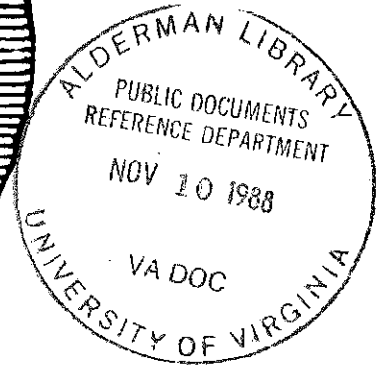


THE VIRGINIA REGISTER

OF REGULATIONS

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INFORMATION ABOUT THE VIRGINIA REGISTER OF REGULATIONS

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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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.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTE: The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulations:

VR 325-02. GAME.

VR 325-02-24. Waterfowl and Waterfowl Blinds.

VR 325-02-27. Permits.

VR 325-03. FISH.

VR 325-03-1. Fishing Generally.

VR 325-03-2. Trout Fishing.

VR 325-03-5. Minnows, Hellgrammites and Crayfish.

VR 325-04. WATERCRAFT.

VR 325-04-1. In General.

Statutory Authority: §§ 29.1-501, 29.1-502, 29.1-701 and 29.1-735 of the Code of Virginia.

Public Hearing Date: October 28, 1988 - 9:30 a.m.

(See Calendar of Events section for additional information)

Public Hearing Notice:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed new and amended board regulations applicable Statewide. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the board's offices, 4010 West Broad Street, Richmond, Virginia, beginning at 9:30 a.m. on Friday, October 28, 1988, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations, or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposals at that time, acting upon the proposals separately or in block.

Summary:

Summaries are not provided since, in most instances, the summary would be as long or longer than the full text.

VR 325-02. GAME.

VR 325-02-24. WATERFOWL AND WATERFOWL
BLINDS.

Proposed Effective Date: December 1, 1988.

§ 12. Hunting of waterfowl prohibited on Wednesdays on Pamunkey River.

This section is rescinded in its entirety.

VR 325-02-27. PERMITS.

Proposed Effective Date: January 1, 1989.

§ 8. Stuffing or mounting birds and animals - Records; inspections.

A. A holder of a permit to stuff or mount birds and animals shall keep a complete record of all transactions. All records of a permit holder and the premises where such business is conducted shall be open to inspection by representatives of the department at all times. Such records shall include the species to be mounted or tanned; the date of receipt; the name, address and telephone number of the person for whom the work is being performed; the name of the person who killed the specimen (if different from above); the hunting license or Virginia driving license number of such person; the county where the specimen was taken or, if taken out-of-state, the state in which it was taken; and the date the completed work was returned to the customer. Such records shall be retained for three years. These records, and the premises where such business is conducted, shall be open to inspection by representatives of the department at all times.

B. Upon receipt of any specimen of wildlife, a holder of a permit shall immediately affix to such specimen a tag bearing the designation of the species, the name and address of the customer and the date the specimen was killed. Such tag shall remain affixed to the specimen, except when the specimen is actually in the process of being worked on, until it is delivered to the customer. A numbered tag, with numbers corresponding to the number of the line entry of the records required in subsection A of this section, may be used.

VR 325-03. FISH.

VR 325-03-1. FISHING GENERALLY.

Proposed Effective Date: January 1, 1989.

§ 2. Creel limits.

The creel limits for the various species of fish shall be

Proposed Regulations

as follows:

1. Largemouth, smallmouth and spotted bass, five a day in the aggregate ; *except, that on Briery Creek Lake (Prince Edward County) the limit shall be two per day in the aggregate.*

2. Landlocked striped bass and landlocked striped bass X hybrids, in the aggregate, four a day; *except, that in Smith Mountain Reservoir and its tributaries, including the Roanoke River upstream to Niagara Dam, the limit shall be two a day in the aggregate ; .*

3. White bass, no limit, *except that in Gaston Reservoir the limit shall be 25 ; .*

4. Walleye or yellow pike perch *and sauger, eight a day in the aggregate , and chain pickerel or jackfish eight a day of each ; provided that 10 walleye a day may be taken from South Holston Reservoir below full pool elevation of 1730; .*

5. Northern pike and muskellunge, two a day ; .

6. *Sauger, no limit, provided that only 15 a day may be taken from South Holston Reservoir below full pool elevation of 1730;*

7. 6. Bluegill (bream) and other sunfish, including crappie or silver perch and rock bass or redeye, no limit.

§ 3. Size limit.

Except as provided in this regulation and VR 325-03-2, §§ 5, 11, 12 and 13, there shall be no size limit on any species of fish.

1. There shall be a ~~26~~ 30 -inch minimum size limit on muskellunge, a 20-inch minimum size limit on northern pike and a 20-inch minimum size limit on landlocked striped bass (rockfish) and a 15-inch minimum size limit on landlocked striped bass X white bass hybrids.

2. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass in Occoquan Reservoir from the reservoir dam upstream to the Lake Jackson Dam on Occoquan Creek and upstream to the Yates Ford Bridge (Route 612) on Bull Run Creek. It shall be unlawful to have any such bass less than 14 inches in length in one's possession on the above described waters of this reservoir.

3. There shall be a 12-inch minimum size limit on largemouth, smallmouth and spotted bass in the ~~North Fork of Pond~~, Chickahominy, Claytor, Philpott ; and Flannagan ; and ~~Beaver dam Loudoun County~~ Reservoirs, and in Lake Moomaw (Gathright Project), and in the waters of Fort A.P. Hill ; ~~and in the waters of Quantico Marine Reservation .~~ It shall be

unlawful to have any largemouth, smallmouth or spotted bass less than 12 inches in length in one's possession while on any of the waters mentioned in the preceding sentence.

4. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass on the Roanoke (Staunton) and Dan Rivers and their tributaries and impoundments (Gaston, John Kerr, Leesville and Smith Mountain Reservoirs) downstream from Niagara Dam on the Roanoke River and the Brantly Steam Plant Dam on the Dan River; *except, that as many as two of such bass of a lesser size caught in such waters may be retained in the creel, but no more than two such bass may be in possession on such waters that are less than 14 inches in length.*

5. It shall be unlawful to have any largemouth, smallmouth or spotted bass from 12 to 15 inches in length, both inclusive, in one's possession on North Anna Reservoir and its tributaries ~~and~~ , on Chesdin Reservoir or the Appomattox River from the Brasfield (Chesdin) Dam to Bevel's Bridge on Chesterfield County Route 602 , *on Beaverdam Reservoir (Loudoun County) and on the waters of Quantico Marine Reservation .*

6. It shall be unlawful to have any walleye or yellow pike perch less than 14 inches in length in one's possession on Gaston Reservoir.

7. It shall be unlawful to have any smallmouth, largemouth or spotted bass from 11 to 14 inches in length, both inclusive, in one's possession on the Shenandoah River, including the North and South Forks downstream from the Route 42 bridge on the North Fork and from the confluence of the North and South Rivers on the South Fork below Port Republic; on the New River from Claytor Dam to the West Virginia boundary line; ~~or~~ on the James River from the confluence of the Jackson and Cowpasture rivers downstream to the Interstate 95 Bridge at Richmond ; *or on North Fork Pound Reservoir .*

8. *It shall be unlawful to have any largemouth, smallmouth or spotted bass less than 18 inches in length on Briery Creek Lake (Prince Edward County).*

§ 4. Sale of Freshwater molluscs, mussels, game fish or catfish prohibited.

It shall be unlawful to sell, offer for sale or buy any species of freshwater *mollusc or mussel*, game fish or catfish, provided that this shall not apply to game fish sold alive for propagation purposes or sold pursuant to VR 325-03-2, §§ 15 and 16 or to any catfish taken from tidewater or artificially raised.

§ 5. Permit required for importation, etc., of certain species.

Proposed Regulations

In accordance with authority conferred by § 29.1-103 of the Code of Virginia, the board finds and declares the following species to be predatory or undesirable within the meaning and intent of those terms as used in § 29.1-542 of the Code, in that their introduction into the Commonwealth will be detrimental to the native fish resources of Virginia: *Rudd (genus scardinius)*, *tilapia (genus Tilapia)*, piranha (any of the genus *Serrasalmus*, *Rooseveltiella*, *Pygocentrus*), walking catfish (any of genus *Clarias*), cichlid (Texas), perch (*Chichlasoma cyanoguttatum*), grass carp (any genus *Ctenopharyngodon*) or African clawed frog (*Xenopus laevis*).

It shall be unlawful, pursuant to § 29.1-542 of the Code, to import, cause to be imported, buy, sell or offer for sale or liberate within the Commonwealth any of the above-named species unless a permit therefor is first obtained from the department, except that the African clawed frog may be imported or sold, but not liberated, without such permit, when such action can be shown to be an essential part of a specific research or educational project designed to advance scientific knowledge by achieving precisely formulated objectives.

§ 6. Permit required to stock fish into department owned or department controlled impoundment public waters; exception .

It shall be unlawful to stock any fish species into any department owned impoundment, or any impoundment under the control of the department, without first obtaining a permit to do so from the department.

It shall be unlawful to stock any species of fish, except brook, rainbow and brown trout, into any public waters of the Commonwealth, without first obtaining a permit to do so from the department. Nothing in this section shall be construed as restricting the use of native species of fish in privately-owned ponds and lakes.

§ 8. Fishing, collecting bait, etc., in tail waters of Leesville Dam.

It shall be unlawful to fish, attempt to fish, assist others in fishing or collect or attempt to collect bait while wading in any of the waters of the Roanoke River from Leesville Dam downstream a distance of 840 feet to a permanent overhead cable; provided, that this shall not be construed to prohibit persons from fishing from behind the safety railings of the Leesville Access Structure built by the department.

§ 10. Department-owned or controlled lakes, ponds or streams - General regulations.

A. Motors and boats.

Unless otherwise posted at each recognized entrance to any department-owned or controlled lake or pond or stream, the use of boats propelled by gasoline motors, sail or mechanically operated recreational paddle wheel is

prohibited. Department employees may use gasoline motors in the performance of official duties.

B. Seining and trotlines. Seining for minnows or for any purpose and the use of trotlines in all department owned or controlled lakes, ponds or streams is prohibited.

B. Method of fishing.

Taking any fish at any department-owned or controlled lake or pond by any means other than by use of one or more attended poles with hook and line attached is prohibited.

C. Hours for fishing.

Unless otherwise posted at each recognized entrance to any department-owned or controlled lake, pond or stream, the hours of use shall be from one hour before sunrise to one hour after sunset.

D. Seasons; hours and methods of fishing; size and creel limits; hunting.

The open seasons for fishing, as well as fishing hours, methods of taking fish and the size, possession and creel limits, and hunting, for department-owned or department-controlled lakes, ponds or streams shall conform to the general regulations of the board unless otherwise excepted by posted notice displayed at each recognized entrance to the lake, pond or stream, in which case the posted regulations shall be in effect.

E. Other uses.

Camping overnight or building fires, except in developed and designated areas, swimming, wading in public fishing lakes, except by fishermen actively engaged in fishing and trapping for furbearers, is prohibited. Trapping may be authorized by special permit from the warden when requested to issue such permit or permits by the fish division.

F. Fishing tournaments, etc.

It shall be unlawful to organize, conduct, supervise or solicit entries for fishing tournaments, rodeos or other fishing events on waters owned by the department, for which prizes are offered, awarded or accepted, either in money or other valuable considerations.

§ 13. Use of live minnows for bait on Quantico Marine Reservation.

This section is rescinded in its entirety.

§ 15. Shooting certain fish in Clinch River in Scott County.

It shall be lawful for any person holding a current license to fish to shoot suckers, redhorse and carp with a rifle, during the hours of sunrise to sunset, from April 15

Proposed Regulations

to May 31, both inclusive, in the waters of the Clinch River within the limits of Scott County; except, that it shall be unlawful to shoot fish on Sunday, or within the limits of any town, or from any bridge. No more than 20 such fish may be so taken during any one day. All persons engaged in the shooting or the retrieval of fish pursuant to this section shall have in their possession a current fishing license.

VR 325-03-2. TROUT FISHING.

Proposed Effective Date: January 1, 1989.

§ 1. Season - General open season.

Except as otherwise specifically provided in the sections appearing in this regulation, the open angling season for taking trout shall be from 9 a.m. the third Saturday in March through February 1, both dates inclusive. Except for the first day, angling during the season in *designated stocked trout waters* shall be permitted from 5 a.m. until one hour after sunset.

§ 12. Special provision applicable to certain portions of Buffalo Creek, Mossy Creek, Smith Creek and Smith River.

It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of Mossy Creek in Augusta County upstream from the Augusta/Rockingham County line to a sign posted at the confluence of Joseph's Spring, in that portion of Smith Creek in Rockingham County from a sign posted 1.0 miles below the confluence of Lacy Spring to a sign posted 0.4 miles above Lacy Spring, and in that portion of Smith River in Henry County from signs below the east bank of Towne Creek for a distance of approximately three miles downstream, except that in Mossy Creek only fly-fishing is lawful. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any natural bait or any trout under 16 inches in length in these areas.

§ 14. Special provision applicable to *Stewarts Creek Trout Management Area* and certain portions of Rapidan and Staunton rivers and tributaries.

It shall be lawful year round to fish for trout using only artificial lures with single barbless hooks *within the Stewarts Creek Trout Management Area in Carroll County*, and in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the lower Shenandoah National Park boundary in Madison County. All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in

these areas.

§ 14.1. Special provision applicable to certain portions of South River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures with single barbless hooks, in the South River from the CSX Railroad bridge located 0.1 miles below Broad Street in the City of Waynesboro to a sign posted 2.5 miles upstream at the upstream boundary of Riverside Park. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any natural bait or trout. During the period of June 1 through September 30, these waters shall revert to general trout regulations and the above restrictions will not apply.

VR 325-03-5. MINNOWS, HELLGRAMMITES AND CRAYFISH.

Proposed Effective Date: January 1, 1989.

§ 1. Taking minnows for sale.

A. "Minnow haul seine" defined.

"Minnow haul seine," as used in this section, when used in the public inland waters above where the tide ebbs and flows shall mean a haul seine not exceeding four feet in depth by 14 feet in length and when used in the public inland waters below where the tide ebbs and flows shall mean a haul seine not exceeding four feet in depth by 100 feet in length. Such term shall be construed also to include umbrella type nets without limit as to size and also small minnow traps.

B. Permit required.

It shall be unlawful to take minnows for sale from the public inland waters without having a permit therefor as provided for in *subdivision 3 of subsection A of § 29.1-416 of the Code of Virginia § 29-110*.

C. Permit holder to be present when seine operated; persons assisting.

The holder of a permit to seine for minnows must be present at all times when the seine is being operated to catch minnows. Persons assisting in the operation of the haul seine need not obtain permits.

D. Records.

The holder of a permit to take minnows for sale shall keep a record of the approximate number of minnows caught and sold, together with the amount received therefor.

VR 325-04. WATERCRAFT.

VR 325-04-1. IN GENERAL.

Proposed Effective Date: January 1, 1989.

§ 4. Vessels prohibited within 600 feet *certain areas* below John H. Kerr Dam *and Leesville Dam* .

It shall be unlawful to operate or anchor any vessel within 600 feet below the John H. Kerr Dam *or within 840 feet below the Leesville Dam* .

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-01-02. Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law.

Statutory Authority: §§ 58.1-3230 and 58.1-3240 of the Code of Virginia.

Effective Date: November 23, 1988

Summary:

The regulations prescribe standards which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use or horticultural use.

The major change in the proposed standards as adopted by the board was a modification in the certification procedure. The remaining changes were clarity or corrections to the code designations or agency names.

VR 115-01-02. Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law.

Pursuant to Under the authority of § 58-760.4 et seq., § 58.1-3229 et seq. of the Code of Virginia (1950) as amended, the Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to: cited on the Virginia Land Use Assessment Law; and

Pursuant to the declared objective of the Law, as set forth in Section 58-760.4 thereof, "...

(a) 1. To Encourage the proper use of such real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.

(b) 2. To Conserve natural resources in forms that will prevent erosion.

(c) 3. To Protect adequate and safe water supplies.

(d) 4. To Preserve scenic natural beauties and open spaces.

(e) 5. To Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.

(f) 6. To Promote a balanced economy and ameliorate ease pressures which force the conversion of real estate to more intensive uses.

Pursuant According to the specific authority and responsibility conveyed by §§ 58-760.5 (a) and (b), and 58-760.12 58.1-3230 and 58.1-3240 of the law, directing the Commissioner of Agriculture and Consumer Services is directed to provide ; a statement of the standards which shall be applied uniformly throughout the Commonwealth to determine if real estate is devoted to agricultural or horticultural uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue or and a duly appointed assessor of each locality adopting an ordinance pursuant to in compliance with Article 4 of Chapter 32 of Title 58.1 this article, a statement of the standards which shall be applied uniformly throughout the state in determining whether real estate is devoted to agricultural (or) horticultural uses. The area must be a minimum of five acres and must meet all of the following standards to qualify for agricultural or for horticultural use.

Now, therefore, the standards to qualify for agricultural or for horticultural use as set forth hereinbelow are hereby adopted to become effective on December 15, 1978.

§ 1. Previous and current use, and exceptions.

A. Previous use.

The real estate sought to be qualified must shall have been devoted, for at least for five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:

1. Aquaculture

2. Forage crops

3. Commercial sod and seed

4. Grains and feed crops

5. Tobacco, cotton, and peanuts

6. Dairy animals and dairy products

7. Poultry and poultry products

8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals

9. Bees and apiary products

10. Commercial game animals or birds

11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the Director of the Department of Conservation and Economic Development State Forester, if less than 20 acres, and produced incidental to other farm operations

12. Fruits and nuts

13. Vegetables

14. Nursery products and floral products.

If a tract of real estate is converted from nonproduction to agricultural and/or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use only in the event that if the operator makes such change in use to expand expands or replace replaces production enterprises existing on other tracts of real estate owned by the applicant.

B. Current use.

The real estate sought to be qualified must shall be currently be devoted to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to, the items in § 1.A. above; except that no real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres.

2. The real estate meets the technical standards prescribed by the Director of the Department of Conservation and Economic Development State Forester, and

3. The real estate is producing tree or timber products incidental to other farm operations.

C. Expectations Exceptions.

1. Conversions by farm operator - nonqualifying real estate. If a tract of real estate is converted from other uses or nonproduction to agricultural and/or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use when the operator makes such change in use to

expand expands or replace replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.

2. Conversions by farm operator - qualifying real estate. If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five year history of agricultural or horticultural use.

