider and, where appropriate, approve an increase in the purchase price, an increase in the principal amount of the construction loan and/or an increase in the principal amount of the permanent loan, if determined by the authority to be in its best interest in accomplishing the acquisition or in protecting its security. Nothing contained in this § 10 9 shall impose any duty or obligation on the authority to increase any purchase price or the principal amount of any construction loan or permanent loan, as the decision as to whether to grant a purchase price, construction loan or permanent loan increase shall be within the sole and absolute description of the authority.

§ 11. 10. Operation, management and marketing.

The authority shall establish the rents to be charged for dwelling units in the development. Units in the development shall only be leased to persons and families who are eligible for occupancy thereof as described in § 2 of these rules and regulations. The authority (or any successor entity acquiring the development pursuant to § 9 8 hereof) shall examine and determine the income and eligibility of applicants for their initial occupancy of the dwelling units of the development and shall reexamine and redetermine the income and eligibility of all occupants of such dwelling units every two three years following such initial occupancy or at more frequent intervals if required by the executive director. It shall be the responsibility of each applicant for occupancy of such a dwelling unit, and of each occupant thereof, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority (or any such successor entity) with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income

shall exceed such maximum limit for a period of six months or more, the authority (or any such successor entity) may terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit.

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;
2. The status and physical condition of the housing then occupied by such applicants; and
3. Any other factors or matters which the executive director deems relevant to the effectuation of the public purposes of the authority.

The authority (or any successor entity as described in § 9 8 hereof) shall develop a tenant selection plan for tenants eligible to occupy the development. Such tenant selection plan shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source, (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the authority or such successor entity for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development. In selecting eligible residents, the authority (or any such successor entity) shall comply with such occupancy criteria and priorities and with the tenant selection plan.

The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments by management agents. Copies of the housing management handbook shall be available upon request.

The management of the development shall also be subject to a management agreement by and between the management agent and the authority (or any successor entity). Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The term of the management agreement shall be as prescribed by the executive director, and upon the

expiration of such term the authority may renew or extend such management agreement or may contract with a different management agent on such terms and conditions as the executive director shall require. The development shall be managed in accordance with the Act, these rules and regulations, and the management agreement and the authority's housing management handbook, if applicable.

If any successor entity formed pursuant to § 9-8 hereof is not within the exclusive control of the authority, the executive director may require that such entity and the development owned by and mortgage loan made to such entity be subject to such of the provisions of the authority's rules and regulations for multi-family housing developments as he shall require to protect its security for the mortgage loan, to protect its interest in such entity and to fulfill its public purpose under the Act.

V.A.R. Doc. No. R95-133; November 16, 1994, 12:25 p.m.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

Title of Regulation: VR 470-02-03. Rules and Regulations for the Licensure of Private Psychiatric Hospitals (REPEALED).

Title of Regulation: VR 470-02-07. Rules and Regulations for the Licensure of Correctional Psychiatric Facilities (REPEALED).

Title of Regulation: VR 470-02-08. Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities (REPEALED).

Title of Regulation: VR 470-02-09. Rules and Regulations for the Licensure of Outpatient Facilities (REPEALED).

Title of Regulation: VR 470-02-10. Rules and Regulations for the Licensure of Day Support Programs (REPEALED).

Title of Regulation: VR 470-02-11. Rules and Regulations for the Licensure of Residential Facilities (REPEALED).

Title of Regulation: VR 470-02-13. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.1-10 and Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.

Effective Date: January 13, 1995.

Summary:

VR 470-02-13, Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation, and Substance Abuse Services, is a major redraft and consolidation of the department's licensure regulations. The new regulation will replace six current licensure regulations. Except for residential facilities for children, the new regulation will include all other licensable facilities and programs including, but not limited to, halfway houses, residential treatment centers, substance abuse treatment and rehabilitation facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related residential facility, outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient services, treatment services in correctional facilities, intensive in-home services, opioid replacement therapy, sobering up services, and any other similar or related treatment services.

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

Agency Contact: Copies of the regulation may be obtained from Rubyjean Gould, Administrative Services Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 109 Governor Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-3915. There may be a charge for copies.

Preamble:

The Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services are the basis of all reviews conducted by the Office of Licensure staff. The Definitions section provides an explanation of terms used throughout the regulation. The Administrative Services section contains standards applicable to most provider organizations and includes such issues as governing structure, administrative roles, and fiscal and personnel management. The Services and Supports section contains the standards related to clinical services and other client related issues. The last section, Specialized Services, contains standards which address ancillary services and other services provided in other circumstances.

These regulations are intended to specify minimum standards for the assurance of the protection of the health, safety and welfare of individuals receiving services. Most licensees will endeavor to exceed, or are already exceeding, these standards in the course of providing high quality services.

Authority

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The regulations contained in this document are intended to fulfill the requirements of Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, which authorizes the Department of Mental Health, Mental Retardation and Substance Abuse Services, through the Office of Licensure, to license:

any facility or institution not operated by an agency of the federal government by whatever name or designation which provides care or treatment for mentally ill or mentally retarded persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone. Such institution or facility shall include a hospital as defined in § 32.1-123, out-patient clinic, special school, halfway house, home and any other similar or related facility.

No organization may deliver services without first receiving a license from the department. Providing services without a license is unlawful and may result in imposition of appropriate civil action by the Commonwealth of Virginia against the organization.

The Office of Licensure of the Department of Mental Health, Mental Retardation and Substance Abuse Services has the responsibility for monitoring compliance with these regulations. Representatives of the Office of Licensure are authorized to make the necessary inspections to determine compliance. Announced and unannounced site visits are made at reasonable times, giving regard to minimizing disruption of services. Reviews may include, but are not limited to:

1. Observation of service delivery
2. Review of the organization's physical plant
3. A review of clinical and administrative records
4. Interviews with clients, staff and administrators

The Office of Licensure will make at least one unannounced review of each licensed organization annually. As a condition of licensure, an organization must comply with all reasonable requests from the Office of Licensure to conduct on-site reviews of facilities and records and to interview staff and clients.

Application for Licensure

Individuals and organizations seeking licensure from the Department of Mental Health, Mental Retardation and Substance Abuse Services are encouraged to obtain preapplication consultation from the Office of Licensure. An application for licensure is required of all new programs and facilities that are not currently licensed. The application provides general information about the provider organization, including

administrative structure and types and location of services. In addition, the applicant organization is asked to provide a staffing plan, a program plan and description, documentation of financial viability, and documentation of authority to conduct business in the Commonwealth of Virginia. Applications may be obtained from the Office of Licensure.

Applicants for licensure will be asked to specify the type of license they are seeking. A provider license authorizes the provision of services in any one or combination of services, e.g., outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient services, treatment services in correctional facilities, intensive in-home services, opioid replacement therapy, detoxification services, sobering up services, or other similar or related services. A provider license is intended to cover all services offered irrespective of the number and types of services offered. A facility license authorizes an organization to operate a building wherein 24-hour residential services are provided for five or more persons with mental illness, mental retardation, or problems with substance abuse, including halfway houses, hospitals, residential treatment centers, substance abuse treatment and rehabilitation facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related facility, except a private family home. A facility license is a building or structure license and may be issued in conjunction with a provider license.

Licensing Process

Upon receipt of an application for licensure, a licensure specialist will be assigned to provide consultative services and to conduct the regulatory compliance reviews. The administrative operations, services and physical environment of each organization are subject to review. The licensure specialist may request supplemental materials to support the organization's application. The specialist may also examine the results of previous licensure reviews and actions related to the organization to determine the extent to which those reviews and actions have an impact on the application under consideration.

Compliance with the standards is measured qualitatively using the following scale:

Substantial Compliance (SC): indicates the organization consistently meets all major provisions of the standard.

Partial Compliance (PC): indicates the organization meets some of the provisions of the standard.

Noncompliance (NC): indicates the organization fails to meet provisions of the standard.

Not Applicable (NA): indicates the organization is not

required to meet the provisions of the standard

Corrective Action Procedures

Within 30 days of the completion of any licensure review, the Office of Licensure will issue a Licensure Report. The purpose of the report is to identify the strengths and weaknesses in the organization, as they relate to regulatory compliance. The applicant organization is expected to submit a Plan of Correction for each standard found to be not in compliance. The Plan of Correction serves as one measure of determining the need for additional on-site reviews. Typically, the Plan of Correction must be submitted within 15 business days of issuance of the Inspection Report. Extensions are granted upon request; however, no extension may be granted for more than 30 days. When a finding of noncompliance with a licensure standard is determined to pose a danger to the health, safety or welfare of clients, immediate corrective action may be required.

Public Notice/Consumer Comment

The Department of Mental Health, Mental Retardation and Substance Abuse Services values the input of consumers and the general public. An integral part of the licensure process is the public and consumer comment period held in conjunction with an organization's application for a new license or license renewal. During this period, the applicant organization must post a notice of its application in prominent locations in its place of business, and the department will publish a public notice in newspapers of general circulation. Both of these notices will invite written comments regarding the quality and effectiveness of the organization's services. Comments received by the department will be summarized in the licensure inspection report.

Issuance of Licenses

After conducting on-site reviews and considering materials submitted in support of an application for licensure, including plans of correction, the Office of Licensure may recommend issuance of a license in one of three categories:

A conditional license may be issued to an organization that has not previously held a license issued by the Department of Mental Health, Mental Retardation and Substance Abuse. This organization will also be establishing a program or facility that, at the time of application, does not have sufficient client participation to demonstrate compliance with applicable standards. Typically, compliance with standards relating to clinical records, treatment plans, and personnel recruitment, selection and qualifications cannot be demonstrated until the program/facility is in operation. The conditional license permits the applicant organization to demonstrate compliance with the

standards and allows the Office of Licensure an opportunity to evaluate the organization's compliance. A conditional license may be renewed, but the term of a conditional license may not exceed six successive months.

A provisional license may be issued to an organization that is in partial compliance with the regulatory standards. The Office of Licensure may recommend a provisional license under the following circumstances:

1. Operation of the program/facility will not pose a danger to the health, safety and welfare of individuals receiving services,
2. The organization has submitted a Plan of Correction which addresses standards found to be in partial compliance or noncompliance,
3. The Office of Licensure has approved the Plan of Correction,
4. Where feasible, corrective actions have been taken prior to the issuance of the license

A provisional license may be renewed, but the term of a provisional license may not exceed six successive months.

A full license will be issued after an organization demonstrates substantial compliance with the standards. A full license may be granted for up to three years.

License Renewal and Modification

The Office of Licensure will notify each licensee of the upcoming expiration of its license and will provide all of the necessary application materials in the notification packet. The application process will consist of confirming the intent to continue operation and updating information that has changed since the last application. Upon receipt of the renewal application, the Office of Licensure will conduct an on-site licensure compliance review as described above.

As a condition of licensure, an organization must apply for modification of license under the following circumstances:

1. A change occurs in the geographic location of the organization or facility (e.g., move from one location to another)
2. A change occurs in the setting(s) where services are provided (e.g. outpatient clinic to home-based)
3. The addition or deletion of one or more treatment programs is proposed (e.g., outpatient, day support, residential, inpatient)

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4. A change in required staff qualifications or organizational structure is adopted

5. A change is proposed in the disability of the population served (mental health, mental retardation, substance abuse) in combination with any of the above

6. A change in facility bed capacity.

Requests for modification of licenses as outlined above may be made of the licensure specialist assigned to the organization. Depending upon the scope of the change and upon the organization's previous compliance with licensure standards, application for modification of the license may not require on-site review before approval of the request. Licenses may not be transferred or assigned. A new application must be made and a new license issued when there is a change in ownership.

Denial, Revocation, Suspension or Nonrenewal of a License

An application for licensure or licensure renewal may be denied and a full, conditional, or provisional license may be revoked or suspended for one or more of the following reasons:

1. Violation of federal, state and local laws, ordinances, rules, regulations and codes relating to building, health, fire protection, safety, sanitation and zoning
2. Violation of the licensing standards contained in this document
3. Conduct or practices which jeopardize the health, safety or welfare of clients
4. Permitting, aiding or abetting the commission of an illegal act in a licensed organization
5. Failure or refusal to submit reports or make records available as requested by a the Office of Licensure
6. Refusal to admit a representative of the Office of Licensure to the premises at a reasonable time.

An organization will be notified in writing of the department's intent to deny, revoke or suspend a license. Under the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) the organization has the right and the opportunity to appeal the department's decision. Within 10 days of receipt of the department's decision, the organization may file a request for an informal hearing or a formal administrative hearing. The department will provide the organization with a detailed summary of the facts of record that support the decision to deny, revoke or suspend the license. Procedures associated

with the informal hearing and formal administrative hearings may be obtained by writing:

Commissioner
Department of Mental Health, Mental Retardation and
Substance Abuse Services
P.O. Box 1797
Richmond, VA 23214

Upon revocation or suspension of the license the organization must surrender its license to a representative of the Office of Licensure. If revocation or suspension of the license does not affect all the organization's licensed programs, a modified license will be issued.

Other circumstances under which the license must be surrendered include transfer of ownership and discontinuation of services. The organization must notify the Office of Licensure, in writing, 30 days before discontinuing services.

VR 470-02-13. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.

PART I. [GENERAL PROVISIONS: DEFINITIONS.]

§ 1.1. Definitions.

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

"Abuse" means:

1. Physical acts such as hitting, kicking, scratching, pinching, striking, hair pulling, choking or slapping;
2. Sexual activity or any type of inappropriate touching;
3. Coercion, threats or intimidation which are statements or actions that would evoke fear in a reasonable person or that could reasonably be expected to evoke fear in the client;
4. Neglect in care which is failure to provide treatment, care, goods or services necessary to the health, safety or welfare of a client;
5. Statements or actions which humiliate, demean or exploit a client; or
6. Condoning or permitting the abuse of a client which includes client to client conflict which may result in physical, emotional, or psychological harm.

"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 direction, or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Admission" means the process of acceptance into a program or service that includes orientation to program goals, rules and requirements, and assignment to appropriate staff.

"Allegation" means an accusation that an organization is operating without a license.

"Allowable variance" means the waiver granted by the department when enforcement of one or more of the standards creates an undue hardship. Organizations applying for a variance from standards demonstrate that client health, safety, and welfare are not jeopardized by the variance. Variances are in writing and may be time limited.

"Assessment" means the process of evaluating a client for the purpose of developing a profile on which to base service planning and referral. Assessment includes information gathering both initially and on an on-going basis and designed to assist the professional staff in determining a client's need for treatment.

"Behavior management" means use of a planned, systematic sequence of therapeutic interventions designed to decrease maladaptive, destructive behavior while encouraging more adaptive, constructive behavior.

"Behavior modification" means an approach to changing behavior that involves a wide variety of techniques based on learning principles such as conditioning and reinforcement.

"Care or treatment" means individually planned interventions which are intended to help a person in the reduction or amelioration of disability, discomfort, symptoms, disorders or undesirable changes or conditions specific to physical, mental, behavioral or social functioning. The term "care or treatment" includes psychiatric or substance abuse inpatient services provided in a hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia or in a unit of such a hospital; outpatient services; day support services; day hospital, partial hospital or day treatment services; residential services; supportive residential services; sponsored placements; [prison based] treatment services [in correctional facilities]; and any other similar or related services.

"Case management" means services to assist individuals and their family members in accessing needed services that are responsive to individual needs. Such services include, but are not limited to, identifying and reaching out to potential clients; assessing needs and planning services; linking the individual to services and supports; assisting the person directly to locate, develop or obtain

needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; and advocating for individuals in response to their changing needs.

"Client" means the primary service recipient whether that person is referred to as a patient, resident, and consumer or another term.

"Complaint" means an accusation against a licensed facility or provider regarding an alleged violation of regulations or law.

"Continuity of service" means the process of a smooth transition from one service to another program or independence without a significant disruption in the client's course of recovery. Follow-up occurs to make certain the transition has occurred successfully.

"Corporal punishment" means the deliberate act of causing pain or injury directly to a client. Corporal punishment includes, but is not limited to, striking or hitting with any part of the body or with an implement, pinching, pulling, shaking, or any similar action that normally inflicts pain or discomfort. Corporal punishment does not include medical diagnostic or treatment procedures performed by a licensed health practitioner operating within the scope of his license.

"Crisis intervention services" means a face-to-face or telephone response to a crisis or emergency situation experienced by an individual, significant other, or community system. A short-term service to individuals experiencing severe reduction in psychiatric, adaptive, or behavioral functioning for individuals seeking such services for themselves or their significant others.

"Day support services" means a structured program of mental health, mental retardation or substance abuse treatment, activity or training services, generally in clusters of two or more continuous hours per day, to groups or individuals in [a nonresidential setting actual sites or settings where skills will be used and where the consumer indicates it is most beneficial for him]. The term "day support services" includes, but is not limited to, psychosocial rehabilitation, day treatment, partial hospitalization, [day health and rehabilitation services,] and developmental day services. The term "day support services" does not include services whose primary function is to provide:

1. Extended sheltered or competitive employment;
2. Supported or transitional employment services;
3. General education services;
4. General recreational services; or
5. Outpatient services licensed pursuant to the

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provisions of Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.

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

["Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person reaches age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is:
 - a. Self-care;
 - b. Receptive and expressive language;
 - c. Mobility;
 - d. Self-direction; and
 - e. Capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Developmental disability" includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.]

"Discharge" means the process by which the client's active involvement with [an organization or program a provider] is terminated.

"Dispense" means the preparation, administration or delivery of a drug pursuant to the lawful order of a practitioner as established by the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

"Facility license" means a license issued to an organization to operate a building wherein 24-hour residential [or inpatient] services are provided for five or more persons with mental illness, mental retardation, [developmental disability,] or problems with substance abuse, including halfway houses, residential treatment centers, substance abuse treatment and rehabilitation

facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related facility [; except a private family home] . A facility license is a building or structure license.

"Follow-up services" means those services or supports designed to help the client maintain and improve the level of functioning achieved during treatment. Follow-up services and plans ensure that individuals receive the support necessary to successfully reintegrate into the family or community, sustain recovery or obtain additional intensive services, and facilitate timely re-entry to service, if needed, after discharge from the program.

"Health and safety management" means functions designed to identify, evaluate, and reduce the risk of injury and loss. They encompass a broad range of activities intended to reduce loss associated with personal injury, property damage or loss, and other sources of potential liability.

"Individual service plan" or "ISP" means a written plan that identifies the needs and desires of and for the client and the strategies and treatment interventions to be used to meet those needs and desires.

"Inpatient services" means 24-hour intensive medical and nursing care and treatment provided for persons with mental illness or problems with substance abuse in a hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Intensive in-home services" means time-limited (usually between two and six months) family preservation interventions for children and adolescents. In-home services are provided typically but not solely in the residence of an individual who is at risk of being moved into out-of-home placement or who is being transitioned to home from out-of-home placement. These services include, but are not limited to, crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and 24-hour per day emergency response.

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent or self-injurious behavior. The techniques may be unpleasant, noxious, or may otherwise cause discomfort to alter the occurrence of a specific behavior or to protect a client from self-injury or injury to others.

"Investigation" means a detailed inquiry or systematic examination of the conditions at a facility or of the operations of a provider regarding an alleged violation of regulations or law.

"Jail based treatment services" means care or treatment for persons with mental illness, mental retardation, [developmental disability,] or problems with substance abuse provided in jails.

"Licensable organization" means any organization not operated by an agency of the federal government by whatever name or designation which provides care or treatment for persons with mental illness, mental retardation, [~~developmental disability,~~] or problems with substance abuse. The term "licensable organization" does not include:

1. A private family home, except wherein five or more unrelated persons with mental illness, mental retardation, [~~developmental disability,~~] or problems with substance abuse are receiving residential services;
2. An organization operated by the Department of Mental Health, Mental Retardation and Substance Services;
3. An organization operated by the Department of Rehabilitative Services;
4. An organization licensed by the Department of Health, except an organization providing inpatient psychiatric or substance abuse services in a special unit in a hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia;
5. An organization licensed by the Department of Social Services;
6. An organization providing residential care or treatment for children;
7. An organization operated or licensed by the Department of Education or operated by a local school division;
8. An individual practitioner of the healing arts licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia;
9. An individual practitioner of the professions licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1 of the Code of Virginia; or
10. A private practice group as defined in these regulations.

["Medical detoxification" means a program in a hospital or other setting under the supervision of a physician designed to control medical complications and other disorders associated with the process of withdrawal from the excessive use of alcohol or other drugs.]

"Medical evaluation" means the process of assessing a client's health status that includes a medical history and a physical examination of the client conducted by a licensed medical practitioner operating within the scope of his license.

"Medical management services" means medical evaluations, pharmacy and medication management, and diagnostic laboratory. These services may be offered as part of other services.

"Mental illness" means mental disorder or functioning classifiable under the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association that affects the well-being or behavior of an individual to such an extent that for his own welfare or the welfare of others, he requires care and treatment.

"Mental retardation" means substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.

"Opioid replacement therapy" means an intervention strategy for chronic opioid drug users. A daily individual-specific, physician-ordered dose of medication is administered either for detoxification or maintenance treatment in a rehabilitative context. The goals of treatment are stabilization, strengthening coping skills, developing a new peer group and changing lifestyles, habits and behaviors.

"Organization" means the entity to whom a license is issued. The organization is legally responsible for compliance with the regulations and statutory requirements and may be a person, corporation, partnership, association, or public agency.

"Outpatient services" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. The term "outpatient services" includes, but is not limited to, emergency services, crisis intervention, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. The term "outpatient services" specifically includes:

1. A program of such services operated by a community mental health, mental retardation and substance abuse services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
2. A program of such services funded wholly or in part, directly or indirectly, by a community mental health, mental retardation and substance abuse services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

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3. A program of such services that is owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

["~~Prison based treatment services~~" means ~~care or treatment for persons with mental illness, mental retardation, developmental disability, or problems with substance abuse provided in organizations operating under the management and control of the Department of Corrections.~~]

"Private practice group" means one or more practitioners of the healing arts or practitioners of the behavioral science professions who are individually licensed under the provisions of Title 54.1 of the Code of Virginia and their employees who are individually licensed under the provisions of Title 54.1 of the Code of Virginia or who are otherwise legally authorized to render professional services within this Commonwealth, who have for purposes of convenience or efficiency associated or grouped themselves through the use of shared office space or administrative support in order to provide professional services within the scope and limits of their individual and respective professional licenses, whether the association is informal or has been formalized through a legally established organization such as a professional corporation organized pursuant to the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 of the Code of Virginia, or a general partnership organized under the provisions of Chapter 1 (§ 50-1 et seq.) of Title 50 of the Code of Virginia.

"Program" means an organized plan of services designed to address the needs of a defined population. A program may be an identified administrative unit within a larger organization. It may also consist of more than one component or element.

"Protective device" means a mechanical device used either: for a specific protective or supportive purpose to maintain body position, balance or support for a client with a neurological disorder or to assist the movement of a client whose mobility is impaired by a physical disorder; or for a medical or surgical purpose, to prevent removal of dressings, catheters, intravenous tubes, nasogastric intubations, or otherwise interrupt acute medical or surgical treatment.

"Provider license" means a license issued to an organization or entity authorizing it to provide services in any one or a combination of services for the care or

treatment of persons with mental illness, mental retardation, [~~developmental disability,~~] or problems with substance abuse, e.g., outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient [services] , [~~prison based~~] treatment services [in correctional facilities] , intensive in-home services, opioid replacement therapy, sobering up services, or other similar or related services. A provider license is intended to cover all services offered irrespective of the number and types of services offered.

"Referral" means the process of directing a client to an organization, program or service [~~that is~~] designed to provide the assistance needed.

"Residential community" means an alternative life-sharing program in which:

1. The residential community employs a live-in staffing pattern, wherein the staff person's primary domicile is with the person who has a mental disability;
2. The residential community provides an integrated setting with an environment of shared lives and mutual interdependence among all residential community members with and without mental disabilities; and
3. The majority of staff directly or indirectly caring for the persons with mental disabilities are unsalaried.

"Residential services" means 24-hour care in conjunction with a treatment or training program in a setting other than a hospital or 24-hour care provided in conjunction with supervised living or other supportive residential services. Residential services provide a range of living arrangements ranging from highly structured, intensively supervised, and programmatically intensive service with 24-hour staff coverage to relatively independent lifestyles requiring only a modest amount of staff support and monitoring. Residential services include, but are not limited to, those provided in intensive residential treatment programs, group homes, halfway houses, supervised apartments, residential communities, residential respite care programs, emergency shelter programs, and sponsored placements.

"Respite care services" means a support service that provides or arranges for the temporary care of a client for the purpose of giving relief to the client's family, guardian, or regular care giver. Individual persons providing respite care are recruited, trained, supervised and registered with a licensed organization. Respite care service options include:

1. "Center-based respite" means the client receives respite care services at a licensed facility;
2. "In-home respite" means the client receives respite care services in his own home; and

3. "Out-of-home respite" means the client [receives may receive] respite care services [in the home of by] an individual respite care provider. No more than [three four] clients at a time are placed [in with] an individual respite care provider home. Individual providers of respite care services offering to serve five or more clients concurrently [in the home] must obtain a facility license.

"Restraint" means the use of planned, systematic, agency-sanctioned physical force or any mechanical device (handcuffs, wristlets, muffs, camisoles or other such devices) that restricts the physical movements of an individual for behavior management purposes. Restraint does not include protective devices.

"Screening" means the preliminary assessment of a clients's appropriateness for admission or readmission to a program or service.

"Seclusion" means the placing of a client in an enclosed area secured in any manner that will not permit the client to gain egress.

"Sobering up services" means a program for the [placement diversion] of public inebriates [for the purpose of detoxification as an alternative to jail from jail for the purpose of monitoring withdrawal from excessive use of alcohol] .

["Social detoxification" means a program providing nonmedical supervised care for the natural process of withdrawal from excessive use of alcohol or other drugs.]

"Sponsored placements" means placing people in residential settings and providing substantial amounts of financial, programmatic or service support. Sponsored placements include, but are not limited to, individualized therapeutic or community teaching homes, specialized foster care, family sponsored homes, and residential services contracts for specified individuals. The focus is on individual client residential placements with an expected stay exceeding 30 days rather than on residential services in facilities.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological [or physiological] dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior. The term "substance abuse" includes the intemperate use of narcotic drugs, alcohol or other stimulants as well as such substances as cannabis, cocaine, hallucinogens, inhalants, PCP, and sedatives.

"Supportive residential services" means unstructured services that support individuals in their own housing arrangements. Supportive residential services include, but are not limited to, drop-in or friendly-visitor support and counseling, in-home respite care and family support

services. These services normally do not involve overnight care delivered by the organization; however, due to the flexible nature of these services, overnight care may be provided on an [hourly occasional] basis.

"Time out" means the practice of removing a client from a source of reinforcement to an unlocked setting pursuant to an approved behavior modification plan.

[Treatment services in correctional facilities" means care or treatment for persons with mental illness, mental retardation, or problems with substance abuse provided in organizations operating under the management and control of the Virginia Department of Corrections.]

"Volunteer" means a person who, without financial remuneration, provides services to the program or organization.

PART II. ADMINISTRATIVE SERVICES.

Article I. Management and Administration.

§ 2.1. [Licensed required.]

An organization that serves clients with mental illness, mental retardation, [developmental disability,] or problems with substance abuse must be licensed as defined in § 37.1-179 of the Code of Virginia.

§ 2.2. [Compliance with applicable laws, regulations and policies.]

The organization [including its employees, contract service providers, students, and volunteers] must comply with:

1. The [applicable] regulations for licensed programs;
2. Terms of the license;
3. Other applicable federal, state or local laws and regulations;
4. Applicable human rights regulations; and
5. The organization's own policies.

§ 2.3. [Required reports and information.]

The organization shall submit, or make available, reports and information that the Office of Licensure requires to establish compliance with these regulations and applicable statutes.

§ 2.4. [Written plan of correction for noncompliance.]

The organization shall submit, in a timely manner, and implement a written plan of action to correct any

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noncompliance with these regulations identified during a licensing review. The plan shall include a:

1. Description of the corrective action(s) to be taken;
2. Date of completion for each action; and
3. Signature of the person responsible for the program.

§ 2.5. [Reviews by Office of Licensure staff; requests for information.]

[A.] The organization shall permit representatives from the Office of Licensure to conduct [~~inspections~~ reviews] to:

1. Verify application information;
2. Assure compliance with these regulations;
3. Review client, personnel, and financial records; and
4. Investigate complaints.

[§ 2.6.]

[B.] The organization shall consent to all reasonable requests from the Office of Licensure to obtain information from staff and clients.

[§ 2.7. § 2.6. Notification of changes.]

The organization shall notify the Office of Licensure of the [~~implementation~~ of intent to implement] changes that affect:

1. Geographic location;
2. Milieu or settings where services are performed;
3. Services provided;
4. Staff qualifications;
5. Organizational structure; [~~and~~]
6. Population being served [; and]

[7. Bed capacity.]

[§ 2.8. § 2.7. License availability.]

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

[§ 2.9. Service providers or community affiliates under contract with the organization must comply with the organization's policies and these regulations.]

§ 2.10. § 2.8. Evidence of operating authority.]

The organization shall have evidence of its operating authority. A public organization shall have documents describing the administrative framework of the governmental department of which it is a component. A private organization shall have its charter or articles of incorporation and bylaws.

[§ 2.11. § 2.9. Governing body.]

[A.] The organization's governing body shall be clearly identified.

[§ 2.12.]

[B.] The organization shall document the role and actions of the governing body [; ~~including the methods for discharging its duties and frequency of meetings~~ which shall be consistent with its operating authority] .

[§ 2.13. § 2.10. Mission statement; operating elements and management structures.]

[A.] The provider's written mission statement shall clearly identify its philosophy, purpose, and goals.

[§ 2.14.]

[B.] The provider shall identify its operating elements and programs, the internal relationship among these elements and programs, and the management or leadership structure.

[§ 2.15. § 2.11. Appointment of administrator.]

The organization shall appoint [a] qualified [~~individual~~ individual(s)] to whom it delegates, in writing, the authority and responsibility for the administrative direction and day-to-day operation of the organization.

[§ 2.16. § 2.12. Financial resources; financial records; financial audit.]

[A.] The organization shall document financial resources to operate its programs or facilities or shall have a line of credit sufficient to cover 90 days of operating expense.

[§ 2.17.]

[B.] All financial records shall be kept according to generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the State Auditor of Public Accounts.

[§ 2.18.]

Prior to the expiration of an organization's license, C.] All financial records shall be audited [at least triennially] by an independent Certified Public Accountant (CPA) or audited as otherwise provided by law.