2. 3. Government action. If a tract of real estate which has previously qualified for agricultural use taxation is not devoted to agricultural and/or horticultural production because of governmental actions, the tract or portions thereof shall be considered productive for that period of time.

§ 2. Conservation of land resources, management and production, and certification.

A. Conservation of land resources.

To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of soil management and soil conservation practices which is intended to:

1. Reduce or prevent soil erosion by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices which prevent soil erosion and improve water quality.

2. Maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of agricultural crops or as recommended by soil tests.

3. Control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

NOTE: It is recommended that each locality consider a procedure that the applicant for assessment according to use provide a map showing the acres of property in the tract for each Soil Conservation Service land capability classification. Soil management and soil conservation planning services to landowners are available from representatives of local soil and water conservation districts, Virginia Soil and Water Conservation Commission, USDA Soil Conservation Service in Virginia, and the Virginia Cooperative Extension Service.

Section 3. Management and Production.

A. Field Crops.

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That field crop production be primarily for commercial uses and that the average crop yield per acre on each crop grown on the real estate during the immediate three (3) years previous, shall be equal to at least one-half of the county (city) average for the past three (3) years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

NOTE: Each locality might consider a procedure that the applicant records to indicate acres or units, yield and use of crops, except timber, and livestock produced during the previous calendar year and that plans be available on production intentions on crops, livestock, poultry, and timber for the year the application concerns.

B. Production of Livestock, Livestock Products, Poultry and Poultry Products.

That when field crops have been produced primarily for on farm consumption or feed during the previous year, or when the real estate is used primarily for commercial production of livestock, livestock products, poultry, or poultry products, there shall be a minimum of twelve (12) animal unit months of commercial livestock or poultry per five (5) acres of open land in the previous year. One (1) animal unit to be one (1) cow, one (1) horse, five (5) sheep, five (5) swine, one hundred (100) chickens, sixty six (66) turkeys, one hundred (100) other fowl. (An animal unit month means one (1) mature cow or the equivalent on five (5) acres of land for one (1) month; therefore, twelve (12) animal unit months means the maintenance of one (1) mature animal on each five (5) acres for twelve (12) months, or any combination of mature animals and months that would equal twelve (12) animal unit months such as three (3) mature animals for four (4) months, four (4) mature animals for three (3) months, two (2) mature animals for six (6) months, etc.)

Since some properties are primarily concerned with livestock feeding, poultry production, and similar operations wherein feed and other materials are produced or purchased, these standards are to provide evidence on bona-fide production for sale.

C. Horticultural Products.

That at least five (5) acres shall be devoted to one of the following purposes, and combination of such purposes, or in rotations of crops for such purposes:

1. Nursery.

The real estate be used for the propagating, growing, and handling of ornamental trees, shrubs, vines, and fruit trees that are grown in rows of specific species or other such manner that facilitates commercial production rather than personal ornamental display by the owner or operator.

2. Greenhouse.

The real estate be used for the propagating, growing, and handling of plants indoors for the purpose of producing cut flowers, nursery products, and vegetable products for commercial production rather than personal use by the owner or operator.

3. Cut Flower Production.

The real estate be used for the propagating, growing, and handling of floral products in rows by specific species or other such manner that facilitates production for commercial purposes rather than personal use by the owner or operator.

4. Plant Material Production.

The real estate be used for propagating, growing, and handling of seedlings, root stock, and other plant materials in rows by specific species or other such manner that facilitates commercial production rather than personal use by the owner or operator.

5. Orchards, Vineyards, and Small Fruit Production.

The real estate be used for growing, harvesting, and handling commercial fruit or for long term commercial fruit production in future years.

D. Production of Timber Products.

That timber production, in addition to crop and livestock production on the real estate, meet standards prescribed by the Director of the Department of Conservation and Economic Development for forest areas except those for minimum acres.

NOTE: Portions of the real estate that meet such standards for forest areas are expected to be assessed at use values for forestry purposes.

B. Management and production.

To qualify for agricultural and horticultural use, the applicant shall certify that the real estate is being used in a planned program of management and production of field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products for sale.

Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate during the immediate three years previous, shall be equal to at least 1/2 of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry and aquaculture products. Livestock, dairy and

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poultry shall have a minimum of 12 animal unit-months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, 100 chickens, 66 turkeys, 100 other fowl. (An animal unit-month means one mature cow or the equivalent on five acres of land for one month; therefore, 12 animal unit-months means the maintenance of one mature animal on each five acres for 12 months, or any combination of mature animals and months that would equal 12 animal unit-months such as three mature animals for four months, four mature animals for three months, two mature animals for six months, etc.)

Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food.

Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards and small fruit flowers, plant materials, orchards, vineyards and small fruit products.

Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the Department of Forestry for forest areas and will be assessed at use value for forestry purposes.

§ 3. Certification procedures.

A. Documentation.

The [commissioner of revenue or the] local assessing officer may require the applicant to certify that the real estate is devoted to the bona fide production for sale of agricultural and horticultural products being used in a planned program of soil management and a planned program of management and production of field crops, livestock, dairy, poultry, aquaculture, horticultural crops, and timber products. The commissioner [of revenue or local assessing officer] may find one [or more] of the following documents useful in making his determination:

1. The assigned USDA/ASCS farm number, and evidence of participating in a federal farm program, or

2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land, or

* 3. A Conservation Farm Management Plan prepared by a professional.

** 4. Gross sales averaging more than \$1,000 annually over the previous three years.

* The 1985 Food Policy Act (Farm Bill) requires farmers participating in federal farm programs to have a farm conservation plan proposed by the USDA Soil

Conservation Service by 1990 and fully implemented by 1995.

** The Agriculture Census defines a farm as a place where agricultural products were sold or normally would have been sold annually averaging more than \$1,000.

Adopted Effective December 15, 1978.

S. Mason Carbaugh
Commissioner
Department of Agriculture and Consumer Services

NOTE: The following procedures are to be used by officials to obtain opinions from the Commissioner in doubtful cases:

PROCEDURES TO BE FOLLOWED BY OFFICIALS WHEN OBTAINING OPINIONS FROM THE COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES WHEN DETERMINING THE ELIGIBILITY OF AGRICULTURAL AND HORTICULTURAL REAL ESTATE FOR USE VALUE TAXATION.

B. Interpretation of standards.

In cases of uncertainty on the part of the [commissioner of revenue or the] local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

A. 1. The [commissioner of revenue or the] local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia 23209, describing the use and situation, and requesting an opinion as to whether or not [it the real estate] qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. Such The letter should include the following:

1. a. Owner's name and address.

2. b. Operator's name and address.

3. c. Total number of acres, acres in crops, acres in pastures, acres in soil conservation programs (ASCS, SCS, Agricultural Stabilization and Conservation Service, Soil Conservation Service, [Division of Soil and Water Conservation Commission Virginia Department of Conservation and Historic Resources] programs), and acres in forest.

4. d. If more than one tract of real estate, the number of acres in each tract. Are tracts and whether the tracts are contiguous ?

5. Number of animal units.

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6. e. A copy of application for land use assessment taxation.

B. 2. The commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.

C. 3. The commissioner will issue an opinion as soon as possible after all necessary information has been received. An appeal from of any opinion which does not ~~comport~~ comply with these standards set forth herein may be taken made as provided by [Article 4] (§ 58-769-12 58.1-3240) [of Chapter 32 of Title 58.1] of the Code of Virginia.

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulations:

VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

VR 125-01-2. Advertising.

VR 125-01-3. Tied-House.

VR 125-01-4. Requirements for Product Approval.

VR 125-01-5. Retail Operations.

VR 125-01-6. Manufacturers and Wholesalers Operations.

VR 125-01-7. Other Provisions.

Statutory Authority: § 4-11 of the Code of Virginia.

Effective Date: November 24, 1988

Summary:

Proposals to allow (i) outdoor alcoholic beverage advertising promoting responsible drinking and (ii) distilled spirits to be advertised in college publications relating to intercollegiate athletic events were eliminated. VR 125-01-3 was amended so that solicitor salesmen of wine and wine coolers are required to be accompanied by a wholesaler or importer or their representative when soliciting orders or negotiating sales contracts and distinguishes solicitation of orders from promotion of products. The proposed language pertaining to pole toppers was eliminated and language specifying dimension limitations on cut case cards was reinserted. The proposed amendment to permit the peddling of wine coolers was eliminated. Modifications clarify acts which constitute solicitation and provide that a distilled spirits representative, who is also a licensed wholesaler, may sell or deliver wine, beer or beverages to licensees. New regulations pertaining to beer and beverage excise taxes; solicitation of mixed beverage licenses by representatives of manufacturers, etc., of distilled spirits; and the prohibition of certain Sunday deliveries by wholesalers were adopted.

Other provisions in the regulations (i) allow the sale

of wine in containers in metric sizes previously did not conform with agency regulations, (ii) clarify that identification cards issued by a state university or college are not acceptable evidence of legal age, (iii) allow wine wholesalers to participate with specialty shop licensees in wine testings involving the public by providing information about wine.

VR125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

PART I.

HEARINGS BEFORE HEARING OFFICERS.

§ 1.1. Appearance.

A. Any interested party who would be aggrieved by a decision of the board upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the hearing officer may proceed in his absence and render a decision.

§ 1.2. Argument.

Oral or written argument, or both, may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing.

§ 1.3. Attorneys.

Any interested party may be represented by counsel. If an interested party is an individual, he may represent himself. With respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings, a corporation must be represented by an attorney.

§ 1.4. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the Director, Division of Hearings.

§ 1.5. Complaints.

The board in its discretion and for good cause shown may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director of Regulatory Division, setting forth the name and post

office address of the person(s) against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

§ 1.6. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Director, Division of Hearings, or the hearing officer who will preside over the hearing.

§ 1.7. Decisions.

A. Initial decisions.

The decision of the hearing officer shall be deemed the initial decision, shall be a part of the record and shall include:

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and
2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

B. Summary decisions.

At the conclusion of a hearing, the hearing officer, in his discretion, may announce the initial decision to the interested parties.

C. Notice.

At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See Part II § 2.1 for Appeals).

D. Prompt filing.

The initial decision shall be reduced to writing, mailed to interest parties, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision.

Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of appeal to the board and request early or immediate implementation of the initial decision. The board or hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of

the appropriate order.

F. Timely review.

The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in Part II § 2.1.

§ 1.8. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the board or to the Director, Division of Hearings, the order may be varied.

§ 1.9. Evidence.

A. Generally.

All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed, and
2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available the hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence the more effort should be made to have the original document produced.

B. Cross-Examination.

Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the board whose report is in evidence and to submit rebuttal evidence except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination.
2. Where there is more than one interested party, only counsel or other representatives of such parties shall exercise the right of cross-examination.
3. Where there is more than one group of interested parties present for the same purpose, only counsel or other representative of such groups shall exercise the right of cross-examination. If the hearing officer deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

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C. Cumulative testimony.

The introduction of evidence which is cumulative, corroborative or collateral shall be avoided. The hearing officer may limit the testimony of any witness which is judged to be cumulative, corroborative or collateral; provided, however, the interested party offering such testimony may make a short avowal of the testimony which would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

D. Subpoenas, depositions and request for admissions.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with § 4.7(j) and § 9.6.14:13 of the Code of Virginia.

E. Stenographic report.

All evidence, stipulations and argument in the stenographic report which are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the board.

F. Stipulations.

Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

§ 1.10. Hearings.

A. Hearings before the hearing officer shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment be located within the corporate limits of any city then in such city. However, if it be located in a county or city within a metropolitan area in which the board maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding the above, hearing officers may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process.

B. Any person hindering the orderly conduct or decorum of a hearing shall be subject to penalty provided by law.

§ 1.11. Hearing officers.

A. Hearing officers are charged with the duty of conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of the board.

B. Each hearing officer shall have authority, subject to the published rules of the board and within its powers, to:

1. Administer oaths and affirmations.

2. Issue subpoenas as authorized by law.

3. Rule upon offers of proof and receive relevant and material evidence.

4. Take or cause depositions and interrogatories to be taken, directed and issued.

5. Examine witnesses and otherwise regulate the course of the hearing.

6. Hold conferences for the settlement or simplification of issues by consent of interested parties.

7. Dispose of procedural requests and similar matters.

8. Amend the issues or add new issues provided the applicant or licensee expressly waives notice thereof. Such waiver shall be made a part of the stenographic report of the hearing.

9. Submit initial decisions to the board and to other interested parties or their representatives.

10. Take any other action authorized by the rules of the board.

§ 1.12. Interested parties.

As used in this regulation, interested parties shall mean the following persons:

1. The applicant.

2. The licensee.

Where in this regulation reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent this regulation is not inconsistent with the statutes and regulations relating to such persons.

3. Persons who would be aggrieved by a decision of the board.

4. For purposes of appeal pursuant to Part II § 2.1, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.

§ 1.13. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the Director, Division of Hearings, and shall state with reasonable certainty the ground therefor. Argument upon such motions or requests will not be heard without special leave granted by the hearing officer who will preside over the hearing.

§ 1.14. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place and issues involved.

§ 1.15. Consent settlement.

A. Generally.

Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee. The chief hearing officer is precluded from presiding over any case in which an offer of consent settlement has been extended.

B. Who may accept.

The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. Settlement shall be conditioned upon approval by the board.

C. How to accept.

The licensee must return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the Notice of Hearing.

D. Effect of acceptance.

Upon approval by the board, acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under § 1.16 of this part.

E. Approval by the board.

The board shall review all proposed settlements. Only after approval by the board shall a settlement be deemed final. The board may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

F. Record. Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

§ 1.16. Offers in compromise.

Following notice of a disciplinary proceeding a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the Secretary to the Board. *Upon approval by the board, acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges.* The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15-calendar-days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing. *The board may waive any provision of this section for good cause shown.*

§ 1.17. Record.

A. The certified transcript of testimony, argument and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record of the initial decision.

B. Upon due application made to the Director, Division of Hearings, copies of the record of a hearing shall be made available to parties entitled thereto at a fee established by the board.

§ 1.18. Rehearings.

A rehearing before a hearing officer shall not be held in any matter unless it be affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available, is not merely cumulative, corroborative or collateral, and could not have been discovered before the original hearing by the use of ordinary diligence; provided, however, that the board, in its discretion, may cause a rehearing to be held before a hearing officer in the absence of the foregoing conditions, as provided in Part II § 2.6.

§ 1.19. Self-incrimination.

If any witness subpoenaed at the instance of the board shall testify in a hearing before a hearing officer on complaints against a licensee of the board as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall in no case

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be used against him nor shall the board take any administrative action against him as to the offense to which he testifies.

§ 1.20. Subpoenas.

Upon request of any interested party, the Director, Division of Hearings, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

§ 1.21. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in § 1.9 B of this regulation, the hearing officer may separate the witnesses, including agents of the board.

C. A person attending as a witness, under a summons issued at the instance of the board to testify in a hearing, shall be entitled to the same allowance for expenses and compensation as witnesses for the Commonwealth in criminal cases.

PART II. HEARINGS BEFORE THE BOARD.

§ 2.1. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within 10 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the 10-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing, the board may proceed in his absence and render a decision.

§ 2.2. Attorneys.

Any interested party may be represented by counsel. If an interested party is an individual, he may represent himself. With respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings, a corporation must be represented by an attorney.

§ 2.3. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the Secretary to the Board.

§ 2.4. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the Secretary to the Board.

§ 2.5. Decision of the board.

The final decision of the board, together with any written opinion, should be transmitted to each interested party or to his representative.

§ 2.6. Evidence.

A. Generally.

Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

B. Additional evidence.

Should the board determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the board may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with Part I § 1.18.

2. Upon unanimous agreement of the board members permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the hearing officer.

C. Board examination.

Any board member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination.

The right to cross-examine and the submission of rebuttal evidence as provided in Part I § 1.9 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

§ 2.7. Hearings.

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Hearings before the board in the absence of notice to the contrary will be held in the office of the board, Virginia A.B.C. Building, 2901 Hermitage Road, Richmond, Virginia.

§ 2.8. Motions or requests.

Motions or requests for rulings, made after a hearing before a hearing officer and prior to an appeal hearing before the board, shall be in writing, addressed to the Secretary to the Board, and shall state with reasonable certainty the grounds therefor. Argument upon such motions or requests will not be heard without special leave granted by the board.

§ 2.9. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or his representative.

§ 2.10. Record.

A. The record of the hearing before the hearing officer, including the initial decision, and the transcript of testimony, argument and exhibits together with all papers and requests filed in the proceeding before the board, shall constitute the exclusive record for the final decision of the board.

B. Upon due application made to the Secretary to the Board, copies of the record, including the decision of the board and any opinion setting forth the reasons for the decision shall be made available to parties entitled thereto at a rate established by the board.

§ 2.11. Rehearings and reconsideration.

The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement of the relief desired. The board may grant such at any time on its own initiative for good cause shown.

§ 2.12. Scope of hearing.

A. Except as provided in Part II § 2.6, the appeal hearing shall be limited to the record made before the hearing officer.

B. The provisions of Part I of this regulation shall be applicable to proceedings held under this Part II except to the extent such provisions are inconsistent herewith.

PART III. WINE AND BEER FRANCHISE ACT.

§ 3.1. Complaint.

Complaints shall be referred in writing to the Secretary to the Board. The Secretary's Office, in consultation with the Deputy for Regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters 2.1 and 2.2 of Title 4, of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.

§ 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of this regulation. Further, the board and the hearing officers designated by it may require an accounting to be submitted by each party in determining an award of costs and attorneys' fees.

§ 3.3. Appeals.

The decision of the hearing officer may be appealed to the board as provided in Part II § 2.1 of this regulation. Appeals shall be conducted in accordance with the provisions of Part II of this regulation.

§ 3.4. Hearings on notification of price increases.

Upon receipt from a winery, brewery or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the board, not a hearing officer, as soon as practicable with five days' notice to all parties which include at a minimum all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the board must rule within 24-hours of the hearing.

§ 3.5. Discovery, Prehearing Procedures and Production At Hearings.

A. Introduction.

The rules in this section shall apply in all proceedings under the Beer and Wine Franchise Acts, Chapters 2.1 and 2.2 of Title 4 of the Code of Virginia, including arbitration proceedings when necessary pursuant to Code of Virginia §§ 4-118.10 and 4-118.30.

No provision of any of the rules in this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence ore tenus only at hearings before hearing officers, shall continue unaffected hereby.