[~~§ 2.19.~~ § 2.13. Indemnity coverage.]

To protect the interests of clients, staff, and the organization from risks of liability, there shall be indemnity coverage to include:

1. General liability;
2. Professional liability;
3. Vehicular liability; and
4. Property damage.

[~~§ 2.20.~~ § 2.14. Financial controls.]

The provider shall have documented financial controls to minimize risk of theft or embezzlement of client or organizational funds.

[~~§ 2.21.~~ § 2.15. Fiscal manager requirements.]

At a minimum, the individual who has the authority and responsibility for the fiscal management of the provider organization shall be bonded or otherwise indemnified.

[~~§ 2.22.~~ § 2.16. Written fee schedule.]

If the provider charges for services, the written schedule of rates and charges shall be available upon request.

[~~§ 2.23.~~ § 2.17. Client funds.]

[A.] If the provider handles client funds, financial record keeping shall provide for separate accounting of client funds.

[~~§ 2.24.~~]

[B.] The provider shall ensure that clients employed by the organization are paid in compliance with all applicable laws governing labor and employment.

[~~§ 2.25.~~]

[C.] All money earned by a client shall accrue to the sole benefit of that individual.

[~~§ 2.26.~~ § 2.18. Deceptive or false advertising.]

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

[~~§ 2.27.~~ § 2.19. Provider program and subprogram names.]

The provider's name and subprogram names shall not imply the provider is offering services for which it is not licensed.

[~~§ 2.28.~~ § 2.20. Remuneration for referrals.]

The provider shall not offer or pay any remuneration, directly or indirectly, to encourage a licensed practitioner to refer a client to the organization.

[~~§ 2.29.~~ § 2.21. Participation in human research.]

The provider shall comply with the applicable regulations to assure the protection of participants in human research or shall have a written policy prohibiting participation in human research.

[~~§ 2.30.~~ § 2.22. Monitoring and evaluating service quality.]

The provider shall monitor and evaluate service quality and effectiveness and make program improvements, when indicated.

[~~§ 2.31.~~ § 2.23. Notification of policy changes.]

All employees shall be kept informed of policy changes that affect performance of duties.

Article 2. Program Description.

[~~§ 2.32.~~ § 2.24. Program description; required elements.]

[A.] The provider shall develop, implement, review and revise its program of services according to the organization's mission [and shall have that information available for public review] .

[~~§ 2.33.~~]

[B.] Each program shall have a written description that accurately describes its services. Program description elements shall include:

1. Program goals;
2. Services provided;
3. Characteristics and needs of the population served;
4. Contract services, if any;
5. Admission and exclusion criteria;
6. Termination of treatment and discharge or transition criteria; and
7. Type and role of staff.

[~~§ 2.34.~~ § 2.25. Community integration of clients.]

Opportunities shall be provided for clients to [utilize ~~community~~ resources become integrated into the community] .

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[~~§ 2.35.~~ § 2.26. Substance abuse treatment for women.]

If the provider offers substance abuse treatment services, the program description shall address the timely and appropriate treatment of substance abusing pregnant women.

Article 3. Physical Environment.

[~~§ 2.36.~~ § 2.27. Building inspection and classification.]

All buildings shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

[~~§ 2.37.~~ § 2.28. Physical environment.]

The physical environment shall be appropriate to the population served, the services provided, and shall be safe and sanitary for clients and staff.

[~~§ 2.38.~~ § 2.29. Sewer and water inspections.]

If the building is not on city or county water and sewage systems, then documentation of the local health department inspection and correction of any deficiencies shall be kept on file for a minimum of three years.

[~~§ 2.39.~~ § 2.30. Safety plan during building modifications.]

An interim plan addressing safety and continued service delivery shall be required for new construction or for conversion, structural modifications or additions to existing buildings.

[~~§ 2.40.~~ § 2.31. Weapons.]

Weapons shall be prohibited [, except when carried by law-enforcement personnel] .

[~~§ 2.41.~~ § 2.32. Smoke free areas.]

If smoking is permitted, the organization shall make provisions for [~~smoke free areas for clients, staff, and visitors~~ alternate smoking areas from the program environment] .

[~~§ 2.42.~~ § 2.33. Client beds.]

[A.] The provider shall not operate more client beds than the number for which it is licensed [~~except in an emergency when temporary permission is granted in writing by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. A request for an increase in client bed capacity shall be made in writing to the department~~] .

[B.] Emergency increases in bed capacity are approved

in writing by the commissioner.]

[~~§ 2.43.~~ § 2.34. Rooms dry and ventilated.]

Rooms shall be dry and well ventilated. Bedrooms below ground level shall meet the requirements of the Uniform Statewide Building Code.

[~~§ 2.44.~~ Within 30 days of direct client contact, each new staff member shall obtain an evaluation indicating the absence of tuberculosis in a communicable form. A statement signed by a qualified, licensed practitioner documenting absence of tuberculosis in a communicable form includes the type(s) of test(s) administered, dates of the tests, and the result(s) of those tests.

§ 2.45. Staff aged 55 years or older shall receive a second test within 10 days of the initial test.

§ 2.46. All staff members shall be tested for tuberculosis using the tuberculin skin test annually.

§ 2.47. All staff members shall be reevaluated for tuberculosis if TB-like symptoms arise or if exposed to a known case of communicable tuberculosis. Staff must submit documentation of a completed evaluation within one week.

§ 2.48. All staff members shall be educated regarding the symptoms of tuberculosis and infection risk reduction behavior.]

[~~§ 2.49.~~ § 2.35. Emergency medical or first aid training.]

There shall be at least one staff member on duty [at each service site] who holds a current certificate, issued by a recognized authority, in standard first aid [; and] cardiopulmonary resuscitation, or emergency medical training.

[~~§ 2.50.~~ § 2.36. Size of bedrooms.]

[A.] Single occupancy bedrooms shall have no less than 80 square feet of floor space.

[~~§ 2.51.~~]

[B.] Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per client.

[~~§ 2.52.~~ § 2.37. Number of clients per bedroom.]

No more than four clients shall share a bedroom.

[~~§ 2.53.~~ § 2.38. Client storage space.]

Each client shall be assigned adequate storage space accessible to the bedroom for clothing and personal belongings.

[~~§ 2.39.~~ Path of travel to bathroom.

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No required path of travel to the bathroom shall be through another bedroom.]

[§ 2.54. § 2.40. Privacy.]

[A.] Bedroom and bathroom windows [and doors] shall provide privacy.

[§ 2.55.]

[B.] Bathrooms not intended for individual use shall provide privacy for showers and toilets.

[§ 2.56. Soiled linen and clothing shall be kept separate from clean linen and clothing.]

[§ 2.57. § 2.41. Fire inspection results.]

In facilities housing over eight clients, results of fire safety and building maintenance inspections shall be on file for a minimum of three years and available for public inspection.

[§ 2.58. § 2.42. Recycling, composting and garbage disposal.]

Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

[§ 2.59. § 2.43. Conditions of beds.]

Beds shall be clean, comfortable and equipped with a mattress, pillow, blanket(s), and bed linens.

[§ 2.60. § 2.44. Ratios of toilets, basins and showers or baths.

There shall be at least one toilet, one hand basin and a shower or bath for every four clients. For all residential facilities established, constructed or reconstructed after January 13, 1995, there shall be at least one toilet, one hand basin and shower or bath for every four clients.]

[§ 2.61. § 2.45. Hot and cold running water.]

Adequate hot and cold running water [of a safe and appropriate temperature] shall be available.

[§ 2.62. § 2.46. Door locks; emergency access.]

[A.] Door locking devices and door locking arrangements shall allow for prompt release, in case of emergency.

[§ 2.63.]

[B.] All doors to client's bathrooms and bedrooms shall be equipped to permit emergency access.

Article 4.

Food and Nutrition.

[§ 2.64. § 2.47. Food service.]

An organization providing food service and preparing and serving food shall:

1. Comply with applicable Department of Health regulations regarding food service and sanitation;

2. Have a written plan for the provision of food services which ensures access to nourishing, well-balanced, healthful meals; and

3. [Prepare Make reasonable efforts to prepare] meals that [accommodate consider] cultural background, personal preferences, food habits and [that meet the] dietary needs of the clients served.

[§ 2.65. § 2.48. Monitoring client food consumption.]

[A The] provider [subsidizing food or housing] shall monitor each client's patterns of food consumption [and food preparation skills] and provide advice and support as needed.

Article 5. Human Resources.

[§ 2.66. § 2.49. Compliance with federal and state statutes and regulations.]

Personnel management and employment practices shall comply with applicable federal and state statutes and regulations.

[§ 2.67. § 2.50. Confidentiality and security of records.]

[A.] The provider shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

[§ 2.68.]

[B.] Physical and data security controls shall exist for electronic records.

[§ 2.69. § 2.51. Employee health-related information retention.]

Employee health-related information shall be retained in a file separate from personnel files.

[§ 2.70. § 2.52. Provider staffing plan.]

The provider shall design and implement a staffing plan that reflects the:

1. Needs of the population served;

2. Types of services offered; and

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3. The program description.

[~~§ 2-71.~~ § 2.53. Licensure of certain personnel; credentials verification.]

[~~Any person who is employed or contracted to provide health care, behavioral science services, or consultation shall be licensed or certified as required by A. Employees and contractors shall comply, as required, with the regulations of] the Department of Health Professions.~~

[~~§ 2-72.~~]

[B.] The organization shall design and implement a mechanism to verify professional credentials.

[~~§ 2-73.~~ § 2.54. Job description; required elements; availability to employee.]

[A.] Each employee position shall have a written job description that includes:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills, and abilities or professional qualifications required for entry level.

[~~§ 2-74.~~]

[B.] Employees shall have access to their current position description. There shall be a mechanism for advising employees of changes to their job responsibilities.

[~~§ 2-75.~~ § 2.55. Employee personnel records; required elements; record retention.]

[A.] Employee personnel record, whether hardcopy or electronic, shall include:

1. Identifying information;
2. Education and training history;
3. Employment history;
4. Results of the provider credentialing process including methods of verification of applicable professional licenses or certificates;
5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;
6. Results of criminal background checks, if any;
7. Results of performance evaluations;

8. A record of disciplinary action taken by the organization, if any;

9. A record of adverse action by any licensing bodies and organizations and state human rights regulations, if any; and

10. A record of participation in staff development activities, including orientation.

[~~§ 2-76.~~]

[B.] Each employee personnel record shall be retained in its entirety for a minimum of three years after termination of employment.

[~~§ 2-77.~~ § 2.56. Orientation of new employees, volunteers, contract individuals and students; required elements.]

New employees, volunteers, contract individuals, and students shall be oriented commensurate with their function or job-specific responsibilities. Orientation shall include:

1. Objectives and philosophy of the organization;
2. Practices of confidentiality;
3. Practices that assure client rights including orientation to human rights regulations;
4. Applicable personnel policies;
5. Emergency preparedness procedures;
6. Infection control practices and measures; and
7. Other policies and procedures that apply to specific positions and specific duties and responsibilities.

[~~§ 2-78.~~ § 2.57. Staff development opportunities.]

The provider organization shall provide opportunities for and record participation in staff development activities designed to enable staff to perform the responsibilities of their positions.

[~~§ 2-79.~~ § 2.58. Performance evaluation.]

[A.] The provider shall develop and implement a policy for evaluating employee performance.

[~~§ 2-80.~~]

[B.] Individual staff development needs and plans shall be a part of the performance evaluation.

[~~§ 2-81.~~ § 2.59. Written grievance policy.]

The provider shall have a written grievance policy and a mechanism to inform employees of grievance

procedures.

[~~§ 2.82.~~ § 2.60. Qualifications of staff.]

Any person who assumes the responsibilities of any staff position(s) shall meet the minimum qualifications of that position(s).

[~~§ 2.83.~~ § 2.61. Students and volunteers.]

[A.] The provider shall develop and implement a policy that addresses the [requirements for] selection, orientation, scheduling, supervision and evaluation of students and volunteers.

[~~§ 2.84.~~]

[B.] The provider shall have and implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers.

[~~§ 2.85.~~]

[C.] The provider shall not rely solely on students or volunteers for the provision of direct care services.

[~~§ 2.86.~~]

[D.] All students and volunteers shall have qualifications appropriate to the services they render. [Copies of credentials, if applicable, shall be kept on file.]

Article 6. Health and Safety Management.

[~~§ 2.87.~~ § 2.62. Plan to monitor, reduce and eliminate health and safety risks.]

The organization shall document and implement a plan or a policy to identify, monitor, reduce and eliminate health and safety risks, including infection control and emergency preparedness.

[~~§ 2.88.~~ § 2.63. Designation of responsible individual for health and safety management.]

The organization shall designate an individual responsible for health and safety management.

[~~§ 2.89.~~ § 2.64. Documentation of significant injuries.]

The provider shall document significant client, staff and visitor injuries. Documentation shall be kept on file for three years.

[~~§ 2.90.~~ § 2.65. Procedure regarding missing clients.]

The provider shall develop and implement procedures regarding missing clients.

[~~§ 2.91.~~ § 2.66. Admission policy.]

The provider shall not admit individuals for whom services are not available and planned or for which staffing levels and types are not adequate.

[~~§ 2.92.~~ § 2.67. Serious injury or death investigation and report.]

Any incident relating to the operation of the provider organization which results in serious injury or death shall be investigated by the organization, appropriately reported to local authorities, and reported to the Office of Licensure. A written report of the incident shall be kept on file for three years.

[~~§ 2.93.~~ § 2.68. Access to telephone in emergencies; emergency telephone numbers.]

Access to telephones shall be available for emergency purposes. Emergency telephone numbers shall be prominently posted near the telephones.

[~~§ 2.94.~~ § 2.69. Access to emergency health care for clients and employees.]

The provider shall have a documented plan for access to emergency health care for clients and employees. The plan shall include transportation to and from a health care provider.

[~~§ 2.95.~~ § 2.70. First aid kit.]

[A.] A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

[~~§ 2.96.~~]

[B.] The first aid kit shall include activated charcoal and Syrup of Ipecac for use at the direction of a poison control authority or physician.

~~§ 2.97. If a swimming pool is used, a plan shall be developed and implemented to ensure the safety of clients.~~

[~~§ 2.98.~~ § 2.71. Safety inspections.]

Safety inspections of all locations owned, rented or leased shall be conducted at least annually. Recommendations for safety improvement shall be documented and implemented.

[~~§ 2.99.~~ § 2.72. Infection control measures and universal precautions.]

The provider shall develop, document and implement infection control measures, including the use of universal precautions.

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[§ 2.73. Tuberculosis screening; staff education regarding tuberculosis.]

[A.] Within 30 days of direct client contact, each new staff member, student or volunteer shall obtain an evaluation indicating the absence of tuberculosis in a communicable form. A statement signed by a qualified, licensed practitioner documenting absence of tuberculosis in a communicable form includes the type(s) of test(s) administered, dates of the tests, and the result(s) of those tests.

[§ ~~2.100.~~

~~The provider shall document in-service and client education in infection control and prevention for staff and clients, including training in universal precautions. B. All staff members of substance abuse outpatient or residential treatment programs shall be certified as tuberculosis free on an annual basis.]~~

[§ ~~2.101.~~]

[C.] All staff members are educated regarding [symptoms of tuberculosis,] infection [~~risk-reduction~~ behavior control and prevention] .

[§ ~~2.102.~~ § 2.74. Written emergency preparedness plan.

A.] A written emergency preparedness plan shall be developed, reviewed, and implemented when needed. The plan shall address response to natural disasters, as well as fire or other emergency which disrupts the normal course of service delivery. The plan shall [address provisions for relocating residential clients and] also address staff responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures including the evacuation of clients with special needs (e.g., deaf, blind, multihandicapped);
3. Using, maintaining and operating emergency equipment;
4. Accessing client emergency medical information; and
5. Utilizing community support services.

[§ ~~2.103.~~]

[B.] All staff shall participate in periodic emergency preparedness training.

[§ ~~2.104.~~]

[C.] Staff shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

[§ ~~2.105.~~ § 2.75. Operable flashlights or battery lanterns.]

Operable flashlights or battery lanterns shall be readily accessible in programs that operate between dusk and dawn.

[§ ~~2.106.~~ § 2.76. Reporting of disaster, fire, emergency or other conditions.]

In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and well-being of clients, the organization shall notify the Office of Licensure of the conditions and status of the clients and the licensed service site as soon as possible.

PART III. SERVICES AND SUPPORTS.

Article I. Screening and Admission.

§ 3.1. [Individuals served.]

The provider shall serve only those individuals whose service needs are consistent with the program description.

§ 3.2. [Policies on screening, admission and orientation.]

Policies on screening, admission and referral services are written and implemented to include:

1. Procedures on referral, admission, and orientation to service;
2. Staff designated to provide screening and admission services; and
3. Protocol for crisis triage and intervention.

§ 3.3. [Staff access to information.]

All staff performing screening and referral activities shall have immediate access to written service descriptions for all offered programs, as well as resource documents or a resource directory that describes other community services available.

§ 3.4. [Emergency clinical consultation availability.]

[~~If screening staff are not clinicians, trained staff shall be available for emergency consultation~~ The organization shall provide for emergency clinical consultation for screening staff.]

§ 3.5. [Screening and referral services documentation and retention.]

Screening [services] and [~~referral~~ referrals that result from screening] services shall be documented and retained for at least [~~three years six months~~] . ~~Writer~~ documentation shall include:

procedures.

[~~§ 2.82.~~ § 2.60. Qualifications of staff.]

Any person who assumes the responsibilities of any staff position(s) shall meet the minimum qualifications of that position(s).

[~~§ 2.83.~~ § 2.61. Students and volunteers.]

[A.] The provider shall develop and implement a policy that addresses the [requirements for] selection, orientation, scheduling, supervision and evaluation of students and volunteers.

[~~§ 2.84.~~]

[B.] The provider shall have and implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers.

[~~§ 2.85.~~]

[C.] The provider shall not rely solely on students or volunteers for the provision of direct care services.

[~~§ 2.86.~~]

[D.] All students and volunteers shall have qualifications appropriate to the services they render. [Copies of credentials, if applicable, shall be kept on file.]

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[§ 2.101.]

[C.] All staff members are educated regarding [symptoms of tuberculosis,] infection [risk-reduction behavior control and prevention] .

[§ 2.102. § 2.74. Written emergency preparedness plan.

A.] A written emergency preparedness plan shall be developed, reviewed, and implemented when needed. The plan shall address response to natural disasters, as well as fire or other emergency which disrupts the normal course of service delivery. The plan shall [address provisions for relocating residential clients and] also address staff responsibilities for:

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3. Using, maintaining and operating emergency equipment;
4. Accessing client emergency medical information; and
5. Utilizing community support services.

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[B.] All staff shall participate in periodic emergency preparedness training.

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§ 3.4. [Emergency clinical consultation availability.]

[If screening staff are not clinicians, trained staff shall be available for emergency consultation. The organization shall provide for emergency clinical consultation for screening staff.]

§ 3.5. [Screening and referral services documentation and retention.]

Screening [services] and [referral referrals that result from screening] services shall be documented and retained for at least [three years six months] . Written documentation shall include:

1. Date [~~and time~~] of initial contact;
2. Name, age, and gender of the individual;
3. Address and phone number, if applicable;
4. Presenting needs or situation;
5. Name of screening staff;
6. Type and location of each contact; and
7. Outcome [of screening process] .

§ 3.6. [Identifying information on admission forms; required elements.]

Identifying information on a standardized admission form(s) includes the following:

1. Identification number unique for the client;
2. Name of client;
3. Current residence, if known;
4. Social security number;
5. Gender;
6. Marital status;
7. Date of birth;
8. Name of legal guardian;
9. Name, address, and telephone number for emergency contact;
10. Legal status (e.g., relevant criminal charges or convictions, probation or parole status, or adjudicated legal incompetency or legal incapacity);
11. Date of admission to program; and
12. Date services initiated.

[§ 3.7. Clients shall be given orientation to the organization's services, programs, and facility, unless clinically contraindicated. When orientation is not provided the clinical record is noted with the reason and the expected date of orientation.]

[§ 3.8. § 3.7. Orientation; required elements.]

[The orientation shall include the following elements as appropriate to the scope and level of service offered. The organization shall make available to clients the following information as appropriate to the scope and level of services] :

1. The mission of the provider organization;
2. Individual confidentiality practices;
- [~~3. Consent to treatment;~~
4. Informed consent;]
- [~~5. 3.] Individual rights and how to report violations;~~
- [~~6. 4.] Fire safety and emergency preparedness procedures;~~
- [~~7. 5.] The grievance procedure;~~
- [~~8. 6.] Program guidelines;~~
- [~~9. Infection control;~~]
- [~~10. 7.] Physical plant or building lay-out;~~
- [~~11. 8.] Hours and days of operation; and~~
- [~~12. 9.] Availability of after hours service [; if appropriate] .~~

[§ 3.9. Orientation shall be documented in the client's record.]

Article 2. Crisis Intervention and Clinical Emergencies.

[§ 3.10. § 3.8. Crisis intervention policy.]

The provider shall develop and implement a crisis intervention policy that includes the provision for obtaining physician services if on-call physician back up is not available.

[§ 3.11. § 3.9. Documenting crisis intervention services.]

[A.] The provider shall develop a method for documenting the provision of crisis intervention services. Documentation should include the following if available:

1. Identification of the individual in crisis;
2. Precipitating factors; and
3. Outcome.

[§ 3.12.]

[B.] If [~~an individual~~ a client] is admitted to service, the crisis intervention documentation shall become part of [the client's his] record.

[§ 3.13. § 3.10. Written policies and procedures for client medical and psychiatric emergencies; required elements.]

The provider shall develop and implement written

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policies and procedures for prompt intervention in the event of client medical and psychiatric emergencies that include:

1. A definition of medical or psychiatric emergency;
2. Procedures for immediate access to appropriate internal and external resources;
3. Staff responsibilities;
4. Location of client emergency medical information; and
5. The telephone number and location of the nearest hospital, ambulance service, rescue squad or other trained medical personnel, the nearest poison control center and the police.

[§ 3.14. § 3.11. Emergency medical information.]

Emergency medical information about the client shall be readily accessible in an emergency. The information shall include:

1. [If available] the name, address, and telephone number of:
 - a. The client's physician, and
 - b. A relative or other person to be notified;
2. Medical insurance company name and policy or Medicaid, Medicare or CHAMPUS number, if any; [and]
3. Information concerning (i) medications used, (ii) medication [and food] allergies, (iii) history of substance abuse, and (iv) significant medical problems [; and .]

[4. Written permission for emergency medical care.]

[§ 3.15. § 3.12. Medical or psychiatric emergencies.]

Medical or psychiatric emergencies which occur at the licensed organization or during the course of service provision shall be documented in the client's record and include:

1. Events precipitating the emergency;
2. Treatment received; and
3. Outcome.

Article 3. Assessments and Service Planning.

[§ 3.16. § 3.13. Assessments of clients.]

Assessments shall be conducted to identify a client's physical, emotional, behavioral, and social strengths, preferences and needs, as applicable.

[§ 3.17. § 3.14. Assessment process policy.]

[A.] The assessment process shall be documented by written policy and shall designate the individuals authorized to perform assessments.

[§ 3.18.]

[B.] Assessments shall be performed prior to development of the individualized service plan.

[§ 3.19. § 3.15. Plan for service.]

[A.] An individualized plan for service shall define and describe the goals, objectives and expected outcomes of service(s).

[§ 3.20.]

[B.] The client's needs and preferences shall be considered when the service plan is developed and revised.

[§ 3.21.]

[C.] The client and principle service provider or service team are documented participants in service planning.

[§ 3.22.]

[D.] Involvement of the family, guardian, or others in developing the service plan shall be consistent with laws protecting confidentiality, privacy, and the rights of minors.

[§ 3.23. § 3.16. Individualized service plan; minimum required elements.

The individualized service plan shall include, at a minimum:

1. A [description of the client's strengths, needs, preferences, and relevant accomplishments summary or reference to the assessment] ;
2. Goals and measurable objectives for addressing each identified need;
3. The services and supports and frequency of service to accomplish the goals and objectives;
4. Target dates for accomplishment of goals and objectives;
5. Estimated duration of service;

6. The role of other agencies if the plan is a shared responsibility; and

7. The staff responsible for coordination and integration of services, including the persons of other agencies if the plan is a shared responsibility.

[§ 3.24. § 3.17. Progress notes and other documentation.]

Signed and dated progress notes or other documentation shall be used to document the services provided, and the implementation and outcomes of service plans.

[§ 3.25. § 3.18. Services plans review.]

Service plans shall be reviewed at least [~~quarterly~~, every six months] with goals and objectives updated, if indicated. Reviews shall be conducted with the client and in consultation with other service providers and shall be signed and dated by the person responsible for the coordination and integration of services.

Article 4.

Continuity of Service and Discharge.

[§ 3.26. § 3.19. Movement of client among programs.]

The provider shall have written procedures to define the process for the movement of a client between and among programs or to facilitate discharge from the program or service.

[§ 3.27. § 3.20. Discharge of client.]

[A.] Discharge planning and discharge shall be consistent with the client's service plan or the program's criteria for discharge.

[§ 3.28.]

[B.] A written discharge summary shall be completed within 30 days and shall include, at a minimum, the:

1. Reason for discharge;
2. Client's participation in discharge planning;
3. Client's level of functioning or functional limitation(s), if applicable;
4. Recommendations on procedures, activities, or referrals to assist the client in maintaining or improving functioning and increased independence;
5. Progress made achieving the goals and objectives identified in service plan;
6. Discharge date;
7. Discharge medications, if applicable;

8. Status, location and arrangements for future services that have been made;

9. Date the discharge summary was actually written or documented; and

10. Signature of person doing summary.

Article 5. Records management.

[§ 3.29. § 3.21. Content of primary record.]

A primary record shall contain, at a minimum:

1. The admission form;
2. Screening, referral and assessment information;
- [3. Documentation of orientation;]
- [4. 3.] Medical evaluation, as applicable to the program;
- [5. 4.] Service plan(s) and service plan reviews;
- [6. 5.] Progress notes; and
- [7. 6.] A discharge summary, if applicable.

[§ 3.30. 3.22. Documentation policy.]

The [~~program~~ organization] shall define, by policy, a system of documentation which supports appropriate service planning, coordination, and accountability. At a minimum this policy shall outline:

1. The location of the "primary" record;
2. Methods of access to the primary record by service providers who are located at satellite locations; [and]
3. Methods of updating the primary record with information recorded at satellite locations [- ; and]
- [4. Minimum requirements for satellite records.]

[§ 3.31. § 3.23. Written records management policy.]

A written records management policy shall describe confidentiality, accessibility, security, and retention, including:

1. Disclosure of information;
2. Storage, processing and handling of active and closed records;
3. Storage, processing and handling of electronic records;

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4. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;

5. Designation of person responsible for records management; and

6. Disposition of records in event the program ceases operation.

[§ ~~3.32~~. § 3.24. Record storage and security.]

[A.] When not in use, active and closed records shall be stored in a locked cabinet or room.

[§ ~~3.33~~.]

[B.] Physical and data security controls shall exist for electronic records.

[§ ~~3.34~~. § 3.25. Availability of client records.]

Information contained in a client's record shall be available only to persons legally authorized according to federal and state laws.

[§ ~~3.35~~. § 3.26. Confidentiality procedures.]

[~~There~~ The provider] shall [~~be develop and implement~~] a mechanism to inform staff of confidentiality procedures regarding access, duplication, and dissemination of any portion of a record.

[§ ~~3.36~~. § 3.27. Individual primary record.]

[A.] There shall be a single, separate primary record for each individual or family admitted for service. A separate record shall be maintained for each family member who is receiving individual treatment.

[§ ~~3.37~~.]

[B.] Entries in the client record shall be current, dated and authenticated by the [~~staff member~~ person] making the entry. Errors shall be corrected by striking through and initialing.

[§ ~~3.38~~. § 3.28. Retention of client records.]

[A.] Client records shall be kept for minimum of three years after discharge or date of last contact unless otherwise specified by state or federal requirements.

[§ ~~3.39~~.]

[B.] Permanent information kept on each client shall include:

1. Client's name;

2. Social security number;

3. Date of client's birth;

[~~5~~. 4.] Dates of admission and discharge; and

[~~6~~. 5.] Name and address of legal guardian, if any.

[§ ~~3.40~~. § 3.29. Review process for records.]

A review process shall evaluate records for completeness, accuracy, and timeliness of entries.

PART IV. SPECIALIZED SERVICES.

Article I.

Medical Management, Pharmacy and Medication Management Services.

§ 4.1. [Health care policy.]

The provider shall develop and implement a written policy, appropriate to the scope and level of service, that addresses provision of adequate health care. This policy shall include:

1. The level of physical assessment necessary;

2. How the physical examinations will be provided and who will perform them;

3. How abnormal findings will be managed or corrected;

4. How the appropriate and safe use of medication will be ensured, including:

a. What medications patients may bring into the program,

b. How medication is safely and securely stored,

c. How compliance with medication policies are monitored, and

d. What training is required for medication management staff; and

[~~5~~. e.] How diagnostic laboratory and other medical assessment results are communicated to clients.

§ 4.2. [Medical evaluation.]

The provider shall develop [and implement] a medical evaluation that consists of, at a minimum, a client (or other) reported health history and, if required for admission to the services offered, a physical examination. The provider organization's policy on physical examinations shall be developed in consultation with a qualified practitioner.

§ 4.3. [Health history.]

A client (or other) reported health history shall include:

- [~~1.~~ Immunizations;]
- [~~2.~~ 1.] Allergies;
- [~~3.~~ 2.] Recent physical complaints;
- [~~4.~~ 3.] Chronic conditions;
- [~~5.~~ 4.] Communicable diseases;
- [~~6.~~ 5.] Handicaps or restriction on physical activities, if any;
- [~~7.~~ 6.] Past serious illnesses, serious injuries and hospitalizations;
- [~~8.~~ 7.] Serious illnesses and chronic conditions of the individual's parents [, siblings and significant others in the same household] ; and
- [~~9.~~ 8.] Current [~~drug history~~ past drug usage] including alcohol, prescription and nonprescription medications, and illicit drugs.

§ 4.4. [Physical examination.]

A physical examination shall include, at a minimum:

1. General physical condition;
- [2. Evaluation for communicable diseases;]
- [~~2.~~ 3.] Recommendations for further treatment, if appropriate;
- [~~3.~~ 4.] Other examinations indicated, if appropriate; and
- [~~4.~~ 5.] The date of examination and signature of a qualified practitioner.

§ 4.5. [Physical examination locations.]

Locations designated for physical examinations shall ensure individual privacy.

§ 4.6. [Written policies on medication management.]

The provider shall have written policies addressing:

1. The safe administration, handling, storage, and disposal of medications;
2. The use of medication orders;
3. The handling of packaged medications brought by clients from home or other residences; and

4. A definition of medication errors and procedures for reporting.

§ 4.7. [Medication administration.]

Medications shall be administered only by persons authorized by state law.

§ 4.8. [Dispensing of medications.]

Medications shall be given only to the clients for whom they are prescribed.

§ 4.9. [Medication errors and drug reactions.]

Medication errors and drug reactions shall be reported immediately to the client's or program's physician.

§ 4.10. [Medication records.]

Medications given, medication errors, and drug reactions shall be recorded in the client's record.

§ 4.11. [Prescription order.]

If the provider administers medications or supervises self-administration of medication in a program, a current [~~prescription~~ medication] order for all medications the client receives shall be maintained [~~in the client's record on site~~] .

§ 4.12. [Disposition of drugs.]

Discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels shall be promptly disposed of according to the applicable regulations of the Virginia Board of Pharmacy.

§ 4.13. [Pharmacy operation or drug storage and administration service.]

The provider operating a pharmacy or maintaining a drug storage and administration service shall comply with:

1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);
2. The Virginia Board of Pharmacy regulations relating to pharmacies; and
3. Applicable federal laws and regulations relating to controlled substances.

§ 4.14. [In-service training in basic pharmacology.]

If the provider operates a pharmacy or maintains a drug storage and administration service, in-service training to staff and consultation to clients shall be provided on issues of basic pharmacology including medication side effects.

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Article 2. Special Interventions.

§ 4.15. [Policies and procedures on behavior management techniques.]

The provider shall develop and implement policies and procedures that describe the use of behavior management techniques, including seclusion, [~~locked secured~~] time out, restraint, and time out. The policies and procedures shall be consistent with applicable human rights regulations, emphasize positive approaches to behavior management, and:

1. List and define behavior management techniques in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each program;
2. Protect the safety and well-being of the client at all times, including during fire and other emergencies;
3. Specify the mechanism for monitoring the use of behavior management techniques; and
4. Specify the methods for documenting the use of behavior management techniques.

§ 4.16. [Behavior management program.]

The behavior management program shall be developed, implemented and monitored by staff trained in behavior management programming.

§ 4.17. [Intrusive aversive therapy.]

A behavior management plan that proposes intrusive aversive therapy shall be implemented only with the approval of the local human rights committee.

§ 4.18. [Availability of behavior management policies and procedures.]

Policies and procedures related to behavior management shall be available to clients, their families, guardians and advocates.

§ 4.19. [Prohibited actions.]

[A.] The following actions shall be prohibited:

1. Prohibition of contacts and visits with attorney, probation officer, placing agency representative, minister or chaplain;
2. Any action that is humiliating, degrading, harsh, or abusive;
3. Corporal punishment as defined by regulation;
4. Subjection to unclean and unsanitary living

conditions;

5. Deprivation of opportunities for bathing and access to toilet facilities;

6. Deprivation of [services and treatment including] health care [~~including~~ and] counseling;

7. Administration of laxatives, enemas, or emetics for effecting behavior change; [~~and~~]

8. Prohibition of contacts and visits with family or legal guardian [: ; and]

[9. Limitation on contacts with regulatory or patient advocacy personnel.]

[§ 4.20.]

[B.] The following actions shall be prohibited, unless clinically indicated and documented:

1. Deprivation of drinking water or nutritionally balanced snacks, or meals;

2. Limitations of contacts and visits with family or legal guardian; [~~and~~]

3. Delay or withholding of incoming or outgoing mail [: ; and]

[4. Deprivation of opportunities for sleep or rest.]

[§ 4.21. § 4.20. Injuries recorded and reported.]

Injuries resulting from or occurring during the implementation of behavior management techniques shall be recorded in the clinical record and reported to the staff person responsible for the overall coordination of services.

[§ 4.22. § 4.21. Client discipline.]

Clients shall not [~~be involved in the~~] discipline, [~~restraint~~ restrain] , [~~seclusion~~ seclude] or [~~implementation of~~ implement] behavior management plans of other clients.

[§ 4.23. § 4.22. Seclusion, secured time out and restraint.

A.] The use of seclusion, [~~locked secured~~] time out and restraint shall comply with applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia.

[§ 4.24.

B.] The use of seclusion, [~~locked secured~~] time out and restraint shall be consistent with the provider organization's policies and procedures.

[§ 4.25.

C.] The facility, part or section of the building used for seclusion or [~~locked~~ secured] time out shall meet the design requirements for buildings used for detention, seclusion, or [~~locked~~ secured] time out of persons.

§ 4.26.

D.] The seclusion or [~~locked~~ secured] time out room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

[§ 4.27.

E.] The seclusion or [~~locked~~ secured] time out room shall be free of all protrusions, sharp corners, hardware, fixtures or other devices which may cause injury to the occupant.

[§ 4.28.

F.] Windows in the seclusion or [~~locked~~ secured] time out room shall be so constructed as to minimize breakage and otherwise prevent the occupant from harming himself.

[§ 4.29.

G.] Light fixtures and other electrical receptacles in the seclusion or [~~locked~~ secured] time out room shall be recessed or so constructed as to prevent the occupant from harming himself. Light controls shall be located outside the seclusion or locked time out room.

[§ 4.30.

H.] Doors to the seclusion or [~~locked~~ secured] time out room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for staff outside the door to see into all corners of the room.

[§ 4.31.

I.] Locks on seclusion or [~~locked~~ secured] time out room doors shall be so arranged on the outside to permit exit from the room by simple operation without the use of a key.

[§ 4.32.

J.] The seclusion or [~~locked~~ secured] time out room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

[§ 4.33.

K.] The seclusion or [~~locked~~ secured] time out room shall maintain temperatures appropriate for the season.

[§ 4.34. § 4.23. Mechanical restraint.]

Devices used for mechanical restraint shall be designed specifically for behavior management of human beings in clinical or therapeutic programs.

[§ 4.35. § 4.24. Documentation of seclusion, secured time out and restraint.]

Application of seclusion, [~~locked~~ secured] time out, restraint, and time out shall be documented in the client's record and, at a minimum, include:

1. Date and time;
2. Staff involved;
3. Circumstances and reasons for use, including other behavior management techniques attempted;
4. Duration;
5. Type of technique used; and
6. Outcomes.

[§ 4.36. § 4.25. Time out.]

[Rooms used for time out procedures shall not be locked or secured in any manner. A. Time out rooms cannot be locked. When time out room doors are closed (i.e. secured time out) they may be held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.]

[§ 4.37.

B.] Clients in time out shall be able to communicate with staff.

Article 3. Opioid Replacement Therapy.

[§ 4.38. § 4.26. Registration of opioid replacement program.]

The opioid replacement program shall maintain current registration with:

1. The Federal Drug Enforcement Administration;
2. The Food and Drug Administration; and
3. The Virginia Board of Pharmacy.

[§ 4.39. § 4.27. Criteria for involuntary termination from treatment.]

The program shall establish criteria for involuntary termination from treatment that describe the rights of the client and the responsibilities and rights of the program.

Final Regulations

On admission, clients shall be given a copy of the criteria and sign a statement acknowledging receipt of same.

[~~§ 4.40.~~ § 4.28. Program operation schedule.]

The program shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority shall be required for additional closed days.

[~~§ 4.41.~~ § 4.29. Medication dispensing hours.]

Medication dispensing hours shall include at least two hours each day outside normal working hours, i.e., before 9 a.m. and after 5 p.m.

[~~§ 4.42.~~ § 4.30. Physical examinations.]

Physical examinations shall be completed not more than 30 days prior to admission.

[~~§ 4.43.~~ § 4.31. Counseling sessions.]

Face-to-face counseling sessions shall be conducted at least every two weeks for the first year of treatment and every month thereafter.

[~~§ 4.44.~~ § 4.32. Drug screens.]

[A.] Random drug screens shall be performed:

1. Weekly, during the first three months of treatment;
2. Weekly, whenever a client's urine sample indicates continued drug use; and
3. Monthly, after the first three months of treatment, when urine samples indicate no drug use.

[~~§ 4.45.~~

[B.] Drug screens for other drugs with potential for addiction shall be performed when clinically and environmentally indicated.

[~~§ 4.46.~~ § 4.33. Take-home medication.]

[A.] Prior to dispensing regularly scheduled take-home medication, the program shall ensure the client demonstrates a level of stability as evidenced by the following:

1. Employment or school attendance (if not retired, disabled or a homemaker);
2. Regular clinic attendance;
3. Absence of alcohol and other drug use;

4. Absence of significant behavior problems; and

5. Absence of criminal activities, charges or convictions.

[~~§ 4.47.~~

[B.] The program shall educate the client on the safe transportation and storage of take-home medication.

[~~§ 4.48.~~ § 4.34. Preventing the duplication of medication services.]

To prevent duplication of opioid medication services to a client, the program shall contact every [~~Virginia~~] opioid replacement therapy [~~programs~~ program] within a 100 mile radius. No medications shall be dispensed to guest clients without prior contact with the home clinic.

[~~§ 4.49.~~ § 4.35. Guest clients.]

[A.] Guest clients may be provided with up to a 28-day supply of medication. To continue receiving medication after 28 days, the client must be admitted to the program. Clients receiving guest medications as part of a residential treatment program may exceed the 28-day maximum time limit.

[~~§ 4.50.~~

[B.] Guest take-home medication shall not exceed six days unless prior approval is given by the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority.

[~~§ 4.51.~~ § 4.36. Detoxification prior to discharge.]

Clients shall be given an opportunity to detoxify from opioid medication prior to discharge from the program.

[~~§ 4.52.~~ § 4.37. Opioid replacement therapy renewal.]

Physician orders for opioid replacement medication shall be renewed at least [~~annually~~ every six months] .

[~~§ 4.53.~~ § 4.38. Dosages exceeding 100 milligrams.]

[A.] Dosages initially exceeding 100 milligrams shall be documented in the client's record by the physician and reported to the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority.

[~~§ 4.54.~~

[B.] All dosages exceeding 100 milligrams shall be reported to the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority annually.

[~~§ 4.55.~~ § 4.39. Security of opioid replacement medication

supplies.]

At a minimum, opioid replacement medication supplies shall be secured as follows:

1. Admittance to the pharmacy shall be restricted to licensed medical or pharmacy personnel;
2. Supplies shall be reconciled monthly; and
3. Inventory records, including the monthly reconciliations, shall be kept for three years.

[§ 4.56. § 4.40. Emergency preparedness plan.]

The program's emergency preparedness plan shall address continued opioid replacement treatment in the event of an emergency or natural disaster.

Article 4.

[Detoxification and] Sobering Up Centers.

[§ 4.57. § 4.41. Criminal justice referrals.]

Policies and procedures for accepting criminal justice referrals shall be developed and implemented in conjunction with the chief law-enforcement officer and the chief general district court judge of the locality served by the sobering up center.

[§ 4.58. § 4.42. Cooperative agreements with community agencies.]

The [sobering up center provider] shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for emergency medical care.

[§ 4.59. § 4.43. Rest, holding or admission areas.]

[A.] Rest, holding, or admission areas shall provide for:

1. Adequate space for individuals to sleep and sober up;
2. Unobstructed observation by staff;
3. Nearby bathrooms;
4. Available drinking water; and
5. Access to showers.

[§ 4.60.

B.] Designated staff areas shall allow for unobstructed observation of clients.

[§ 4.61. § 4.44. Direct-care staff training.]

Direct-care staff training and certification shall include

Department of Mental Health, Mental Retardation and Substance Abuse Services Managed Withdrawal Training and:

1. First responder training; or
2. First aid and CPR training.

[§ 4.62. § 4.45. Minimum number of staff on duty.]

In freestanding sobering up centers, there shall be at least two on-duty staff members at all times. If the center is located within or contiguous to another service site, one staff member shall be on duty in the center with backup staff support immediately available.

[§ 4.63. § 4.46. Significant events documented.]

Staff members on each shift shall document significant events to ensure service continuity between shifts.

[§ 4.64. § 4.47. Admission assessments.]

Admission assessments shall identify:

1. Individuals with a high-risk profile;
2. Substances used and time of last use;
3. Time of last meal;
4. Blood alcohol content [or breathalyzer] ; and
5. Vital signs.

[§ 4.65. § 4.48. Vital signs.]

Unless the individual refuses, vital signs shall be taken:

1. At admission and discharge;
2. Every four hours for the first 24 hours and every eight hours thereafter; and
3. As frequently as necessary, until signs and symptoms stabilize for individuals with a high-risk profile.

[§ 4.66. § 4.49. First aid equipment accessibility.]

First aid equipment shall be easily accessible in a well-marked location and include a blood pressure cuff and thermometer.

[§ 4.67. § 4.50. Light snacks and fluids.]

Light snacks and fluids shall be offered to individuals who are not in danger of aspirating.

Article 5.

Treatment Services in Correctional Facilities.

Final Regulations

[~~§ 4-68.~~ § 4.51. Resolution of procedural and programmatic issues between clinical and security staff.]

The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security staff.

[~~§ 4-69.~~ § 4.52. Communication between clinical and security staff.]

The provider shall demonstrate ongoing communication between clinical and security staff to ensure individual care.

[~~§ 4-70.~~ § 4.53. Cross-training for clinical and security staff.]

The provider shall provide cross-training for the clinical and security staff that includes:

1. Mental health [, mental retardation,] and substance abuse education;
2. Use of clinical and security restraints; and
3. Channels of communication.

[~~§ 4-71.~~ § 4.54. Use of clinical and security restraint; in-service training.]

Staff [shall] receive periodic in-service training and have knowledge of and can demonstrate the appropriate use of clinical and security restraint.

[~~§ 4-72.~~ § 4.55. Physical environment, clinical services and security mission of facility.]

The physical environment shall enhance clinical services while supporting the security mission of the facility.

[~~§ 4-73.~~ § 4.56. Location to provide program services.]

The locations designated for clinical services, activities, and recreation shall be sufficient to provide program services.

[~~§ 4-74.~~ § 4.57. Security and behavioral assessments.]

Security and behavioral assessments shall be completed at the time of admission to determine program eligibility and at least weekly for the safety of clients, other individuals, staff, and visitors.

[~~§ 4-75.~~ § 4.58. Client orientation.]

[~~Within five days of admission,~~] Clients shall receive orientation that is appropriate to their education level and clinical condition. Orientation shall include:

1. Individual rights and responsibilities;

2. Program services; and

3. Security restrictions, if any.

[~~§ 4-76.~~ § 4.59. Living quarters assignment.]

Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

[~~§ 4-77.~~ § 4.60. Group bathroom facilities.]

Group bathroom facilities shall be partitioned between toilets and urinals to provide privacy.

[~~§ 4-78.~~ § 4.61. Uniform clothing.]

If uniform clothing is required, the clothing shall be properly fitted, climatically suitable, durable, and presentable.

[~~§ 4-79.~~ § 4.62. Personal grooming and care services for recalcitrant individuals.]

Personal grooming and care services for recalcitrant individuals shall be a cooperative effort between the clinical and security staff.

[~~§ 4-80.~~ § 4.63. Privacy for contact with family and attorneys.]

Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

[~~§ 4-81.~~ § 4.64. Financial compensation for work performed.]

Financial compensation for work performed shall be determined by the Department of Corrections. Personal housecleaning tasks may be assigned without compensation to the individual.

[~~§ 4-82.~~ § 4.65. Use of audio equipment.]

The use of audio equipment, such as televisions, radios, and record players, shall not interfere with [~~other~~] therapeutic activities.

[~~§ 4-83.~~ § 4.66. Clinical assessments when disciplinary action or restrictions required.]

An assessment of the individual's clinical condition and needs is made when disciplinary action or restrictions are required for infractions of security measures.

[~~§ 4-84.~~ § 4.67. Clinical services provided when security detention or isolation imposed.]

Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

[§ 4.85. § 4.68. Aftercare planning.]

Aftercare planning for clients nearing the end of incarceration shall include provision for continuing medication and follow-up services with area community services to facilitate successful reintegration into the community.

V.A.R. Doc. No. R95-125; Filed November 15, 1994, 5:03 p.m.

Virginia Department of Mental Health, Mental Retardation
and Substance Abuse Services

PROVIDER APPLICATION FOR LICENSURE

Code of Virginia § 37.1-183.1



Attach address label here

Please use a typewriter or print legibly using permanent, black ink. This application may be completed by the individual, chief executive officer, director, or other member of the governing body who has the authority and responsibility for maintaining standards, policies, and procedures for the service. The following information is provided to assist in completing items # and # of this application.

Item # : Types of services that can be listed include:

- Day Support
- Emergency
- Inpatient
- Intensive In-Home
- Medical Detox
- Opioid Replacement Therapy
- Outpatient
- Residential
- Respite Care
- Sublingual
- Social Detox
- Sponsored Placements
- Supported Residential

Item # : A partial list of accrediting bodies that may be identified:

- Joint Commission on Accreditation of Health Care Organizations
- Commission on Accreditation of Rehabilitation Facilities
- Accreditation Council for Services for People with Developmental Disabilities
- Virginia Association of Special Education Facilities

A check made payable to the Treasurer of Virginia must be submitted with this application. Fee schedule is attached

Thank you.

1. Applicant Information:

Name: Identify the person, partnership, corporation, association, or governmental agency applying to lawfully establish, conduct, operator maintain a facility:
 Address: _____
 Mailing Address (if different): _____
 City: _____ Zip: _____
 Phone: () _____
 Chief Executive Officer or Director. Identify the person responsible for the overall management and oversight of the facility to be operated by the applicant.
 Name: _____
 Title: _____
 Phone: () _____

2. Organizational Structure. Identify the organizational structure of the applicant's governing body.

Check one (1) of the following:
 Non-Profit
 For-Profit

Check one (1) of the following:
 Individual (proprietorship)
 Partnership
 Corporation
 Unincorporated Organization or Association

Public Agency:
 State
 Community Services Board
 Other

3. Do you offer Methadone as a treatment modality? Yes No

If yes, identify program(s) below:

Listing of Programs to be included under Provider License

(A Program Information Data Sheet must be submitted for each Program listed below).

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

4. Program Name. Complete for each service offered by the organization.

Type of Service: _____
 Street Address: _____
 City: _____ Phone: _____
 Site Manager: _____

THIS PROGRAM SERVES:
 persons with single diagnosis (check all that apply): AND/OR persons with multiple diagnoses (check all that apply):
 Mental Retardation Developmental Disabilities Mental Illness/Mental Retardation
 Mental Illness Substance Abuse Mental Retardation/Substance Abuse
 Mental Illness/Substance Abuse
 Mental Illness/Mental Retardation/Substance Abuse

Client Demographics (check all that apply):
 Male Female Child Adolescent Adult Geriatric

Accreditation/Certification Status: _____
Name of Accrediting Body

Type of Service: _____
 Street Address: _____
 City: _____ Phone: _____
 Site Manager: _____

THIS PROGRAM SERVES:
 persons with single diagnosis (check all that apply): AND/OR persons with multiple diagnoses (check all that apply):
 Mental Retardation Developmental Disabilities Mental Illness/Mental Retardation
 Mental Illness Substance Abuse Mental Retardation/Substance Abuse
 Mental Illness/Substance Abuse
 Mental Illness/Mental Retardation/Substance Abuse

Client Demographics (check all that apply):
 Male Female Child Adolescent Adult Geriatric

Accreditation/Certification Status: _____
Name of Accrediting Body

Type of Service: _____
 Street Address: _____
 City: _____ Phone: _____
 Site Manager: _____

THIS PROGRAM SERVES:
 persons with single diagnosis (check all that apply): AND/OR persons with multiple diagnoses (check all that apply):
 Mental Retardation Developmental Disabilities Mental Illness/Mental Retardation
 Mental Illness Substance Abuse Mental Retardation/Substance Abuse
 Mental Illness/Substance Abuse
 Mental Illness/Mental Retardation/Substance Abuse

Client Demographics (check all that apply):
 Male Female Child Adolescent Adult Geriatric

Accreditation/Certification Status: _____
Name of Accrediting Body

5. Certification of Application

This certification is to be read and signed by the applicant. The person signing below must be the individual applicant in the case of a proprietorship or partnership, or the chairperson or equivalent officer in the case of a corporation or other association, or the person charged with the oversight of the facility by the appointing authority in the case of a governmental agency.

I am in receipt of and have read the applicable rules and regulations for licensure. It is my intent to comply with the statutes and regulations and to remain in compliance if licensed.

I grant permission to authorized agents of the Department of Mental Health, Mental Retardation and Substance Abuse Services to make necessary investigations into this application or any complaints received. I understand that routine announced and unannounced visits will be made to determine continued compliance with regulations.

TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL INFORMATION CONTAINED HEREIN IS CORRECT AND COMPLETE. I FURTHER DECLARE MY AUTHORITY AND RESPONSIBILITY TO MAKE THIS APPLICATION.

Signature of Applicant: _____ Date: _____

Title: _____

This application is to returned to:

Office of Licensure
Department of Mental Health, Mental Retardation and Substance Abuse Services
Post Office Box 1737
Richmond, Virginia 23214

DMH/MRSAS 12 (12/90)

COMMONWEALTH OF VIRGINIA DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES STAFF INFORMATION SHEET

Name of Program: _____ Date: _____

Position (use * to denote position vacancy)	Name	Staff Member Education Level and Credentials	Program Assigned							
				MON	TUES	WED	THURS	FRI	SAT	SUN

Use @ to indicate staff having current certificate in First Aid. Use # to indicate staff who have received a certificate in cardiopulmonary resuscitation.

EMERGENCY REGULATIONS

DEPARTMENT OF STATE POLICE

Title of Regulation: VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.

Statutory Authority: § 19.2-390.1 of the Code of Virginia.

Effective Dates: November 17, 1994, through November 16, 1995.

Summary:

Chapter 362 of the 1994 Acts of Assembly (SB 455) amended the Code of Virginia by adding § 19.2-390.1, requiring the Department of State Police to keep and maintain a Sex Offender Registry. The Department of State Police is required to promulgate regulations governing the operation and maintenance of the Sex Offender Registry and the expungement of records on persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement has been entered, as well as establishing a fee for responding to requests for information from the Sex Offender Registry. The emergency regulations establish the procedures and forms to be used in registration of persons required by law to register with the Sex Offender Registry, and in the lawful dissemination of Sex Offender Registry. The emergency regulations also establish the fee to be charged for responding to requests for information from the Sex Offender Registry.

Basis of Emergency:

The effective date of the enabling legislation did not allow sufficient time to comply with the provisions of the Administrative Process Act (APA).

During the term of these emergency regulations, the Department of State Police will promulgate permanent regulations following the APA.

/s/ M. Wayne Huggins
Superintendent of State Police
Date: September 9, 1994

Approved:

/s/ Jerry Kilgore
Secretary of Public Safety
Date: September 15, 1994

Approved:

/s/ George Allen
Governor
Date: November 4, 1994

I acknowledge receipt of this emergency regulation to be effective November 17, 1994.

/s/ Joan W. Smith
Registrar of Regulations
Date: November 17, 1994

VR 545-01-18. Regulations Governing the Operation and Maintenance of the Sex Offender Registry.

Article 1.
Sex Offender Registry Established.

§ 1.1. The Department of State Police shall keep and maintain a Sex Offender Registry, to include conviction data received from the courts pursuant to Virginia Code § 19.2-390 and registrations received from persons required to do so by Virginia Code § 19.2-298.1.

§ 1.2. The records of the Sex Offender Registry shall be maintained separate and apart from all other records maintained by the Department of State Police.

Article 2.
Registration.

§ 2.1. Any person required to register with the Department of State Police pursuant to Virginia Code § 19.2-298.1 shall do so by completing the Sex Offender Registration Form, Form SP-236, and mailing it to Department of State Police, Central Criminal Records Exchange, Attn: Sex Offender Registry, P. O. Box 27472, Richmond, Virginia 23261-7472. Form SP-236 may be obtained at any office of the Department of State Police.

§ 2.2. Within thirty days following any change of residence by any person required to register with the Sex Offender Registry, any such person shall re-register by mailing a new Sex Offender Registration Form with the new residence information.

Article 3.
Expungement from Registry.

§ 3.1. Upon receipt of a certified copy of a death certificate recording the death of any person registered with the Sex Offender Registry, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

§ 3.2. Upon receipt of a duly attested copy of a pardon issued by the Governor of Virginia as to any conviction reported to the Sex Offender Registry, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender Registry. If the pardoned person has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

§ 3.3. Upon receipt of a report from any clerk of a circuit court that any conviction previously reported to the Sex Offender Registry has been reversed, the Department of State Police will expunge any and all records concerning

such conviction from the Sex Offender Registry. If the person whose conviction is reversed has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

§ 3.4. Upon receipt of a certified copy of an order of expungement entered pursuant to Virginia Code §§ 19.2-298.2 or 19.2-392.1, the Department of State Police will expunge any and all records concerning such conviction from the Sex Offender Registry. If the person whose conviction has been expunged has no other convictions requiring registration, the Department of State Police will expunge any and all records concerning such person from the Sex Offender Registry.

Article 4.

Dissemination of Sex Offender Registry Information.

§ 4.1. Any authorized officer or employee of an agency authorized to receive Sex Offender Registry information pursuant to Virginia Code § 19.2-390.1 may request such information by completing a Sex Offender Registry Record Request form, Form SP-230, and mailing the completed form, along with the appropriate fee, to Department of State Police, Central Criminal Records Exchange, P. O. Box C-85076, Richmond, Virginia 23261-5076. Form SP-230 may be obtained from any office of the Department of State Police.

Article 5.

Fee for Responding to Requests for Information.

§ 5.1. Any person requesting Sex Offender Registry information shall pay a fee of fifteen dollars (\$15.00) for each Sex Offender Registry record requested. If the request is made in conjunction with a request for a criminal history record for the same individual, the person making the request shall pay a fee of twenty dollars (\$20.00), to cover both requests.

Article 6.

Forms.

§ 6.1. Form SP-236. Sex Offender Registration Form.

§ 6.2. Form SP-230. Sex Offender Registry Record Request.

VA.R. Doc. No. R95-137; Filed November 17, 1994, 9:42 a.m.

SP-230 7-1-94

SEX OFFENDER REGISTRY RECORD REQUEST
CRIMINAL HISTORY RECORD REQUEST

(Please check box to identify the type of search requested.)

A CERTIFIED CHECK OR MONEY ORDER MADE PAYABLE TO "VIRGINIA STATE POLICE" FOR \$15.00 MUST ACCOMPANY THIS REQUEST BEFORE A FILE SEARCH WILL BE INITIATED. A REQUEST FOR BOTH RECORDS MUST INCLUDE A CERTIFIED CHECK OR MONEY ORDER IN THE AMOUNT OF \$20.00.

• Personal Checks Not Accepted •

MAIL REQUEST TO:	DEPARTMENT OF STATE POLICE CENTRAL CRIMINAL RECORDS EXCHANGE P. O. BOX C-85076 RICHMOND, VIRGINIA 23261-5076	<input type="checkbox"/> CHARGE ACCT# _____
		<input type="checkbox"/> PAID
		<input type="checkbox"/> CJA

1. (Print Clearly) NAME TO BE SEARCHED						
LAST NAME	FIRST	MIDDLE	MAIDEN	SEX	RACE	DATE OF BIRTH
PLACE OF BIRTH - County or City		PLACE OF BIRTH - State or Country		SOCIAL SECURITY NUMBER		

2. AGENCY, INDIVIDUAL OR AUTHORIZED AGENT MAKING REQUEST						
MAIL REPLY TO: Agency, Individual or Authorized Agent Making Request						
<table border="1"> <tr><td>NAME</td></tr> <tr><td>STREET/RFD</td></tr> <tr><td>CITY</td></tr> <tr><td>STATE</td></tr> <tr><td>ZIP CODE</td></tr> </table>	NAME	STREET/RFD	CITY	STATE	ZIP CODE	Check the applicable box: <input type="checkbox"/> Registered <input type="checkbox"/> Unregistered small family day-care home
NAME						
STREET/RFD						
CITY						
STATE						
ZIP CODE						
As provided for in Sections 19.2-389 and 19.2-390.1, Code of Virginia, I hereby request the criminal history record and/or sex offender record of the individual named in Section 1 above.						
I certify that I am entitled by law to receive the requested record (s), and that the record (s) provided shall be used only for the administration of criminal justice or for the screening of current or prospective employees or volunteers. I understand that further dissemination of sex offender registry records or criminal history records or use for purposes not authorized by law is prohibited and constitutes a violation punishable as a Class 1 or Class 2 misdemeanor. Sex Offender Registry searches may only be conducted for: law enforcement agencies; public school divisions; private denominational or parochial schools; child welfare agencies; or registered/unregistered small family day-care homes as defined in Section 63.1-195, Code of Virginia.						
Date of Request _____	Signature of Person Making Request _____					

FOR AN ADDITIONAL COPY OF A SEX OFFENDER RECORD OR A CRIMINAL HISTORY RECORD, CHECK THE APPROPRIATE BLOCK AND ENCLOSE A SEPARATE CHECK OR MONEY ORDER IN THE AMOUNT OF \$5.00 FOR EACH ADDITIONAL RECORD.

NOTICE

Response based on comparison of information about person named in request against a master name index contained in the files of the Virginia State Police Central Criminal Records Exchange/Sex Offender Registry only.

NO CONVICTION DATA NO CRIMINAL RECORD - Name Search Only NO SEX OFFENDER RECORD

Date: _____ By: _____

SP-236 7-1-94

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE**

SEX OFFENDER REGISTRATION FORM

Section 19.2-298.1(B) requires every person serving a sentence of confinement or under community supervision for a felony sexual offense as specified on the reverse side of this form to register with the Department of State Police. Refer to reverse for instructions on completing this form.

AGENCY OR INDIVIDUAL PROVIDING REGISTRY INFORMATION:

(CHECK ONE)

CIRCUIT COURT

NAME OF COURT _____

SIGNATURE: _____

DEPT. OF CORRECTIONS Name of Location _____

Type of Release & Date _____

Inmate Number _____

PROBATION/PAROLE/OTHER COMMUNITY SUPERVISION

District Office _____

TYPE OF REGISTRATION
INITIAL <input type="checkbox"/>
UPDATE <input type="checkbox"/>

OFFENDER INFORMATION: (PRINT CLEARLY)

LAST NAME	MAIDEN	FIRST	MIDDLE	SEX	RACE	DOB
-----------	--------	-------	--------	-----	------	-----

ALIASES USED: _____	SSN _____
---------------------	-----------

HOME ADDRESS	STREET	CITY-TOWN	STATE	ZIP CODE
--------------	--------	-----------	-------	----------

VIRGINIA CONVICTION(S) INFORMATION:

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NO.