B. Definitions.

The following words and terms, when used in this regulation, shall have the following meanings unless the

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context clearly indicates otherwise:

"Board" means the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the board, including the secretary and the hearing officer(s), unless otherwise specified or unless the context requires otherwise.

"Commencement" of proceedings under this Part III of VR 125-01-1 means the date of the board's notice to the complainant(s) and the respondent(s), pursuant to § 3.1, that reasonable cause exists to believe that there has been a violation of either the Wine or Beer Franchise Acts.

"Manufacturer" means a winery or brewery, as those terms are defined in §§ 4-118.23 and 4-118.4, respectively, of the Code of Virginia.

"Person" means a winery, brewery, importer or wholesaler, as well as those entities designated as "persons," within the meaning of §§ 4-118.23 and 4-118.4 of the Code of Virginia.

"Secretary" means the Secretary of the Virginia Alcoholic Beverage Control Board.

C. General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the board orders otherwise under paragraph 3 of this subsection or paragraph 1 of subsection P, the frequency of use of these methods is not limited.

2. Scope of discovery. Unless otherwise limited by order of the board in accordance with this § 3.5, the scope of discovery is as follows:

a. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Applicability. Discovery as provided under this § 3.5 shall apply to all proceedings or hearings of Wine or Beer Franchise Act cases while pending

before hearing officers or arbitrators. Discovery under this section shall not be authorized during the course of appeals to the board, unless the board has first granted leave to proceed with additional discovery.

c. Hearing preparation: materials. Subject to the provisions of subdivision 2 d of this subsection C, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection C and prepared in anticipation of litigation or for the hearing by or for another party or by or for that other party's representative (including his attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

d. Hearing preparation: experts; costs. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 2 a of this subsection C and acquired or developed in anticipation of litigation or for the hearing, may be obtained only as follows:

(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3) of this subsection C, concerning fees and expenses as the board may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or

specially employed by another party in anticipation of litigation or preparation for the hearing and who is not expected to be called as a witness at the hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the board shall require that the party seeking discovery pay the expert a reasonable fee for time spent and his expenses incurred in responding to discovery under subdivision d(1)(ii) and d(2) of this subsection C; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection C the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection C the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the board; (vi) that a deposition after being sealed be opened only by order of the board; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board.

If the motion for a protective order is denied in whole or in part, the board may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the board upon motion, or pursuant to subsection N of this section, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired except as follows:

a. A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

b. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

c. A duty to supplement responses may be imposed by order of the board, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this § 3.5, any notice or document required or permitted to be served under this § 3.5 by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served under this § 3.5 by the board upon one or more parties shall be served as provided in §§ 1.7, 1.14, 2.5 or 2.9 of Parts I and II of VR 125-01-1.

7. Filing. Any request for discovery under this § 3.5 and the responses thereto, if any, shall be filed with the secretary of the board except as otherwise herein provided.

(Ref: Rule 4:1, Rules of Virginia Supreme Court.)

D. Depositions before proceeding or pending appeal.

1. Before proceeding.

a. Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under Part III of these regulations but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to

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establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

b. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in §§ 1.14 or 2.9 of Parts I and II of VR 125-01-1; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.

c. Order and examination. If the board is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with § 3.5. The attendance of witnesses may be compelled by subpoena, and the board may make orders of the characters provided for by subsection M of this § 3.5.

d. Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

e. Filing. The depositions shall be certified as prescribed in subsection G of this § 3.5 and then returned to and filed by the secretary.

f. Use of deposition. If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III of these regulations in accordance with the provisions of subsection C of § 3.5.

2. Pending appeal. If an appeal has been taken from a ruling of the board or before the taking of an appeal if any time therefor has not expired and for good cause shown, the board may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion before the board for leave to take the depositions, upon the same notice and service thereof as if the proceeding was pending therein. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (ii) the reasons for perpetuating their testimony. If the board finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by subsection M of § 3.5 and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this § 3.5 for depositions taken in pending actions.

3. Perpetuation of testimony. This subsection D provides the exclusive procedure to perpetuate testimony before the board.
(Ref: Rule 4:2, Rules of Virginia Supreme Court.)

E. Persons before whom depositions may be taken.

1. Within this Commonwealth. Within this Commonwealth depositions under this § 3.5 may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

2. Within the United States. In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this § 3.5 may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

3. No commission necessary. No commission by the Governor of this Commonwealth shall be necessary to take a deposition under this § 3.5 whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country depositions under this § 3.5 shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such

country, or any notary therein.

5. Certificate when deposition taken outside Commonwealth. Any person before whom a deposition under this § 3.5 is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he has none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

(Ref: Rule 4:3, Rules of Virginia Supreme Court.)

F. Stipulations regarding discovery.

Unless the board orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (ii) modify the procedures provided by these rules for other methods of discovery. Such stipulations shall be filed with the deposition.

(Ref: Rule 4:4, Rules of Virginia Supreme Court.)

G. Depositions upon oral examination.

1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.

2. Notice of examination. General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization.

a. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

b. (Reserved)

c. The board may for cause shown enlarge or shorten the time for taking the deposition.

d. (Reserved)

e. The notice to a party deponent may be accompanied by a request made in compliance with subsection M of this § 3.5 for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this § 3.5 shall apply to the request.

f. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision 2 f does not preclude taking a deposition by any other procedure authorized in this § 3.5.

g. The parties may stipulate in writing or the board may on motion order that a deposition be taken by telephone. A deposition taken by telephone shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this § 3.5. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of

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a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C 3 of § 3.5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of subsection O 1 d apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in forms or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under subsection J 4 d of this § 3.5 the board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the secretary of the board and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for

identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.

b. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

c. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(Ref: Rule 4:5, Rules of Virginia Supreme Court.)

H. Deposition upon written questions.

1. Serving questions; notice. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes subject to any authorization and limitations that may be required or imposed by any court within the Commonwealth.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating that (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description

sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of subsection G 2 f of § 3.5.

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The board may for cause shown enlarge or shorten the time.

2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subdivisions 3, 4 and 5 of subsection G of § 3.5, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.
(Ref: Rule 4:6, Rules of Virginia Supreme Court.)

I. Limitation on depositions.

No party shall take the deposition of more than five witnesses for any purpose without leave of the board for good cause shown.
(Ref: Rule 4:6A, Rules of Virginia Supreme Court.)

J. Use of depositions in proceedings under the Beer and Wine Franchise Acts.

1. Use of depositions. At the hearing or upon the hearing of a motion, or during an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

- a. (Reserved)
- b. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
- c. The deposition of a party or of anyone who at

the time of taking the deposition was an officer, director, or managing agent, or a person designated under paragraph 2 f of subsection G or paragraph 1 of subsection H of this § 3.5 to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the board finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that the witness is a judge, or is in any public office or service the duties of which prevent his attending hearings before the board provided, however, that if the deponent is subject to the jurisdiction of the board, the board may, upon a showing of good cause or sua sponte, order him to attend and to testify *ore tenus*; or (vi) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally, to allow the deposition to be used.

e. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

f. No deposition shall be read in any proceeding against a person under a disability unless it be taken in the presence of the guardian *ad litem* appointed or attorney serving pursuant to § 8.01-9, or upon questions agreed on by the guardian or attorney before the taking.

g. In any proceeding, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order, provided, however, that such deposition may be read as to matters ruled upon in such interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending before the board several proceedings between the same parties, depending upon the same

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facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such proceedings, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and a proceeding before the board involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.

2. Objections to admissibility. Subject to the provisions of subdivision 4 c of subsection J of § 3.5, objection may be made at the hearing to receive in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

3. Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 1 c of this subsection J. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

4. Effect of errors and irregularities in depositions.

a. As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

b. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

c. As to taking of deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the

oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted under subsection H of § 3.5 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

d. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under subsections G and H of § 3.5 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

5. (Reserved)

6. Record. Depositions shall become a part of the record only to the extent that they are offered in evidence.

(Ref: Rule 4:7, Rules of Virginia Supreme Court.)

K. Audio-visual depositions.

1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by and when taken in compliance with law.

2. Use of clock. Every audio-visual deposition shall be timed by means of a timing device, which shall record hours, minutes and seconds which shall appear in the picture at all times during the taking of the deposition.

3. Editing. No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the board and only as and to the extent directed in such order.

4. Written transcript. If an appeal is taken in the case, the appellant shall cause to be prepared and filed with the secretary a written transcript of that portion of an audio-visual deposition made a part of the record at the hearing to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

5. Use. An audio-visual deposition may be used only as provided in subsection J of § 3.5.

6. Submission, etc. The provisions of subsection G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of § 3.5 shall be applicable to the extent practicable.

(Ref: Rule 4:7A, Rules of Virginia Supreme Court.)

L. Interrogatories to parties.

1. Availability; procedures for use. Upon the commencement of any proceedings under this Part III, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

2. Form. The party serving the interrogatories shall leave sufficient space between each interrogatory so as to permit the party answering the interrogatories to make a photocopy of the interrogatories and to insert the answers between each interrogatory. The party answering the interrogatories shall use a photocopy to insert answers and shall precede the answer with the word "Answer." In the event the space which is left to fully answer any interrogatory is insufficient, the party answering shall insert the words, "see supplemental sheet" and shall proceed to answer the interrogatory fully on a separate sheet or sheets of paper containing the heading "Supplemental Sheet" and identify the answers by reference to the number of the interrogatory. The party answering the interrogatories shall prepare a separate sheet containing the necessary oath to the answers, which shall be attached to the answers filed with the court to the copies sent to all parties and shall contain a certificate of service.

3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.

4. Answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories. The board may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subdivision 1 of

subsection O with respect to any objection to or other failure to answer an interrogatory.

5. Scope; use. Interrogatories may relate to any matters which can be inquired into under subdivision 2 of subsection C, and the answers may be used to the extent permitted by the rules of evidence. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the board for good cause shown.

(Ref: Rule 4:8, Rules of Virginia Supreme Court.)

M. Production of documents and things and entry on land for inspection and other purposes; production at the hearing.

1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of paragraph 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to the board at the time

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of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision 2 of subsection C of § 3.5.

When the physical condition or value of a party's plant, equipment, inventory or other tangible asset is in controversy, the board, upon motion of an adverse party, may order a party to submit same to physical inventory or examination by one or more representatives of the moving party named in the order and employed by the moving party. The order may be made only by agreement or on motion for relevance shown and upon notice to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

2. Procedure. The request may, without leave of the board, except as provided in subdivision 4 of this subsection M, be served after commencement of the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request. The board may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subdivision 1 of subsection O with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

3. Production by a person not a party. Upon written request therefor filed with the secretary by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been mailed or delivered to counsel of record and to parties having no counsel, the secretary shall, subject to subdivision 4 of this subsection M, issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably

usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.

Documents subpoenaed pursuant to this subdivision 3 of subsection M shall be returnable only to the office of the secretary unless counsel of record agree in writing filed with the secretary as to a reasonable alternative place for such return. Upon request of any party in interest, or his attorney, the secretary shall permit the withdrawal of such documents by such party or his attorney for such reasonable period of time as will permit his inspection, photocopying, or copying thereof.

4. Certain officials. No request to produce made pursuant to subdivision 2 of this subsection M, above, shall be served, and no subpoena provided for in subdivision 3 of this subsection M, above, shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

5. Proceedings on failure or refusal to comply. If a party fails or refuses to obey an order made under subdivision 2 of this subsection M, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of subsection M shall not be filed in the office of the secretary unless requested in a particular case by the board or by any party prior to or during the hearing.

(Ref: Rule 4:9, Rules of Virginia Supreme Court.)

N. Requests for admission.

1. Request for admission. Upon commencement of any proceedings under this Part III, a party may serve upon any other party a written request for the

admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of subdivision 2 of subsection C set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph 3 of subsection O, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the board determines that an objection is justified, it shall order that an answer be served. If the board determines that an answer does not comply with the requirements of this subsection N, it may order either that the matter is admitted or that an amended answer be served. The board may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to the provisions of subsection P governing amendment of a prehearing order, the board may permit withdrawal or amendment when the presentation of the merits of the action will be

subverted thereby and the party who obtained the admission fails to satisfy the board that withdrawal of amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

3. Filing. Requests for admissions and answers or objections shall be served and filed as provided in subsection L.

4. Part of record. Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(Ref: Rule 4:11, Rules of Virginia Supreme Court.)

O. Failure to make discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the board for an order compelling discovery as follows:

a. (Reserved)

b. Motion. If a deponent fails to answer a question propounded or submitted under subsections G and H, or a corporation or other entity fails to make a designation under subdivision 2 f of subsection G and subdivision 1 of subsection H, or a party fails to answer an interrogatory submitted under subsection L, or if a party, in response to a request for inspection submitted under subsection M, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition or oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the board denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subdivision 3 of subsection C.

c. Evasive or incomplete answer. For purposes of this subsection an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted and the board finds that the party whose conduct necessitated the motion acted in bad faith, the board shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney

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advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the motion is denied and the board finds that the moving party acted in bad faith in making the motion, the board shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.

If the motion is granted in part and denied in part, the board may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

2. Failure to comply with order.

a. Suspension or revocation of licenses, monetary penalties. Failure to comply with any order of the board under this § 3.5 (Discovery) shall constitute grounds for action by the board under § 4-37 A(1)(b) of the Code of Virginia.

b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1 of this subsection, the board may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment or decision by default against the disobedient party.

In lieu of any of the foregoing orders or in addition thereto, if the board finds that a party acted in bad faith in failing to obey an order to provide or permit discovery, the board shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under subsection N, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the board for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The board shall make the order if it finds that the party failing to admit acted in bad faith. A party will not be found to have acted in bad faith if the board finds that (i) the request was held objectionable pursuant to subdivision 1 of subsection N, or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under subsection L, after proper service of the interrogatories, or (iii) to serve a written response to the request for inspection submitted under subsection M, after proper service of the request, the board on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions 2 b(1), 2 b(2) and 2 b(3) of this subsection O. In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused merely on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subdivision 3 of subsection C.

(Ref: Rule 4:12, Rules of Virginia Supreme Court.)

P. Prehearing procedure; formulating issues.

1. The hearing officer(s) or the board, may in his or its discretion direct the attorneys for the parties to appear before such hearing officer(s) or the board for a conference to consider;

a. A determination or clarification of the issues;

- b. A plan and schedule of discovery;
- c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;
- d. The necessity or desirability of amendments to the pleadings;
- e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;
- f. The limitation of the number of expert witnesses;
- g. The possibility of filing bills of particulars and grounds of defense by the respective parties;
- h. Such other matters as may aid in the disposition of the action.

2. The hearing officer(s) or the board, shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(Ref: Rule 4:13, Rules of Virginia Supreme Court.)

Q. Disposition of discovery material.

Any discovery material not admitted in evidence filed in the secretary's office may be destroyed by the secretary after one year after entry of the final order or decision. But if the proceeding is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the decision or mandate on appeal or the entry of any final judgment or decree thereafter.

R. Interlocutory appeals to the board.

If any party to a proceeding under Part III of VR 125-01-1 is aggrieved by a decision or order of the hearing officer(s) relating to discovery or other matters contained in this section, such aggrieved party may appeal such interlocutory decision or order to the board pursuant to VR 125-01-1, Part III, § 2.1.

(Ref: Rule 4:14, Rules of Virginia Supreme Court.)

PART IV. TELEPHONE HEARINGS

§ 4.1. Applicability.

The board and its hearing officers may conduct hearings by telephone only when the applicant/licensee expressly

waives the in-person hearing. The board will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I shall apply only to Part IV where applicable.

§ 4.2. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The board will arrange for telephone conference calls at its expense.

§ 4.3. Argument.

Oral or written argument may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.4. Documentary evidence.

Documentary evidence, which an interested party desires to be considered by the hearing officer, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.5. Hearings.

A. Telephone hearings will usually originate from the central office of the board in Richmond, Virginia, but may originate from other locations. Interested parties may participate from the location of their choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in his absence.

B. If at any time during a telephone hearing the hearing officer determines that the issues are so complex that a fair and impartial hearing cannot be accomplished, the hearing officer shall adjourn the telephone hearing and reconvene an in-person hearing as soon as practicable.

§ 4.6. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the applicant/licensee can be reached.

§ 4.7. Witnesses.

Interested parties shall arrange to have their witnesses present at the time designated for the telephone hearing, or should supply a telephone number where the witnesses can be reached, if different from that of the interested party.

PART V PUBLIC PARTICIPATION GUIDELINES FOR

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ADOPTION OR AMENDMENT OF REGULATIONS

§ 5.1. Public participation guidelines in regulation development; applicability; initiation of rulemaking; rulemaking procedures.

A. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control. They shall not apply to regulations adopted on an emergency basis.

B. Initiation of rulemaking.

Rulemaking procedures may be initiated at any time by the Alcoholic Beverage Control Board but shall be initiated at least once each year. A petition for adoption, amendment or repeal of any regulation may be filed with the Alcoholic Beverage Control Board at any time by any group or individual. It shall be at the board's discretion to initiate the procedures as a result of such petition or petitions. The petition shall contain the following information, if available:

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. Recommended adoption, amendment or repeal of specific regulation(s).
4. Why is change needed? What problem is it meant to address?
5. What is the anticipated effect of not making the change?
6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations.
7. Who is affected by recommended change? How affected?
8. Supporting documents.

The board may also consider any other request for regulatory change at its discretion.

C. Rulemaking procedures.

1. The Secretary to the Board in conjunction with the Deputy for Regulation shall prepare a general mailing list of those persons and organizations who have demonstrated an interest in specific regulations in the past through written comments or attendance at public hearings. The mailing list will be updated at least every two years and a current copy will be on file in the office of the Secretary to the Board. Periodically, but not less than every two years, the board shall

publish in the Virginia Register, in a newspaper published at Richmond and in other newspapers in Virginia a request that any individual or organization interested in participating in the development of specific rules and regulations so notify the board. Any persons or organizations identified in this process will be placed on the general mailing list.

2. When developing a regulation proposed by citizens or on its initiative, the board shall prepare a Notice of [~~Proposed Regulation~~ *Intended Regulatory*] Action, which shall include:

- a. Subject of the proposed action.
- b. Identification of the entities that will be affected.
- c. Discussion of the purpose of the proposed action and the issues involved.
- d. Listing of applicable laws or regulations.
- e. Request for comments from interested parties, either at the public meeting or in writing.
- f. Notification of time and place of the public meeting on the proposal.
- g. Name, address and telephone number of staff person to be contacted for further information.

3. The board shall disseminate Notice of [~~Proposed Regulatory~~ *Intended Regulatory*] Action to the public via:

- a. Distribution by mail to persons on General Mailing List.
- b. Publication in the Virginia Register of Regulations.
- c. Press release to media throughout the Commonwealth.

4. The board shall form an ad hoc advisory panel consisting of persons selected from the general mailing list to make recommendations on the proposed regulation and formulate draft language.

5. The board shall conduct a regulation development public meeting to receive views and comments and answer questions of the public. The meeting will be held at least 30 days following publication of the notice. It normally will be held in Richmond, but if the proposed regulation will apply only to a particular area of the Commonwealth, the meeting will be held in the area affected.

6. After consideration of the public input and the report of the advisory panel, the board shall prepare a final proposed draft regulation and initiate the

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proceedings required by the Administrative Process Act.

VR 125-01-2. Advertising.

§ 1. Advertising generally; cooperative advertising; federal laws; beverages and cider; exceptions; restrictions.

A. Generally.

All alcoholic beverage and beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by this regulation and those following, and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee does not constitute advertising.

B. Cooperative advertising.

There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages. The term "cooperative advertising" shall mean the payment or credit directly or indirectly by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

C. Federal laws.

Advertising regulations adopted by the appropriate federal agency pertaining to alcoholic beverages shall be complied with except where they conflict with regulations of the board.

D. Beverages and cider.

Advertising of beverages, and cider as defined in § 4-27 of the Code of Virginia, shall conform with the requirements for advertising beer.

E. Exceptions.

The board may issue a permit authorizing a variance from these advertising regulations for good cause shown.

F. Restrictions.

No advertising shall contain any statement, symbol, depiction or reference that:

1. Would intend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent, or depicts any person or group of persons which is immodest, undignified or in bad taste, or is suggestive of any illegal activity;

3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess;

4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Makes any appeal to order alcoholic beverages by mail;

8. Offers a special price on alcoholic beverages, for sale in the print media, on the radio or on television unless such advertisement appears in conjunction with the advertisement of nonalcoholic merchandise. The alcoholic beverage sale advertising must significantly conform in size, prominence and content to the advertising of nonalcoholic merchandise offered for sale advertising, except for coupons offered by manufacturers as provided in § 9 of this regulation. [This provision shall apply only to advertising by retail licenses;]

9. Is a contest or other offer to pay anything of value to a consumer where a purchase is required for participation.

§ 2. Advertising; interior; retail licensees; show windows.

A. Interior advertising generally.

The advertising of alcoholic beverages inside retail establishments is within the discretion of the licensee, with the following exceptions:

1. No references may be made to any brand or manufacturer of alcoholic beverages offered for sale in this Commonwealth on decorations, materials or furnishings on or supported by any wall, ceiling, floor or counter, unless such references are:

a. Contained in works of art;

b. Displayed in connection with the sale over the counter of novelty and specialty items as provided in § 6 of these regulations;

c. Used in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting, or events and events of a charitable or cultural nature in accordance with § 10 of [these regulations VR 125-01-2];

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d. Displayed on service items such as placemats, coasters, glasses and table tents. Further, alcoholic beverage brands or manufacturer references may be contained in wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which shall be shipped in the case.

2. Advertising materials regarding responsible drinking or moderation in drinking may not be used inside licensed retail establishments except under the following conditions:

a. Such materials shall contain no depictions of an alcoholic beverage product and no reference to any brands of alcoholic beverages;

b. Such materials shall contain no more than two minor references to the name of the alcoholic beverage manufacturer or its corporate logo;

c. Such materials are limited to posters of reasonable size and table tents;

d. Such materials shall be approved in advance by the board.

3. Each draft beer knob shall indicate the brand of beer offered for sale.

4. Point-of-sale entry blanks, relating to contest and sweepstakes, may be affixed to cut case cards as defined in § 9 F of VR 125-01-3. Beer and wine wholesalers may attach such entry blanks to cut case cards at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers.

B. Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising. However, furnishing materials relating to moderation in drinking or responsible drinking programs is permitted subject to the provisions of subdivision A 2 of this section.

C. Show windows.

No advertising of alcoholic beverages, may be displayed

in show windows facing outside the licensed establishment except that contained on table menus, or on newspaper tear sheets, provided such alcoholic beverage advertising is subordinate in size to the main advertising matter.

§ 3. Advertising; exterior; signs; trucks; uniforms.

Outdoor alcoholic beverage advertising shall be limited to signs and is otherwise discretionary except as follows:

A. Manufacturers and wholesalers, including wineries and farm wineries:

1. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises.

2. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to ~~eight feet in height or width,~~ 64 square feet with advertising limited to brand names.

3. If the establishment is a winery also holding a winery off-premises license or is a farm winery, additional directional signs limited in dimension to [~~eight feet in height or width~~ 64 square feet] with advertising limited to brand names, and tour information, may be erected in accordance with state and local rules, regulations and ordinances.

4. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler.

[~~5. On billboards promoting "responsible drinking," the manufacturer or wholesaler may make reference to its name or corporate logo, but not its brands or beverages. The content of such advertising must be approved in advance by the board.~~]

B. Retailers, - including mixed beverage licensees, other than carriers and clubs:

1. No more than two signs at the establishment and, in the case of establishments at intersections three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment.

2. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits", and

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not including any reference to or depiction of "Bar Room," "Saloon," "Speakeasy," "Happy Hour," or references or depictions of similar import, nor to prices of alcoholic beverages, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages.

§ 4. Advertising; newspaper, magazines, radio, television, trade publications, etc.

A. Generally.

Beer, wine and mixed beverage advertising in the print or electronic media is permitted with the following exceptions:

1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits."
2. The following terms or depictions thereof are prohibited: "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import.
3. Any references to "Happy Hour" or similar terms are prohibited.

B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser.
2. No manufacturer, bottler or wholesaler shall be deemed to have any financial interest in the business of a retail licensee nor to have sold or given to the retail licensee any property nor to have engaged in cooperative advertising solely by virtue of any advertisement appearing in college publications or trade publications of associations of retail licensees which conform to the conditions and limitations herein.
3. Advertisements of beer, wine and mixed beverages are not allowed in student publications unless in reference to a dining establishment.
4. Advertisements of beer, wine and mixed beverages in publications not of general circulation which are distributed primarily to a high school or younger age level readership are prohibited.

§ 5. Advertising; newspapers and magazines; programs; distilled spirits.

Distilled spirits advertising by distillers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed

programs relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:

A. Required statements.

1. Name. Name and address (street address optional) of the responsible advertiser.
2. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of distilled spirits, such as "whiskey," is referred to, statements as to contents may be omitted.
3. Type size. Required information on contrasting background in no smaller than eight-point size type.

B. Prohibited statements.

1. "Bonded." Any reference to "bond," "bonded," "bottled in bond," "aged in bond," or the like, unless the words or phrases appear upon the label of the distilled spirits advertised.
2. Age. Any statement or depiction of age not appearing on the label, except that if none appears on the label and the distilled spirits advertised are four years or over in age such representations as "aged in wood," "mellowed in fine oak casks," and the like, if factually correct, may be used.
3. Religious references. Any statement or depiction referring to Easter, Holy Week, similar or synonymous words or phrases, except with reference to the Christmas holiday season if otherwise remote from any religious theme.
4. Price. Any reference to a price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

C. Further limitation.

Distilled spirits may not be advertised in college publications, including but not limited to, newspapers and programs relating to intercollegiate athletic events [*except as otherwise permitted under VR125-01-2 § 10*].

§ 6. Advertising; novelties and specialties.

A. Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of \$2.00 in wholesale value may be given away;
2. Items in excess of \$2.00 in wholesale value may be donated by distilleries, wineries and breweries only to

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participants or entrants in connection with the sponsorship of conservation and environmental programs, events of a charitable nature, *cultural events* or athletic or sporting events, but otherwise shall be sold at the reasonable open market price:

- a. By mail upon request; and
- b. Over the counter at retail establishments customarily engaged in the sale of novelties and specialties.

3. Wearing apparel distributed shall be in adult sizes;

4. Point-of-sale order blanks, relating to novelty and specialty items, may be affixed to cut case cards as defined in § 9 F of VR 125-01-3. Beer and wine wholesalers may attach such order blanks to cut case cards at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put order blanks on the package at the wholesale premises and order blanks may not be shipped in the case to retailers. Wholesalers may not be involved in the redemption process.

§ 7. Advertising; fairs and trade shows; wine and beer displays.

Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:

1. Display of wine and beer in closed containers and informational signs provided such merchandise is not sold or given away except as permitted in VR 125-01-7 § 10.
2. Distribution of informational brochures, pamphlets, and the like, relating to wine and beer.
3. Distribution of novelty and specialty items bearing wine and beer advertising not in excess of \$2.00 in wholesale value.

§ 8. Advertising; film presentations.

Advertising of alcoholic beverages by means of film presentations is restricted to the following:

1. Presentations made only to bona fide private groups, associations or organizations upon request; and
2. Presentations essentially educational in nature.

§ 9. Advertising; coupons.

A. Definitions. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Coupons may be part of, or attached to, the package only if the winery or brewery put them on at the point of manufacture (however, beer and wine wholesalers may attach coupon pads on holders to case cards; *or place coupon pads on rebate bulletin boards designated by the retailer for coupons* at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative). Wholesale licensees in Virginia may not put them on the package at the wholesale premises and coupons may not be shipped in the case to retailers.

2. Manufacturers offering coupons on distilled spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees of the board are not permitted to offer coupons.

4. Retail licensees of the board may offer coupons on wine and beer sold for off premises consumption only. Retail licensees may offer coupons in the print media, at the point-of-sale or by direct mail to consumers. Coupons offered by retail licensees shall appear in an advertisement with nonalcoholic merchandise and conform in size and content to the advertising of such merchandise.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons; the name of the retail establishment may not appear on any coupons offered by manufacturers and no manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

§ 10. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events [; *intercollegiate events open to alumni and the general public*] and events of a charitable or cultural nature by distilleries, wineries, and breweries.

B. Restrictions and conditions:

1. Programs and events on a college, high school or younger age level are prohibited [; *with the exception of official competitive intercollegiate events open to alumni and the general public*];

2. Cooperative advertising as defined in § 1 of these regulations is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable and fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media , *including programs, tickets and schedules for the event*, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Point-of-sale advertising materials may not be furnished to retailers by manufacturers, bottlers, or wholesalers. However, at the request of the charity involved, employees of a wholesale licensee may deliver and place such material relating to charitable events which have been furnished to them by the charity involved. Wholesale licensees of the board may deliver to retailers point-of-sale advertising materials relating to charitable events which have been furnished to them by a third party provided that the charity involved so requests;

8. Point-of-sale advertising shall be limited to counter cards, cannisters and table tents of reasonable size , *subject to the exceptions of subdivision 7 above* ;

9. Public events permissible for sponsorship shall be of limited duration such as tournaments or limited fund raising events. An entire season of activities such as a football season may not be sponsored;

10. Prior written notice of the event shall be

submitted to the board describing the nature of the sponsorship and giving the date, time and place of it;

11. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

VR 125-01-3. Tied House.

§ 1. SUNDAY DELIVERIES BY WHOLESALERS PROHIBITED; EXCEPTIONS.

Persons licensed by the board to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to ships sailing for a port of call outside of the state, and except for the delivery of draft beer or beverages to banquet licensees.

(1972, Sec. 26, A-207)

(Ref: § 4-7(1), 4-11(a) and 4-103(b) of the Code of Virginia.)

§ 2 I . Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts.

For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wholesaler may perform, except on Sundays, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area).

2. Restock beer and wine.

3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer.

4. Transfer beer and wine between storerooms, between displays, and between storerooms and displays.

5. Create or build original displays using wine or malt beverage products only.

6. Exchange beer or wine, for quality control purposes, on an identical quantity, brand and package basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

B. Prohibited acts.

A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales

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area or storeroom except in the following cases:

a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler.

b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler.

2. Mark or affix retail prices to products.

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced.

b. Products erroneously delivered may be replaced or money refunded.

c. Resaleable draft beer or beverages may be returned and money refunded.

d. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board.

e. Products which have been condemned and are not permitted to be sold in this state may be replaced or money refunded upon permit issued by the board.

f. Beer or wine may be exchanged on an identical quantity, brand or package basis for quality control purposes.

§ 3 2 . Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages or beverages sales only; provided, however, that in the case of retail wine and beer or beer only licensees, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages or beverages.

§ 4 3 . Interests in the businesses of licensees.

Persons to whom licenses have been issued by the board shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses, or

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section,

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses and/or

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses, and do not unreasonably restrict the control of the licensee over the sale and consumption of mixed beverages, other alcoholic beverages, or beverages.

§ 5 4 . Restrictions upon employment; exceptions.

No retail licensee of the board shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages or beverages; nor shall any manufacturer, bottler or wholesaler licensed by the board employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages or beverages.

This section shall not apply to banquet licensees or to off-premises winery licensees.

§ 6 5 . Certain transactions to be for cash; "cash" defined; reports by sellers; payments to the board.

A. Generally.

Sales of wine, beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, and each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery.

B. "Cash," defined.

"Cash," as used in this section, shall include legal tender of the United States, a money order issued by a duly licensed firm authorized to engage in such business in Virginia or a valid check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase.

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C. Checks and money orders.

If a check or money order is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the check or money order shall be no larger than the purchase price of the alcoholic beverage or beverages.
2. If nonalcoholic merchandise is also sold to the retailer, the check or money order may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. A separate invoice shall be used for the nonalcoholic merchandise and a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer.

D. Reports by seller.

Wholesalers shall report to the board on or before the 15th day of each month any invalid checks received during the preceding month in payment of wine, beer or beverages. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form and if no invalid checks have been received, no report shall be required.

E. Payments to the board.

Payments to the board for the following items shall be for cash as herein defined:

1. State license fees.
2. Purchases of alcoholic beverages from the board by mixed beverage licensees.
3. Wine taxes collected pursuant to § 4-22.1, of the Code of Virginia.
4. Registration and certification fees collected pursuant to these regulations.
5. Monetary penalties and costs imposed on licensees by the board.
6. Forms provided to licensees at cost by the board.

§ 7 6 . Deposits on containers required; records; redemption of deposits; exceptions.

A. Minimum deposit.

Wholesalers shall collect in cash, at or prior to the time of delivery of any beer or beverages sold to a retail licensee, the following minimum deposit charges on the containers:

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Bottles having a capacity of not more than 12 oz. ...	\$.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz.	\$.04
Cardboard, fibre or composition cases other than for 1-1/8 or 2-1/4 gallon kegs	\$.02
Cardboard, fibre or composition cases for 1-1/8 or 2-1/4 gallon kegs	\$.50
Kegs, 1-1/8 gallon	\$1.75
Kegs, 2-1/4 gallon	\$3.50
Kegs, 1/4 barrel	\$4.00
Kegs, 1/2 barrel	\$6.00
Keg covers, 1/4 barrel	\$4.00
Keg covers, 1/2 barrel	\$6.00
Tapping equipment for use by consumers	\$10.00
Cooling tubs for use by consumers	\$5.00
Cold plates for use by consumers	\$15.00

O9

B. Records.

The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

C. Redemption of deposits.

Deposits shall be refunded upon the return of the containers in good condition.

D. Exceptions.

Deposits shall not be required on containers sold as nonreturnable items.

§ 8 7 . Solicitation of [MIXED BEVERAGE] licensees **GENERALLY; DISQUALIFYING FACTORS** by wine, beer and beverage solicitor salesmen [or representatives] .

A. Generally.

The solicitation of mixed beverage licensees is limited:

1. To solicitor salesmen holding permits under the provisions of Section 4-26 of the Code of Virginia.
2. To the sale of beer and wine.

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A permit is not required [~~for the solicitation of~~ to solicit or promote wine, beer or beverages to] wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any [winery, brewery,] wholesaler or importer licensed in this Commonwealth engaged in the sale of wine, beer and beverages.] [Further, a permit is not required to sell (which shall include the solicitation or receipt of orders) wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any winery, brewery or wholesaler licensed in this Commonwealth engaged in the sale of wine, beer and beverages.]

B. Permit required.

A permit is required [~~for the solicitation of~~ to solicit or promote wine, beer or beverages to] wholesale or retail licensees of the board, including mixed beverage licensees[,] by a wine, beer or beverage solicitor salesman [~~who represents~~ or representative of] any wholesaler engaged in the sale of wine, beer or beverages, but not holding a license therefor in this Commonwealth, or [by of any] manufacturers, wholesalers or any other person outside this Commonwealth holding a wine or beer importer's license issued by the board. [A permit under this section shall not authorize the sale of wine and wine coolers, by the permittee, the direct solicitation or receipt of orders for wine and wine coolers, or the negotiation of any contract or contract terms for the sale of wine and wine coolers unless such sale, receipt or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor salesman or representative.] In order to obtain a permit a person shall:

1. Register with the board by filing an application on such forms as prescribed by the board;
2. Pay a fee of \$125, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-26(b) of the Code of Virginia.
3. Be 18 years old or older to solicit [or promote] the sale of wine, beer or beverages, and may not be employed at the same time by a nonresident person engaged in the sale of wine, beer or beverages at wholesale and by a licensee of the board to solicit the sale of or sell wine, beer or beverages, and shall not be in violation of the provisions of VR 125-01-3 § 5.

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the board.]

B. Disqualifying factors. - No solicitation of a mixed beverage licensee shall be made by any person holding any interest, direct or indirect, as owner, partner, officer, director, board agent, employee, shareholder or otherwise, in the manufacture, distribution or sale of spirits unless such person:

1. holds a solicitor-salesman permit,
2. is accompanied by an employee of a wholesale licensee, and
3. solicits the sale of wine or beer only.

[Further, such person may provide D. Solicitation and promotion under the regulation may include] educational programs regarding [only] wine [or ,] beer or beverages to mixed beverage licensees [, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks].

[E. For the purposes of this regulation, the soliciting or promoting of wine, beer or beverages shall be distinguished from the sale of such products, the direct solicitation or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This regulation shall not be deemed to regulate the representative of a manufacturer, importer or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.]

§ 8 . Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; cut case cards; clip-ons and table tents.

A. Beer tapping equipment.

Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer.
2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet excluding the following:
 - a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
 - b. Gas pressure gauges (may be sold at cost);
 - c. Draft arms or standards;
 - d. Draft boxes;
 - e. Refrigeration equipment or components thereof.

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Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Wine tapping equipment.

Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;
2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales;
3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed \$2.00. Openers in excess of \$2.00 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Banquet licensees.

Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees paper or plastic cups upon which advertising matter regarding wine or beer may appear.

F. Cut case cards.

Any manufacturer, bottler or wholesaler of wine or beer may sell, lend, buy for or give to any retailer of wine or beer cut case cards, which are defined as promotional, nonmechanical, two-dimensional or three-dimensional printed [*paper or cardboard*] matter [*no larger than double the largest single dimension of the case product to which they refer for use in displaying and advertising*] in the interior of his establishment, other than in exterior windows, the sale of beer or wines having an alcoholic content of 21% or less by volume, provided such manufacturer, bottler or wholesaler in furnishing such cards conforms with the regulations of the appropriate federal agency, relating to inside signs. Such printed matter shall be supported by or affixed to, and be an integral part of, the case display. [*Such printed matter may be supported by a device other than the case itself. Such printed matter may be supported by a device other than the case itself.*] With the consent of the retail licensee, which may be a continuing consent, a wholesaler may mark or affix retail prices on such cut case cards.

G. Wine and beer clip-ons and table tents. Any manufacturer, bottler or wholesaler of wine or beer may sell, lend, buy for or give to any retailer of wine or beer, clip-ons and table tents containing the listing of not more than four wines or and four beers.

H. A retail licensee who consents to any violation of this section shall also be in violation.

[*The use of pole toppers is permitted if an integral part of the display. Wholesalers may mark or affix retail prices on pole toppers.*]

§ 10 9 . Routine business entertainment; definition; permitted activities; conditions.

A. Generally.

Nothing in these regulations shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in Virginia from providing a retail licensee of the board "routine business entertainment" which is defined as those activities enumerated in subsection B below.

B. Permitted activities.

1. Meals and beverages.
2. Concerts, theatre and arts entertainment.
3. Sports participation and entertainment.
4. Entertainment at charitable events; and
5. Private parties.

C. Conditions.

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The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer.
2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment.
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees.
4. Routine business entertainment that requires overnight stay is prohibited.
5. No more than \$200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, on any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions.
6. No person enumerated in subsection C.5. above may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year.
7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained.
8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

VR 125-01-4. Requirements for product approval.

§ 1. Distilled spirits; definitions and standards of identity.

Distilled spirits sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. Applicants shall furnish the board a certified copy of the approval of the label by such federal agency.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the

board, and be packaged in approved types and sizes of containers.

§ 2. Wines, qualifying procedures; disqualifying factors; samples; exceptions.

A. Qualifying procedures.

All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of wine offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through government stores shall be subject only to a registration fee in such amount as may be established by the board.

3. All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.

5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.

B. Disqualifying factors as to contents.

While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;

2. If the alcoholic content exceeds 21% by volume;

3. Which is a wine cocktail containing any ingredient other than wine.

C. Disqualifying factors as to labels.

While not limited thereto, the board shall withhold approval of any label:

1. Which contains the name of a cocktail generally understood to contain spirits;
2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;
3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;
4. Which contain the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;
5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;
6. Which contains subject matter designed to induce minors to consume alcoholic beverages, or is suggestive of the intoxicating effect of wine;
7. Which contains any reference to a game of chance;
8. Which contains any design or statement which is likely to mislead the consumer.

D. Samples.

A person holding a license as a winery, farm winery or a wholesale wine distributor shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

E. Exceptions.

Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.

§ 3. Wine containers; sizes and types; on- and off-premises limitations; cooler dispensers; novel containers; carafes and decanters.

A. Sizes generally.

Wine may be sold at retail only in or from the original containers of the sizes of 6.3 1.7 ounces (187 50 ml. if in a metric sized package) or above which have been

approved by the appropriate federal agency.

B. On-premises consumption.

Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original package with closure.

C. Off-premises consumption.

Wine shall not be sold for off-premises consumption in any container upon which the original closure has been broken.

D. Cooler-dispensers.

The sale of wine from cooler-dispensers is prohibited unless the device is designed so that the original container becomes a part of the equipment, except that frozen drink dispensers or containers used in automatic dispensing may be used if approved by the board.

E. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the following factors: nature and composition of the container; length of time it has been employed for the purpose; the extent to which it is designed or suitable for those uses; the extent to which the container is a humorous representation; whether the container is dutiable for any other purpose under custom laws and regulations.

F. Carafes or decanters.

Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity.

§ 4. Beer and beverage containers; sizes; off- and on-premises limitations; novel containers; opening devices.

A. Generally.

Beer and beverages may be sold at retail only in or from the original containers of the sizes which have been approved by the appropriate federal agency.

B. Off- and on-premises limitations.

No beer or beverages shall be sold by licensees for off-premises consumption in any container upon which the original closure has been broken. Further, licensees shall not allow beer or beverages dispensed for on-premises consumption to be removed from authorized areas upon the premises.

C. Novel or unusual containers.

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Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the factors set forth in § 3 of this regulation.

D. Opening devices.

No retail beer licensee shall sell at retail any beer or beverage packaged in a metal container designed and constructed with an opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container.

§ 5. Beer and beverages; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Qualifying procedures.

Beer and beverages sold in this Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of beer or beverages offered for sale in the state. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that beer and beverages offered for sale in another state with which this Commonwealth has an analysis and certification exchange agreement shall be subject only to a registration fee in such amounts as may be established by the board.

3. All beer and beverages sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer or beverages originally approved by the board.

B. Samples.

A person holding a license as a brewery or as a wholesale beer distributor shall upon request furnish the board without compensation a reasonable quantity of each brand of beer or beverage sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may

be established by the board shall be included with each recertification.

C. Exceptions.

Any beer or beverage whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer or beverage was sold at retail in this State *Commonwealth* as of December 1, 1960, and remains the same in content, label and container.

D. Disqualifying factors as to labels.

While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;
2. Implies the product contains above average alcohol for beer;
3. Is suggestive of intoxicating effects;
4. Would tend to induce minors to consume;
5. Would tend to induce persons to consume to excess;
6. Is obscene, lewd or indecent;
7. Implies or indicates that the product is government (federal, state or local) endorsed;
8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team;
9. Implies endorsement of the product by any prominent living person;
10. Makes any humorous or frivolous reference to any intoxicating drink.

VR 125-01-5. Retail Operations.

§ 1. Restrictions upon sale and consumption of alcoholic beverages and beverages.

A. Prohibited sales.

Except as may be otherwise permitted under §§ 4-48 or 4-50 of the Code of Virginia, no licensee shall sell any alcoholic beverage or beverage to a person whom he shall know or have reason at the time to believe is:

1. Under the age of 21 years;
2. Is intoxicated;
3. Is an interdicted person.

B. Prohibited consumption.

No licensee shall allow the consumption of any alcoholic beverage or beverage upon his licensed premises by any person to whom such alcoholic beverage or beverage may not lawfully be sold under this section.

§ 2. Determination of legal age of purchaser.

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser;

2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, Armed Forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency [<], *excluding student university and college identification cards* [>] provided such identification shall contain a photograph and signature of the subject, with the subject's height, weight and date of birth.

C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

§ 3. Restricted hours; exceptions.

A. Generally.

The hours during which licensees shall not sell nor permit to be consumed upon their licensed premises any wine, beer, beverages or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:

a. For on-premises sale and consumption: 2 a.m. to 6 a.m.

b. For off-premises sale: 12:00 Midnight to 6 a.m.

2. In all other localities: 12:00 Midnight to 6 a.m., for on-premises sales and consumption and off-premises sales, except that on New Year's Eve the licensees shall have an additional hour in which to exercise the on-premises privileges of their licenses.

B. Exceptions.

1. Club licensees: No restrictions at any time.

2. Individual licensees whose hours have been more stringently restricted by the board shall comply with such requirements.

3. Licensees in the City of Danville are prohibited from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m.

§ 4. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.

A. Generally.

Each licensee, except a licensed individual who is on the premises, shall have a Designated Manager present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the Designated Manager of every retail and mixed beverage licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

The posting of the name of a Designated Manager shall qualify such person to act in that capacity until disapproved by the board.

B. Disapproval of Designated Manager.

The board reserves the right to disapprove any person as a Designated Manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a Designated Manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the Alcoholic Beverage Control Act.

C. Restrictions upon employment.

No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as Designated Manager of his business.

§ 5. Restriction upon employment of minors.

No person licensed to sell alcoholic beverages or beverages at retail shall permit any employee under the age of 18 to sell, serve or dispense in any manner any alcoholic beverage or beverage in his licensed

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establishment for on-premises consumption nor shall such person permit any employee under the age of 21 to prepare or mix alcoholic beverages or beverages in the capacity of a bartender. Bartender is defined as a person who sells, serves or dispenses alcoholic beverages for on-premises consumption at a counter as defined in § 11 of this regulation and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only.

§ 6. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers; employment of minors.

A. Generally.

No mixed beverage restaurant or carrier licensee shall:

1. Preparation to order. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.
2. Limitation on sale. Serve as one drink the entire contents of any spirits containers having a greater capacity than a "miniature" of two fluid ounces or 50 ml, nor allow any patron to possess more than two drinks of mixed beverages at any one time. "Miniatures" may be sold by carriers and by retail establishments licensed as hotels, or restaurants upon the premises of a hotel, to sell mixed beverages. However, such licensees, other than carriers, may sell miniatures only for consumption in bedrooms and in private rooms during a scheduled private function.
3. Types of ingredients. Sell any mixed beverage to which alcohol has been added.

B. Mixed beverage restaurant licensees.

No mixed beverage restaurant licensee shall:

1. Stamps and identification. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license which does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Source of ingredients. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine distributor.
3. Empty container. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.
4. Miniatures. Sell any spirits in a container having a capacity of two fluid ounces or less, or 50 ml.

C. Sales of spirits in closed containers.

If a restaurant for which a mixed beverage restaurant license has been issued under § 4-98.2 of the Code of Virginia is located on the premises of and in a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packages in original closed containers purchased from the board, as well as other alcoholic beverages and beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board.
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function.
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages and beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee.
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Employment of minors.

No mixed beverage licensee shall employ a person less than 18 years of age in or about that portion of his licensed establishment used for the sale and consumption of mixed beverages; provided, however, that this shall not be construed to prevent the licensee from employing such a person in such portion of his establishment for the purpose of:

1. Seating customers or busing tables when customers generally are purchasing meals.
2. Providing entertainment or services as a member or staff member of an otherwise adult or family group which is an independent contractor with the licensee for that purpose.
3. Providing entertainment when accompanied by or under the supervision of a parent or guardian.

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§ 7. Restrictions on construction, arrangement and lighting of rooms and seating of licensees.

The construction, arrangement and illumination of the dining rooms and designated rooms and the seating arrangements therein of a licensed establishment shall be such as to permit ready access and reasonable observation by law enforcement officers and by agents of the board. The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such rooms.

§ 8. Entreating, urging or enticing patrons to purchase prohibited.

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage or beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the board.

§ 9. Storage of alcoholic beverages and beverages generally; permits for storage; exception.

A. Generally.

Alcoholic beverages and beverages shall not be stored at any premises other than those described in the license, except upon a permit issued by the board.

B. Procedures under permits.

The licensee shall maintain at all times as a part of the records required by VR 125-01-7 § 9, an accurate inventory reflecting additions to and withdrawals of stock. Withdrawals shall specify:

1. The name of the person making the withdrawal who shall be the licensee or his duly authorized agent or servant.
2. The amount withdrawn.
3. The place to which transferred.

C. Exception.

Draft beer and draft beverages may be stored without permit by a wholesaler at a place licensed to do a warehousing business in Virginia.

§ 10. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses;

exceptions; further conditions; temporary licenses.

A. Wine and beer.

Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. Delicatessen. An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments;

Monthly sales..... \$2,000

Inventory (cost)..... \$2,000

2. Drugstore. An establishment selling medicines prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use;

Monthly sales..... \$3,500

Inventory (cost)..... \$3,500

3. Grocery store. An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals;

Monthly sales..... \$2,000

Inventory (cost)..... \$2,000

4. Convenience grocery store. An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores, and does not sell any petroleum related service with the sale of petroleum products;

Monthly sales..... \$2,000

Inventory (cost)..... \$2,000

In regard to both grocery stores and convenience grocery stores, edible items shall mean such items normally used in the preparation of meals, including liquids, and which shall include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.

5. Specialty shop. An establishment provided with adequate shelving and storage facilities which sell products such as cheese and gourmet foods;

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Monthly sales..... \$2,000

Inventory (cost)..... \$2,000

B. Beer. Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. Delicatessen. An establishment as defined in subsection A above;

Monthly sales..... \$1,000

Inventory (cost)..... \$1,000

2. Drugstore. An establishment as defined in subsection A above;

Monthly sales..... \$1,500

Inventory (cost)..... \$1,500

3. Grocery store. An establishment as defined in subsection A above;

Monthly sales..... \$1,000

Inventory (cost)..... \$1,000

4. Marina store. An establishment operated by the owner of a marina which sells food and nautical and fishing supplies.

Monthly sales..... \$750

Inventory (cost)..... \$750

C. Exceptions.

The board may grant to an establishment not meeting the qualifying figures in A and B above provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

D. Further conditions.

The board in determining the eligibility for a license of an establishment shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;

2. The extent to which a variety of edible items of the types normally found in grocery stores are sold;

3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Temporary licenses.

Notwithstanding the above the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

§ 11. Definitions and qualifications for retail on-premises and on-and-off premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. Generally.

The following definitions shall apply to retail licensees and mixed beverage licensees where appropriate:

1. Designated room. A room or area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board;

2. Dining car, buffet car or club car. A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold;

3. "Meals." In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:

a. The assortment of foods commonly offered for sale;

b. The method and extent of preparation and service required;

c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

4. "Habitual" sales. In determining what constitutes "habitual" sales of specific foods the board may

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consider the following factors, among others:

- a. The business hours observed as compared with similar type businesses;
 - b. The extent to which such food or other merchandise is regularly sold;
 - c. Present and anticipated sales volume in such food or other merchandise.
5. "Sale" and "sell." The definition of "sale" and "sell" in VR 125-01-7 § 9 shall apply to this section.

B. Wine and beer. Retail on- or on-and-off premises licenses may be granted to persons operating the following types of establishments provided the total monthly food sales for consumption in dining rooms and other designated rooms on the premises are not less than those shown:

1. Boat. A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving in a dining room meals prepared on the premises;

Monthly sales..... \$3,000

2. Restaurant. A bona fide dining establishment habitually selling meals with entrees and other foods prepared on the premises;

Monthly sales..... \$3,000

3. Hotel. Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals with entrees and other food prepared on premises and lodging are habitually furnished to persons and which has 10 or more bedrooms;

Monthly sales..... \$3,000

In regard to both restaurants and hotels at least \$1,000 of the required monthly sales must be in the form of meals with entrees.

C. Beer.

Retail on- or on-and-off premises licenses may be granted to persons operating the following types of establishments provided the total monthly food sales for consumption in dining rooms on the premises are not less than those shown:

1. Boat. A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving in a dining room food prepared on the premises;

Monthly sales..... \$1,800

2. Restaurant. An establishment habitually selling food prepared on the premises;

Monthly sales..... \$1,800

3. Hotel. See B.3 above;

Monthly sales..... \$1,800

4. Tavern. An establishment where food and refreshment, including beer or beverages, are habitually sold for on-premises consumption.

D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

1. Bona fide, full-service restaurant. An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining rooms on the premises. In determining the qualifications of such restaurant the board may consider the assortment of entrees and other food sold. Such restaurants shall include establishments specializing in full course meals with a single substantial entree;

2. Monetary sales requirements. The monthly sale of food prepared on the premises shall not be less than \$5,000 of which at least \$3,000 shall be in the form of meals with entrees;

3. Dining room. A public room in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein;

4. Designated room. A public room the location, equipment and facilities of which have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption at tables on the premises at all times the mixed beverages are offered for sale therein. The seating area or areas of such designated room or rooms shall not exceed the seating area of the required public dining room or rooms, nor shall the seating capacity of such room or rooms be included in determining eligibility qualifications;

5. Outside terraces or patios. An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining room" or as a "designated room" in the discretion of the board but the seating capacity of an outside "dining room" or "designated room" shall not be included in determining eligibility qualifications of the establishment, and generally a location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk,

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street or alley by more than one well-defined entrance therefrom;

6. Tables and counters.

a. A "table" shall be considered to be an article of furniture generally having a flat top surface supported by legs, a pedestal or a solid base and designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together) and provided with seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein;

b. While the definition of a "table" set forth above shall be sufficient to include a "counter," insofar as the surface area is concerned, a "counter" shall have characteristics sufficient to make it readily distinguishable from the "tables" used by the licensee, either by the manner of service and use provided, or by the type of seating provided for patrons, or in both regards. Counters shall be located only in dining rooms or designated rooms as defined in subdivisions D 3 and D 4, and the length of the counter shall not exceed one foot for each qualifying seat at the tables in such dining or designated room including employee service areas;

c. This subsection shall not be applicable to a room otherwise lawfully in use for private meetings and private parties limited in attendance to members and guest of a particular group.

E. Exceptions.

The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Temporary licenses.

Notwithstanding the above the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the

subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

§ 12. Fortified wines; definitions and qualifications.

A. Definition.

Wines having an alcoholic content of more than 14% by volume but not more than 21%.

B. Qualifications.

Fortified wine may be sold for off-premises consumption by licensees authorized to sell wine for such consumption.

§ 13. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.

A. Applications.

Each applicant for a club license shall furnish the following information:

1. A certified copy of the charter, articles of association or constitution.
2. A copy of the bylaws.
3. A list of the officers and directors showing names, addresses, ages and business employment.
4. The average number of members for the preceding 12 months. Only natural persons may be member of clubs.
5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition as of the end of the month next preceding the date of application.

B. Qualifications.

In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked the board will consider, but is not limited to, the following factors:

1. The nature of the objectives of the club and whether the operation is in compliance therewith.
2. Whether the club qualifies for exemption from federal and state income taxes.
3. The extent to which the facilities of the club are permitted to be used by nonmembers, including reciprocal arrangements.

C. Reciprocal arrangements.

Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have members' privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board prior to the exercise of the privileges thereunder.

The mileage limitations of this subsection notwithstanding, members of private, non-profit clubs or private clubs operated for profit located in separate cities which are licensed by the board to operate mixed beverage restaurants on their respective premises and which have written agreements approved by the board for reciprocal dining privileges may be considered guests of the host club and deemed to have members' privileges with respect to its dining facilities.