OUT OF STATE CONVICTION(S) INFORMATION:

CONVICTED IN ANOTHER STATE OF SEX OFFENSE (S)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
STATE(S)	DATE(S) OF CONVICTION	SENTENCING COURT (S)	COURT CASE NO.

*SIGNATURE OF PERSON REGISTERING _____

DATE SUBMITTED _____

*My signature herewith signifies that I have been duly informed of my responsibilities to maintain this information current with the Department of State Police. Furthermore, I understand I am required to re-register with the Department of State Police within 40 days following any change of address. The intentional failure to register or knowingly providing false information to the Registry is punishable as a Class 1 misdemeanor.

MAIL THIS FORM TO:
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
ATTN: SEX OFFENDER REGISTRY
P. O. BOX 27472

REGISTRY NUMBER:
STAFF POLICE USE ONLY

Instructions for Completing Sex Offender Registration Form

Sections 19.2-298.1 (A) and (C), 19.2-390 (C), 19.2-390.1 (A), 46.2-323, 53.1-116.1, and 53.1-160.1 require all individuals convicted of any sex offense(s) listed below whether such conviction occurred pursuant to Virginia law or under substantially similar law of the United States or any other state to register with the Department of State Police.

This registration form is to be used for reporting and/or updating the Sex Registry as maintained by the Department of State Police. Questions concerning this form or procedures relating to the registry may be directed to the Office Manager, Central Criminal Records Exchange by phoning (804) 674-2086.

Convictions Reportable to Sex Offender Registry

18.2-61	Rape
18.2-63	Carnal knowledge of child between 13 and 15 years old
18.2-64.1	Carnal knowledge of certain minors
18.2-67.1	Forcible sodomy
18.2-67.2	Inanimate Object Sexual Penetration
18.2-67.3	Aggravated Sexual Battery
18.2-67.5	Attempted Rape, Forcible Sodomy, Inanimate Object Sexual Penetration, Aggravated Sexual Battery and Sexual Battery.
18.2-361	Crimes Against Nature
18.2-366	Adultery and Fornication by Persons Forbidden to Marry; Incest
18.2-370	Taking Indecent Liberties with Children
18.2-370.1	Taking Indecent Liberties with Child by Person in Custodial or Supervisory Relationship.

Clerk of Courts

Section 19.2-390 of the Code, as amended, requires the Clerk of a Circuit Court to register an individual, whether convicted as a juvenile or adult with the Department of State Police. Instructions for completing the registration form are as follows:

1. Check the block to identify the Circuit Court of origin, write the name of the court, and sign the document.
2. Indicate the type of registration, initial or update. When this report is submitted after conviction, consider it an initial registration. If the court modifies or amends information submitted on a previous report, show "update" as the type of registration.
3. **Offender Information.** Enter the full name of individual who was convicted, as it appears on the sentencing court order. Record all aliases the individual is known to have used, including sex, race, date of birth, social security number and home address.

4. **Virginia Conviction(s) Information:** List the specific reference to the offense(s) for which the individual has been convicted by recording the Code Section(s) and literal description(s) of the offense(s). PLEASE NOTE: If the individual has previously been convicted in your court at any time of any of the aforementioned offenses, provide this information in this category of the registration form.

5. **Out of State Conviction(s) Information:** Record any past criminal convictions which may become a matter of court record in any other state or federal law conviction which is substantially similar to the offenses as aforementioned.

Section 19.2-298.1, as amended requires sentencing orders for a conviction of any of the aforementioned offenses to specify, as a part of the sentence imposed, to register with the Department and imposes a duty to keep the registration current. The signature block of this form has been developed to disclose to the offender his responsibility to maintain his/her registration current, therefore, obtaining the offender's signature in the space provided will finalize the official completion of the registration form.

Department of Corrections/Probation/Parole and Other Community Supervision

Section 19.2-298.1 (B) of the Code requires every person serving a sentence of confinement or under community supervision for a felony as aforementioned to be required to register with the Department of State Police and shall be given notice of the duty to register. Additionally, Section 19.2-390(F), as amended, provides for the Department of Corrections to make reports of correctional status changes to the Sex Offender Registry, therefore, the completion and submission of this form to the Department of State Police will be utilized to report correctional status information.

1. Check the block to indicate the form was submitted by a Correctional facility and note the location in which the form was prepared.
2. Indicate the type of release (i.e., parole, discharge, etc.) and the date of release from custody.
3. **Offender Information:** Record the individual's full commitment name, all aliases used, sex, date of birth, social security number and the full post release address.
4. **Out of State Conviction(s) Information:** Record any past convictions within any other state or federal court which are substantially similar to the offenses listed above.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER THIRTY-NINE (94)

VIRGINIA'S INSTANT GAME LOTTERY; "4 CARD BINGO," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's instant game lottery (Number 0302), "4 Card Bingo." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: October 17, 1994

V.A.R. Doc. No. R95-126; Filed November 16, 1994, 11:29 a.m.

DIRECTOR'S ORDER NUMBER FORTY (94)

THE VIRGINIA LOTTERY "DAYTONA 500 SECOND CHANCE"; FINAL RULES FOR GAME OPERATION

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia Lottery "Daytona 500 Second Chance" drawing game rules for the Virginia Lottery promotional program to be conducted from Thursday, November 17, 1994 through Friday, December 30, 1994. These rules amplify and conform to the duly adopted State Lottery Department regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: October 31, 1994

V.A.R. Doc. No. R95-127; Filed November 16, 1994, 11:29 a.m.

DIRECTOR'S ORDER NUMBER FORTY-FIVE (94)

VIRGINIA'S FORTY-FIFTH INSTANT GAME LOTTERY; "FAST CASH," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's forty-fifth instant game lottery, "Fast Cash." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle
Director
Date: November 11, 1994

V.A.R. Doc. No. R95-128; Filed November 16, 1994, 11:29 a.m.

Virginia Tax Bulletin

Virginia Department of Taxation

January 19, 1994

94-1

RETAIL SALES AND USE TAX: ANTIQUE PURCHASES

Law change: Effective January 1, 1994, Virginia dealers are prohibited from accepting a resale exemption certificate from the purchaser of tangible personal property which is more than 50 years old if the purchaser does not have a Virginia sales and use tax registration number. The purchaser must pay the sales tax and apply for a refund of the tax after the property is resold. See Va. Code § 58.1-602.1.

Under the new law, every Virginia dealer is required to separately report gross sales of tangible personal property more than 50 years old to purchasers who:

- (1) offer a resale exemption certificate, and
- (2) have no Virginia sales and use tax registration number.

In an effort to keep the administrative burden on Virginia dealers to a minimum, while satisfying the separate reporting requirement mandated in the statute, the department has incorporated current reporting and refund procedures wherever possible.

Compliance: Because this Tax Bulletin has been issued subsequent to the effective date of the law change, the department will audit for compliance for taxable periods beginning February 1, 1994 and after.

Schedule ST-51 and instructions will be mailed to dealers by March 1, 1994. Schedules may also be obtained by contacting the department.

Filing Requirements: Schedule ST-51 has been developed for separate reporting purposes and must be filed with Form ST-9 (Dealer's Retail Sales and Use Tax Return) for any period in which the dealer has such transactions to report. This schedule must also be used to report refunds issued and credits taken as a result of claims made by purchasers to the dealer (see below).

Refund Procedures: An out-of-state dealer who pays the tax and subsequently resells the item(s) purchased within 18 months of the purchase date may apply to the dealer who sold the property for a refund or credit of the sales tax paid.

Evidence of a bona fide sales transaction must be presented to the Virginia dealer to validate the refund/credit claimed by the out-of-state dealer (purchaser). A copy of the sales invoice showing the item(s) sold and the date of the sale are required to be presented to the Virginia dealer, along with a copy of the original purchase invoice.

As provided under current department procedures, a purchaser may request a refund directly from the department if the Virginia dealer is no longer in business when the purchaser's right to a refund arises.

The purchaser must provide the department with evidence of a bona fide sales transaction, as set forth above, along with proof of the month the sales tax on the purchase was reported to the department.

Bond: In lieu of providing a Virginia sales and use tax registration number, a purchaser may post bond in accordance with Va. Code §§ 58.1-630 and 16.1-107 to secure collection of the tax. In such a case, the Virginia dealer shall accept the resale exemption certificate offered by the purchaser and report the transaction on Form ST-9 only (not on Schedule ST-51).

Virginia Tax Bulletin 94-1
Page 2

EXAMPLE: In June of 1994 Company X, a Virginia furniture dealer, sold \$7,500 in furniture and also sold an antique oak washstand for \$300 to an out-of-state antique dealer (Purchaser 1). Purchaser 1 presented a resale exemption certificate but did not have a Virginia sales and use tax registration number. During the same month, merchandise with a sales price of \$700 was returned to Company X, and a refund of \$18 was issued to an out-of-state dealer (Purchaser 2) who purchased an antique coffee table for \$400 (excluding tax) in February 1994 and paid the tax after his resale exemption certificate was not accepted because he did not have a Virginia sales and use tax registration number. Purchaser 2 resold the coffee table in May.

In order to comply with the new law (Va. Code § 58.1-602.1), Company X must:

- (1) Refuse to accept Purchaser 1's resale exemption certificate and charge \$13.50 for Virginia sales tax on the purchase of the antique oak washstand for \$300.
- (2) Report gross sales and deductions for February on Form ST-9 and Schedule ST-51 as shown below.

FORM ST-9 DEALER'S RETAIL SALES AND USE TAX RETURN		For Assessment Code (884) 287-0027				
FOR PERIOD ENDING		A. ITEM		B. STATE	C. LOCAL	
JUNE 30, 1994		1. GROSS SALES	(A)	7,800	(A)	7,800
PLUNG DATE		2. PERSONAL USE				
		3. ITEM 1 PLUS ITEM 2				
		4. EXEMPT SALES				
		5a. TOTAL DEDUCTIONS	(C)	1,100	(C)	1,100
ACCOUNT NUMBER		7. AMOUNT ON WHICH TAX MUST BE COMPUTED				
LOCALITY		8. TAX STATE 3% LOCAL 1%*				
		9a. DEALER'S DISCOUNT				
		10. ITEM 6 LESS ITEM 9				
		11. PENALTY FOR LATE FILING AND PAYMENT				
		12. INTEREST FOR LATE FILING AND PAYMENT				
		14. COMBINED STATE & LOCAL TAX PER \$100 DUE AND PAYABLE				

MAKE CHECK PAYABLE TO THE VA DEPARTMENT OF TAXATION

SIGNATURE _____ DATE _____ TELEPHONE NO. _____

FORM ST-51 SCHEDULE FOR SALES OF TANGIBLE PERSONAL PROPERTY MORE THAN 90 YEARS OLD TO OUT-OF-STATE DEALERS WITH NO NEXUS IN VIRGINIA			
Buyer Address Number or P.O. Box	Buyer Name	Month	Year
		06	94
1. Gross receipts total.		(B)	300
2. Sales price of tangible personal property for which a refund or credit of sales tax paid by the purchaser was issued.		(D)	400
3. Total deductions from Form ST-9, Item 6 related to sales of tangible personal property more than 90 years old.			

- A - Gross sales reported on Form ST-9: \$7,800 (\$7,500 furniture plus \$300 for the antique washstand).
- B - Gross sales reported on Schedule ST-51: \$300.
- C - Deductions reported on Form ST-9: \$1,100 (\$700 sales price for returned merchandise plus the \$400 sales price of the coffee table for which a refund was issued).
- D - Deductions reported on Schedule ST-51: \$400.

NOTE: Amounts entered on Schedule ST-51 are included in the figures reported on the Virginia dealer's ST-9. The schedule is for information purposes only and separate payments should not accompany this schedule. Dealers should maintain records of these transactions for verification of the deductions claimed.

For additional information: Contact the Office of Taxpayer Services, Virginia Department of Taxation, P.O. Box 1880, Richmond, Virginia 23282-1880, (804) 367-8037.

Virginia Tax Bulletin

Virginia Department of Taxation

February 15, 1994

94-2

FIXED DATE CONFORMITY REPEALED

Under emergency legislation passed by the 1994 General Assembly and signed by Governor Allen, the 1993 legislation which deconformed Virginia's income tax law to federal law has been repealed.

Senate Bill 185, introduced by Senator Walter A. Stosch, CPA, repeals the 1993 legislation which temporarily froze Virginia's conformity to federal income tax law as it existed on December 31, 1992. In effect, it would reconfirm Virginia tax law to federal tax law as if deconformity had never occurred.

Since 1972, Virginia has conformed to federal income tax law. Whenever federal income tax law was changed, the changes automatically affected Virginia income taxes, unless otherwise exempted. The 1993 legislation deconformed Virginia's tax law for one year - 1993. Because of changes in federal law contained in the Omnibus Budget Reconciliation Act (OBRA) of 1993, effective for taxable year 1993, some filers (individuals, fiduciaries, and corporations) would have been required to recompute their federal adjusted gross income (FAGI) or federal taxable income (FTI), in accordance with 1992 federal law, rather than 1993 federal law.

Special Instructions for Taxpayers

Most Virginia taxpayers will not be affected by this change because only a limited number of taxpayers would have been required to make the special fixed date conformity modifications.

Taxpayers Who Have Not Yet Filed

Taxpayers who have **not** yet filed their returns should disregard the instructions for the *Special Fixed Date Conformity Additions* and *Special Fixed Date Conformity Subtractions*. No entries for these items should be made on the following lines:

Individuals and Fiduciaries:

Form 760 - Lines 32 and 37
Form 760PY - Lines 33 and 38
Form 763 - Lines 30 and 35
Form 770 - Schedule III, Lines 1 and 6

The Virginia Schedule A included with your income tax instructions should **NOT** be used. Instead you may file a copy of your federal Schedule A as you have always done.

Corporations:

Form 500 - Lines 2(b) and 4(c)
Form 500S - Part II, Line 3 and Part III, Line 8

Virginia Tax Bulletin 94-2

Page 2

Taxpayers Who Have Already Filed

Taxpayers who have **already filed** and reported *Special Fixed Date Conformity Modifications* do NOT need to file amended returns. The Department of Taxation will adjust any return already filed to eliminate the unnecessary modifications. Taxpayers will be notified of the change in their tax liability, if any.

Forgiveness Of Underpayment Penalty

The Department of Taxation will waive the addition to the tax charge (760C, 760F, or 500C) for any taxpayer who can demonstrate that the elimination of the *Special Fixed Date Conformity Subtractions* modification created additional tax sufficient to cause the taxpayer to be subject to the addition to the tax charge. Taxpayers must write **FIXED DATE CONFORMITY** across the top of Form 760C, 760F, or 500C.

Tax Bulletin 93-9

This Tax Bulletin **supersedes** Tax Bulletin 93-9, dated December 1, 1993 and any other oral directives or written documents in conflict herewith.

Additional Information

For additional information, contact the Taxpayer Assistance Section, Office of Taxpayer Services, Virginia Department of Taxation, P. O. Box 1115, Richmond, Virginia 23208-1115 or call (804) 367-8031 (Individuals) or (804) 367-8036 (Corporations).

Virginia Tax Bulletin

Virginia Department of Taxation

February 4, 1994

94-3

VIRGINIA STATE LOTTERY WINNINGS Individual Income and Withholding Taxes

Individual Income Tax Subtraction

For purposes of computing Virginia taxable income, individuals will be allowed to subtract, to the extent included in federal adjusted gross income, each lottery prize less than \$600. No subtraction is allowed for the first \$599 of a prize of \$600 or more.

The subtraction can be taken on the line designated "Other" in Part III of Virginia Form 760. The subtraction cannot be taken on Virginia Form 760S.

Withholding Requirements

The State Lottery Department is required to withhold state income tax on any prize in excess of \$5,001, including prizes won by nonresidents. Virginia Regulation 630-6-4006 requires the State Lottery Department to withhold 4% of any lottery winning in excess of \$5,001 and report this amount to the Virginia Department of Taxation on Internal Revenue Service Form W-2G.

Important Reminder - Estimated Taxes

While prizes of \$5,001 or less will not be subject to withholding, individuals will be required to pay estimated tax if their estimated tax liability on all income subject to state taxation exceeds their withholding and tax credits by more than \$150. While lottery prizes in excess of \$5,001 are subject to the flat 4% withholding rate, taxpayers with other income subject to state taxation will be required to pay estimated tax if their estimated tax liability exceeds their total withholding and tax credits by more than \$150. All taxpayers who receive lottery winnings subject to state taxation must file a Declaration of Estimated Tax if so required. Failure to pay at least 90% of the actual tax liability throughout the year by withholding and installments of estimated tax, except in those circumstances provided by law, will result in the assessment of an addition to tax for the underpayment of estimated tax.

If you have any questions on the application of the income tax and withholding requirements to a lottery winning, please feel free to call your local Commissioner of the Revenue or the Department of Taxation at (804) 367-8031.

Virginia Tax Bulletin

Virginia Department of Taxation

April 11, 1994

94-4

RETAIL SALES AND USE TAX: ANTIQUE PURCHASES

Under legislation passed by the 1994 General Assembly and signed by Governor Allen, the effective date of the 1993 legislation relating to antique purchases by out-of-state dealers has been deferred to July 1, 1995.

Under the law passed by the 1993 General Assembly, Virginia dealers are prohibited from accepting a resale exemption certificate from the purchaser of tangible personal property more than 50 years old if the purchaser does not have a Virginia sales and use tax registration number. See Va. Code § 58.1-602.1. The law became effective January 1, 1994, but a provision in 1994 legislation (House Bill 1175) has deferred the effective date to July 1, 1995.

Accordingly, until July 1, 1995, Virginia dealers may continue to accept resale exemption certificates for tangible property more than 50 years old from out-of-state purchasers with no Virginia sales and use tax registration number.

Industry Participation: The department recognizes that there are many issues surrounding the implementation of the new law and would like to form a working group of 10 to 12 interested parties to work with the department over the next year to resolve the issues and ensure that the requirements established under the law are satisfied. Anyone interested in being a part of the working group should contact Randy Melton at (804) 367-9359.

Revised Refund Procedure: In Tax Bulletin 94-1, issued January 19, 1994, it was announced that out-of-state purchasers were to apply to the Virginia dealer who sold the property for a refund or credit of the sales tax paid. In response to concerns raised by Virginia dealers, the department made an administrative decision to handle all refund requests from out-of-state antique dealers.

Prior Compliance: If an out-of-state purchaser presented a resale exemption certificate that was not accepted by a Virginia dealer because of the 1993 law change, the purchaser may apply directly to the department for a refund of the tax paid. A refund will be issued provided that all of the following are supplied: (1) state of registration and sales and use tax registration number; (2) purchase invoice indicating sales price of the items, the tax paid and the name and address of the Virginia dealer; and (3) date of sale. Absent any one of these, a refund will not be issued.

For additional information: Contact the Office of Taxpayer Services, Virginia Department of Taxation, P.O. Box 1115, Richmond, Virginia 23208-1115, (804) 367-8037.

Virginia Tax Bulletin

Virginia Department of Taxation

May 23, 1994

94-6

FEDERAL RETIREES: NO NEED YET TO FILE AMENDED TAX RETURNS FOR 1985-1988

On May 20, 1994, Governor Allen signed emergency legislation (H.B. 4006) to clarify that federal retirees need **NOT** file amended income tax returns at this time to preserve their claim for refunds for taxable years 1985-1988.

This action came in response to numerous articles being published which instruct federal retirees who are affected by the pending Virginia income tax litigation on the taxation of federal pensions to file amended returns for taxable years 1985-1988 with the Virginia Department of Taxation by June 18.

On June 18, 1993, in the case of Harper v. Virginia Department of Taxation, 112 S. Ct. 2519, the United States Supreme Court held that its decision in Davis v. Michigan Dep't of Treas., 489 U.S. 803 (1989), which determined that the unequal tax treatment of federal and state government retirees was unconstitutional, is to be retroactively applied. The court declined to order refunds for the retirees, however, and remanded the case to the Virginia courts to determine whether Virginia law provided adequate opportunities for taxpayers to challenge tax assessments prior to the actual payment of the tax.

Virginia Code § 58.1-1823 (B) allows amended returns to be filed, if necessary, one year after a final court decision in the ongoing litigation. The emergency legislation passed on May 11 declared that the decision of the United States Supreme Court in Harper, shall not be deemed a "final" decision for purposes of calculating the one-year statute of limitations.

Until the courts have resolved this issue or until a settlement program such as the one proposed by the Attorney General has been enacted, retirees **do not need to file anything** with the Department of Taxation to protect their rights to a refund or settlement. Once this issue is resolved by the courts or otherwise, the Department of Taxation will advise tax practitioners and members of the federal retirement community as soon as possible of the appropriate actions that must be taken.

Virginia Tax Bulletin

Virginia Department of Taxation

June 23, 1994

94-7

Application of the Sales Tax to Printing Purchased by Out-of-State Advertising Agencies

This bulletin is intended to notify members of Virginia's printing industry of a change to the Virginia Retail Sales and Use Tax Act effective July 1, 1994. This bulletin supersedes Tax Bulletin 93-7.

Current Rule

Under Virginia Regulation 630-10-86, an exemption exists for printed material, other than administrative supplies, stored for 12 months or less in Virginia for distribution in other states.

As set out in Virginia Regulation 630-10-3, advertising agencies are deemed to be the taxable users or consumers of all tangible personal property, including printing, used in providing media advertising services. Media advertising includes direct mail.

Accordingly, the exemption for printing distributed outside of Virginia has not been applicable to agencies providing media advertising services.

Change in Law

Effective July 1, 1994, the exemption for printed materials (other than administrative supplies) stored for 12 months or less in Virginia for distribution outside of Virginia is available to out-of-state advertising agencies.

This change in the law only applies to printing purchased by out-of-state agencies. Instate advertising agencies remain totally taxable on all printing regardless of its ultimate destination.

Documentation

Virginia Certificate of Exemption, Form ST-10A, has been revised to reflect the printing exemption now available to out-of-state advertising agencies.

Conclusion

Out-of-state advertising agencies are now entitled to the exemption for printed materials (except administrative supplies) that are for ultimate distribution outside of Virginia. Instate advertisers must continue to pay the tax on all printing used in providing media advertising services. As this bulletin address only the change in the law, it does not attempt to restate the general rules set out in the printing and advertising regulations.

Virginia Tax Bulletin

Virginia Department of Taxation

June 27, 1994

94-9

APPLICATION OF THE WATERCRAFT SALES AND USE TAX TO THE SALE OF BOAT MOTORS

This bulletin is intended to notify dealers of a change to the Virginia Watercraft Sales and Use Tax Act effective July 1, 1994. This notification affects dealers who are in the regular business of selling watercraft and all other retail dealers who sell boat motors.

Current Rule

Under Va. Code § 58.1-1402, the Watercraft Sales and Use Tax (Watercraft Tax) is imposed on the sale of watercraft sold in Virginia or the use in Virginia of watercraft. The rate of the tax is 2% with a maximum tax of \$2,000. Watercraft subject to the 2% Watercraft Tax are not subject to the 4.5% Retail Sales and Use Tax (Retail Tax).

A "watercraft" is defined as: i) a boat 15 feet or more in length powered by a motor in excess of 25 horsepower, and ii) a sailboat in excess of 18 feet in length.

Under current law, the sale of a motor, sold separately from the boat, is subject to the 4.5% Retail Tax.

Change in the Law

Effective July 1, 1994, any motor used to power a watercraft as defined above, and sold separately from the watercraft, is itself deemed a watercraft. Therefore, a motor sold separately from the boat may be subject to the 2% Watercraft Tax rather than the 4.5% Retail Tax.

Administering the Change in Law

In administering the new law, the Department will classify boat motors into two categories: Motors in excess of 25 horsepower (large motors) and those motors 25 horsepower or less (small motors).

Sale of Large Motors (in excess of 25 HP)

The sale of a large motor is deemed the sale of watercraft and is subject to the 2% Watercraft Tax. Dealers who are in the regular business of selling watercraft, and who have agreed with the Department to collect and remit Watercraft Tax on behalf of their customers, are directed to collect the 2% Watercraft Tax on the sale of large motors.

If a dealer has not agreed with the Department to collect and remit Watercraft Tax, the dealer must charge the 4.5% Retail Tax. The department will subsequently refund the 2.5% difference (between the 4.5% Retail Tax and 2% Watercraft Tax) directly to the customer upon application by the customer to the Department.

Virginia Tax Bulletin 94-9

Page 2

Sale of Small Motors (25 HP and less)

Under the new law, it is anticipated that most sales of small motors will continue to be classified as the sale of tangible personal property subject to the 4.5% Retail Tax. For example:

Example 1: A customer owns a 17 foot rowboat and purchases a 20 HP motor for that boat. Since the combination of a 17 foot boat powered by a 20 HP motor is not a watercraft as defined above, the 4.5% Retail Tax is correct on the sale of the motor.

Therefore, in most instances there is no change in the dealers' collection of the 4.5% Retail Tax on the sale of small motors.

However, in some cases the sale of a small motor may be the sale of a watercraft:

Example 2: A customer owns a 19 foot sailboat (which is a watercraft as defined above) and purchases a 10 HP motor for use on the sailboat as auxiliary power. In this instance, the 10 HP motor is a watercraft.

Example 3: A customer owns a 20 foot bass boat powered by a 50 HP motor (which is a watercraft as defined above). In addition to the large motor, the customer also wants a small, quiet motor to use on the bass boat and so purchases an electric trolling motor. In this instance, the electric trolling motor is a watercraft.

Dealers who are not registered to collect and remit the Watercraft Tax on behalf of their customers must charge the 4.5% Retail Tax on their sales of small motors (as they have been doing prior to the law change). In those instances when the small motor is deemed a watercraft (as in Examples 2 and 3 above), the Department will refund the 2.5% difference (between the 4.5% Retail Tax and 2% Watercraft Tax) directly to the customer upon application by the customer to the Department.

Dealers who have agreed with the Department to collect and remit the Watercraft Tax on behalf of their customers must also collect the 4.5% Retail Tax unless the dealer can document that the small motor is classified as a watercraft. Such documentation must include: i) a written statement from the customer that the motor will be used on a watercraft (as in Examples 2 and 3 above); and ii) the title number issued by the Virginia Department of Game and Inland Fisheries for the watercraft on which the small motor will be used.

Notification to Customers

The Department seeks the help of dealers to notify customers that they may be eligible for a partial refund of the tax paid on boat motors. Forms and instructions for the customer to use in applying for the partial refund will be made available to dealers, and dealers are requested to distribute them to their customers.

For additional information, please contact the Department at (804) 367-8037.

Virginia Department of Taxation
WCT-REFUND CONSUMER'S APPLICATION FOR REFUND

If you bought your boat motor after June 30, 1994, the sale may be subject to a 2% watercraft sales tax, instead of the 4.5% retail sales tax you have paid. If so, you're entitled to a refund for the difference. To see if you qualify, answer the following question:

Will this motor be installed on a watercraft, as defined below? _____

What is a watercraft?

- A: Virginia law defines a watercraft as a boat fitting one of the following descriptions:
- a) A boat that is at least 15 feet long AND that is powered by a motor in excess of 25 horsepower;
 - b) A sailboat that is over 18 feet long.

If you answered "no", you do not qualify for a refund. If you answered "yes", write the boat's Virginia Department of Game and Inland Fisheries title number here _____, and complete the refund application on the back of this sheet. **NOTE:** The watercraft must be titled before you can apply for a refund.

Other Watercraft Refund Information

- Q: I bought a small motor (25 HP or less) – I guess I don't get a refund.
A: Probably not. Small motors are usually subject to the 4.5% retail sales tax. For example, if your boat is 17 feet long, but your primary motor is only 20 HP, your boat doesn't qualify as a watercraft.

- Q: Is there any way I can get a refund on a small motor?
A: Yes, there are a few cases that qualify, as shown in the following examples:

EXAMPLE 1: You own a 19-foot sailboat, and you buy a 10 HP motor to use on the boat for auxiliary power. Since a 19-foot sailboat meets the definition of "watercraft", the motor you bought is subject to the 2% watercraft tax.

EXAMPLE 2: You own a 20-foot bass boat. The boat already has a 50 HP motor (so it's a watercraft!), but you also want something small and quiet, so you buy a 7 HP trolling motor. Since you'll be putting the 7 HP motor on a watercraft, the motor is subject to the 2% watercraft tax.

To sum it up, most small motor purchases are subject to the 4.5% retail sales tax. But, if you have a special case like those in the above examples, the purchase is subject to only a 2% watercraft tax and you can get a refund for the difference.

- Q: What if I bought a big motor (more than 25 HP) – I get a refund, right?
A: Probably. If you bought a big motor and paid the 4.5% retail sales tax, you can get a refund IF you use the motor on a boat that is at least 15 feet long.

- Q: So, how do I get my refund – assuming I qualify?
A: Complete the refund form on the back of this page.

- Q: And if I have any questions?
A: Just call the department at (804) 367-8037.

Virginia Tax Bulletins

A. PURCHASER INFORMATION

Name _____
Address _____ _____
Social Security Number _____

B. BOAT MOTOR INFORMATION

Date Purchased _____ Horsepower _____
Dealer's name & address _____

C. REFUND COMPUTATION (you need your sales receipt for this part)

1. Cost of motor <u>only</u> (do NOT include sales tax or other items on the receipt)	1. _____
STOP HERE! If you want us to compute your refund, leave this section blank. Be sure to sign the form and attach your sales receipt.	
2. Sales tax paid *	2. _____
3. Multiply line 1 by 2% (.02)	3. _____
4. Refund due: subtract line 3 from line 2	4. _____
* If your receipt includes items other than the boat motor, include only the sales tax you paid on the motor. To compute that amount, multiply the cost of the motor by 4.5% (.045).	

I certify that the information contained in this application is true and correct to the best of my knowledge.

SIGNATURE

DATE

DAYTIME TELEPHONE #

(In case we have a question about your claim)

Attach your sales receipt to this application, and mail it to:

Virginia Department of Taxation
Watercraft Tax Refund
P.O. Box 1115
Richmond, VA 23208-1115

One More Note: Your sales receipt must show the date of purchase, specify that a boat motor was purchased, and show the cost of the motor and the sales tax charged. If you have any questions, call (804) 367-8037.