D. Changes.

Any change in the officers and directors of a club shall be reported to the board within 30 days, and a certified copy of any change in the charter, articles of association or by-laws shall be furnished the board within 30 days thereafter.

E. Financial statements.

Each club licensee shall furnish the board a financial statement for the latest calendar or fiscal year at the time the annual license renewal fee is submitted.

§ 14. Lewd or disorderly conduct.

While not limited thereto, the board shall consider the following conduct upon any licensed premises to constitute lewd or disorderly conduct:

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment they shall be in conformity with subdivision 2.

2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1.

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual

act prohibited by law, by any person, whether an entertainer or not.

4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

§ 15. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license granted by the board which authorizes the licensee to sell wine or beer at retail for consumption off the premises of such licensee shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

The provisions of this section shall be applicable also to the delivery of beverages.

§ 16. Happy hour and related promotions; definitions; exceptions.

A. Definitions.

1. Happy Hour. A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. Drink. Any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. Prohibited practices.

No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day.

2. Allowing a person to possess more than two drinks at any one time during a happy hour.

3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink.

4. Selling two or more drinks for one price, such as "two for one" or "three for one."

5. Selling pitchers of mixed beverages.

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6. Giving away drinks.

7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00."

8. Advertising happy hour in the media or on the exterior of the licensed premises.

C. Exceptions.

This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

§ 17. Caterer's license.

A. Qualifications.

Pursuant to § 4-98.2(e) of the Code of Virginia the board may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § 4-2 of the Code of Virginia or as provided in § 4-98.2(c) of the Code of Virginia, and

2. With an established place of business with catering gross sales average of at least \$5,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

B. Privileges.

The license authorizes the following:

1. The purchase of spirits, vermouth and wine produced by farm wineries from the board.

2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer or 3.2 beverages from licensed wholesalers.

3. The retail sale of alcoholic beverages or mixed beverages to persons who sponsor the private gatherings or special events described in subsection A above or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case.

4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event.

2. The records required to be kept by § 9 of VR 125-01-7 shall be maintained by caterers. If the caterer also holds other alcoholic beverages licenses he shall maintain the records relating to his caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time and place of the event and the name and address of the sponsoring person or group of each event catered.

3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of alcoholic beverages, mixed beverages, beverages as defined in § 4-99 of the Code of Virginia and food.

4. The caterer shall notify the board in writing at least 2 calendar days in advance of any events to be catered under his license for the following month. The notice shall include the date, time, location and address of the event and the name of the sponsoring person, group, corporation or association.

5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages.

6. The private gathering referred to in subsection A above shall be a social function which is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not the caterer.

7. The licensee shall insure that all functions at which alcoholic beverages are sold are ones which qualify for a banquet license, for a special event license or a mixed beverage special events license. Licensees are entitled to all services and equipment now available under a banquet license from wholesalers.

8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised.

9. The caterer's license shall be considered a retail license for purposes of § 4-79 of the Code of Virginia

§ 18. Volunteer fire departments or volunteer rescue squads; banquet facility licenses.

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A. Qualifications.

Pursuant to § 4-25(pl) of the Code of Virginia, the board may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services, or both; and
2. Having as its premises a fire or rescue squad station, or both, regularly occupied by such fire department or rescue squad, or both; and
3. Being duly recognized by the governing body of the city, county or town in which it is located.

B. Privileges.

The license authorizes the following:

1. The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.

C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons holding such banquet facility licenses:

1. Alcoholic beverages cannot be sold or purchased by the licensee;
2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;
3. The private affair referred to in subdivision B 1 above shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;
4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;

5. A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station;

6. The fire department or rescue squad, or both, shall comply with the requirements of the local governing body concerning sanitation, health, construction, or equipment and shall obtain all local permits or licenses which may be required to exercise the privilege of its license.

VR 125-01-6. Manufacturers and Wholesalers Operations.

§ 1. Solicitor-salesmen; records; employment restrictions; suspension or revocation of permits.

A. Records.

A solicitor-salesman employed by any nonresident person to solicit the sale of or sell wine or beer at wholesale shall keep complete and accurate records for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products, and shall, upon request, furnish the board with a certified copy of such records.

B. Restrictions upon employment.

A solicitor-salesman must be 18 years old or older to solicit the sale of beer or wine, and may not be employed at the same time by a nonresident person engaged in the sale of beer or wine at wholesale and by a licensee of the board to solicit the sale of or sell wine or beer.

C. Suspension or revocation of permit.

The board may suspend or revoke the permit of a solicitor-salesman if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

Before suspending or revoking such permit, the board shall accord the solicitor-salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the Alcoholic Beverage Control Act.

§ 2. Wines; purchase orders generally; wholesale wine distributors.

A. Purchase orders generally.

Purchases of wine from the board, between licensees of the board and between licensees and persons outside the Commonwealth shall be executed only on orders on forms prescribed by the board and provided at cost if supplied by the board.

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B. Wholesale wine distributors.

Wholesale wine distributors shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine distributor at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the distributor reflecting accurately the date received and any changes;
2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale;
3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale;
4. Peddling. Wine shall not [~~Wine coolers, as defined in § 4-00 of the Code of Virginia, but not wine, may~~] be peddled to retail licensees;
5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms;
6. Reports to the board. Each month wholesale wine distributors shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of State Wine Tax collected from retailers pursuant to § 4-22.1 of the Code of Virginia. Each wholesale wine distributor shall on forms prescribed by the board on a quarterly basis indicate to the board the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

§ 3. Procedures for retail off-premises winery licenses; purchase orders; segregation, identification and storage.

A. Purchase orders.

Wine offered for sale by a retail off-premises winery licensee shall be procured on order forms prescribed by the board and provided at cost if supplied by the board. The order shall be accompanied by the correct amount of

State Wine Tax levied by § 4-22.1 of the Code of Virginia, due the Commonwealth in cash, as defined in these regulations.

B. Segregation, identification and storage.

Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the board. The licensee shall place his license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified as herein required may be offered for sale at retail.

§ 4. Indemnifying bond required of wholesale wine distributors.

No wholesale wine distributor's license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth of Virginia in the penalty of \$1,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the faithful compliance with requirements of the Alcoholic Beverage Control Act and the regulations of the board.

A wholesale wine distributor may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

§ 5. Records required of distiller, fruit distiller, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's license, a fruit distiller's license, a winery license, or a farm winery license shall comply with the following procedures:

A. Records.

Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall include the following information:

1. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month.
2. The amount of alcoholic beverages on hand at the end of each calendar month.
3. Withdrawals of alcoholic beverages for sale to the board or licensees of the board.
4. Withdrawals of alcoholic beverages for shipment outside of Virginia showing:

- a. Name and address of consignee.
- b. Date of shipment.
- c. Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

5. Purchases of cider or wine including:

- a. Date of purchase.
- b. Name and address of vendor.
- c. Amount of purchase in liters.
- d. Amount of consideration paid.

6. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

B. Distillation for another.

A distiller or fruit distiller manufacturing distilled spirits for another person shall:

1. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof.
2. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container.
3. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

C. Farm wineries.

A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.

§ 6. Wine or beer importer licenses; conditions for issuance and renewal.

In addition to complying with the requirements of § 4-25(g1) of the Code of Virginia relating to wine importers' licenses, and of § 4-25(e1) of the Code of Virginia, relating

to beer importers' licenses, and to other requirements of law applying to board licensees generally, all persons applying to the board for the issuance or renewal of a wine or beer importer's license shall file with the board a list of the brands of wine or beer they intend to sell and deliver or ship into this Commonwealth, along with a corresponding list of the names of the owners of such brands and a copy of the written permission of the brand owner, or its duly designated agent, authorizing such applicant to sell and deliver or ship the indicated brands of wine or beer into this Commonwealth. In the event that, subsequent to the issuance or renewal of a wine or beer importer's license, the licensee makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the licensee shall make a supplemental filing with the board identifying such additional brands and brand owners and providing the required evidence of authorization by the brand owner, or its duly designated agent, for the licensee to sell and deliver or ship such additional brands of wine or beer into this Commonwealth.

§ 7. Beer and beverage excise taxes.

A. *Indemnifying bond required of beer manufacturers, bottlers or wholesalers.*

1. *No license shall be issued to a manufacturer, bottler or wholesaler of beer or beverages as defined in § 4-127 unless there shall be on file with the board, on a form approved or authorized by the board, an indemnifying bond running to the Commonwealth of Virginia in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the payment of the tax imposed by Chapter 4 of Title 4 of the Code of Virginia in accordance with the provisions thereof.*

2. *A manufacturer, bottler or wholesaler of beer or beverages may request in writing a waiver of the surety and the bond by the board. The board may withdraw such waiver at any time for failure to comply with the provisions of Sections 4-128, 4-129 and 4-131.*

B. *Shipment of beer and beverages to installations of the armed forces.*

1. *Installations of the United States Armed Forces shall include, but not be limited to, all United States, Army, Navy, Air Force, Marine, Coast Guard, Department of Defense and Veteran Administration bases, forts, reservations, depots, or other facilities.*

2. *The direct shipment of beer and beverages from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations*

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shall be prohibited. Beer and beverages must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and beverages so delivered shall be exempt from the beer and beverage excise tax as provided by Chapter 4 of Title 4 of the Code of Virginia only if the sale thereof meets the exemption requirements of § 4-130.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday or Legal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any report required by Chapter 4 of Title 4 of the Code of Virginia may be filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest.

Unless otherwise specifically provided, interest on omitted taxes and refunds under Chapter 4 of Title 4 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia, as amended.

§ 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits.

A. Generally.

This regulation applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale distilled spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this regulation shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit by the board. To obtain a permit a person shall:

a. Register with the board by filing an application

on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-98.16 D of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer [, or] brand owner [or its duly designated United States agent,] of each specific brand or brands of distilled spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth;

d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of distilled spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer [, or] brand owner [, or its duly designated United States agent] and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of distilled spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records.

1. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, which shall include the following:

a. Name and address of each mixed beverage licensee solicited;

b. Date of solicitation and name of each individual contacted;

c. Brand names of all distilled spirits promoted during the solicitation; and

d. Amount and description of any expenses incurred

with respect to each such solicitation.

2. A permittee shall [submit to the board a certified copy of the aforementioned records for the previous 12 months period within 30 days following the annual expiration date of his permit. Further, within 10 days after request of the board or its duly authorized agent, a permittee shall submit to the board a certified copy of said records for the previous two year period make available to any agent of the board on demand the records referred to in subdivision 1 above.]

D. Permitted activities.

Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one per retailer per brand), which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of \$2.00 in wholesale value (one per retailer per brand) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages of distilled spirits not then sold by the licensee which are purchased from a Virginia ABC store; the label on the distilled spirits package shall bear the word "sample" in lettering of reasonable size; the package of distilled spirits shall bear the permit number of the distilled spirits permittee, shall remain the property of the permittee and may not be left with the licensee;

3. Promote their authorized brands of distilled spirits at conventions, trade association meetings, or similar gatherings of organizations a majority of whose membership consists of mixed beverage licensees or distilled spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from packages of distilled spirits purchased from Virginia ABC stores when the distilled spirits donated are intended for consumption during the gathering;

b. To displays of distilled spirits in closed containers bearing the word "sample" in lettering of reasonable size, and informational signs provided such merchandise is not sold or given away except as permitted in this regulation;

c. Distribution of informational brochures, pamphlets

and the like, relating to distilled spirits;

d. Distribution of novelty and specialty items bearing distilled spirits advertising not in excess of \$2.00 in wholesale value;

e. Film or video presentations of distilled spirits which are essentially educational.

E. Prohibited activities.

A permittee shall not:

1. [Sell distilled spirits to any licensee of the board, solicit or receive orders for distilled spirits from any licensee,] provide or offer to provide cash discounts or cash rebates to any licensee, [or to negotiate any contract or contract terms for the sale of distilled spirits with a licensee];

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell distilled spirits [; to licensees;]

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except at conventions, trade association meetings or similar gatherings as permitted in D.3;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver distilled spirits or other alcoholic beverages [for or] to licensees or provide any services as inducements to licensees [, except that this provision shall not preclude the sale or delivery of wine, beer or beverages by a licensed wholesaler];

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Provide or offer to provide point-of-sale material [to licensees];

8. Solicit licensees on Sundays except at conventions, trade association meetings, and similar gatherings as permitted in D.3;

9. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in D.3;

10. Solicit or promote any brand or brands of distilled spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth;

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11. Engage in solicitation of distilled spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend or revoke a permit if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act and regulations of the board.

§ 9. Sunday deliveries by wholesalers prohibited; exceptions.

Persons licensed by the board to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to ships sailing for a port of call outside of the Commonwealth, or to banquet licensees.

VR 125-01-7. Other Provisions.

§ 1. Transportation of alcoholic beverages and beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. Permits generally.

The transportation within or through this State of alcoholic beverages or beverages lawfully purchased within this State is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Wine and beer. No limitation.
2. Alcoholic beverages other than those described in subdivision 1 above. Three gallons; provided, however, that not more than one gallon thereof shall be in packages containing less than 1/5 of a gallon.
3. Beverages. No limitation.

If any part of the alcoholic beverages being transported is contained in a metric sized package, the three gallon limitation shall be construed to be 12 liters and not more than four liters shall be in packages smaller than 750 milliliters.

The transportation within, into or through this State of alcoholic beverages or beverages lawfully purchased outside of this State is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Alcoholic beverages, including wine and beer. One gallon (four liters if any part is in a metric sized package).

2. Beverages. One case of not more than 384 ounces (12 liters if in metric sized packages).

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages or beverages at all times to the final destination.

B. Commercial carrier permits.

Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages or beverages within, into or through this Commonwealth shall, except as hereinafter noted, file application in writing for a transportation permit upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages or beverages upon condition that there shall accompany each such transporting vehicle:

1. A bill of lading or other memorandum describing the alcoholic beverages or beverages being transported, and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment; and
2. Except for express companies and carriers by rail or air, a certified photocopy of the carrier's transportation permit.

C. Refusal, suspension or revocation of permits.

The board may refuse, suspend or revoke a carrier's transportation permit if it shall have reasonable cause to believe that alcoholic beverages or beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending or revoking such permit, the board shall accord the carrier involved the same notice, opportunity to be heard, and follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act.

D. Exceptions.

There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee.
2. Persons transporting wine, beer, cider or beverages purchased from the board or a licensee of the board.

3. Persons transporting alcoholic beverages or beverages which may be manufactured and sold without a license from the board.

4. A licensee of the board transporting lawfully acquired alcoholic beverages or beverages he is authorized to sell in a vehicle owned or leased by the licensee.

5. Persons transporting alcoholic beverages or beverages to the board, or to licensees of the board, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell.

6. Persons transporting alcoholic beverages or beverages as a part of their official duties as federal, state or municipal officers or employees.

7. Persons transporting lawfully acquired alcoholic beverages or beverages in a passenger vehicle, other than those alcoholic beverages or beverages referred to in item D 2 and D 3, provided the same are in the possession of the bona fide owners thereof, and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A.

E. One gallon (four liters if any part in a metric sized package) limitation.

This regulation shall not be construed to alter the one gallon (four liters if any part is in a metric sized package) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § 4-84(d) of the Code of Virginia.

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 ml. if in a metric sized package) nor more than one gallon (three liters if in a metric sized

package).

D. Labels.

If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the board.

E. Markup.

The markup or profit charged by the board shall be eight cents per liter or fractional part thereof.

F. Age limits.

Persons must be 21 years of age or older to purchase or possess cider.

§ 3. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders.

Purchase orders for sacramental wine shall be on separate order forms prescribed by the board and provided at cost if supplied by the board.

B. Permits.

Sales for sacramental purposes shall be only upon permits issued by the board without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Applications for permits.

Requests for permits by a religious congregation shall be in writing, executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

D. Use of sacramental wine.

Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

§ 4. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. Permits.

The board may issue a culinary permit to a person operating a dining room where meals are habitually served. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend or revoke a license.

B. Purchases.

Purchases shall be made from the board at government stores or at warehouses operated by the board, and all

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purchase receipts issued by the board shall be retained at the permittee's place of business for a period of one year and be available at all times during business hours for inspection by any member of the board or its agents. Purchases shall be made by certified or cashier's check, money order or cash, except that if the permittee is also a licensee of the board remittance may be by check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase, provided that the money order or check is in an amount no larger than the purchase price.

C. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose, nor shall the permit authorize the possession of any other alcoholic beverages. They shall be stored in a place designated for the purpose upon the premises of the permittee, separate and apart from all other commodities, and custody thereof shall be limited to persons designated in writing by the permittee.

§ 5. Procedures for druggists and wholesale druggists; purchase orders and records.

A. Purchase orders.

Purchases of alcohol by druggists or wholesale druggists shall be executed only on orders on forms supplied by the board. In each case the instructions on the forms relative to purchase and transportation shall be complied with.

B. Records.

Complete and accurate records shall be kept at the place of business of each druggist and wholesale druggist for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall show:

1. The amount of alcohol purchased,
2. The date of receipt, and
3. The name of the vendor.

In addition, records of wholesale druggists shall show:

1. The date of each sale,
2. The name and address of the purchaser, and
3. The amount of alcohol sold.

§ 6. Alcoholic beverages for hospitals, industrial and manufacturing users.

A. Permits.

The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 of the Code of Virginia;
4. For use in a hospital or home for the aged (alcohol only).

Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.

The application for such permits shall be on forms provided by the board.

B. Permit fees.

Applications for alcohol shall be accompanied by a fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.

C. Storage.

A person obtaining a permit under this section shall:

1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the application separate and apart from any other articles kept on such premises;
2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages;
3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year.

D. Refusal of permit.

The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe

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either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4-31 of the Code of Virginia for which the board might refuse to grant the applicant any license.

E. Suspension or revocation of permit.

The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under § 4-37 of the Code of Virginia.

F. Access to storage and records.

The board and its agents shall have free access during business hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.

§ 7. Procedures for owners having alcoholic beverages distilled from grain, fruit, fruit products or other substances lawfully grown or produced by such person; permits and limitations thereon.

A. Permits.

An owner having a distiller or fruit distiller manufacture distilled spirits out of grain, fruit, fruit products or other substances lawfully grown or produced by such person may remove the finished product only upon permit issued by the board, which shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address and license number (if any) of the consignee;
2. The kind and quantity in gallons of alcoholic beverages;
3. The name of the company employed to transport the shipment.