Virginia Tax Bulletin

Virginia Department of Taxation

July 13, 1994

94-11

FEDERAL RETIREE SETTLEMENT LEGISLATION

Governor George Allen today signed into law legislation (SB 2008) enacted by the General Assembly to provide a settlement for individual income taxes paid on federal retirement income received during taxable years 1985-1988. These taxes are at issue in Harper v. Virginia Department of Taxation which is currently in litigation.

Terms of Legislation

The legislation provides for a \$340 million settlement to federal retirees payable over a five-year period. The settlement will be funded by five appropriations, the first of which will be made on or before July 15, 1994. The total amount of the settlement payments for each federal retiree who accepts a settlement offer will depend on the overall responses of federal retirees to a notice that will be mailed shortly.

The legislation requires a two-step process. **First**, on August 1, 1994, the Department of Taxation will mail notices and forms to over 175,000 federal retirees who have been identified from information furnished by the federal Department of Defense and Office of Personnel Management and other sources. A public notification campaign will also be undertaken for federal retirees or their survivors who are not reached by direct mail. Retirees must respond to the Department of Taxation on or before November 1, 1994. **Second**, in a December 15, 1994 mailing, those retirees who responded in a timely manner to the first notice will be offered the opportunity to accept a settlement, agree to be bound by the final decision reached in existing litigation, or file their own court action.

Process

Computation of 1985-1988 Disputed Tax Overpayments

The Department of Taxation has recomputed the taxes owed by most federal retirees for taxable years 1985-1988 by excluding the retiree's federal pension/annuity from the taxable income shown on their original returns for those years. This amount was compared to the taxes actually paid for those years to determine the amount of each retiree's overpayment. When it was to the retiree's advantage, the department adjusted the filing status and allocation of exemptions and deductions to maximize the potential overpayments.

In recomputing the overpayment amount, the department excluded the pension amount as reported by the federal payer from the Virginia taxable income reported on returns for 1985, 1986, 1987 and 1988.

In some situations, not all of a retiree's gross pension amount received from a federal payer was subject to income tax. In such situations, the retiree must provide the department with the amount of pension income that was subject to tax for federal purposes so that the correct overpayment amount can be calculated.

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Forms

The Department of Taxation has developed the following forms for use by the federal retirees:

- Form FR1 - Virginia Department of Taxation Computation of Overpayment Amount
- Form FR2 - Retiree's Computation of Overpayment Amount
- Form FR4 - Computation of Overpayment Amount (blank form for retirees who did not receive preprinted forms with their computations of overpayments)

First Notice

On August 1, 1994 the Department of Taxation will mail tax overpayment notices and forms to over 175,000 federal retirees and begin a public notification campaign to advise all affected federal retirees of this legislation. For most retirees, this notice will include the amount of tax overpayments for 1985-1988 that were computed by the department.

Retirees who receive the first notice in the mail from the Department of Taxation (accompanied by copies of Form FR1 and Form FR2), should check the computations.

- ◆ If they agree with the computations, they should complete Form FR1 and return it to the Department of Taxation no later than November 1, 1994.
- ◆ If they disagree with the computations, or their pension/annuity amount on Form FR1 is incorrect, they should complete Form FR2 and return it to the Department of Taxation no later than November 1, 1994. If the retiree wishes, the Department of Taxation will recompute the taxes for retirees who file Form FR2. In either case, the retiree must sign the Form FR2 and furnish a Form W-2P issued by the federal retirement system or other information provided by their former employer that states the amount of pension or annuity payments for the years 1985-1988.

Whether retirees agree or disagree with the computation, they must respond to the first notice and file the appropriate form with the Department of Taxation on or before November 1, 1994, or they will lose all rights to recover any Virginia taxes paid on federal retirement income received in taxable years 1985-1988, including the right to sue. This applies even if a retiree previously filed an amended return with the Department of Taxation requesting a refund.

When Retiree Does Not Receive First Notice

Blank forms (Form FR4) will be available on August 1, 1994 for any retiree who does not receive the first notice in the mail. The blank forms will be available from many retiree organizations, state and local government offices, or the Department of Taxation. The department will accept information from a Form W-2P issued by a federal retirement system or other information from their former employer that states the pension or annuity payments for the years 1985-1988. Retirees may recompute their taxes for each year by excluding the amount of taxable federal retirement benefits previously reported each year. The Department of Taxation will recompute the taxes for retirees if provided with the pension information on Form FR4 no later than November 1, 1994. A response is necessary (on FR1, FR2 or FR4) by November 1, 1994 in order to preserve the retiree's rights.

Second Notice — Final Settlement Offer

The final settlement offer will be mailed by the Department of Taxation on December 15, 1994 to all retirees who responded in a timely manner to the first notice. This second notice will specify the amount of the settlement offer made to each retiree. The Department of Taxation will also provide instructions about accepting or declining the offer. To participate in the settlement program, retirees must return a signed settlement agreement and release to the Department of Taxation by February 1, 1995. Retirees who wish to pursue litigation must return an agreement to be bound by existing litigation or file their own lawsuit by February 1, 1995.

IMPORTANT REMINDER: Failure to meet the November 1, 1994 deadline will forever bar a federal retiree from initiation of any action to recover Virginia taxes paid with respect to the retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988. A federal retiree must respond even if he already filed an amended return or returns with the Department of Taxation claiming a refund for those years.

If you have any questions or need help in completing the necessary forms related to the settlement offer, you may call the Department of Taxation for assistance at :

1- 800 -730-8730

(804) 367-2601 (local Richmond area)

or

Write to the Department:

Federal Retiree Settlement Administration

P. O. Box 5126

Richmond, VA 23220-0126

AGE DEDUCTION MODIFICATION

The legislation enacted by the General Assembly and signed by the Governor also contains modifications to the current age deduction. For taxable year 1994, the age deduction for those 65 and over is \$12,944, and for those age 62-64 the age deduction is \$6,472. For 1994, these amounts will continue to be reduced by social security or railroad retirement benefits received.

For taxable year 1995, the age deduction for those age 65 and over will be \$10,000, and for those age 62-64 the age deduction will be \$5,000. These amounts are not reduced by social security or railroad retirement benefits received.

For taxable years beginning on or after January 1, 1996, the age deduction for those age 65 and over will be \$12,000, and for those age 62-64 the age deduction will be \$6,000. These amounts will not be reduced by social security or railroad retirement benefits received nor will they be indexed for inflation in future years.

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KEY DATES IN THE SETTLEMENT PLAN

- | | |
|--------------------------|--|
| August 1, 1994 | TAX Mails Tax Overpayment Notices to Retirees
TAX Begins Public Notification Program for Retirees Who Do Not Receive Mailing |
| November 1, 1994 | DEADLINE FOR RETIREES RESPONSE TO NOTICE

All retirees must file Form FR1, FR2, or FR4 with TAX to preserve their rights to recover any Virginia taxes paid on federal retirement income for taxable years 1985-1988 |
| December 15, 1994 | TAX Mails Final Settlement Offer to Retirees Who Responded to First Notice |
| February 1, 1995 | DEADLINE FOR RETIREES TO ACCEPT SETTLEMENT, CHOOSE TO BE BOUND BY EXISTING LITIGATION OR FILE THEIR OWN LAWSUIT |
| March 31, 1995 | First Checks Mailed to Participating Retirees |

IMPORTANT TELEPHONE NUMBERS FOR RETIREE INFORMATION:

Outside the Richmond Area **1-800-730-8730**
In Richmond **367-2601**

FORMS WILL BE AVAILABLE IN THE FOLLOWING LOCATIONS AFTER AUGUST 1:

Virginia Department of Taxation, Richmond and district offices located in:

Northern Virginia	(703) 534-5791
Norfolk	(804) 455-3810
Hampton	(804) 594-7482
Harrisonburg	(703) 434-1768
Bristol	(703) 466-3412
Roanoke	(703) 562-3510
Danville	(804) 791-5244
Richmond:	Federal Retiree Settlement Administration, P. O. Box 5126 Richmond, VA 23220-0126
	Federal Retiree Organizations
	Local Commissioners of Revenue

Virginia Tax Bulletin

Virginia Department of Taxation

SEPTEMBER 23, 1994

94-12

INTEREST RATES FOURTH QUARTER 1994

Rates changed: State and certain local interest rates are subject to change every quarter based on changes in the federal rates established pursuant to I.R.C. § 6621. The federal rates for the fourth quarter of 1994 will be 9% for tax underpayments (assessments), 8% for tax overpayments (refunds), and 11% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Va. Code § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the fourth quarter of 1994 will be 11% for tax underpayments, 8% for tax overpayments, and 13% for "large corporate underpayments".

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on June 30, 1994: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the third quarter 10% underpayment rate will apply through the due date of the return, October 17, 1994.

Taxpayers whose taxable year ends on September 30, 1994: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the fourth quarter 11% underpayment rate will apply through the due date of the return, January 16, 1995.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Va. Code § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the fourth quarter of 1994, the federal underpayment rate is 9%.

Refunds: Localities which have provided for refund of erroneously assessed taxes may provide by ordinance that such refund be repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

Recent Interest Rates

Accrual Period		Overpayment	Underpayment	Large Corporate
<u>Beginning</u>	<u>Through</u>	<u>(Refund)</u>	<u>(Assessment)</u>	<u>Underpayment</u>
1-Jan-87	30-Sep-87	8%	9%	---
1-Oct-87	31-Dec-87	9%	10%	---
1-Jan-88	31-Mar-88	10%	11%	---
1-Apr-88	30-Sep-88	9%	10%	---
1-Oct-88	31-Mar-89	10%	11%	---
1-Apr-89	30-Sep-89	11%	12%	---
1-Oct-89	31-Mar-91	10%	11%	---
1-Apr-91	30-Jun-91	9%	10%	---
1-Jul-91	31-Dec-91	9%	12%	14%
1-Jan-92	31-Mar-92	8%	11%	13%
1-Apr-92	30-Sep-92	7%	10%	12%
1-Oct-92	30-Jun-94	6%	9%	11%
1-Jul-94	30-Sep-94	7%	10%	12%
1-Oct-94	31-Dec-94	8%	11%	13%

For additional information: Contact the Taxpayer Assistance Section, Office of Taxpayer Services, Virginia Department of Taxation, P. O. Box 1880, Richmond, Virginia 23282-1880, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8036
Withholding Tax	(804) 367-8037
Soft Drink Excise Tax	(804) 367-8098
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

Virginia Tax Bulletin

Virginia Department of Taxation

September 30, 1994

94-13

RETAIL SALES AND USE TAX: LEGISLATIVE CONSIDERATION OF EXEMPTION REQUEST

The 1994 General Assembly passed legislation (Senate Bill 148, Chapter 222, 1994 Acts of Assembly) establishing new standards and procedures which must be satisfied and followed by organizations seeking exemptions from the sales and use tax. The legislation, effective July 1, 1994, was recommended by the Joint Subcommittee of the Senate and House Finance Committees to Develop Criteria For Evaluating Sales and Use Tax Exemption Requests (SJR 249, 1993 General Assembly).

Information Requirements - Organizations Seeking an Exemption

Formerly, the patron of any legislation seeking a sales and use tax exemption was required to submit information based on various statutory criteria to the Division of Legislative Services prior to consideration of the legislation by the committee.

Under the new law, the patron must submit information to the Department of Taxation (TAX) by November 1 prior to the session in which the exemption is sought.

Nonprofit Organizations

The new law also requires organizations seeking an exemption under the educational (§ 58.1-609.4), medical-related (§ 58.1-609.7), civic and community services (§ 58.1-609.8) and cultural (§ 58.1-609.9) groupings to submit the following additional information relating specifically to the operation and administration of the organization:

- (1) Documentation indicating exemption from federal income taxation under either § 501(c)(3) or (4) of the Internal Revenue Code;
- (2) The charitable purpose of the entity and how those functions or services are provided to Virginia citizens;
- (3) Documentation that no more than one-third of the organization's gross annual revenue is spent on general administration and fundraising;
- (4) The location of the organization's financial records and the salaries, including benefits, of the five most highly compensated employees;

- (5) Proof of compliance with Chapter 5 of Title 57 (Solicitation of Contributions) of the Code of Virginia from organizations subject to it; and
- (6) The names and addresses of a volunteer board of directors.

For any nonprofit organization granted an exemption under the new information requirements set forth above, Item 3 (relating to general administration and fundraising expenses) constitutes a continuing obligation and condition for maintaining tax exempt status. Failure to comply with this requirement may constitute grounds for the revocation of the organization's sales and use tax exemption.

New Questionnaire for Exemption Requests

TAX has developed a questionnaire to assist organizations in satisfying the information requirements set out above. An organization seeking an exemption should obtain the questionnaire from TAX, complete it, and forward it and the required information to the legislator who will sponsor the bill for exemption. The legislator must sign the questionnaire and submit it and the accompanying documentation to TAX by November 1.

Questionnaires ("Request for Sales and Use Tax Exemption") may be obtained from TAX by calling (804) 367-8010 or by writing to the Department of Taxation, Office of Tax Policy, P.O. Box 1880, Richmond, Virginia 23282-1880. Legislators should forward completed and signed questionnaires to the department's Office of Tax Policy at the above address.

Upon receipt, TAX will review the questionnaire and issue a preliminary determination to the legislator and to the Division of Legislative Services, by January 5, that the organization has furnished all the required information. The Division of Legislative Services may not draft a bill providing for a sales and use tax exemption unless the drafting request is accompanied by TAX's preliminary determination.

Penalty For Failing to Comply with New Reporting Requirements

Effective July 1, 1994, organizations must remain in compliance with all the information requirements noted above. Failure to do so may constitute grounds for revocation of exempt status.

Study of Existing Exemptions - New Information Requirements for Exempt Organizations

Under Va. Code § 30-19.05, the Secretary of Finance is required to investigate and analyze, on an ongoing basis, each category of exemptions set out in Va. Code §§ 58.-609.1 through 58.1-609.10. A report is due to the House and Senate Finance Committees each year by December 1. Senate Bill 148 requires that the information and questionnaire be updated every five years by the organizations being studied. The information is due to TAX by July 1 prior to the December 1 deadline for the report.

For additional information: Contact the Office of Taxpayer Services, Virginia Department of Taxation, P.O. Box 1115, Richmond, Virginia 23208-1115, (804) 367-8037.

GOVERNOR

EXECUTIVE ORDER NUMBER THIRTY-FOUR (94)

EDUCATION BLOCK GRANT ADVISORY COMMITTEE

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 and Sections 2.1-393 and 9-6.25 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby reestablish the Education Block Grant Advisory Committee.

The Committee is classified as an advisory committee, as defined in Section 9-6.25 of the Code of Virginia.

The Committee shall be responsible for advising the State Board of Education on the following matters pertaining to the use of federal funds received under Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended by P.L. 100-297 (1988), hereinafter referred to as "the Act," and similar legislation:

1. The formula for the allocation of funds to local education agencies;
2. The allocation, among authorized programs, of funds reserved for use by the Virginia Department of Education; and
3. The planning, development, implementation, and evaluation of Virginia Department of Education programs that receive such funds.

The Committee also shall advise the Secretary of Education on matters related to the use of these funds.

The Committee shall consist of no more than twenty-seven members, including a chair and a vice-chair, who shall be appointed by the Governor and serve at his pleasure. The membership of the Committee shall be representative of the general public of the Commonwealth, and of the following:

1. Public and private elementary and secondary school children;
2. Classroom teachers;
3. Parents of elementary and secondary school children;
4. Local boards of education;
5. Local and regional school administrators;
6. Institutions of higher education;
7. The General Assembly;

8. Elementary and secondary school librarians; and

9. School counselors and other pupil services personnel.

The Superintendent of Public Instruction shall serve as Chair of the Committee. Vacancies in the membership of the Committee shall be filled by appointment of the Governor.

Members of the Committee shall serve without compensation, but may be reimbursed for reasonable and necessary expenses incurred in the discharge of their official duties.

Such staff support as is necessary for the conduct of the Committee's business during the term of its existence shall be furnished by the Office of the Secretary of Education and the Department of Education. An estimated 50 hours of staff support will be required to assist the Committee annually.

Such funding as is necessary for the term of the Committee's existence shall be provided from funds appropriated to the Department of Education for the same purposes as the Committee. Annual expenditures for the Committee's work are estimated to be \$1,000.

This Executive Order shall be retroactively effective to July 1, 1994, upon its signing, and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 25th day of October, 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R95-112; Filed November 10, 1994, 9:55 a.m.

EXECUTIVE ORDER NUMBER THIRTY-FIVE (94)

JOB TRAINING PARTNERSHIP ACT AND RELATED PROGRAMS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.1-704, 2.1-707, and 2.1-710 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign authority for carrying out the State's responsibilities under the federal Job Training Partnership Act, PL 97-300 as amended by PL 102-367 (hereafter referred to as the Act).

The purpose of programs funded under the Act is to prepare youth and adults facing serious barriers to employment for participation in the labor force by

Governor

providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the nation.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

The Governor's Job Training Coordinating Council is hereby continued as an advisory body in accordance with Section 2.1-704 of the Code of Virginia and the provisions of the Act, as hereinafter provided. The Secretary of Health and Human Resources will provide policy guidance and direction for the Council.

The Council's primary duty shall be to recommend a coordinated state policy for all job training programs that results in better job opportunities, improved program coordination, and reduced duplication of services and activities. The Council shall have the following specific advisory responsibilities:

1. To recommend to the Governor a coordination and special services plan, as required by the Act;
2. To recommend to the Governor substate service delivery areas, to plan resource allocations not subject to Section 202(b) or 262(b) of the Act, to provide management guidance and review for all programs in the state, to develop appropriate linkages with other employment and training programs, to coordinate activities with private industry councils established under the Act, to develop the Governor's Coordination and Special Services Plan, and to recommend variations in performance standards;
3. To advise the Governor and local entities on job training plans and to certify the consistency of such plans with criteria set forth in the Governor's Coordination and Special Services Plan for coordinating activities under the Act with other federal, state and local employment-related programs, including programs operated in designated urban enterprise zones in accordance with Section 59.1-274 of the Code of Virginia;
4. To review the operation of programs conducted in each service delivery area, including the availability, responsiveness, and adequacy of state services, and to recommend to the Governor, state agencies, appropriate chief elected officials, private industry councils, service providers, the General Assembly, and the general public, ways to improve the effectiveness of programs or services provided under the Act;
5. To review the reports made pursuant to paragraphs (D) and (E) of Section 104(b)(12) and to make recommendations for technical assistance and corrective action, based on the results of such reports;

6. To prepare a summary of the reports made pursuant to paragraphs (D) and (E) of Section 104(b)(12) detailing promising service delivery approaches developed in each service delivery area for the training and placement of women in nontraditional occupations, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

7. To review the activities of the Governor to train, place and retain women in nontraditional employment, including activities under section 123, to prepare a summary of activities and an analysis of results, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

8. To consult with the sex equity coordinator established under section 111(b) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, to obtain from the sex equity coordinator a summary of activities and analysis of results in training women in nontraditional employment under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990, and to disseminate annually such summary to service delivery areas, service providers throughout the state and to the Secretary of Labor;

9. To review and comment on the state plan developed for the state employment service agency;

10. To make an annual report to the Governor, which shall be a public document, and to issue such other studies, reports, or documents as it deems advisable to assist service delivery areas in carrying out the purposes of the Act;

11. To identify, in concert with appropriate state agencies, the Commonwealth's employment and training and vocational education needs, and to assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting those needs; to comment at least once annually on the measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

12. To review plans of all state agencies that provide employment, training, and related services, including the state plan developed pursuant to Section 8(a) of the federal Wagner-Peyser Act and the plan required pursuant to Section 114 of the federal Carl D. Perkins Vocational and Applied Technology Education Act of 1990; and to provide comments and recommendations to the Governor, the General Assembly and the appropriate state and federal agencies on the

appropriateness and effectiveness of employment and training and related service delivery systems in the Commonwealth.

All reports, recommendations, reviews, and plans prepared by the Council shall be transmitted to the Secretary of Health and Human Resources and the Secretary of Commerce and Trade, who jointly will advise the Governor on appropriate actions to be taken with respect to such submissions.

All state agencies, institutions, and collegial bodies are instructed to cooperate and assist the Council in the performance of its duties when requested to do so. The Council may seek advice and assistance from any available source. The Council may establish such ad hoc advisory committees as it deems necessary and appropriate for the performance of its duties. Local government officials and community leaders throughout the Commonwealth are requested and urged to advise and assist the Council in the performance of its duties.

The Council shall consist of thirty members appointed by the Governor and serving at his pleasure. The Governor shall appoint the chairman of the Council, who shall be a nongovernmental member. The Council shall consist of representatives of the groups listed below.

1. Nine members shall be private sector representatives from private for-profit companies or other major nongovernmental employers. One member from this group shall represent agricultural interests. Three of the private sector members shall represent private sector organizations with 500 or fewer employees.

2. Seven state officials shall be appointed as follows:

Member of the General Assembly of Virginia,

Board Member from the Advisory Council to the Virginia Employment Commission,

Board Member from the Board of Rehabilitative Services,

Board Member from the Board of Social Services,

Board Member from the State Board for Community Colleges,

Board Member from the Industrial Development Services Advisory Board, and

Board Member from the State Board of Education.

3. One member shall be a representative of a unit of general local government or consortia thereof and shall represent administrative entities or grantees under the Act, and shall be appointed from nominations of the chief elected officials of such units

or consortia.

4. One member shall be a superintendent from local educational agencies who shall be appointed from nominations by the Virginia Association of School Administrators.

5. Nine members shall be representatives of organized labor and community-based organizations.

6. Three members shall be appointed from the general public.

Members of the Council shall serve without compensation, but may be reimbursed for reasonable and necessary expenses incurred in the discharge of their official duties.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

In accordance with Section 2.1-708 of the Code of Virginia, the Governor's Employment and Training Department receives all federal funds allocated under Titles II and III of the Act and is responsible for implementing Titles I, II, and the substate part of Title III.

In accordance with Section 2.1-707 of the Code of Virginia, the Department, under the direction of its Executive Director, shall provide assistance to the Council. Such staff support as is deemed necessary by the Executive Director for the conduct of the Council's business is to be furnished by the Governor's Employment and Training Department. Such funding as is deemed necessary by the Executive Director for the Council's operation is to be provided from funds appropriated to the Department.

The Governor's Employment and Training Department and each other state agency that administers employment and training programs shall coordinate their planning and develop means to assure the best quality job training and placement programs for participants in programs funded under the Act.

The administrative entities of the service delivery areas have been designated by the Governor as the substate grantees under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA). Oversight of the substate grantees and reporting requirements shall be the shared responsibility of the Governor's Employment and Training Department and the Virginia Employment Commission as outlined in a memorandum of understanding between the Department and the Commission.

VIRGINIA EMPLOYMENT COMMISSION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Employment Commission is designated as the agency responsible for administering and

Governor

managing the following programs authorized by PL 97-300 as amended by PL 102-367:

Dislocated Worker Unit under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA); and

Labor Market Information (Title IV, Part E).

The Commission is designated as the agency responsible for administering and managing all state Labor Market Information programs provided for under the Job Training Partnership Act, including the State Occupational Information Coordinating Committee.

The Commission will receive the state program allocation through the Governor's Employment and Training Department for the purpose of implementing the responsibilities of the Dislocated Worker Unit.

DEPARTMENT OF EDUCATION

In accordance with Section 2.1-710 of the Code of Virginia, the Virginia Department of Education is designated as the agency responsible for administering the state education grants authorized by Section 123 of the Act. The Department of Education will receive appropriate funds granted under the Act through the Governor's Employment and Training Department. In addition to those funds, the Department of Education will arrange for matching funds as required by the Act to provide education and training programs for eligible participants through agreements with administrative entities in service delivery areas in Virginia and, where appropriate, local education agencies. Funds available for program coordination will be used in conformity with the adopted Governor's Coordination and Special Services Plan.

OLDER WORKER PROGRAM

The Governor's Employment and Training Department is designated as the agency responsible for administering employment and training programs for older individuals authorized under Title V of the Older Americans Act and the Job Training Partnership Act. The agency also may negotiate with national Title V sponsors to administer older worker programs in Virginia.

These programs shall be designed to assure the training and placement of older individuals in employment opportunities with private business concerns. Wherever possible, these programs shall train participants for jobs in growth industries and jobs that reflect the use of new technological skills. Funds available shall be allocated in conformity with the Governor's Coordination and Special Services Plan.

The JTPA older worker program for eligible individuals shall be developed in conjunction with the service delivery areas and shall be consistent with the substate plan goals of the service delivery areas and the Governor's

Coordination and Special Services Plan.

This Executive Order shall be retroactively effective to July 1, 1994, upon its signing, and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of October, 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R95-113; Filed November 10, 1994, 9:55 a.m.

EXECUTIVE ORDER NUMBER THIRTY-SIX (94)

CREATING THE VIRGINIA-ISRAEL PARTNERSHIP

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, and recognizing the benefit to the Commonwealth that could accrue from stronger economic and cultural ties to the State of Israel, I hereby create the Virginia-Israel Partnership.

For purposes of Section 2.1-51.35 and 9-6.25 of the Code of Virginia, the Partnership is classified as a gubernatorial advisory commission.

The Partnership shall have the responsibility to advise the Governor on establishing economic and cultural links between the Commonwealth of Virginia and the State of Israel, with a focus on the areas of commerce and trade, art and education, and general government. There exists a need to explore the numerous opportunities that exist for expanding the economic and cultural relationship between the Commonwealth of Virginia and the State of Israel. The Partnership shall consider, develop, and present a plan for an exchange of ideas, people and exhibits during 1995.

The Partnership shall be comprised of such members as the Governor shall appoint. All members shall be appointed by and serve at the pleasure of the Governor. The Governor shall designate a Chair or one or more Co-Chairs of the Partnership, who shall vote as members and who shall direct the Partnership's activities.

Such staff support as is necessary for the conduct of the Partnership's work during the term of its existence shall be furnished by the Office of the Governor, the Offices of the Governor's Secretaries, and such executive agencies with closely and definitely related purposes as the Governor may designate. An estimated 500 hours of staff support will be required to assist the Partnership.

Such funding as is necessary to support the Partnership's

activities during its existence shall be provided entirely from private sources.

The Partnership shall complete its examinations of these matters and report to the Governor no later than October 31, 1995, and shall make such additional reports as the Governor may direct.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until October 31, 1995, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 7th day of November 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R95-114; Filed November 10, 1994, 9:55 a.m.

EXECUTIVE ORDER NUMBER THIRTY-SEVEN (94)

SELF-DETERMINATION AND FEDERALISM

By virtue of the authority vested in me under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.1-38.2, 2.1-41.1, and 2.1-51.36 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Advisory Council on Self-Determination and Federalism and issue directives to all Executive Branch agencies and officials regarding activities to preserve and enhance the Commonwealth's prerogatives and the people's liberties within our federal system.

Federalism and Freedom

Two centuries ago, the challenge to the liberties of Virginians came from an arrogant, overbearing monarchy across the sea. Today, that challenge comes all too often from our own federal government — a government that has defied, and that now ignores, virtually every constitutional limit fashioned by the framers to confine its reach and thus to guard the freedoms of the people.

In our day, the threat to self-determination posed by the centralization of power in the nation's capital has been dramatically demonstrated. The effects of intrusive federal government authority have been felt so widely and so profoundly that a united chorus of opposition has risen from town halls and State capitols, from community organizations and private associations, from enterprises and individuals, across America.

The founders of our Republic and the framers of our Constitution well understood the ultimate incompatibility of centralized power and republican ideals. They did not pledge their lives, fortune and sacred honor to achieve

independence from an oppressive monarchy in England only to surrender their liberties to an all-powerful central government on these shores. Rather, they devoted their considerable energies and insights to erecting an array of checks and balances that promised to prevent the emergence of an unresponsive and unaccountable national government.

Chief among these checks were to be the State governments, whose sovereignty was expressly acknowledged in the Tenth Amendment to the Constitution, and whose sweeping jurisdiction and popular support were presumed sufficient to resist federal encroachment. The federal government, by contrast, was given certain expressly enumerated powers and was denied all others. From this balanced federal-state relationship, predicated on dual sovereignty, there was envisioned a healthy tension that would serve as a bulwark against any concentration of power that threatened the freedoms of the people.

It is now clear that these checks and balances have been dangerously undermined. During our nation's history, and especially in recent decades, the States have witnessed the erosion of their sphere of responsibility. Today, there is virtually no area of public responsibility or private activity in which federal authorities are not free to override the will of the people in the States through federal rules, rulings, and enactments.

Our freedoms are not safe when they exist only at the sufferance of federal legislators, federal courts, and federal bureaucrats.

Federal Excesses and Abuses

The encroachments by the federal government upon the prerogatives of the States and the rights of Virginians have taken many forms.

The Congress and federal executive branch have imposed ever-growing numbers of mandates, regulations and restrictions upon States and local governments, removing power and flexibility from the units of government closest to the people and increasing central control in Washington.

Federal action frequently has exceeded the clear bounds of the federal government's jurisdiction under the Constitution, and thus violated rights guaranteed to the people.

Federal courts have largely refused to enforce the guarantees of the Tenth Amendment, which reserves to the States and the people powers not expressly delegated to Congress, and have refused to recognize any meaningful constitutional limit to congressional power. Instead, they have held that the States generally must rely on political processes in Washington for their protection.

Federal mandates have imposed enormous costs on States and localities, draining away resources and

Governor

preventing State governments from addressing pressing local needs such as education, law enforcement and transportation.

Federal laws impose "one size fits all" requirements that often make no sense in light of local conditions and force States and localities to waste limited tax dollars.

The federal government's failure to meet its own responsibilities, such as in the area of immigration, has forced States to incur billions of dollars in excess costs.

In addition to laws passed by Congress, States and localities are burdened by mushrooming numbers of complex, lengthy, and incomprehensible regulations, imposing enormous costs of compliance. These regulations are drafted by unelected bureaucrats who are not accountable to the people.

Congress has not only assumed ever-growing power for itself; it has thwarted many State initiatives to deal with local problems. Federal preemption of State and local laws has reached unprecedented proportions.

Congress has refused to make itself subject to the same laws that it has imposed on States, localities, and citizens, granting itself exemptions from labor, civil rights, and other laws that States, localities, and citizens must obey.

Congress has failed to show a capacity for self-regulation in its relations with the States, failing thus far even to pass modest legislation to restrain the growth of unfunded mandates.

The Effects of Centralized Power

The effects of the centralization of power in Washington are evident in the acute frustration and feeling of powerlessness expressed by many citizens in Virginia and around the country.

As federal institutions – Congress, the federal courts, and the federal bureaucracy – have seized ever-greater responsibility for determining policy on issues of importance, the ability of citizens to influence the course of government has been diminished. Decisions made through government processes at the State and local levels are far more accessible to citizens than decisions made in Washington. Citizens increasingly feel powerless to shape their future because fewer policy choices are made at the levels of government within their grasp.

Centralized power in Washington diminishes government responsiveness and accountability. Citizens do not possess even a semblance of control over the actions of federal courts and the federal bureaucracy, both of which have assumed dramatically broadened policy-making roles in recent decades. Congress, while elected, has long been insulated from direct accountability to the voters as a result of procedure, distance and perquisite. The dramatic results of the 1994 congressional elections demonstrate the

degree to which that body has been deemed unresponsive to the people.

The problem is not only that decision-makers in our nation's capital are remote and unaccountable. It is that their actions in many cases have rendered State and local officials unresponsive as well. Officials at the State and local levels often cannot meet the expectations of the people who elected them because of an inhibiting web of federal laws, regulations, court orders, administrative interpretations and edicts. Thus, there is a widening gulf between the voters' demands for change and the ability of State and local leaders to surmount federal obstacles and effect those changes.

The widespread feeling of frustration and futility among citizens thus is not an inexplicable phenomenon. To the contrary, it is a direct and wholly predictable consequence of the shift of government power to institutions beyond the reach of the people.

Actions to Reinvigorate Federalism

There exists today a unique opportunity to proceed on a bipartisan basis to restore balance to federal-state relations. It shall be the policy of the Executive Branch to support and promote the following primary measures to achieve that goal:

I. Communication and Mobilization of Public Support. Citizens must be informed of the central role that the usurpation of State and local prerogatives, and the growth of federal bureaucratic, judicial and legislative authority, has played in the diminution of their political freedoms. Efforts to mobilize public support for reform should be actively pursued and supported.

II. States' Initiative and Veto. In order to defend their prerogatives, the States need the collective means to initiate changes in the U. S. Constitution and to invalidate improper or intrusive federal enactments without the necessity for congressional or judicial action or the risk of a "runaway" constitutional convention. To fill this need, there should be added to the U. S. Constitution an amendment with two complementary parts:

i. The States' Initiative: Where broad consensus exists among state governments on the need for a constitutional amendment, the States should be able to obtain it without needing to rely upon the federal Congress in Washington. Under the proposed States' Initiative, if three-quarters of the States approve a proposed amendment within a specified time period, and if Congress thereafter fails to override the States' action by a two-thirds vote of the Senate and the House of Representatives, then the state-initiated action would become part of the Constitution.

ii. The States' Veto: Under this complementary provision, where three-quarters of the States pass

resolutions seeking the repeal of objectionable federal legislation or regulations within a prescribed time period, the federal measure would be rendered invalid unless the Congress thereafter overrides the States' action by a two-thirds vote of the Senate and the House of Representatives.

III. Tenth Amendment Litigation. Where federal actions exceed the constitutionally prescribed jurisdiction of the federal government and usurp rights reserved to the States, resulting in detriment to the Commonwealth's citizens and their ability to control their own destiny, litigation invoking the Tenth Amendment is appropriate and should be pursued.

IV. Unfunded Mandates Legislation. Proposed federal legislation or constitutional amendment prohibiting the imposition of unfunded federal mandates is a limited but essential step in restoring balance to the state-federal relationship, and should be supported.

V. Interstate Cooperation. The States, local governments and their respective officials can more effectively oppose burdensome, intrusive or misdirected federal programs, and promote desirable federal actions within the scope of the federal government's jurisdiction, by acting in a cooperative and a coordinated manner. Such collaborative action by government officials in the Commonwealth and their counterparts in other States should be encouraged and supported.

VI. Conference of the States. It is proposed that a Conference of the States convene in the next two years to adopt an agreed agenda for constitutional reforms and other measures to reinvigorate federalism. The Commonwealth will actively support the convening of this conference and will participate fully.

The Governor's Advisory Council

For purposes of Sections 2.1-51.35 and 9-6.25 of the Code of Virginia, the Governor's Advisory Council on Self-Determination and Federalism is classified as a gubernatorial advisory commission.

The Council shall be comprised of not more than 65 members, who shall be appointed by the Governor and shall serve at his pleasure. The Attorney General of Virginia shall be an ex officio member and the honorary chairman of the Council. From among the members of the Council, the Governor shall designate a Chair, or two or more Co-Chairs, to preside over its activities. The Counselor to the Governor shall serve as Director of the Council, and shall direct administrative activities and staff support for the Council.

Such staff support as is necessary for the conduct of the Council's work during the term of its existence shall be furnished by the Office of the Governor, the Offices of the

Governor's Secretaries, the Office of the Attorney General, the Department of Planning and Budget, and such other executive agencies with closely and definitely related purposes as the Governor may designate. An estimated 3,000 hours of staff support will be required to support the Council. Funding necessary to support the Council's work shall be provided from sources, both private contributions and state funds appropriated for the same purposes as the Council, authorized by Section 2.1-51.37 of the Code of Virginia. Direct expenditures for the Council's work are estimated at \$30,000.

Members of the Council shall serve without compensation and shall receive expenses incurred in the discharge of their official duties only upon the approval of the Chief of Staff to the Governor.

The Council shall be responsible for advising the Governor regarding the goals, progress and impact of his initiative to promote the reinvigoration of federalism and the restoration of balance in state-federal relations. The Council shall have the following specific responsibilities:

1. The Council shall assist the Governor in developing and implementing strategies and methods for promoting the six primary initiatives for the reinvigoration of federalism identified above.
2. The Chair or Co-Chairs shall establish, and the Council shall conduct its business through, working groups consisting of Council members and such additional volunteers as Council members may recommend and the Chair or Co-Chairs may approve. These working groups shall focus on particular projects that further the objective of reinvigorating federalism, and shall provide assistance and advice to Executive Branch officials who are engaged in, or whose responsibilities and activities are affected by, such projects.
3. The Council shall serve as a forum for the exchange of views and the sharing of information regarding ideas, activities, and actions that affect state-federal relations.
4. The Council shall communicate and consult with other governmental and non-governmental organizations involved in promoting the reinvigoration of federalism and the restoration of balance in the state-federal relationship.
5. The Council shall advise and assist the Governor in preparing for the Conference of the States scheduled to be held in 1996, and a planning meeting to be held in 1995.
6. The full membership of the Council shall meet in general session at least two times annually, and shall provide to the Governor on an annual basis its assessment of the progress made in implementing the policies and achieving the goals set forth in this

Governor

Executive Order. The Council shall include in such assessment its recommendations for actions by the Commonwealth, and any officials thereof, that will promote the policies and goals set forth in this Executive Order. The Council shall provide its initial assessment to the Governor not later than September 1, 1995.

7. The Council shall, through its working groups or in general session, provide such additional assistance and reports as the Governor may request.

Directives to Executive Branch Officials

Each agency, office and employee of the Executive Branch shall implement the policies set forth in this Executive Order, and shall, in the performance of their duties, promote achievement of the goals set forth herein. The following specific actions shall be taken:

A. All agencies of the Executive Branch shall promptly notify the appropriate Governor's Secretary whenever they become aware of any actual or proposed federal government policy, interpretation, procedure, regulation, law, administrative or judicial action that has or would have the effect of (i) impairing the Commonwealth's or its localities' ability to implement state law or policy, (ii) impairing the administration of state programs, or (iii) affecting the Commonwealth's fiscal affairs. Such notification shall be in the form of a Federal Interference Assessment, and shall describe with reasonable specificity how each such federal provision (or set of provisions) affects, or would affect, state law, policy, programs, or finances. The Assessment shall contain the agency's recommendations, if any, for action to obtain relief from or modification of the federal provisions. Currently existing federal provisions shall be systematically assessed according to a schedule agreed upon by the agency and the responsible Governor's Secretary.

B. The Governor's Secretaries shall review all Federal Interference Assessments supplied by Executive Branch agencies within their supervision, and shall forward each such Assessment, together with the Secretary's recommendations, to the Governor's Policy Office and the Virginia Liaison Office.

C. Executive Branch agencies shall identify opportunities for collaborative effort with officials of other States and of local and regional bodies in opposition to improper or intrusive federal government policies and actions. They shall pursue and implement such collaborative efforts upon approval by the responsible Governor's Secretary.

D. All policies, communications and other actions by Executive Branch agencies substantively affecting the relationship between the Commonwealth of Virginia or its localities and the United States Government, or any

significant policy matter in issue between those governments, shall be approved in advance by the responsible Governor's Secretary and the Governor's Policy Office, which shall notify the Virginia Liaison Office.

E. The Governor's Policy Office and the Virginia Liaison Office shall, in cooperation with the Governor's Secretaries, monitor the implementation of this Executive Order and the policies and goals set forth herein, and shall recommend to the Governor such additional actions as may be necessary or beneficial in enhancing the Commonwealth's ability to direct its own affairs without unwarranted federal interference.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until November 1, 1995, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 14th day of November, 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R95-138; Filed November 21, 1994, 8:43 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **State Plan for Medical Assistance Relating to Physical Therapy and Related Services.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.
VR 460-02-4.1920. Methods and Standards Used to Establish Payment Rates - Other Types of Care.
VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

Governor's Comment:

I have reviewed the attached regulation and the public comment. Secretary Kay Coles James has brought her concerns about this regulation to my attention. Based upon her recommendation and the concerns of Dr. Timothy Kelly, Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, and Dr. William Boshier, Superintendent of Public Instruction, I am requesting the agency to remove the portions of the regulation which would allow schools to become Medicaid

providers of psychological and psychiatric services. These provisions represent a change which is not mandated by state or federal law.

/s/ George Allen
Governor

Date: November 11, 1994

V.A.R. Doc. No. R95-136; Filed November 17, 1994, 9:42 a.m.

The LEGISLATIVE RECORD

Volume 4
Number 6

November
1994

Published by the Virginia Division of Legislative Services

SJR 128: Joint Subcommittee Studying Ways to Assist Small Business in Virginia

October 25, 1994, Richmond

Convening its initial meeting of the 1994 interim, the joint subcommittee heard testimony from executive branch representatives and advocates of small business.

Microenterprise Initiatives Proposed

The director of the Department of Housing and Community Development told the joint subcommittee about the *Virginia Enterprise Initiative*, the agency's response to the General Assembly's request that it develop a microenterprise loan program for Virginia.

Microenterprise programs, which are typically administered by nonprofit organizations, provide small loans (ranging from approximately \$500 to \$5,000), combined with training, technical assistance and mentoring, to low-income and disadvantaged individuals who aspire to own or expand small businesses. The loans—usually made at market rates—are not designed to lower financing costs or to fund extremely risky ventures, but to provide financing for a segment of the market that has historically had difficulty gaining access to credit.

A Mott Foundation study of 27 microenterprise programs across the United States revealed that they had loaned more than \$8 million to over 2,140 new or growing small

businesses, helping to generate over 3,400 full-time jobs. Of these businesses, 77 percent were operated by low-income individuals, 59 percent of whom were women and 64 percent were minorities. The overall average default rate on program loans was 7.3 percent—much lower than anticipated given the perceived high-risk nature of the borrowers.

The Virginia Enterprise Initiative contemplates using 15 competitively selected, community-based nonprofit organizations as intermediary financing institutions. The state's primary roles under the initiative would be to (i) provide the leverage

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- 9** HJR 141: Joint Subcommittee Studying Marketing and Financing Practices Associated with Preneed Funeral Contracts
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- 11** HJR 160: Joint Subcommittee Studying Local Revenue Sources

capital and start-up operating support needed by participating organizations, (ii) establish training partnerships with the private sector, (iii) serve as an information clearinghouse, and (iv) remove regulatory barriers to small business development and asset accumulation by low-income individuals.

The Allen Administration has not yet taken a final position on a specific budget amendment. The subcommittee was advised that the total two year budget needed for the Virginia Enterprise Initiative is estimated to be \$3 million.

Enterprise Zone Program Proposals

Several administrative and legislative proposals are being developed by DHCD related to Virginia's Enterprise Zone Program, including

- Doubling the number of zones, from 25 to 50, to expand economic opportunity to more communities around the state;
- Adding a tax credit of 15 percent of zone lender interest income, to spur private investment in zone-area small businesses;
- Adding a tax credit of 30 percent of qualified real property improvements within zones to increase the pace of zone rehabilitation;
- Modifying the 50 percent gross receipts test on business activities within zones, so communities can attract larger chain operations previously excluded from participation in the program;
- Permitting low-income *or* zone residents to be included in zone hiring criteria;
- Addressing the unique circumstances of rural localities by allowing for larger rural zones of up to 20 square miles of noncontiguous territory;
- Linking the zone program with other state-administered community development initiatives, such as the Neighborhood Assistance Tax Credit Program and the Clean Sites fund; and
- Revising zone regulations to narrow the use of the sales tax incentive to items used or consumed within a zone.

Recognizing the key role that the Enterprise Zone Program plays in revitalizing communities and assisting small businesses, subcommittee members expressed their desire to monitor and evaluate proposals being considered for the 1995 Session.

Small Businesses Needs

Several small business advocates, including representatives of the Small Business Committee of the Virginia Chamber of

Commerce, appeared before the joint subcommittee to propose ways to assist small business in the Commonwealth. The suggestions covered two areas in particular: (i) providing access to capital and (ii) providing training and technical assistance to small businesses.

Many small businesses cite inadequate availability of capital as a critical obstacle to establishing or expanding their operations. Among the recommendations made to the Subcommittee were:

- Funding the guaranty reserves of the Virginia Small Business Financing Authority (VSBFA) in order to better operate the Loan Guaranty Program;
- Increasing the staff of the VSBFA; and
- Locating a sizable pool of venture capital in the Commonwealth, possibly by allowing a venture capital fund manager (with an office in Virginia) to manage Virginia Retirement System venture capital funds.

In order to thrive, small businesses also often need specific training or technical assistance. The Small Business Development Center (SBDC) Program was cited as an excellent resource that could be better utilized with increased funding. The 21 SBDCs located through the Commonwealth receive the same state funding per year (\$250,000) that they received when established, despite the program's growth and unfulfilled demand.

Further Study

Chairman Walker appointed two work groups to undertake further study of issues being considered by the joint subcommittee.

The Economic Development Work Group was directed to examine (i) funding proposals, including appropriations for the Virginia Small Business Financing Authority, the Small Business Development Center Program, and for microenterprise initiatives; (ii) Enterprise Zone Program issues and proposals being considered by the Senate Finance Committee and the Allen Administration; and (iii) the venture capital proposal of the Virginia Chamber's Small Business Committee.

The Oversight Work Group was charged with (i) examining the feasibility and desirability of establishing a permanent legislative commission on small business and (ii) facilitating the preparation of the panel's report to the Governor and the 1995 Session of the General Assembly.

These work groups will report their findings and recommendations to the joint subcommittee at its next meeting.



The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Mark C. Pratt

Commission on Early Childhood and Child Day Care Programs

October 18, 1994, Richmond

The commission reviewed the status and effects of its recommendations and legislative proposals over the past two years.

1993 Recommendations

During the 1993 General Assembly Session, the commission sponsored major legislation revising the licensure system for child day centers and homes (SB 777, HB 2380, 1993). Subsequent to the 1993 Session, the commission visited a variety of child day programs in Tidewater and in the Waynesboro-Staunton area to monitor implementation of the legislation.

Zoning

The commission also established a task force to study the issue of zoning and its effect on family day care after hearing from numerous sources that restrictive zoning was an impediment to the establishment and above-board operation of family day homes. Representatives of the commission, zoning, planning, day care, licensing and local government officials served on the task force. An extensive survey of localities revealed that local zoning ordinances are varied and inconsistent in the treatment of family day homes.

The commission sponsored legislation that recommended that family day homes with five or fewer children be subject to no more restrictions than those imposed upon single family residences and allowed for an administrative process, rather than the time-consuming and expensive special use process, currently used by some localities to grant approval for larger homes. The bill passed, with an amendment that exempted Fairfax and Arlington Counties, Fairfax City, and the Cities of Falls Church and Alexandria. The effective date of the legislation is January 1, 1995.

Low-Income Families

The commission also recommended that the state increase funding so that all children of the working poor, who would be on public assistance if not for the day care subsidy, eligible to receive subsidized day care could do so. The commission has repeatedly expressed concern about low-income families in which the parent feels compelled to terminate employment and become an AFDC recipient because he or she cannot afford day care and no day care subsidies are available. The commission sponsored a 1994 budget amendment asking the Council on Child Day Care and Early Childhood Programs to recommend ways to maximize child day care subsidy dollars.

1994 Recommendations

During the 1994 General Assembly Session, the commission sponsored identical House and Senate joint resolutions encouraging financial institutions to provide loans to child day-care programs. The commission supported the Child Day Care Financing Program, a cooperative effort between the Virginia Small Business Financing Authority and the Council on Child Day Care and Early Childhood Programs to provide small direct loans to child day center providers, but felt that traditional financial institutions should also be encouraged to make loans to providers.

At-Risk Four-Year-Olds

Last year the commission reviewed a report by the Department of Education and the Council on Child Day Care and Early Childhood Programs on at-risk four-year-olds and endorsed the development of a plan to provide quality preschool programs to at-risk four-year-olds, who would otherwise be unserved, within the next four years. In the 1994-1996 budget, the General Assembly appropriated \$10 million for programs for at-risk four-year-olds.

Current Issues

The Governor's Commission on Government Reform has recommended the elimination of the Council on Child Day Care and Early Childhood Education and the placement of its functions in the Department of Social Services. The consolidation is said to be in keeping with the mission to downsize and consolidate state government and would achieve economies of scale and reduce fragmentation of services for families who currently find it difficult to locate services. No reduction in services is anticipated. Some commission members expressed concern about reducing the visibility of child care and reducing services and questioned the rationale for the consolidation decision. It was agreed that the commission would be supplied with an in-depth analysis of the specific rationale for eliminating the council.

The deputy commissioner of the Virginia Department of Social Services (DSS) reported on the department's implementation of the revised system of licensure for child day centers and family day homes (SB 777, HB 2380, 1993). Advisory groups participated in regulatory development, which is complete, except for therapeutic recreation programs, and staff and providers have been trained. Four programs elected to close because of the new law, but their decision was driven by other laws and regulations (e.g., asbestos, building code, zoning).

Other issues suggested to the commission included the licensure system for short-term center programs and family day homes; the cost of the asbestos inspections required for licensed centers, which has led many church-based centers to opt for the religious exemption; the fact that programs are not allowed to use locally generated criminal records clearances, which are

less costly; and the local zoning ordinances that discourage or prohibit larger family day homes.

Public-Private Initiative

Representatives of the DSS and the United Way Foundation reported on a public-private initiative to maximize federal child care funds that are not otherwise matched by general funds. The 1994 Appropriation Act directed the DSS, in conjunction with the United Way of Virginia and other interested statewide nonprofit organizations, to develop and implement a minimum of three model projects and to study the feasibility of implementing such a system statewide. Virginia has not allocated sufficient general funds to draw down all available federal funds for the at-risk child day care program (low-income working families) and the AFDC Education and Training Day Care Program. Twenty-five localities have submitted a memorandum of interest reflecting the joint DSS-United Way intent to participate in the project, and the DSS has determined that all 25 requests can be funded, which will enable an expansion of child day care services in each of those localities. In communities where the United Way is not present, other sources of donated funds are being sought.

Block Grant

The director of the Council on Child Day Care and Early Childhood Education explained the FY 95 spending plan for the Child Care and Development Block Grant. Funding areas include early childhood development, before- and after-school programs, quality improvements, child care services and administration, and availability and quality improvement activities. The number of areas unserved by Head Start in Virginia has decreased from 44 to 9. Three Centers for Families That Work are being funded at \$73,000 this year, and no federal money will be lost, despite problems with the contract for the tuition voucher.

Commission Chairman Walker asked members to consider all of the issues presented at the meeting and any other issues falling under the commission's purview and to make recommendations for commission action. The following items were suggested: receive and review the in-depth analysis of the proposal to eliminate the Council on Child Day Care and Early Childhood Education and place its functions in the DSS; ask VML and VACO to work with localities to generate ideas on how to deal with zoning problems; determine whether obtaining homeowners' insurance is a problem for family day providers; determine how restrictive covenants affect family day homes; investigate the effect of the asbestos inspection requirement; look into the use of locally generated criminal records clearances; determine what fire safety requirements the building code contains for family day homes; and monitor the voucher program for Centers for Families That Work.



The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Jessica F. Bolecek

SJR 96: Joint Subcommittee Studying the Reorganization of the State Library and Archives

October 18, 1994, Richmond

SJR 96 directs the joint subcommittee to study the reorganization of The Library of Virginia, to "inventory the collection of historical art work" in the State Capitol, to develop recommendations regarding its restoration and preservation, and to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly. The resolution contrasts the "multiple purposes, objectives and functions" of the Library and the Archives with the current organizational structure that combines these two entities as one state agency.

The mission of The Library of Virginia (as it was renamed in 1994) is threefold: to be the library agency of the Commonwealth, to act as the state's archival agency, and to serve as the reference library at the seat of government. The Library received over \$19.5 million and \$22.6 million in state general and special fund appropriations in each year of the 1994-1996 fiscal biennium. Federal trust fund moneys for the Library exceeded \$6 million.

Library Organization

The collection of research and reference resources, rare books, and periodical literature is within the purview of the General Library Division. The Library Development and Networking Division distributes state and federal library funds to local libraries across the Commonwealth and manages the Virginia Library and Information Network (VLIN). The Publications and Cultural Affairs Division publishes the *Virginia Cavalcade*, a quarterly magazine, as well as other documents. The Archives and Records Division assists state and local agencies in records management, responds to research requests, and is responsible for the circuit court records retention and preservation program. As the Commonwealth's archival agency, The Library of Virginia retains the correspondence and records of each Virginia governor, official publications of cities and towns, state agency publications, various family and circuit court records, elections and adoptions records, and original recorded wills.

The Library's maximum employment level now stands at 154, down from 168 in 1991-92. Current staffing and management practices are largely the product of numerous studies and internal reviews conducted in the last 10 years. In anticipation of the move to the new facility, an internal task force examined the consolidation of the public services sections within the General Library and Archives and Records Divisions. The final recommendations of this task force have been delayed, in deference to this study committee.

Issues

The joint subcommittee may include in its deliberations a review of the mission and statutory duties of the Library to reveal historical and practical bases for its current structure and to identify real or perceived staffing and funding needs. The subcommittee may also review recent funding levels and the efficiency of their application; library and archives structures in other states; the economic impact of the Library on tourism in the metropolitan Richmond area; current archival practices; and the financial and policy implications of creating separate organizational structures for the Archives and The Library of Virginia.

Funding

The chairman of the Library Board cited the "hidden treasures" of the Library and the Archives and noted that the Library's collections budget is lower than that of many public libraries. The Acting State Librarian stated that the "challenges are monumental" as the Library faces the next century. Briefly reviewing the institution's history, he cited the passage of the Public Records Act, the State Networking Users Advisory Board (SNUAB), the circuit court records program, and state revenue shortfalls that have especially affected the Library's mission. Construction is underway for the new Library facility, and general obligation bonds have been authorized for a new State Records Center, to be constructed near the Department of Motor Vehicles. State aid for public libraries, administered by The Library of Virginia, does not support the daily operations of the agency itself. Moreover, the genealogical community is concerned about records preservation and appropriate funding for the Archives Division.

Archives

A representative of the Virginia Genealogical Society stated that "no researcher . . . no historian can exist without libraries." While praising the Archives Division staff, she cited the poor condition of various records, pay inequities, and low employee morale. The society requested several actions by the joint subcommittee, including an examination of current procedures, identification of the collections to be housed in the new Records Center, a comparative look at archives programs in neighboring states, and an examination of the feasibility of separating the Library and the Archives into separate agencies.

Other Issues

The joint subcommittee also considered the microfilming of various records, the implementation of new digitizing technologies, and cooperative initiatives between The Library of Virginia and the Commonwealth's university academic libraries.



The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Kathleen G. Harris

HJR 176: Dulles Airport Regional Economic Study Commission

October 12, 1994

Center for Innovative Technology, Herndon

During the Dulles Commission's first meeting, various members expressed their concerns that regional and local development plans be formulated and implemented with the needs and potential of Dulles Airport in mind, lest the ability of the facility to serve and support the region's continued growth be compromised. Points raised included:

- The need to control residential development in the immediate vicinity of the airport;
- The desirability of encouraging the use of "hush kits" and stage-three noise abatement technology on aircraft operating at the airport;
- The capability of the airport to serve as a center for the import and export of horses;
- The suitability of the airport region as the location for an international trade center;
- The timeliness of construction of an advanced technology center near the airport;
- The need for improvement to both land (highway and rail) and air transportation links to the airport;
- The need to support the construction, development, and operation of the Smithsonian's Air and Space Museum Annex at the airport;
- The need to plan airport development in conjunction with planning for a western bypass around the Washington metropolitan area;
- The desirability of supporting efforts of local governments and the Metropolitan Washington Airport Authority to prevent population growth and business expansion from limiting the potential of the airport; and
- The need to request the General Assembly to extend the commission's mandate for an additional year.

Chairman Callahan announced that the group's next meeting would be at 10 a.m. on Tuesday, November 29, in the auditorium of the Center for Innovative Technology and appointed a subcommittee to work with staff to develop an agenda and arrange for speakers for the meeting.



The Honorable Vincent F. Callahan, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold

HJR 143: Joint Subcommittee Studying the Virginia Consumer Protection Act

October 20, 1994, Richmond

In lieu of a prepared agenda, the joint subcommittee held a work session during its third meeting of the interim to consider and tentatively approve draft language for its legislative recommendations.

Coverage under VCPA

To date, much of the subcommittee's attention has focused on the exclusions from the Virginia Consumer Protection Act (VCPA) listed in § 59.1-199. Among the excluded conduct is any aspect of a consumer transaction "authorized" by state or federal law, regulation, order, or formal advisory opinion. The subcommittee is likely to recommend that § 59.1-199 be amended to clarify, if not tighten, that exclusion. Businesses excluded from VCPA include banks, savings and loan associations, credit unions, small loan companies, public service corporations and insurance companies regulated and supervised by the State Corporation Commission (SCC) or a comparable federal regulating body, and licensed employment agencies. The subcommittee is moving in the direction of excluding from VCPA only those practices and services that are regulated and supervised by the SCC (or a comparable federal regulating body), rather than the entire industry. Under that proposal, unregulated, unsupervised practices of the listed industries would be subject to VCPA.

Investigation and Enforcement

The subcommittee is moving to expand the investigatory power vested in the commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) by recommending that the commissioner be authorized to issue administrative subpoenas. The subcommittee is also likely to recommend that the Attorney General and county, city, and town attorneys be authorized to issue civil investigative demands in the same manner currently available to the Attorney General under the Virginia Antitrust Act and to seek substantial civil penalties when "vulnerable" consumers, such as the elderly or disabled, are victimized by a continuing series or pattern of VCPA violations.

Funding

To help fund increased public investigation and enforcement at the state and local levels, the subcommittee will probably recommend that a revolving trust fund be created within the Office of the Attorney General to receive certain moneys generated by VCPA and antitrust cases. Last year's

budget bill created a similar fund for antitrust cases (see Item 48, "Regulatory and Consumer Advocacy Revolving Trust Fund"). To alleviate the need for annual budget amendments, VDACS' statewide, toll-free consumer hotline is among the suggested uses of the new fund.

Private Lawsuits

In private VCPA lawsuits, the subcommittee is moving to provide triple damages for willful violations of VCPA; to increase statutory minimum damages to \$500 from \$100; to require that plaintiffs recover reasonable attorney's fees and costs for willful violations of VCPA and may recover such fees and costs for unintentional violations; to clarify that defendants in any "frivolous" action may recover reasonable expenses pursuant to the frivolous claims statute; and to establish a two-year statute of limitations for filing a private action under VCPA.

No Action

The subcommittee took no action on proposals to expand the scope of VCPA's unlawful acts or practices from "fraudulent" acts or practices to "fraudulent or unfair" or "fraudulent or unconscionable" acts or practices; to authorize class action lawsuits against a single supplier who commits repeated or ongoing violations of VCPA; to criminalize (certain) violations of VCPA; to authorize the commissioner of VDACS to issue cease-and-desist orders and to publish warnings to the public in the newspaper; to authorize the board of VDACS to promulgate regulations under VCPA for industry-wide practices; and to authorize additional civil remedies, including injunctive relief, in private actions brought under VCPA.

Conclusion of Study

Draft language to implement the subcommittee's legislative recommendations is contained in a memorandum to the subcommittee, dated October 31, 1994. The memorandum was distributed to more than 50 interested parties and entities. Anyone wishing to obtain a copy of the memorandum or to submit comments thereon to the joint subcommittee may contact Diane Horvath, staff counsel, at the Division of Legislative Services. The subcommittee plans to complete and prefile its legislation by mid-December. The subcommittee's final report is due to the 1995 Session of the General Assembly.



The Honorable Mitchell Van Yahres, *Chairman*
Legislative Services contact: Diane E. Horvath

HJR 110: Business, Professional and Occupational License Tax Study

October 27, 1994, Richmond

Model Ordinance

The joint subcommittee's first meeting focused on a model BPOL ordinance developed by the Department of Taxation, with the assistance of the BPOL advisory committee. Input regarding the model ordinance was sought and received from the business community and local government throughout the year.

The department reviewed the model ordinance, emphasizing the most controversial areas, which include the definitions of "gross receipts," "definite place of business," and "professional services," and situs of gross receipts, penalty, interest on refunds, appeals, and audits.

Local Government

Following the department's presentation, representatives of the Virginia Association of Counties, the Virginia Municipal League, and the Commissioners of the Revenue conveyed the local government perspective on the ordinance. While willing to compromise, local government representatives continued to emphasize the importance of a solution, whether it is adopting the model ordinance or something else, that is revenue neutral. The revenues generated by the BPOL tax are the third or fourth largest category of local revenue, depending on the locality, exceeded only by real estate, personal property, and sales and use tax revenues. Therefore, the local governments rely on BPOL tax income and cannot afford to lose it.