B. Limitations on permits.

Permits shall be issued only for shipments to the board, for sale to a lawful consignee outside of Virginia under a bona fide written contract therefor, and for the withdrawal of samples for the owner's use. Samples shall be packaged in containers of one pint or 500 ml and the words, "Sample-Not for Sale," shall be printed in letters of reasonable size on the label.

§ 8. Manufacture, sale, etc., of "sterno," and similar substances for fuel purposes.

No license from the board is required for the manufacture, sale, delivery and shipment of "Sterno," canned heat and similar substances intended for fuel purposes only.

§ 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. Generally.

All licensees of the board shall keep complete and accurate records at the licensee's place of business for a period of two years, except with respect to records regarding beer and 3.2 beverages which shall be kept three years as required by § 58.1-709, of the Code of Virginia, which records shall at all times during business hours be available for inspection by any member of the board or its agents. Licensees of the board may commit these records to microfilm or other available technologies at any time during the period specified herein.

B. Retail licensees generally.

Retail licensees shall keep records of the purchases and sales of alcoholic beverages and beverages, and also records of the purchases and sales of foods and other merchandise including, but not limited to, purchase invoices of such alcoholic beverages, beverages, foods and other merchandise. The records of the purchases and sales of alcoholic beverages and beverages shall be kept separate and apart from other items.

C. Mixed beverage restaurant licensees.

In addition to the requirements of paragraphs A and B hereof, and separate and apart therefrom, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales, and the following additional records:

1. Upon delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its agents a complete and accurate inventory of all alcoholic beverages and beverages then held in inventory on the premises by the licensee.

2. Each licensee at least annually on forms prescribed by the board shall submit to the board, within 30 days following the first day of the month next following the month in which the mixed beverage restaurant license was originally issued:

- a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages, held in inventory at the close of business at the end of the annual review period, and

- b. An accounting of the annual purchases of food,

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nonalcoholic beverages, alcoholic beverages, and beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items, and

c. an accounting of the monthly and annual sales of all merchandise specified in subsection C.2.b.

D. "Sale" and "sell."

The terms "sale" and "sell" shall include exchange, barter and traffic, and delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages, other alcoholic beverages and beverages, and of meals or food.

E. Gross receipts; food, alcoholic beverages, etc.

In determining "gross receipts from the sale of food" for the purposes of Chapter 1.1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia, no licensee shall include any receipts for food for which there was no sale, as defined in this section. Food which is made available at an unwritten, non-separate charge to patrons or employees during so-called "Happy Hours," private social gatherings, promotional events, or at any other time, shall not be included in such gross receipts.

If in conducting its review pursuant to § 4-98.7 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages, other alcoholic beverages or beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate the number of mixed drinks, alcoholic beverage and beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

F. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

§ 10. Gifts of alcoholic beverages or beverages generally; exceptions; taxes and records.

A. Generally.

Gifts of alcoholic beverages or beverages by a licensee to any other person are prohibited except as otherwise provided in this section.

B. Exceptions.

Gifts of alcoholic beverages or beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a package not then sold by such licensee of wine, beer or beverages, which such wholesaler otherwise may sell to such retail licensee, provided in a case of packages the package does not exceed 52 fluid ounces in size (1.5 liter if in a metric sized package) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample package.

3. Hospitality rooms; conventions. A person licensed by the board to manufacture wine, beer or beverages may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, *including wine tastings*; research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer, beverages or wines to:

a. A convention, trade association or similar gathering, composed of licensees of the board, and their guests, when the alcoholic beverages or beverages donated are intended for consumption during the convention.

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages or beverages being given away.

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism.

d. Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees of the board when conducting a bona

vide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by B.3.b. and B4 above are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such, and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine tastings.

Wine wholesalers may participate in a wine tasting sponsored by a wine specialty shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine.

C. D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 of the Code of Virginia and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and internal revenue bonded warehouses; receipts; violations; limitation upon sales.

A. Release generally.

Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board;
2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;
3. Ships actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia;
4. Persons for shipment outside this Commonwealth to someone legally entitled to receive the same under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board and in accordance with the instructions therein set forth.

B. Receipts.

A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or his duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board by the permittee within 10 days after delivery.

C. Violations.

The board may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. Limitation upon sales.

A maximum of six imperial gallons of alcoholic beverages may be sold, released and delivered in any 30 day period to any member of foreign armed forces personnel.

§ 12. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Certificate of approval.

Upon the application of a person qualified under the provisions of § 4-84.1 of the Code of Virginia, the board may issue a certificate of approval for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

B. Segregation.

The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Release from storage.

Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same only upon permit issued by the board, and in accordance with the instructions therein set forth. The owner of the alcoholic beverages, or the owner or operator of the approved warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board.

D. Records.

Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available at all times during business hours for inspection by a member of the board or its agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee.
2. Date of receipt or withdrawal, as the case may be.

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3. Type and quantity of alcoholic beverage.

E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5 § 9, are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Location.

Special mixed beverage licenses may be granted to persons by the board at places primarily engaged in the sale of meals where the place to be occupied is owned by the government of the United States, or any agency thereof, is located on land used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, which licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein.

B. Special privileges.

"Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the sales thereof shall be not less than 45% of the gross receipts from the sale of alcoholic beverages, mixed beverages, beverages as defined in § 4-99, and meals.

C. Taxes on licenses.

The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be \$25 per day.

§ 14. Definitions and requirements for beverage licenses.

A. Definition.

Wherever the term beverages appears in these regulations it shall mean beverages as defined in § 4-99, of the Code of Virginia. § 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing 1/2 of one percent or more of alcohol by volume, and not more than three and 2/10ths percent of alcohol by weight.

B. Beverage licenses may be issued to carriers, and to applicants for retailers' licenses pursuant to § 4-102 of the Code of Virginia for either on-premises, off-premises, or on-and-off premises consumption, as the case may be, to persons meeting the qualifications of a licensee having like privileges with respect to the sale of beer. The license of a person meeting only the qualifications for an off-premises beer license shall contain a restriction prohibiting the consumption of beverages on premises.

§ 15. Wholesale alcoholic beverage and beverage sales; discounts, price-fixing; price increases; price discrimination; retailers.

A. Discounts, price-fixing.

No winery as defined in § 4-118.23 or brewery as defined in § 4-118.4 of the Code of Virginia shall require a person holding a wholesale license to discount the price at which the wholesaler shall sell any alcoholic beverage or beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage or beverage.

B. Notice of price increases.

No winery as defined in § 4-118.23 or brewery as defined in § 4-118.4 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase. A copy of such notice shall also be sent to the board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section.

No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

C. No price discrimination by breweries and wholesalers.

No winery as defined in § 4-118.23 or brewery as defined in § 4-118.4 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers and no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages or beverages between different retail purchasers except where the difference in price charged by such winery, brewery or wholesale licensee is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler or retail purchaser does occur, the board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.

D. Inducements.

No person holding a license authorizing sale of alcoholic beverages or beverages at wholesale or retail shall

knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

§ 16. Alcoholic beverage control board.

Whenever in these rules and regulations the word "Board," "board" or "Commission" shall appear, and the clear context of the meaning of the provision in which it is contained is intended to refer to the Alcoholic Beverage Control Board, it shall be taken to mean the board.

§ 17. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state, except upon permission of the board as provided in § 4-25.1 B of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels.

B. The term "other agricultural products" used in subsection A of this section includes wine.

C. The additional retail establishment authorized by statute to be located at a reasonable distance from the winery is not required to be a permanent one. It may be moved as necessary as long as only one such remote outlet is operating at any given time. The location, equipment and facilities of each remote outlet shall be approved in advance by the board.

DEPARTMENT OF FORESTRY

Title of Regulation: VR 312-01-02. Standards for Classification of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law.

Statutory Authority: §§ 58.1-3230 and 58.1-3240 of the Code of Virginia.

Effective Date: January 1, 1989

Summary:

The regulation identifies forest stand conditions under which land can be eligible for forest use value assessment. The regulation further specifies under what conditions land will be accepted into the program as a result of the landowners' actions.

VR 312-01-02. Standards for Classification of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law.

Pursuant to Under the authority of § 58-760.4, et seq., § 58.1-3229 et seq. of the Code of Virginia, 1950 as amended the State Forester adopts these Standards for Classification of Real Estate As Devoted to Forest Use cited on under

the [Virginia Land Use Special] Assessment [Law] ; and [for Land Preservation] to :

Pursuant to the declared objective of the Law, as set forth in Section 58-760.4 thereof, ...

A. 1. To Encourage the proper use of such real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.

B. 2. To Conserve natural resources in forms that will prevent erosion.

C. 3. To Protect adequate and safe water supplies.

D. 4. To Preserve scenic natural beauties and open spaces.

E. 5. To Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.

F. 6. To Promote a balanced economy and ameliorate ease/lessen the pressures which force the conversion of real estate to more intensive uses. ..."

The area must be a minimum of twenty acres and meet all of the following standards to qualify for forest use.

Pursuant According to the specific authority and responsibility conveyed by §§ 58-760.5(e) and 58-760.12 [§ §§ 58.1-3230, 58.1-3233 and] 58.1-3240 [of the law, directing ,] the director of the Department of Conservation and Economic Development to provide ; a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. After holding public hearings, [pursuant to the Administrative Process Act (§ 9-6.14:1 et. seq. of the Code of Virginia)] the statement shall be sent to the commissioner of the revenue or and [a the] duly appointed assessor of each locality adopting an ordinance pursuant to this article in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia. a statement of the standards which shall be applied uniformly throughout the state in determining whether real estate is devoted to forest use. [The area shall be a minimum of 20 acres and shall meet all the following standards to qualify for forestry use.]

A. § 1. Technical standards [for classification of real estate devoted to forest use].

[A. The area must be a minimum of 20 acres and must meet the following standards to qualify for forestry use.]

[A. B.] Productive forest land.

is land devoted The real estate sought to be qualified

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shall be devoted to forest use which has existed on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, or formerly having such tree cover, as shown in Table 1. Land devoted to forest use that has been recently harvested of merchantable timber [, is being regenerated into a new forest] and not currently developed for nonforest use shall be eligible . [~~H~~ To be qualified the land] must be growing a commercial forest crop that is [physically] accessible for harvesting [when mature].

[~~B~~. C.] Nonproductive forest land.

[The land sought to be qualified] is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock and , shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibit the growth and harvesting of a crop of trees suitable for commercial use.

[C. D. Definitions.]

[1. Tree. A] tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

[~~D~~. 2. Stocking.] Stocking is the number of trees three inches and larger in diameter ; breast high (d.b.h.- at a point on the tree trunk outside bark 4 1/2 feet from ground level) required to equal a total basal area ([b.a. is the] area in square feet of a cross section of [the a] tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in the following Table 1 .

TABLE 1.

Minimum Number of Trees [Combination Thereof Required Per Acre] to Determine 30 Square Feet of Tree Basal Area of 40% Stocking [Required to be Classified for Classification] as Forest Land.

D.B.H. Range	D.B.H. in 2' Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
.....
up to 2.9''	Seedlings		400	80	40
3.0-4.9''	4	0.0873	400	80	40
5.0-6.9''	6	0.1964	153	31	15
7.0-8.9''	8	0.3491	86	17	9
9.0-10.9''	10	0.5454	55	11	6
11.0-12.9''	12	0.7854	38	8	4

13.0-14.9''	14	0.0690	28	6	3
15.0- +''	16+	1.3963	21	4	2
.....					

NOTE: (a) Area 1/5 acre; circle, diameter 105'4"; square 93'4" per side

(b) Area 1/10 acre; circle, diameter 74'6"; square 66'

(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% X 30 = 7.5).

[(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.]

[~~B~~. ~~§~~ 2. Productive earning power.

The forest land productive earning power will be determined by soil series classification and current market prices average of the preceding five year market price for each county and city. The base species will be selected according to the major forest type of greatest economic value in the county or city.

The annual productive earning power will be computed by converting the estimated acre volume yields for a rotation to dollar yields. The cost for land management and stand establishment is then subtracted from the gross income, leaving a net worth of the timber crop. The forest use value is then calculated by dividing the net worth by a determined capitalization rate.]

[~~§~~ 2. ~~§~~ 2.] Conservation of land resources, management and production, and certification.

A. To qualify for forest use, the [applicant owner] shall certify that the real estate is being used in a planned program of timber management and soil conservation practices which are intended to:

1. Enhance the growth of commercially desirable species through generally accepted silvicultural practices.

2. Reduce or prevent soil erosion by best management practices such as logging road layout and stabilization, streamside management zones, water diversion practices and other best management practices which prevent soil erosion and improve water quality.

B. Certification of intent by the owner can be shown by:

1. A signed commitment to maintain and protect forestland by documenting land-use objectives to

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include methods of resource management and soil and water protection; or

2. Submitting a plan prepared by a professional forester.

C. [§ 4, § 3.] Opinions.

Section ~~58-760.12~~ 58.1-3240 of the Code of Virginia (1950), as amended, authorizes [~~an a local~~] assessing officer to request [~~an opinion~~] from the ~~Director of the Department of Conservation and Economic Development State Forester~~ [~~to determine determining~~] whether a particular property meets the criteria for forest use [~~in cases of reasonable doubt~~]. [~~The request should be in writing describing the situation in question. Maps, photos or other pertinent information should accompany the request.~~] The ~~Director State Forester~~ [~~will may hold a hearing or~~] arrange for an onsite inspection by [~~the a~~] department official [~~in company with the assessor and~~], the applicant [~~and the local assessing officer~~]. The ~~Director State Forester~~ will issue his opinion as quickly as possible after all necessary information has been received. An appeal ~~from~~ of any opinion [~~which that~~] does not ~~comport comply with the these standards set forth herein~~ may be ~~taken~~ [~~made taken~~] as provided by law § 58.1-3240 of the Code of Virginia.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: The following three regulations are exempted from the Administrative Process Act under the provisions of § 9-6.14:4 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property.

Title of Regulation: VR 394-01-102. Single Family Rehabilitation and Energy Conservation Loan Program.

Statutory Authority: Chapter 9 (§ 36-141 et seq.) of Title 36 of the Code of Virginia.

Effective Date: October 24, 1988

Summary:

Responding to critical housing problems facing the Commonwealth, as documented in the 1987 Annual Report of the Virginia Housing Study Commission, the Governor and the General Assembly established the Virginia Housing Partnership Revolving Loan Fund. The purpose of the fund is to increase the availability of decent and affordable housing for low and moderate Virginia residents. The Single Family Housing Rehabilitation Program provides low interest loans for the rehabilitation of owner occupied or investor owned single family housing units. The purpose of the program is to increase the supply of decent and affordable single family housing for low

and moderate income owners and renters.

VR 394-01-102. Single Family Rehabilitation and Energy Conservation Loan Program.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Accessibility improvement" means an eligible interior or exterior modification made to an eligible property to compensate for a disabled person's reduced mobility or ability to perform necessary tasks in the home.

"Applicant" is a nonprofit, incorporated organization or governmental entity, which has submitted to the state, an application for consideration to become a local administrator of the Single Family Rehabilitation and Energy Conservation Loan Program.

"Application" is the request, on behalf of the applicant, for a loan fund reservation for administration of the Single Family Rehabilitation and Energy Conservation Loan Program.

"Appraised value" is the value of a home as determined by an independent fee appraiser.

"Area median income" means the median income established by HUD from time to time for various areas of the Commonwealth. State median income means the statewide median income established by the University of Virginia, Center for Public Service.

"Assessed value" is the value of the home as determined by the real estate assessment office of the local government for tax purposes. The applicable assessed value shall be that value which is in effect as of the loan application date.

"Borrower" is a person or family, who has been approved by the state, for funding from the Single Family Housing Rehabilitation and Energy Conservation Loan Program.

"Commitment fee" is a fee of up to \$100 charged by the local administrator to defray the cost of processing the loan. The fee is collected at closing.

"DHCD" means the Department of Housing and Community Development.

"Fund" means the Housing Partnership Revolving Loan Fund.

"General improvements" means improvements made for

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the purpose of making the home more desirable to live in or to make the home more habitable. These improvements must be permanent and may include additions, alterations, renovations, or repairs to the home. Improvements shall not include materials, fixtures, or landscapes of a type or quality which exceed that customarily used in the locality for properties of the same general type as the property to be improved.

"Gross income" is the total annual income of all residents of a housing unit, age 18 or older, from all sources and before taxes or withholding.

"HQS" means HUD Section 8 Housing Quality Standard.

"HUD" means the U.S. Department of Housing and Urban Development.

"Individual" is a single person who submits an application pursuant to the program guidelines.

"Loan application" is a request to the local administrator or VHDA on behalf of the borrower to obtain funds for the purpose as defined in the Single Family Rehabilitation and Energy Conservation Loan Program Guidelines.

"Local administrator" is a nonprofit, incorporated organization or governmental entity, with which the Department of Housing and Community Development (DHCD), in its sole discretion, enters into a contract for local administration of the Single Family Rehabilitation Loan Program. Examples of eligible local administrators include, but are not limited to, cities, counties, towns, redevelopment and housing authorities, community based organizations, area agencies on aging, independent nonprofit housing organizations and others.

"Locality" means a city or county.

"Program" means the Single Family Rehabilitation and Energy Conservation Loan Program.

"Servicing fee" is an add on to the loan interest rate of up to 1/2% by the local administrator for the purpose of defraying the cost of administering the loans.

"State" means the Department of Housing and Community Development or such other entity as DHCD shall designate.

"VHDA" means Virginia Housing Development Authority.

PART II. ELIGIBILITY.

§ 2.1. Eligible applicants.

A. Nonprofit organizations incorporated under the laws

of the Commonwealth of Virginia; or

B. Governmental entities.

§ 2.2. Eligible borrowers.

A. Owner occupied households with total gross income which does not exceed 80% of the area median income as established by HUD or 80% of the state median income as established by the University of Virginia, Center for Public Service, whichever is higher; or

B. The owner of rental property in which the occupants total adjusted gross income does not exceed 80% of the area median income as established by HUD or 80% of the state median income as established by the University of Virginia, Center for Public Service.

C. Must meet program underwriting criteria;

D. Must, if owner occupants have ownership interest in the property; must, if investor owned, be sole owners of the property.

§ 2.3. Eligible properties.

In order to be eligible for rehabilitation under the program, a property must be:

1. Single family owner occupied unit, or a single rental unit, provided it is or will be, after rehabilitation occupied by a household with an income at or below 80% of area median income as established by HUD or 80% of the state median income as established by the University of Virginia, Center for Public Service;

2. An existing unit which does not meet HUD Section 8 Housing Quality Standards (HQS).

§ 2.4. Eligible improvements.