Businesses

The business community was represented by the Virginia Chamber of Commerce, the Virginia Manufacturer's Association, Bell Atlantic, and the Greater Richmond Retail Merchants' Association. One business representative suggested repealing the BPOL tax and raising the local option sales and use tax by one percent. However, this suggestion was not supported by all of the business sector. It was agreed that the BPOL tax was uniformly disliked by business and that in some cases it was harmful to economic development.

Issues

At the end of the meeting, the chairman asked the members of the joint subcommittee to think about the following questions:

1. Should the joint subcommittee propose the model ordinance as legislation, or should the subcommittee take no further action?
2. If proposed, should use of the model ordinance be mandatory or voluntary on the part of local government, or should only certain sections of the ordinance be mandatory and the rest voluntary?

In addition, the chairman directed the legislative and Department of Taxation staff members to meet with the advisory committee to discuss the remaining issues and attempt to resolve them before the joint subcommittee meets again in December.



The Honorable David G. Brickley, *Chairman*
Legislative Services contact: Joan E. Putney

SJR 143: Select Committee Studying the Transportation Trust Fund

October 24, 1994, Richmond

Staff reviewed for the members the panel's activities of 1993 and summarized its preliminary findings and recommendations presented to the Governor and 1994 Regular Session of the General Assembly (Senate Document No. 49, 1994). Following this review, the chairman called upon Secretary of Transportation Robert E. Martinez for his and the administration's reactions.

Secretary Martinez disagreed with the select committee's finding that highway maintenance needs and other demands on the Highway Maintenance and Operating Fund would soon outstrip that fund's ability meet those needs and concluded that no increases in taxes supporting that fund or the Transportation Trust Fund would be required in the foreseeable future.

The members took no action on the request of the director of the Department of Aviation to amend statutes governing the Commonwealth Aviation Fund to provide funding to Metropolitan Washington Airports Authority.

No further meetings of the select committee are currently scheduled.



The Honorable Hunter B. Andrews, *Chairman*
Legislative Services contact: Alan B. Wambold

HJR 75: Joint Subcommittee Studying Educational Museums

November 3, 1994, Richmond

At its November 3 meeting, the Joint Subcommittee Studying Educational Museums and the Appropriate Level of Public Support to be Provided Such Institutions identified the following priorities for potential legislative proposals:

- Acknowledge the Commonwealth's commitment to the existing "hierarchy" of state and nonstate educational and cultural organizations;
- Create a stable funding source for those identified nonstate institutions that demonstrate a clear educational mission as well as a strong impact on regional economic development;
- Provide funding for those institutions that have come to rely on state assistance;
- Identify an agency or organization to administer state support;
- Designate a portion of an existing general fund revenue source to support these nonstate entities;
- Preserve legislative oversight; and
- Ensure continuity in the administration of state support.

Draft Proposals

"Fund" Proposal

The subcommittee reviewed two draft proposals. The first, considered previously by the committee and circulated to nonstate museums in August, would establish the Virginia Educational and Cultural Entities Fund, to be administered by the Department of Education (DOE). The Fund supplies grants for operating costs, special projects, and reserve funds for eligible nonstate educational and cultural entities, as defined by draft legislation. (For a detailed description of this proposal, see the *Legislative Record*, August 1994, page 5).

Alternative Proposal

The alternative proposal would also establish a fund for nonstate museums, but did not designate an administering agency. In contrast to the first proposal, the alternative would identify a particular existing general fund revenue source and designate a portion of it to fund regional and local educational and cultural organizations. The designated revenue would ideally equal the amount the legislature typically appropriates

for nonstate museums—approximately \$5 million annually. No new taxes would be created; no previously dedicated revenue sources would be diverted. Among the potential sources cited were 10 percent of the Commonwealth's annual interest income (\$5.8 million); the bank franchise tax (\$4.9 million); 10 percent of the inheritance and estate tax (\$4.9 million); and two percent of lottery profits (\$6 million).

Similar to current statutes that name those entities funded through the Department of Historic Resources, the alternative proposal would designate specific "regional" nonstate organizations entitled to receive state assistance annually for operating costs. These organizations would be named in the *Code* and the budget. The budget would specify the amount of funding each organization would receive from the designated revenue source. The administering agency would have no discretion in awarding these state funds; it would serve as a "home" for the funds and would provide accountability and continuity.

The alternative proposal would provide generally for "local" educational and cultural organizations. The measure would clarify that the General Assembly could designate a portion of the fund to local entities named in the budget. The listing of local organizations would change annually, at the discretion of the General Assembly. Any of the designated funds not appropriated to the regional organizations cited in statute or the local entities named in the budget would support Virginia Commission for the Arts (VCA) grants, thereby helping the Commonwealth reach its articulated goal of \$1 per capita funding for the arts.

Shared features of these measures include the creation of a specific fund; the protection of funding for the Commonwealth's state museums; no new taxes; and accountability and continuity in the administration of state support.

A special subcommittee will review the two proposals and funding sources and will coordinate with the administration regarding this issue before the next committee meeting.



The Honorable A. Victor Thomas, *Co-Chairman*
The Honorable Stanley C. Walker, *Co-Chairman*

Legislative Services contact: Kathleen G. Harris

HJR 141: Joint Subcommittee Studying Marketing and Financing Practices Associated with Preneed Funeral Contracts

October 6, 1994, Richmond

Three principal issues emerged during the joint subcommittee's second meeting: (i) whether the Board of Funeral Directors and Embalmers should be given authority to intervene more expeditiously in disputes concerning preneed funeral contracts, (ii) whether preneed funeral contract purchasers should receive periodic account statements from the sellers of preneed funding contracts, and (iii) whether marketing and financing practices associated with preneed cemetery contracts should be examined as part of this study. The meeting also featured a public hearing where representatives of the funeral and insurance industries expressed their views on an array of issues associated with this legislative study.

Authority of Regulatory Board

The Board of Funeral Directors and Embalmers (Funeral Board) is the principal regulator of Virginia's funeral industry. The Funeral Board determines the professional requirements for funeral practice licensure within the Commonwealth; it is authorized to undertake disciplinary action against its licensees as well. In 1989 the Funeral Board received statutory authority to regulate the sale of preneed funeral contracts.

During the subcommittee's previous meeting, concerns were expressed about the length of time required to investigate, process, and adjudicate complaints the board receives concerning preneed contracts. The deputy director of the Department of Health Professions advised the subcommittee that the Funeral Board has no statutory authority to intervene summarily through cease-and-desist orders or otherwise.

The Funeral Board's complaint investigation process conforms to the Virginia Administrative Process Act (APA). The APA does not give administrative agencies authority to issue cease-and-desist orders. A recent Virginia Court of Appeals case, *Greenwald Cassell Associates v. The Department of Commerce*, highlights the APA's provisions for expedited action by administrative agencies: (i) refer the matter to a Commonwealth Attorney's office for prosecution, or (ii) petition a circuit court for injunctive relief.

In *Greenwald*, the Virginia Court of Appeals vacated a Department of Commerce's cease-and-desist order issued via an administrative letter. The Court held that such a letter was without basis in the APA or elsewhere. The joint subcommittee learned, however, that some boards within the Department

of Health Professions (e.g., the Boards of Medicine and Pharmacy) have explicit statutory authority to summarily suspend their licensees' professional activities. At its next meeting, the joint subcommittee will examine options for more expeditious Funeral Board intervention.

Preneed Contract Provisions

The subcommittee examined and discussed a sampling of preneed funeral services and funding contracts furnished by funeral homes, insurers, and a financial institution. Preneed funeral services contracts must conform to Funeral Board regulations, which do not prescribe the content or format of the funding contracts (e.g., insurance applications and policies or trust instruments).

The funding contracts examined contained provisions for placing deposited funds or insurance policies in irrevocable trusts. The irrevocability option exists for those desiring to invoke current Medicaid eligibility regulations. The regulations exclude from countable assets those funds set aside for funeral expenses and burial space items. Irrevocable trusts provide one popular means of satisfying the regulations' criteria for exclusion.

The preneed insurance marketing and contractual materials examined utilized the term "trust" in conjunction with setting forth the irrevocability feature discussed above. In that vein, it was suggested that some purchasers might not appreciate the difference between purchasing a preneed insurance policy to be placed in trust and establishing a trust account in a financial institution. One preneed insurer advised the subcommittee of its intentions to revise its marketing materials and contracts to address that concern.

Funding Contracts: Reports and Audits

Some financial institutions providing preneed trust services furnish periodic account statements to trust account customers. The subcommittee received the suggestion that insurers selling policies funding preneed contracts or intermediaries holding these policies in trust or in some similar arrangement should provide comparable annual or periodic account statements to policy purchasers. According to a bank representative, one significant benefit of these statements is that they prevent an account holders' next-of-kin from overlooking the existence of preneed funding arrangements.

The American Association of Retired Persons (AARP) participated in the 1989 preneed legislation's development. The AARP favors post-purchase disclosure of earnings associated with preneed funding contracts. Additionally the AARP advocates (i) independent audit reports of all trust funds submitted at least annually to a state enforcement agency and (ii) bonding requirements for all who accept, handle or have access to preneed trust funds. The joint subcommittee intends to examine these issues at its next meeting.

Preneed Cemetery Contracts

Preneed funeral contracts are one component of the preneed market. The other is the marketing and sale of preneed cemetery contracts involving the sale of gravesites and related merchandise, such as memorials and burial vaults. Sellers of preneed cemetery contracts are required to register with the Department of Agriculture and Consumer Affairs, but are not otherwise licensed by any regulatory agency. Additionally, in-person solicitation of prospective preneed cemetery contract purchasers is not prohibited as it is for the sale of preneed funeral contracts.

Members of the joint subcommittee were informed at the last meeting of the emergence of funeral homes and cemeteries that are affiliated or held in common ownership. This suggested to some members the possibility of joint, in-person solicitation for preneed cemetery contracts and preneed funeral contracts. A representative of the Virginia Cemetery Association emphasized that funeral homes and cemeteries have separate laws governing each industry. Common ownership would not eliminate the obligation of each business to comply with regulations applicable to its operation. Addressing the solicitation "cross-over" issue, he stated that cemetery representatives are barred by a combination of statutory and decisional law from marketing funeral services and related items. Members of the subcommittee will examine preneed cemetery issues further at their next meeting.

Public Hearing

Many representatives of the funeral and insurance industries attended the meeting and testified during the public hearing. Funeral directors echoed the theme of correspondence from the Northern Virginia and Tidewater Funeral Directors Associations. Both letters questioned the need for additional regulation of the preneed industry, citing the 1989 legislation's breadth and the limited number of preneed complaints received by the Board of Funeral Directors since 1989. The letters and witnesses also urged the retention of all current preneed funding options.

Insurers marketing preneed insurance products in Virginia also questioned the need for any additional regulation. One insurer's representative stated that his examination of preneed complaints at the offices of the Board of Funeral Directors and Embalmers and at the State Corporation Commission had revealed no complaints containing allegations of misconduct by an insurer in connection with preneed policies.

The joint subcommittee will convene its next meeting on November 22 in Richmond.



The Honorable Harvey B. Morgan, *Chairman*
Legislative Services contact: Arlen K. Bolstad

HJR 100: Joint Subcommittee Studying the Commonwealth's Adoption Laws

October 21, 1994, Richmond

At its third meeting the subcommittee sorted through the broad range of adoption issues and legislative suggestions put before it during its two prior meetings. In order to ensure comprehensive representation of interests and an accurate understanding of the problems affecting Virginia's adoption laws, the subcommittee invited Virginia's adoption community to participate and assist in the discussion on action to be taken by the subcommittee.

Issues

Representatives of various organizations and viewpoints attended the meeting and participated in the discussion. The subcommittee worked from a list of the suggestions made at its previous meetings and discussed each with those in attendance. Topics discussed came under the headings of consent periods, docket preference, foster care, best interest of the child, criminal sanctions, birth father rights, and miscellaneous.

Consent Periods

The discussion on consent periods focused on the need to create parallel consent periods between agency and parental placement adoptions and to determine whether Virginia's current time frames for executing and revoking consent were sufficient to meet the needs of all involved parties. Many at the meeting expressed the view that most of the problems concerning consent periods relate to the overall problem of getting the necessary parties to the adoption into court. Rather than revising the time periods, the subcommittee decided to recommend that Virginia's adoption laws be amended to require a *timely* appearance in court, along with enforcement mechanisms. All in attendance also agreed that creating a docket preference for adoption cases would be highly beneficial in promoting an important sense of timing for the parties.

Subcommittee Recommendations

The subcommittee also decided to endorse a recommendation to require that birth mothers be represented by counsel; to eliminate the requirement that an out-of-state birth mother appear in a Virginia court instead of a court of competent jurisdiction in her home state; to penalize the purposeful giving of false information; to allow a best interest of the child hearing in certain contested adoptions; to create a strict statute of limitations applying to the ability to attack a final order of adoption; and to provide better guidelines and procedures on

the return of a child to the birth mother upon revocation of consent.

No Action

The subcommittee decided not to take any action relating the establishment of a putative fathers registry or the use of foster care in the parental placement process. It was the feeling of the members of the subcommittee that the changes being made in other areas of Virginia's adoption laws would adequately address the issues of fathers' rights and foster care.

The American Academy of Adoption Attorneys suggested a number of changes to clean up and clarify existing statutory language.

Next Meeting

Draft legislation will be circulated to interested parties prior to the next subcommittee meeting on December 2, 1994. At that meeting, the subcommittee will review the draft legislation and receive comments.



The Honorable Linda T. Puller, *Chairman*
Legislative Services contact: Jessica F. Bolecek

HJR 160: Joint Subcommittee Studying Local Revenue Resources

October 12, 1994, Richmond
October 17, 1994, Norfolk
November 14, 1994, Hot Springs

Adopted by the 1994 Session of the General Assembly, HJR 160 directs the joint subcommittee to examine local revenue resources, including:

1. Identifying and examining all local taxes and fees;
2. Reviewing the equity of each tax and fee assessed;
3. Determining whether changes are needed in the tax structure relative to Virginia's changing economy;
4. Determining which localities tax cellular telephone services, inventory and compare such tax rates, and evaluate the efficacy and impact of the application of such policies (During the 1994 Session, legislation was adopted amending § 58.1-3812 to authorize localities to impose the consumer utility tax

on users of mobile telecommunication services, effective September 1, 1994. Accordingly, the subcommittee is not focusing on the taxation of cellular telephone services, other than in the general context of the entire study); and

5. Recommending possible alternatives for replacement or consolidation of local taxes.

Local Tax Revenues

The primary focus of the subcommittee during its first year is tax revenue sources. Local tax revenues have increased substantially over the course of the last decade, particularly with regard to real property and tangible personal property taxes. Localities continue to rely heavily on property taxes, which comprise almost 64 percent of their total local-source revenue. The real property tax, the single greatest source of tax revenue, provided localities with almost 45 percent of their total revenue. After property taxes, three major sources of revenue for localities include the local sales and use tax (7.13 percent), the consumer utility tax (4.79 percent), and the business, professional and occupational license tax (4.21 percent). Many of the local taxes imposed by the localities (including but not limited to the meals, motor vehicle license, transient occupancy, tobacco, severance, and admissions taxes) generate less than two percent of total local revenue.

Localities derive their taxing authority from three major sources. The Virginia Constitution segregates real estate, coal and other mineral lands, and tangible personal property exclusively for taxation by local governments. Beyond their constitutional authority, localities' taxing authority is primarily statutory. The one exception to the statutory grant of authority is the Uniform Charter Powers Act, which is now subject to inclusion in municipal charters. Those cities and towns that have incorporated the act into their charters have a general taxing authority, and may impose taxes that counties cannot and may avoid rate limitations set out in the *Code*.

In examining the revenue structure of local governments, the subcommittee will be considering whether existing sources of revenue achieve the committed objective of local governments in a manner designed to prevent undue burdens upon the taxpayers; whether the various sources of revenue are adequate under present rates; and whether additional and new potential sources of revenue exist.

Meetings

The subcommittee was briefed on local taxes at its first substantive meeting on October 12. On October 17, the subcommittee met during the Virginia Municipal League's annual conference in Norfolk to hear the concerns of the league's members. The subcommittee provided a similar opportunity to members of the Virginia Association of Counties during its annual conference at The Homestead in Hot Springs on November 14. The subcommittee expects to meet again

prior to the 1995 Session to approve the final version of an interim report.

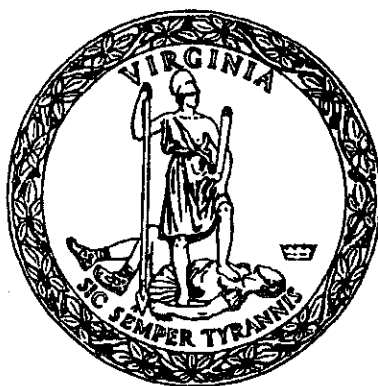
The fundamental issues for the subcommittee are similar to those studied for over a decade by the Revenue Resources and Economic Study Commission, beginning in 1968. Due to the broad nature of the study and because the area of local revenue

resources has not been thoroughly examined since the commission completed its work in 1980, the subcommittee intends to request a continuation of its study for at least one more year.



The Honorable Robert D. Hull, *Chairman*
Legislative Services contact: Pamela Catania

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.



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The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in The Virginia Register of Regulations on July 11, 1994 (10:21 V.A.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in The Virginia Register of Regulations. This section of The Virginia Register has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF FORESTRY

VR 312-01-02. Standards for Classifications of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law.

Public comments may be submitted through January 13, 1995, to Ronald S. Jenkins, Department of Forestry, Post Office Box 3758, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia 22903. Comments may be faxed to (804) 296-2369, if the original paperwork is also mailed.

Contact: Ronald S. Jenkins, Administrative Assistant, Department of Forestry, Post Office Box 3758, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia 22903, telephone (804) 977-6555 or FAX (804) 296-2369.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Office: Administration

VR 470-01-01. Public Participation Guidelines for Developing and Promulgating Regulations.

Actions: In Administrative Review process

Recommendation: To be replaced by permanent Public Participation regulations verbatim: VR 470-01-01:1

Office: State Human Rights

VR 470-03-01. Rules and Regulations to Assure the Rights of Residents of Hospitals and Other Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Recommendation: To be replaced by VR 470-03-04: Consolidated Clients Rights Regulations

VR 470-03-02. Rules and Regulations to Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric

Facilities Licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Recommendation: To be replaced by VR 470-03-04: Consolidated Clients Rights Regulations

VR 470-03-03. Rules and Regulations to Assure the Rights of Clients in Community Programs.

Recommendation: To be replaced by VR 470-03-04: Consolidated Clients Rights Regulations

VR 470-03-04. Rules and Regulations to Assure the Rights of Residents in Department of Mental Health, Mental Retardation and Substance Abuse Services Operated Facilities.

Actions: In Administrative Review process

Office: Licensure

VR 470-01-02. Mandatory Standards for the Certification of First Offender Drug Abuse Diversion and Education Programs

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-02-01. Standards for Interdepartmental Regulation of Residential Facilities for Children. (Officially filed by the Department of Social Services.)

Recommendation: Promulgated by the Department of Social Services

VR 470-02-15. Regulations for the Licensure of Substance Abuse Treatment and Rehabilitation Facilities.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-04-01. Mandatory Standards for Community Mental Health Programs.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-04-02. Mandatory Standards for Community Programs for the Mentally Retarded.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-05-01. Mandatory Standards for Community Substance Abuse Programs.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-05-02. Certification of Therapeutic Consultation and Residential Services.

Schedules for Comprehensive Review of Regulations

Actions/Date:

Public Notice/OAG Review: 12/1/94

Internal Assessment: 1/15/95

Recommendation: 2/15/95

Office: Research and Evaluation

VR 470-06-01. Regulations to Assure the Protection of Participants in Human Research.

Actions/Date:

Public Notice/OAG Review: 12/1/94

Internal Assessment: 1/15/95

Recommendation: 2/15/95

Office: Services for the Mentally Retarded

VR 470-07-01. Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

VR 470-07-02. Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities.

Recommendation: To be replaced by Consolidated Licensure Standards: VR 470-02-13

Contact: Rubyjean Gould, Regulatory Coordinator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

DEPARTMENT OF SOCIAL SERVICES

Notice of Review of Existing Regulations in the Adoptions Program

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is publishing this notice to inform the public that the adoption regulations listed below will be reviewed to determine if they should be continued, amended or repealed.

Regulations

VR 615-50-05. Fees for Court Services Provided by Local Departments of Social Services.

VR 615-43-01. Agency Placement Adoptions - Guiding Principles.

VR 615-43-02. Agency Placement Adoptions - Preplacement Services.

VR 615-43-06. Agency Placement Adoptions - AREVA.

VR 615-43-08. Agency Placement Adoptions - Subsidy.

VR 615-43-09. Agency Placement Adoptions - Appeals.

Procedures for Submitting Comments

Written comments on the above regulations must be received no later than January 3, 1995, to be considered in the regulation review. The regulation(s) about which comments are being made should begin by identifying the regulation by VR number and regulation title.

Please mail comments to the Adoption Policy Consultant, Foster Care and Adoption Unit, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849.

Contact: Brenda Kerr, Adoption Policy Consultant, Foster Care and Adoption Unit, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone: (804) 692-1290.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Review of the following regulations shall be completed by July 1, 1995.

VR 670-01-1. Regulation Guidelines for Public Participation.

VR 670-02-1. Business Enterprises.

VR 670-02-2. Virginia Industries for the Blind.

VR 670-02-3. Vending Facilities in Public Buildings.

VR 670-03-1. Vocational Rehabilitation.

VR 670-03-2. Education Services.

VR 670-03-3. Rehabilitation Teaching.

VR 670-03-4. Independent Living Services.

VR 670-03-5. Social Services.

VR 670-03-6. Deaf-Blind Services.

VR 670-03-7. Low Vision Services.

Public comments on the above regulations may be submitted through January 12, 1995.

Following this comprehensive review, the Virginia Department for the Visually Handicapped shall complete a review of its regulations at least every three years.

Schedules for Comprehensive Review of Regulations

Contact: Carter D. Hamlett, Assistant Deputy Commissioner for Services, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia 23227, telephone (804) 371-3140 (V/TTY).

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

COMMISSION ON LOCAL GOVERNMENT

† Approved Modifications of Schedule of Local Mandate Assessments

Pursuant to the provisions of §§ 2.1-7.1 and 15.1-945.3(6) of the Code of Virginia and to Paragraph 7 of Executive Memorandum 5-94, notice is hereby given that the following modifications of the schedule of local mandate assessments have been approved by the Governor and Secretary of Administration, effective September 22, 1994:

- The completion date for submission of the assessment of the Department of Social Services mandate summarized as "Neglected, abandoned children: Department of Social Services notification required where parent receives or has been approved for State, Federal aid" has been changed to 10-1-94.
- The completion date for submission of the assessment of the Department of Social Services mandate summarized as "Administrative Staff: compliance with merit system of personnel administration required" has been changed to 12-31-94.
- The Department of Agriculture and Consumer Services mandate summarized as "Gypsy Moth Appalachian Integrated Pest Management Project participation: specified personnel, procurement of supplies and equipment required" is no longer subject to review. The program has been discontinued.
- The Virginia Retirement System mandate summarized as "Localities greater than 5,000: employee retirement system and annual report required" is no longer subject to review, since the Virginia Retirement System has become an independent agency.
- The completion date for submission of the assessment of the Department of Mental Health, Mental Retardation and Substance Abuse Services mandate summarized as "Community services board plan and budget: local approval required for State grant eligibility; matching funds required" has been changed to January 1, 1995.
- The entity responsible for assessing the mandate formerly assigned to the Department of Mental Health,

Mental Retardation and Substance Abuse Services and summarized as "Comprehensive Services Act for At Risk Youth and Families (1992): coordination of services, certification for access to State Pool Funds required" has been changed to the State Executive Council.

- The completion date for submission of the assessment of the Department of Rehabilitative Services mandate summarized as "Persons with physical or sensory disabilities: boards required to assess and plan for needs" has been changed to February 15, 1995.

The original schedule for the assessments of state and federal mandates on local governments was established by the Commission on Local Government and approved by Governor Allen. In conducting assessments, agencies will follow the process established by Executive Memorandum 5-94, which became effective April 22, 1994. For further information, call Adele MacLean, Policy Analyst, Commission on Local Government at 786-6508.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in The Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02

General Notices/Errata

PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE
OBJECTIONS - RR08

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
☒ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

23230-4917, telephone (804) 367-8590.

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and The Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

- † January 22, 1995 - 2:30 p.m. – Open Meeting
† January 23, 1995 - 10 a.m. – Open Meeting
† January 24, 1995 - 8 a.m. – Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

The following committees will meet on Sunday, January 22, 1995, on matters requiring committee action: Regulatory Review Committee - 2:30 p.m., CPE Committee - 4 p.m. A public hearing on proposed fees and education will be held, followed by a regular board meeting to review correspondence, applications, review and disposition of enforcement files and other routine board business. The Enforcement Committee will meet at 4 p.m. on Monday, January 23, 1995. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period. However, the meeting is open to the public. Persons desiring to participate in the public hearing or meetings and requiring special accommodations or interpreter services should contact Nancy Taylor Feldman, Assistant Director, or Les Newton, Administrative Assistant, at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

January 11, 1995 - 1 p.m. – Open Meeting
Fairgrounds on Strawberry Hill, 600 East Laburnum Avenue, Exhibition Hall, Washington Room, Richmond, Virginia. ☒

At this regular meeting, the board plans to discuss regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of the other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

Virginia Corn Board

- † February 15, 1995 - 9 a.m. – Open Meeting
† February 16, 1995 - 9 a.m. – Open Meeting
Williamsburg Hilton and Conference Center, 50 Kingsmill Road, Williamsburg, Virginia. ☒

A meeting to review projects currently underway and to consider projects for FY 95-96. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate in the meeting should contact Rosser Cobb at least five days before the meeting date so that suitable arrangements can be made.

Contact: Rosser Cobb, Program Director, P.O. Box 26, Warsaw, VA 22572, telephone (804) 333-3710.

Pesticide Control Board

- † January 12, 1995 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia. ☒

Pesticide Control Board committee meetings. At 6 p.m.

Calendar of Events

the 24th Annual Virginia Agribusiness Appreciation Banquet at the State Fairgrounds on Strawberry Hill, 600 East Laburnum Avenue, Richmond, Virginia, will be held. Any person who needs any accommodation in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin L. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

† **January 13, 1995 - 9 a.m. – Open Meeting**
Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia. ☒

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda at 9:30 a.m. Any person who needs any accommodation in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Pork Industry Board

January 13, 1995 - 2 p.m. – Open Meeting
Virginia State Fairgrounds, 600 East Laburnum Avenue, Washington Room, Richmond, Virginia. ☒

A regular meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact John H. Parker at least five days before the meeting date so that suitable arrangements can be made.

Contact: John H. Parker, Executive Director, Virginia Pork Industry Board, 1012 Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-7092.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

† **December 12, 1994 - 9:30 a.m. – Open Meeting**
† **January 9, 1995 - 9:30 a.m. – Open Meeting**
† **January 23, 1995 - 9:30 a.m. – Open Meeting**
† **February 6, 1995 - 9:30 a.m. – Open Meeting**
† **February 22, 1995 - 9:30 a.m. – Open Meeting**
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☒

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Virginia Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

† **January 5, 1995 - 9 a.m. – Open Meeting**
† **January 6, 1995 - 9 a.m. – Open Meeting**
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

The Land Surveyor Section will conduct an Examination Development Workshop for the Land Surveyor A and B examinations.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

January 10, 1995 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A regular meeting.

Contact: David E. Dick, Assistant Director, Board for Asbestos Licensing and Lead Certification, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

AUCTIONEERS BOARD

† **January 13, 1995 - 2:30 p.m. – Public Hearing**
Hospitality House, 415 Richmond Road, Williamsburg, Virginia.

† **February 12, 1995 – Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Auctioneers Board intends to repeal regulations entitled: **VR 150-01-2, Rules and Regulations for the Virginia Board of Auctioneers** and adopt regulations entitled: **VR 150-01-2:1, Rules and Regulations for the Virginia**

Board of Auctioneers. The proposed regulations establish entry requirements for licensure of auctioneers and auction firms, examination for licensure, licensure by reciprocity, standards of practice regarding advertising, contracts, escrow accounts, records and standards of conduct for auctioneers. The proposed regulations are a result of legislative amendments enacted to § 54.1-603 of the Code of Virginia which repealed the registration and certification program for auctioneers and established a single licensure program.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VIRGINIA AVIATION BOARD

December 19, 1994 - 7 p.m. – Open Meeting
Sheraton Inn Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop for the Virginia Aviation Board. No formal actions will be taken. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Virginia Aviation Board, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

December 20, 1994 - 10 a.m. – Open Meeting
Sheraton Inn Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Virginia Aviation Board, 5702 Gulfstream Rd., Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BRANCH PILOTS

December 13, 1994 - 9 a.m. – Public Hearing
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☎

A meeting to conduct general board business, and a public hearing on review of regulations in response to

Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

December 14, 1994 - 2 p.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

December 15, 1994 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

December 28, 1994 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting. However, written comments are welcome.

Calendar of Events

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

COMPENSATION BOARD

December 22, 1994 - Noon – Open Meeting
Ninth Street Office Building, 202 North 9th Street, Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business.

Contact: Bruce W. Haynes, Executive Secretary, Compensation Board, P.O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

December 19, 1994 - 7 p.m. – Open Meeting
Henrico County Government Center, Administration Building, Board Room, 4301 East Parham Road, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting on VR 217-02-00, Nutrient Management Training and Certification Regulation (refer to the Notices of Intended Regulatory Action section, page 412, for more detailed information). The meeting is being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. H.R. Perkinson. Persons needing interpreter services for the deaf must notify Mr. Perkinson no later than December 8, 1994.

Contact: H.R. Perkinson, Manager, Nutrient Management Program, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2064 or (804) 786-2121/TDD ☎

Board of Conservation and Recreation

December 13, 1994 - 10:30 a.m. – Open Meeting
Pocahontas State Park, 10301 State Park Road, Dining Hall, Chesterfield, Virginia. ☎

A regular meeting.

Contact: Bonnie L. Phillips, Policy Analyst, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291 or (804) 786-2121/TDD ☎

December 19, 1994 - 8 p.m. – Public Hearing
Henrico County Government Center, 4301 East Parham Road, Administration Building, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting on VR 215-02-00, Stormwater Management Regulations (refer to the Notices of Intended Regulatory Action section, page 411, for more detailed information). The hearing is being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact David S. Nunnally. Persons needing interpreter services for the deaf must notify Mr. Nunnally no later than December 5, 1994.

Contact: David S. Nunnally, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

December 12, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A formal hearing regarding the Board for Contractors v. Tomac Corporation. File No. 93-01269.

Contact: Earlyne Perkins, Legal Assistant, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0946.

December 21, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor Conference Room, Richmond, Virginia. ☎

A regular quarterly meeting of the board to address policy and procedural issues, and review and render decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact A.R. Wade. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

Contact: A.R. Wade, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8582 or (804) 367-9753/TDD ☎

BOARD OF CORRECTIONAL EDUCATION

† **December 16, 1994 - 10 a.m.** – Open Meeting
Department of Correctional Education, Central Office, 101 North 14th Street, 7th Floor, Richmond, Virginia.

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Board of Correctional

Education, 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

BOARD OF CORRECTIONS

December 14, 1994 - 10 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☒

A meeting to discuss matters as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Administration Committee

December 14, 1994 - 8:30 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☒

A meeting to discuss administration matters which may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Committee on Certification Process Review

December 14, 1994 - Noon – Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☒

A meeting to discuss and review the board's certification process.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

Correctional Services Committee

December 13, 1994 - 1 p.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☒

A meeting to discuss administration matters which may be presented to the full board.

Contact: Vivian Toler, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

December 12, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation,

3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct examination cut-score study. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Telecommunications Relay Services Advisory Board

January 18, 1995 - 10 a.m. – Open Meeting
Department for the Deaf and Hard-of-Hearing, 1100 Bank Street, 12th Floor, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular business meeting. This meeting is open to the public. Public comment will be permitted with advance notice.

Contact: Loretta H. Barker, Administrative Assistant, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 371-7892/(V/TTY), toll-free 1-800-552-7917/(V/TTY) or (804) 225-2570/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **December 14, 1994 - 6 p.m. – Open Meeting**
Ogden Martin Systems, 5301 Eisenhower Avenue, Alexandria, Virginia. ☒ (Interpreter for the deaf provided upon request)

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, City of Alexandria, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

LOCAL EMERGENCY PLANNING COMMISSION - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

December 13, 1994 - 3 p.m. – Open Meeting
Montgomery County Courthouse, Main and Franklin Streets,

Calendar of Events

3rd Floor, Board of Supervisors Room, Christiansburg, Virginia. ☒

A meeting to develop a disaster simulation drill for field responders in Spring 1995, and also the appointment of new LEPC members.

Contact: Vincent D. Stover, New River Valley Planning District Commission, P.O. Box 3726, Radford, VA 24143, telephone (703) 639-9313 or FAX (703) 831-6093.

LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

January 25, 1995 - 9 a.m. – Open Meeting
Salem Civic Center, 1001 Roanoke Boulevard, Room C, Salem, Virginia. ☒

A meeting to (i) receive public comment; (ii) receive report from community coordinators; and (iii) receive report from standing committee.

Contact: Chief Dan Hall, Fire Chief/Coordinator of Emergency Services, Salem Fire Department, 105 S. Market St., Salem, VA 24153, telephone (703) 375-3080.

DEPARTMENT OF ENVIRONMENTAL QUALITY

December 12, 1994 - 10 a.m. – Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4900 Cox Road, Conference Room, Richmond, Virginia. ☒

This public hearing will provide opportunity for public comment on air pollution related issues concerning an application from Quebecor Printing Richmond, Inc., to construct and operate a new rotogravure press and a new boiler at the existing facility located at 7400 Impala Drive in Henrico County, Richmond, Virginia.

Contact: Gary Graham, Environmental Engineer, Department of Environmental Quality, Piedmont Regional Office, 4900 Cox Rd., Richmond, VA 23260, telephone (804) 527-5144.

† **December 21, 1994 - 8 p.m. – Public Hearing**
Lord Fairfax Community College Special Events Center, 173 Skirmisher Lane, Middletown, Virginia. ☒

A short informational briefing will be held at 7 p.m. prior to the hearing. The hearing is being held to receive public comment regarding air pollution from a proposed hot mix asphalt plant to be constructed off State Route 629, 3 miles north of the Town of Strasburg in Shenandoah County.

Contact: Matthew P. Heckel, Environmental Engineer, Department of Environmental Quality, Northern Virginia Regional Office, 6225 Brandon Ave., Springfield, VA 22150,

telephone (703) 644-0311.

Work Group on Detection/Quantitation Levels

January 18, 1995 - 1:30 p.m. – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, Glen Allen, Virginia.

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for February 15, March 15, April 5, April 19, May 3, May 17, June 7, and June 21, 1995. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date.

Contact: Alan J. Anthony, Chairman, Work Group on Detection/Quantitation Levels, Department of Environmental Quality, 629 E. Main St., 2nd Floor, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4120.

Technical Advisory Committee on Financial Assurance Regulations for Solid Waste Management Facilities

† **December 21, 1994 - 10 a.m. – Open Meeting**
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ☒

The purpose of the meeting is to assist the Department of Environmental Quality in the formulation of the draft of the Financial Assurance Regulations.

Contact: Wladimir Gulevich, Ph.D., P.E., Director, Office of Regulation Planning and Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218 or (804) 762-4021/TDD ☎

Technical Advisory Committee on Vegetative Waste Management and Yard Waste Composting Regulations

† **January 11, 1995 - 9 a.m. – Open Meeting**
† **January 18, 1995 - 9 a.m. – Open Meeting**
† **January 25, 1995 - 9 a.m. – Open Meeting**
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Piedmont Room, No. 1275, Richmond, Virginia. ☒

A meeting to assist the Department of Environmental Quality in formulation of the draft of the Vegetative Waste Management and Yard Waste Composting Regulations.

Contact: Robert G. Wickline, P.E., Department of Environmental Quality, Waste Management Division, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804)

762-4213 or (804) 762-4021/TDD ☎

FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

† **December 16, 1994 - 10 a.m.** – Open Meeting
Department of Social Services, 730 East Broad Street, 8th Floor, Richmond, Virginia. ☒

A meeting of the board.

Contact: Jane Weirich, Executive Director, Family and Children's Trust Fund of Virginia, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1823.

VIRGINIA FIRE SERVICES BOARD

December 16, 1994 - 9 a.m. – Open Meeting
Sheraton Inn Park South, Richmond, Virginia.

A business meeting to discuss training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Services, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

December 15, 1994 - 10 a.m. – Open Meeting
Sheraton Inn Park South, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Services, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

December 15, 1994 - 9 a.m. – Open Meeting
Sheraton Inn Park South, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Services, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

December 15, 1994 - 1 p.m. – Open Meeting
Sheraton Inn Park South, Richmond, Virginia.

A meeting to discuss fire training and policies. The

committee meeting is open to the public for their input and comments.

Contact: Bobby L. Stanley, Jr., Acting Executive Director, Department of Fire Services, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 10, 1995 - 9:30 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

January 13, 1995 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **VR 320-01-3. Preneed Funeral Planning Regulations.** The proposed amendments are designed to amend regulations in compliance with changes to federal law, clarify disclosure requirements for funeral homes to make to consumers and correct editorial errors and comply with Registrar's format.

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

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

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January 10, 1995 - 9:30 a.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

January 13, 1995 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **VR 320-01-04. Regulations of the Resident Trainee Program for Funeral Service.** The purpose of the proposed amendments is to address maximum limit on apprenticeship, supervision of trainee who has completed program, requirements for final reporting, failure to report, editorial changes, supervision for active trainees, and reporting requirements for active trainees.

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

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

Calendar of Events

BOARD OF GAME AND INLAND FISHERIES

December 15, 1994 - Noon – Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The Law and Education Committee will meet at noon. This meeting will be followed by the Wildlife and Boat Committee at 2 p.m. The Law and Education Committee will discuss hunting and boating education safety responsibility and ethics and the economic benefits of wildlife management. The Wildlife and Boat Committee will discuss the economic importance of hunting, fishing and boating to the Commonwealth. They will also discuss forthcoming hunting regulations, and the procedure to be utilized for public input and the schedule for the public meetings.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

December 16, 1994 - 10 a.m. – Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to consider for final adoption regulations that provide for the capture, hold, transport and release of nuisance wildlife and the sale of unclaimed mounts by taxidermists. The board will determine whether or not any of these proposed regulations or other alternative regulatory language should be adopted as final regulations. Regulations may be proposed for advertisement that pertain to shooting enclosures and fox pens. In addition, general and administrative matters may be discussed. The board may hold an executive session.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Biosolids Permit Fee Regulation Advisory Committee

December 14, 1994 - 2 p.m. – Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☒

A meeting to discuss the public participation issues related to the proposed regulation for fees for permits involving land application, marketing, or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX

(804) 786-5567.

Biosolids Use Committee (formerly LASS)

December 14, 1994 - 10 a.m. – Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☒

A meeting to discuss issues related to the Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing, or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

NOTE: CHANGE IN MEETING DATE

December 13, 1994 - 9:30 a.m. – Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☒

A monthly meeting.

Contact: Kim Bolden Walker, Public Relations Coordinator, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

December 13, 1994 - 9:30 a.m. – Open Meeting
Virginia Commonwealth University, Richmond, Virginia.

A general business meeting. For more information, contact the council.

Contact: Anne M. Pratt, Associate Director, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **December 14, 1994 - 10:30 a.m.** – Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804)

786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 3, 1995 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road,
Hopewell, Virginia. ☎ (Interpreter for the deaf provided
upon request)

Local Emergency Preparedness Committee Meeting on
emergency preparedness as required by SARA Title
III.

Contact: Robert Brown, Emergency Service Coordinator,
300 North Main Street, Hopewell, VA 23860, telephone
(804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **December 20, 1994 - 11 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South
Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to
(i) review and, if appropriate, approve the minutes
from the prior monthly meeting; (ii) consider for
approval and ratification mortgage loan commitments
under its various programs; (iii) review the authority's
operations for the prior month; and (iv) consider such
other matters and take such other actions as it may
deem appropriate. Various committees of the Board of
Commissioners may also meet before or after the
regular meeting and consider matters within their
purview. The planned agenda of the meeting will be
available at the offices of the authority one week
prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia
Housing Development Authority, 601 S. Belvidere St.,
Richmond, VA 23220, telephone (804) 782-1986.

STATEWIDE INDEPENDENT LIVING COUNCIL

December 14, 1994 - 10 a.m. – Open Meeting
December 15, 1994 - 9 a.m. – Open Meeting
Department of Rehabilitative Services, 8004 Franklin
Farms Drive, Richmond, Virginia.

In place of a regular quarterly meeting, the council
will be in orientation training on the Rehabilitation
Act and responsibilities of the Statewide Independent
Living Council.

Contact: Dr. Ronald C. Gordon, Commissioner, Department
of Rehabilitative Services, 8004 Franklin Farms Dr.,
Richmond, VA 23230, telephone (804) 662-7010, toll-free
1-800-552-5019/TDD ☎ and Voice or (804) 662-9040/TDD
☎

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers Board

December 14, 1994 - 10 a.m. – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond,
Virginia. ☎ (Interpreter for the deaf provided upon
request)

A regular meeting of the board.

Contact: Patti C. Bell, Staff Coordinator, Department of
Labor and Industry, 13 S. 13th St., Richmond, VA 23219,
telephone (804) 786-2385 or (804) 786-2376/TDD ☎

Safety and Health Codes Board

December 19, 1994 - 10 a.m. – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond,
Virginia. ☎ (Interpreter for the deaf provided upon
request)

The tentative agenda items for consideration by the
board include:

1. Retention of DOT markings, placards, and labels;
Final Rules 1910.1201; 1915.100; 1917.29; 1918.100;
1926.61.
2. Confined and Enclosed Spaces and Other Dangerous
Atmospheres in Shipyard Employment, 1915.11 -
1915.16, 1915.7.
3. Safety Standard for Fall Protection in the
Construction Industry; Final Rules, 1926.500-1926.503.
4. Occupational Exposure to Asbestos; Final Rules,
1910.1001; 1926.1101; 1915.1001.
5. Hazardous Waste Operations and Emergency
Response, 1910.120 and 1926.65.
6. Logging Operations; Final Rule, 1910.266, 1928.21
and 1910.269.
7. Approval of Regulatory Review of Boiler and
Pressure Vessels (VR 425-01-75)
8. Approval of Regulatory Review of Boiler and
Pressure Vessels Certification (VR 425-01-64).
9. Approval of Regulatory Review of Licensed Asbestos
Contractor Notification, Asbestos Project Permits and
Permit Fees (VR 425-01-74).

Contact: John J. Crisanti, Director, Enforcement Policy,
Department of Labor and Industry, Powers-Taylor Bldg., 13
S. 13th St., Richmond, VA 23219, telephone (804) 786-2384,
FAX (804) 786-8418 or (804) 786-2376/TDD ☎

Calendar of Events

LIBRARY BOARD

† **January 20, 1995 - 10:30 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ☒

A meeting to discuss administrative matters of The Library of Virginia.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Automation and Networking Committee

† **January 20, 1995 - 8:45 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Conference Room B, Richmond, Virginia. ☒

A meeting to discuss automation and networking matters related to The Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Building Committee

† **December 15, 1994 - 10:30 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ☒

The discussion will entail an overview and update on the new Library of Virginia building.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

By-Laws Committee

† **January 20, 1995 - 8:15 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia. ☒

A meeting to discuss possible revisions to the by-laws of the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Executive Committee

† **January 19, 1995 - 7 p.m.** – Open Meeting
The Library of Virginia. Location to be announced.

A meeting to discuss matters pertaining to the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th

Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

General Library Committee

† **January 20, 1995 - 8 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the Director of General Library Division, Richmond, Virginia. ☒

A meeting to discuss general library matters as they relate to the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Legislative and Finance Committee

† **January 20, 1995 - 9:30 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia. ☒

A meeting to discuss legislative and financial matters related to the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Nominating Committee

† **January 20, 1995 - 8 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia. ☒

A meeting to discuss nominations relating to the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

† **January 20, 1995 - 9:30 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Library Development and Networking Division, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to public library development and the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Publications and Cultural Affairs Committee

† **January 20, 1995 - 9:30 a.m.** – Open Meeting
The Library of Virginia, 11th Street at Capitol Square,

Office of the Director of Publications and Cultural Affairs,
Richmond, Virginia. ☒

A meeting to discuss matters related to publications
and cultural affairs and the Library Board.

Contact: Jean H. Taylor, Secretary to State Librarian, 11th
Street at Capitol Square, Richmond, VA 23219, telephone
(804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

December 21, 1994 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor,
Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting; subject to cancellation unless there
are action items requiring the council's consideration.
Persons interested in attending should call one week
prior to the meeting date to ascertain whether or not
the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the
Treasury, P.O. Box 1879, Richmond, VA 23215, telephone
(804) 225-4928.

STATE LOTTERY BOARD

December 19, 1994 - 10 a.m. – Open Meeting
State Lottery Department, 2201 West Broad Street,
Richmond, Virginia. ☒ (Interpreter for deaf provided upon
request)

A regular monthly meeting of the board. Business will
be conducted according to items listed on the agenda,
which has not yet been determined. Two periods for
public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State
Lottery Department, 2201 W. Broad St., Richmond, VA
23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

MARINE RESOURCES COMMISSION

December 20, 1994 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport
News, Virginia. ☒ (Interpreter for the deaf provided upon
request)

The commission will hear and decide marine
environmental matters at 9:30 a.m.; permit applications
for projects in wetlands, bottom lands, coastal primary
sand dunes and beaches; appeals of local wetland
board decisions; policy and regulatory issues. The
commission will hear and decide fishery management
items at approximately noon. Items to be heard are as
follows: regulatory proposals, fishery management
plans, fishery conservation issues, licensing, shellfish

leasing. Meetings are open to the public. Testimony is
taken under oath from parties addressing agenda
items on permits and licensing. Public comments are
taken on resource matters, regulatory issues and items
scheduled for public hearing. The commission is
empowered to promulgate regulations in the areas of
marine environmental management and marine fishery
management.

Contact: Sandra S. Schmidt, Secretary to the Commission,
Marine Resources Commission, P.O. Box 756, Newport
News, VA 23607-0756, telephone (804) 247-8088, toll-free
1-800-541-4646 or (804) 247-2292/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

December 15, 1994 - 10 a.m. – Open Meeting
Department of Medical Assistance Services, 600 East Broad
Street, Suite 1300, Board Room, Richmond, Virginia. ☒

An open meeting to discuss medical assistance services
and to take action on issues pertinent to the board.

Contact: Patricia A. Sykes, Board Liaison, Department of
Medical Assistance Services, 600 E. Broad St., Suite 1300,
Richmond, VA 23219, telephone (804) 786-7958.

BOARD OF MEDICINE

Advisory Board of Occupational Therapy

January 10, 1995 - 10 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to receive reports from the chairperson
and vice-chair, review regulations and public
comments on regulatory review, elect officers, and
discuss any other business that may come before the
board. The chairperson will entertain public comments
during the first 15 minutes of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director,
Discipline, Board of Medicine, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230-1717, telephone (804) 662-9923
or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

January 13, 1995 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to review current regulations, respond to
public comments concerning regulatory review and
such other business that may come before the
advisory board. The chairperson will entertain public

Calendar of Events

comments following the adoption of the agenda for 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

December 16, 1994 - 9 a.m. – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 109 Governor St., 13th Floor, Richmond, Virginia. ☎

January 27, 1995 - 9 a.m. – Open Meeting
Southside Complex, West Washington Street, Petersburg, Virginia.

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988.

GOVERNOR'S MINED LAND RECLAMATION ADVISORY BOARD

December 15, 1994 - 10 a.m. – Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review and discuss recent Interstate Mining Compact Commission issues associated with the coal industry.

Contact: Danny R. Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8152.

DEPARTMENT OF MINES, MINERALS AND ENERGY

January 4, 1995 - 1 p.m. – Open Meeting
February 1, 1995 - 1 p.m. – Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Coal Combustion By-Products/Biosolids Work Group to advise the agency on development of guidelines for the placement of coal combustion by-products and biosolids on Division of Mined Land Reclamation permitted sites. This work group is open to the public. There will be a public comment period at the conclusion of the meeting.

Contact: Les Vincent, Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8178 or toll-free 1-800-828-1120 (VA Relay Center)

December 12, 1994 - 9:30 a.m. – Open Meeting
January 9, 1995 - 9:30 a.m. – Open Meeting
February 13, 1995 - 9:30 a.m. – Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Permit Streamlining/Standardization Work Group to advise the agency on development of standardized, streamlined permit applications. This workgroup meeting is open to the public. There will be a public comment period at the conclusion of the meeting.

Contact: Les Vincent, Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8178 or toll-free 1-800-828-1120 (VA Relay Center)

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

December 14, 1994 - 1 p.m. – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

BOARD OF NURSING

December 13, 1994 - 9 a.m. – Open Meeting
December 15, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Informal conferences will be held for the Nurse Aide

Registry. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7310 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

December 19, 1994 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

Informal conference meeting. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

VIRGINIA OUTDOORS FOUNDATION

† **December 16, 1994 - 10 a.m. – Open Meeting**
Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A general business meeting. Agenda available upon request. Public comment will be received.

Contact: Virginia E. McConnell, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Suite 300, Richmond, VA 23219, telephone (804) 225-2147.

BOARD OF PHARMACY

† **December 14, 1994 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia.

A board meeting and formal hearings. This is a public meeting and there will be a public comment period from 9:15 a.m. to 9:30 a.m.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

December 19, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of

Professional and Occupational Regulation intends to amend regulations entitled: **VR 190-01-1:1. Regulations Governing Employment Agencies.** The purpose of the proposed amendments is to establish the requirements for licensure of employment agencies, employment agency controlling persons and employment agency counselors, including a fee adjustment.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-1302.1 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

* * * * *

December 19, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to amend regulations entitled: **VR 190-03-1. Regulations Governing Polygraph Examiners.** The amendments clarify the qualifications for licensure and licensure by reciprocity, establish a waiver of internship requirement, provide information regarding examination, simplify procedures for renewal and reinstatement of licenses, and establish criteria for approval of polygraph schools. The most substantive change is the increase in fees for polygraph licenses, intern registrations, examination, and renewal and reinstatement fees as needed in accordance with § 54.1-113 of the Code of Virginia. All other amendments are for clarity, simplicity, and readability.

Statutory Authority: §§ 54.1-113 and 54.1-1802 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

REAL ESTATE APPRAISER BOARD

† **December 22, 1994 - 9 a.m. – Open Meeting**
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct informal fact-finding conferences in regards to the Real Estate Appraiser Board v. Howard V. Clayton, at 9 a.m., and the Real Estate Appraiser Board v. Hugh S. Sproul at 11 a.m. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with

Calendar of Events

Disabilities Act.

Contact: Carol A. Mitchell, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

VIRGINIA RESOURCES AUTHORITY

December 13, 1994 - 9:30 a.m. – Open Meeting
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

† **January 10, 1995 - 9:30 a.m. – Open Meeting**
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

† **February 14, 1995 - 9:30 a.m. – Open Meeting**
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to (i) approve minutes of its prior meeting; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

BLUE RIBBON COMMISSION ON SCHOOL HEALTH

† **December 19, 1994 - 1 p.m. – Open Meeting**
Department of Social Services, 730 East Broad Street, Lower Level #1, Richmond, Virginia. ☒

Senate Joint Resolution No. 155 of the 1994 Session of the Virginia General Assembly requested the establishment of a Blue Ribbon Commission on School Health to collaborate in developing, implementing and evaluating statewide comprehensive school health programs. The Governor has requested a summit meeting to involve citizens from across the Commonwealth so that the issues before the commission can be addressed by all interested persons.

Contact: Keith Boswell, Office of the Secretary of Health and Human Resources, P.O. Box 1475, Richmond, VA 23212, telephone (804) 786-7765.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

† **January 5, 1995 - 10 a.m. – Open Meeting**
Department of Health, 1500 East Main Street, Main Street Station, Suite 115, Richmond, Virginia.

A regular meeting.

Contact: Berly Nguyen, Secretary, Sewage Handling and Disposal Advisory Committee, 1500 E. Main St., Suite 115, P.O. Box 2448, Richmond, VA 23219, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **February 1, 1995 - 10 a.m. – Open Meeting**
Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock, Virginia. ☒

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

STATE BOARD OF SOCIAL SERVICES

† **December 14, 1994 - 9 a.m. – Open Meeting**
† **December 15, 1994 - 9 a.m. – Open Meeting**
† **January 18, 1995 - 9 a.m. – Open Meeting**
† **January 19, 1995 - 9 a.m. – Open Meeting**
Koger Executive Center West, 1604 Santa Rosa Road, Wythe Building, Richmond, Virginia. ☒

A work session and formal business meeting.

Contact: Phyllis Sisk, Special Assistant to the Commissioner, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900, toll-free 1-800-552-3431 or toll-free 1-800-552-7096/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

† **December 14, 1994 - 2 p.m. – Open Meeting**
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation,

1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **December 15, 1994 - 10 a.m. – Open Meeting**
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

VIRGINIA TRANSPORTATION SAFETY BOARD

† **February 2, 1995 - 9 a.m. – Open Meeting**
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒

A quarterly meeting of the board. The board will confer with the Secretary of Transportation and the Commissioner of Motor Vehicles regarding transportation safety issues.

Contact: Bill Leighty, Deputy Commissioner, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6614.

TREASURY BOARD

December 21, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. ☒

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

December 14, 1994 - 9:30 a.m. – Open Meeting
State Corporation Commission, Tyler Building, 1300 East

Main Street, Richmond, Virginia. ☒

A regular commission meeting and review of regulations.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

BOARD FOR THE VISUALLY HANDICAPPED

† **January 19, 1995 - 2 p.m. – Open Meeting**
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A quarterly meeting to review policy and procedures. The board reviews and comments on the department's budget.

Contact: Mary Schellenger, Administrative Assistant, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145 or toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Vocational Rehabilitation Council

† **February 25, 1995 - 10 a.m. – Open Meeting**
State Library for the Visually and Physically Handicapped, 395 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the department on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth. Request deadline for interpreter services is February 11, 1995, at 3:30 p.m.

Contact: James G. Taylor, Vocational Rehabilitation Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-662-2155 or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

December 16, 1994 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor, Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drug products to the formulary that became effective on May 1, 1994. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health,

Calendar of Events

Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on December 16, 1994, will be made a part of the hearing record.

Contact: James K. Thomson, Bureau of Pharmacy, Department of Health, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

January 19, 1995 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 5, 1995 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A public hearing on proposed fees followed by a regular board meeting on matters which may require board action. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period. However, the meeting is open to the public. Persons desiring to participate in the public hearing or meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230-4917 or (804) 367-8590.

LEGISLATIVE

VIRGINIA CODE COMMISSION

December 21, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

A regular meeting.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

Title 15.1 Recodification Task Force

December 15, 1994 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

A meeting to suggest changes to Title 15.1.

Contact: Michelle Browning, Executive Secretary, Division of Legislative Services, General Assembly Bldg., 910 Capitol Square, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON YOUTH

December 12, 1994 - 1 p.m. – Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia.

The commission will receive the legislative recommendations of the task forces for studies SJR 130 and HJR 260, hold a public hearing on youth-related issues, and review Commission on Youth members' other youth-related legislation.

Contact: Joyce Huey, Commission on Youth, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

December 12

† Alcoholic Beverage Control Board, Virginia Contractors, Board for Cosmetology, Board for Mines, Minerals and Energy, Department of Youth, Commission on

December 13

Conservation and Recreation, Department of Corrections, Board of
- Correctional Services Committee
Emergency Planning Commission, Local - County of Montgomery/Town of Blacksburg
Health Services Cost Review Council, Virginia Higher Education for Virginia, State Council of Nursing, Board of
- Nurse Aide Registry
Resources Authority, Virginia

Calendar of Events

December 14

Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Corrections, Board of
- Administration Committee
- Committee on Certification Process Review
† Emergency Planning Committee, Local - City of Alexandria
Health, Department of
- Biosolids Permit Fee Regulation Advisory Committee
- Biosolids Use Committee
† Historic Preservation Foundation, Virginia
Statewide Independent Living Council
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
Motor Vehicles, Department of
- Medical Advisory Board
† Pharmacy, Board of
† Social Services, State Board of
† Commonwealth Transportation Board
Virginia Racing Commission

December 15

Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Code Commission, Virginia
- Title 15.1 Recodification Task Force
Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
Game and Inland Fisheries, Board of
† Library Board
- Building Committee
Mined Land Reclamation Advisory Board, Governor's
Medical Assistance Services, Board of
Nursing, Board of
- Nurse Aide Registry
† Social Services, State Board of
† Commonwealth Transportation Board

December 16

† Correctional Education, Board of
† Family and Children's Trust Fund of Virginia
Fire Services Board, Virginia
Game and Inland Fisheries, Board of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
† Outdoors Foundation, Virginia

December 19

Aviation Board, Virginia
Conservation and Recreation, Department of
Labor and Industry, Department of
- Safety and Health Codes Board
Lottery Department, State
Optometry, Board of
† School Health, Blue Ribbon Commission on

December 20

Aviation Board, Virginia
† Housing Development Authority, Virginia
Marine Resources Commission

December 21

Contractors, Board for
† Environmental Quality, Department of
- Technical Advisory Committee on Financial Assurance Regulations for Solid Waste Management Facilities
Local Debt, State Council on
Treasury Board

December 22

Compensation Board
† Real Estate Appraiser Board

December 28

Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

January 3, 1995

Hopewell Industrial Safety Council

January 4

Mines, Minerals and Energy, Department of

January 5

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Sewage Handling and Disposal Advisory Committee

January 6

† Architects, Professional Engineers, Land Surveyors, and Landscape Architects, Board for

January 9

† Alcoholic Beverage Control Board, Virginia
Mines, Minerals and Energy, Department of

January 10

Asbestos Licensing and Lead Certification, Board for
Medicine, Board of
- Advisory Board on Occupational Therapy
† Resources Authority, Virginia

January 11

Agriculture and Consumer Services, Department of
† Environmental Quality, Department of
- Technical Advisory Committee on Vegetative Waste Management and Yard Waste Composting Regulations

January 12

† Agriculture and Consumer Services, Department of
- Pesticide Control Board

January 13

Agriculture and Consumer Services, Department of
- Pesticide Control Board

Calendar of Events

- Virginia Pork Industry Board
 - Medicine, Board of
 - Advisory Board on Physical Therapy
 - January 18**
 - Deaf and Hard-of-Hearing, Department of
 - Telecommunications Relay Services Advisory Board
 - Environmental Quality, Department of
 - Work Group on Detection/Quantitation Levels
 - Technical Advisory Committee on Vegetative Waste Management and Yard Waste Composting Regulations
 - † Social Services, State Board of
 - January 19**
 - † Library Board
 - Executive Committee
 - † Social Services, State Board of
 - † Visually Handicapped, Board for the Voluntary Formulary Board, Virginia
 - January 20**
 - † Library Board
 - Automation and Networking Committee
 - By-Laws Committee
 - General Library Committee
 - Legislative and Finance Committee
 - Nominating Committee
 - Public Library Development Committee
 - Publications and Cultural Affairs Committee
 - January 22**
 - † Accountancy, Board for
 - January 23**
 - † Accountancy, Board for
 - † Alcoholic Beverage Control Board, Virginia
 - January 24**
 - † Accountancy, Board for
 - January 25**
 - Emergency Planning Committee, Local - Roanoke Valley
 - † Environmental Quality, Department of
 - Technical Advisory Committee on Vegetative Waste Management and Yard Waste Composting Regulations
 - January 27**
 - Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee
 - February 1**
 - Mines, Minerals and Energy, Department of
 - † Sewage Handling and Disposal Appeals Review Board
 - February 2**
 - † Transportation Safety Board, Virginia
 - February 6**
 - † Alcoholic Beverage Control Board, Virginia
 - February 13**
 - Mines, Minerals and Energy, Department of
 - February 14**
 - † Resources Authority, Virginia
 - February 15**
 - † Agriculture and Consumer Services, Department of
 - Virginia Corn Board
 - February 16**
 - † Agriculture and Consumer Services, Department of
 - Virginia Corn Board
 - February 22**
 - † Alcoholic Beverage Control Board, Virginia
 - February 25**
 - † Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council
- PUBLIC HEARINGS**
- December 12**
 - Environmental Quality, Department of
 - December 13**
 - Branch Pilots, Board for
 - December 16**
 - Voluntary Formulary Board, Virginia
 - December 19**
 - Conservation and Recreation, Department of
 - Board of Conservation and Recreation
 - December 21**
 - † Environmental Quality, Department of
 - January 5, 1995**
 - Waterworks and Wastewater Works Operators, Board for
 - January 10**
 - Funeral Directors and Embalmers, Board of
 - January 13**
 - † Auctioneers Board
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