A. Funds must first be used to bring the property up to HUD Section 8 Housing Quality Standards.

B. Energy improvements which exceed HUD Section 8 Housing Quality Standards are encouraged. Eligible energy improvements must be prior approved by the state. The following are examples of eligible improvements:

1. Installation or replacement of storm doors and windows;

2. Caulking/weatherstripping;

3. Roof, floor and wall repair as associated with insulation improvements;

4. Furnace repair.

C. Funds may be used for other general improvements.

D. *Luxury improvements are prohibited.*

E. *Upon completion of the rehabilitation, property must comply with zoning and other local requirements for planned use.*

PART III. FUNDING PRIORITY.

§ 3.1. *Funding priority.*

Special consideration will be given to organizations which set aside 10% of total loan funds to be used to improve housing in need of emergency repair or to alleviate conditions of overcrowding, major code violations such as lack of indoor plumbing, problem wells, etc. Accessibility improvements will also be considered a priority.

PART IV. DISTRIBUTION OF FUNDS.

§ 4.1. *Distribution of funds.*

A. *Urban/rural distribution.*

The initial distribution of partnership loan funds within the Commonwealth will provide single family housing rehabilitation and energy conservation loan funds to both urban and rural localities. The population in the CDBG entitlement localities and the CDBG nonentitlement localities, taken as a percentage of total state population will be used as the basis for determining a reasonable initial statewide distribution of loan funds within the Commonwealth. The Center for Public Service at the University of Virginia estimated that the 1986 population in entitlement localities (central cities and the most urbanized counties) represents approximately 47.9% of the total state population. The urban rural distribution formula for the Housing Partnership Single Family and Energy Conservation Loan Program will be in effect during the initial six months of the program.

This formula is as follows:

45% to CDBG Entitlement Localities

55% to CDBG Nonentitlement Localities

B. *Fund reservation.*

1. Loan funds will be made available initially on a competitive basis to eligible applicants.

2. Upon selection, an allocation will be reserved for a six month period to allow time for program start-up.

3. The allocation will be divided into two portions: The nonenergy related rehabilitation portion will be provided from the state's General Fund Appropriation. The energy related rehabilitation portion will be

provided from the state's Stripper Oil Well Fund. Local administrators will only be able to use the Stripper Oil Well moneys for eligible energy related improvements as defined in § 2.4 B.

4. Local administrators who have not made significant progress toward loan commitments during the six months may lose all or a portion of their allocation.

5. Local administrators will have 18 months to fully commit their initial allocation. Projects will be reviewed quarterly. Any funds remaining after the competitive awards will be available to applicants on a first come/first serve basis. Eligible applicants for first come/first serve funds include new applicants or previous applicants who have committed 80% of their initial allocation.

C. *Maximum amount per application.*

The maximum amount available per application for rehabilitation improvements will be \$500,000. The maximum amount per locality for rehabilitation improvements will be \$1 million. This limitation may be waived during the final six months of the program period.

D. *Coordination.*

DHCD will ensure delivery of the program is coordinated on a local basis. In cases where there is more than one applicant applying to provide loan services to the same population within the same geographic jurisdiction, selection will be based upon the Applicant Evaluation Criteria as defined in § 6.1.

PART V. LOAN TERMS AND CONDITIONS.

§ 5.1. *Loan terms and conditions.*

A. *Maximum loan amount.*

1. Owner occupied properties. The maximum loan amount for rehabilitation of owner occupied properties will be \$20,000 per unit.

2. Renter occupied properties. The following schedule of maximum loan amounts shall apply to renter occupied properties:

BEDROOM	MAXIMUM LOAN
Efficiency or 1	\$10,000
2	12,500
3	15,000
4 or more	17,500

B. *Interest rate.*

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The interest rate for loans funded from the General Fund Appropriation must average 4.0%. The minimum interest rate for an individual loan shall be 0%. The maximum shall be 8.0%.

Eligible energy improvements which utilize the Stripper Oil Well Fund shall bear an interest rate of 0%.

C. Term of loan.

The maximum term shall be 15 years for loans funded from the General Appropriation Fund. The eligible energy related improvements funded from Stripper Oil Well Fund shall be deferred for the first four years and shall be forgiven at a rate of 25% per year beginning in the fifth year.

D. Loan underwriting.

Underwriting criteria must at a minimum comply with FHA Title I Property Improvement Loans. The borrower's total long term indebtedness must not exceed 45% of the gross income. Any debt ratio above 45% requires state approval. All applicants must have a satisfactory credit rating.

E. Loan servicing.

The Virginia Housing Development Authority may administer loan closing, disbursement and collect payments for loans under this program. Local administrators may service loans upon approval by the state of servicing procedures. Such approved agents may charge a servicing fee of up to 1/2% and a reasonable commitment fee not to exceed \$100.

F. Loan liability.

Local administrative agents involved in the Single Family Rehabilitation and Energy Conservation Loan Program will not be held liable for the repayment of any loan in the event of default by a borrower.

G. Requirements for securing loans.

1. *General requirements.* The borrower must have an ownership interest and all owners must sign the Deed of Trust. A title opinion and title insurance will be required for loans over \$7,500 unless otherwise approved by the state.

2. *Lien requirements.* A lien will be recorded on every property for which a program loan is made. The lien shall be divided into the amount securing the energy related rehabilitation portion of the loan and the amount securing the nonenergy related portion. The nonenergy related portion of the lien shall remain in effect until the loan is fully amortized. The energy related portion of the lien, shall be deferred the first four years as long as program requirements are met. Starting the fifth year, the energy related portion of

the lien will be forgiven at a rate of 25% per year, for four years, provided program requirements continue to be met.

The state will accept a subordinate position only to an existing mortgage or where the primary rehabilitation financing is being provided from another source.

H. Loan-to-value ratio.

The loan-to-value ratio shall be based on the appraised value of the structure after repairs and improvements. In general, the loan-to-value ratio shall be 90% although this may be increased up to 100% under special circumstances with state approval. If assessed value is used, the loan-to-value ratio may not exceed 100% of the prerehab assessed value.

I. Sale or transfer restrictions.

A loan may be assumed by a subsequent purchaser that meets the income limits of this program as defined in § 2.2 of the program guidelines. Approval by the state will be required for loans to be assumed.

PART VI. APPLICANT EVALUATION CRITERIA.

§ 6.1. Applicant evaluation criteria.

A. Project need.

The overall need and demand for rehabilitation and energy improvements provided by this program for housing low and moderate persons in each local area.

B. Coordination.

How well the program design incorporates the use of other local community initiatives.

C. Program design.

The extent to which the program design effectively and appropriately addresses the identified local needs and the priorities established in § 3.1. The extent to which the program design is thorough and complete.

D. Outreach methods.

How well the local program outreach effort has been designed in order to identify and attract the target population, especially those with the greatest need.

E. Leveraging.

At least 20% of program funds must be matched with in-kind, cash, or other public or private funds. Higher leveraging ratios will be a factor in ranking proposals. Other Housing Partnership Funds will not be an eligible

match for this program.

F. Administrative capacity.

Staff expertise in the areas of outreach, underwriting, cost estimation, inspection, and other aspect of residential rehabilitation programs, and its overall community relations.

* * * * *

Title of Regulation: VR 394-01-103. Multifamily Rehabilitation and Energy Conservation Loan Program.

Statutory Authority: Chapter 9 (§§ 36-141 et seq.) of Title 36 of the Code of Virginia.

Effective Date: October 24, 1988

Summary:

Responding to critical housing problems facing the Commonwealth, as documented in the 1987 Annual Report of the Virginia Housing Study Commission, the Governor and the General Assembly established the Virginia Housing Partnership Revolving Loan Fund. The purpose of the fund is to increase the availability of decent and affordable housing for low and moderate Virginia residents. The Multifamily Housing Rehabilitation Loan Program provides low interest loans from the Virginia Housing Partnership Fund. This program is available to owners of rental housing. The purpose of the program is to increase the supply and quality of rental housing available for low and moderate income residents.

VR 394-01-103. Multifamily Rehabilitation and Energy Conservation Loan Program.

**PART I.
DEFINITIONS.**

§ 1.1. Definitions.

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

"Accessibility improvement" means an eligible interior or exterior modification made to an eligible property to compensate for a disabled person's reduced mobility or ability to perform necessary, everyday tasks in the home.

"Applicant" is a nonprofit, incorporated organization or governmental entity which has submitted to the state, an application for consideration to become a local administrator of the Multifamily Housing Rehabilitation and Energy Conservation Loan Program.

"Appraised value" is the value of the home as determined by an independent fee appraiser.

"Area median income" means the median income established by HUD from time to time for various areas of the Commonwealth, or the state median income, means the statewide median income, as established by the University of Virginia Center for Public Services.

"Borrower" is the person(s), family, nonprofit or for-profit organization who has been approved by the state, for funding from the multifamily rehabilitation and energy conservation loan program.

"DHCD" means the Department of Housing and Community Development.

"Fund" means the Housing Partnership Revolving Loan Fund.

"General improvements" means improvements made for the purpose of making housing more desirable to live in or to make the home more habitable. These improvements must be permanent and may include additions, alterations, renovations, or repairs to the home. Improvements shall not include materials, fixtures, or landscapes of a type or quality which exceed that customarily used in the locality for properties of the same general type as the property to be improved.

"Gross income" is the total income of all residents or a housing unit, age 18 or older, from all sources and before taxes or withholding.

"HQS" means HUD Section 8 Housing Quality Standard.

"HUD" means the Department of Housing and Urban Development.

"Loan application" is to request to a local administrator or VHDA, by the borrowers, to obtain funding for purposes as defined in the Multifamily Rehabilitation and Energy Conservation Loan Program Guidelines.

"Local administrator" is a nonprofit, incorporated organization or governmental entity, with which the Department of Housing and Community Development, in its sole discretion, enters into a contract for local administration of the Multifamily Rehabilitation Loan Program. Examples of eligible local administrators include but are not limited to cities, counties, towns, redevelopment and housing authorities, community action agencies, area agencies on aging, independent nonprofit housing organizations and others.

"Locality" means a city or county.

"Program" is the Multifamily Housing Rehabilitation and Energy Conservation Loan Program.

"Project sponsor" is a nonprofit, for-profit or governmental entity seeking to obtain funds for the acquisition and/or rehabilitation of a specific multifamily

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structure in accordance with the program guidelines.

"Servicing fee" is an addition to the loan interest rate of up to 1/2% by the local administrator for the purpose of defraying the cost of servicing the loan.

"State" means the Department of Housing and Community Development or other entity designated by the department to act on its behalf.

"VHDA" means Virginia Housing Development Authority.

PART II. ELIGIBILITY.

§ 2.1. Eligible local administrators.

A. Nonprofit organizations incorporated under the laws of the Commonwealth of Virginia; or

B. Governmental entities.

§ 2.2. Eligible project sponsors.

A. Year I - 1989-90.

1. Nonprofit organizations; incorporated under the laws of the Commonwealth of Virginia; or

2. Governmental entities.

B. Year II - 1990-91.

1. Those defined in § 2.2 A;

2. Private, for-profit corporations;

3. Individual investors.

§ 2.3. Eligible activities.

Loan funds may be used to rehabilitate or to acquire and rehabilitate existing multifamily housing.

A. After acquisition, funds must first be used to bring the property up to HUD Section 8 Housing Quality Standard (HQS).

B. Energy improvements which exceed HUD Section 8 Housing Quality Standards are encouraged. Eligible energy improvements must be prior approved by the state. The following are examples of eligible energy improvements:

1. Installation or replacement of storm doors and windows;

2. Caulking/weatherstripping;

3. Roof, floor and wall repair as associated with insulation improvements;

4. Furnace repair.

C. Funds may also be used for other general improvements.

D. Luxury improvements are prohibited.

E. Upon completion of the rehabilitation, the property must comply with zoning and other local requirements for planned use.

§ 2.4. Eligible properties.

A. Existing structures with two or more units.

B. To qualify as a rehabilitation project, 75% of the exterior walls must be retained.

C. Conversion of commercial or institutional properties to residential use is permitted as long as the property is in conformance with zoning and other local requirements for multifamily use upon completion of the project.

D. Properties must not meet HUD Section 8 Housing Quality Standards (HQS) prior to rehabilitation, unless otherwise approved by the state.

PART III. TARGET POPULATION.

§ 3.1. Target population.

The target population for occupancy of multifamily housing sponsored with Housing Partnership Funds will be low and moderate income persons and families. A minimum percentage of the units must be occupied by these persons for the entire term of the loan. The project sponsor must select one of three options at the time of application and comply with it for the term of the loan:

Option 1: A minimum of 20% of the units be reserved for persons with incomes at 50% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service whichever is higher.

Option 2: A minimum of 40% of the units be reserved for persons within incomes at 60% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service, whichever is higher.

Option 3: A minimum of 80% of the units be reserved for persons within incomes at 80% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service whichever is higher.

PART IV. DISTRIBUTION OF FUNDS.

§ 4.1. Distribution of funds.

A. Dollar limitation per locality.

During the first year (1988-89) each locality will be limited to a maximum of \$500,000 in Multifamily Rehabilitation Loan Funds. During the second year (1989-90) there will be a limitation of \$1 million per project and \$2 million per locality. This limitation may be waived if no other approvable applications have been submitted.

B. Fund reservation for local administrators.

1. Loan funds will be made available initially on a competitive basis to eligible local administrators.

2. Upon selection, an allocation will be reserved for a six-month period to allow time for program start-up.

3. The allocation will be divided into two portions: The nonenergy related rehabilitation portion will be provided from the state's General Fund Appropriation. The energy related rehabilitation portion will be provided from the state's Stripper Oil Well Fund. Local administrators will only be able to use the Stripper Oil Well moneys for eligible energy related improvements as defined in § 2.2.

4. Local administrators will have 18 months to fully commit their initial allocation. Projects will be reviewed quarterly.

5. Any funds remaining after the competitive awards may be available to applicants on a first come/first serve basis. Eligible applicants for first come/first serve funds include new applicants or previous applicants who have committed 80% of their initial allocation.

C. Fund reservation for project sponsor.

1. Loan funds will be made available initially on a competitive basis to eligible project sponsors.

2. Upon selection, a program loan reservations will be made to a project sponsor for up to six months. This will allow time to complete project development activities including arranging for other financing and assistance from other local, state or federal housing programs. Extensions may be granted by the state, if appropriate, but under no circumstances to exceed six additional months.

3. A project sponsor's allocation will be divided into two portions: The nonenergy related rehabilitation will be provided from the state's General Fund Appropriation. The energy related rehabilitation

portion will be provided from the state's Stripper Oil Well Fund.

D. Per unit limitation.

The limitation on the loan amount per unit is based upon unit size. The following per unit limitations will apply:

Bedroom Size	Dollar Loan Limitation
Efficiency or 1	\$10,000
2	12,500
3	15,000
4 or more	17,500

PART V. LOAN TERMS AND CONDITIONS.

§ 5.1. Loan terms and conditions.

A. Interest rate.

Statewide program. The target interest rate for loans originated and serviced by VHDA or local administrators and funded from the General Fund Appropriation is 6.0%. Loans may be made at rates as low as 2.0% and as high as 8.0%, dependent upon the needs of the project.

Loans for eligible energy improvements which are funded from the Stripper Oil Well Fund shall bear an interest rate of 0%.

B. Term.

The maximum term will be 15 years for loans funded from the General Appropriation Fund.

The energy related portion of the loan, if funded from the Stripper Oil Well Fund, shall be deferred for the first four years and shall be forgiven at a rate of 25% per year beginning in the fifth year. Deferrals of principal payments or of both principal and interest payments may be allowed for up to five years. An alternative deferral technique allowing a delayed amortization of the loan may also be permitted. The loan underwriter will determine the feasibility of any payment deferral or amortization deferral for each project. The use of such options may require higher interest rates to be paid during the loan repayment period.

C. Instruments for loan security.

1. General requirements. The borrower(s) must be the sole owner(s) of the property. A title opinion and title insurance will be required for all loans unless otherwise approved by the state.

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2. *Lien requirements.* A lien will be recorded on every property for which a program loan is made. The lien shall be divided into the amount securing the energy related rehabilitation portion of the loan and the amount securing the nonenergy related portion of the loan. The nonenergy related portion shall remain in effect until the loan is amortized. Starting the fifth year, the energy related portion of the lien will be forgiven at a rate of 25% per year, provided program requirements continue to be met.

The state will accept a subordinate position only to an existing mortgage or where the primary rehabilitation financing is being provided from another source.

D. Loan underwriting criteria.

Other underwriting criteria which will apply to these loans will be established by VHDA. These will include an evaluation of the locational amenities, the experience and credit rating of the sponsors and contractors, architectural and engineering studies, site topography, financial risks and other considerations. Each project will be evaluated to assess the potential cash flow available to pay debt service and operating expenses.

E. Loan servicing.

VHDA will close the loans, conduct inspections, disburse proceeds, service the loans and provide ongoing management oversight. Local administrators may service loans upon approval by the state of servicing procedures. Such approved agents may charge a servicing fee of up to 1/2% and a reasonable commitment fee.

F. Loan-to-value ratio.

The loan-to-value ratio shall be based on the appraised value of the structure after repairs and improvements. A loan-to-value ratio of up to 100% will be considered for loans to nonprofit housing sponsors and up to 90% for other sponsors. The state may permit the ratio to exceed 100% under special circumstances to be considered on a case by case basis.

G. Sale or transfer restrictions.

Loans made under this program will be assumable as long as the property use, income requirements, occupancy levels, housing conditions and other state requirements are maintained for the term of the loan. An annual review will be made to assure project compliance. Approval by the state will be required for loans to be assumed.

H. Prepayment of loan.

Prepayment of a loan under this program will be prohibited unless approved by the state.

I. Loan liability.

Organizations involved in the underwriting and approval of program loans will not be held liable to the state for repayment of any loan in the event of default by a project.

PART VI. DISPLACEMENT.

§ 6.1. Displacement.

Projects which result in no or minimal displacement are encouraged. Where displacement is unavoidable, a sponsor's willingness and ability to assist current tenants in finding alternative housing both temporarily during rehabilitation and permanently will be considered in the selection of projects. A project which causes no displacement will be given the highest priority. Other projects will be required to include a description of the assistance (including counseling and reimbursement) to be given to displaced persons. Projects providing a greater level of assistance will be given higher priorities for loans.

PART VII. EVALUATION CRITERIA.

§ 7.1. Evaluation criteria.

Due to the limited funds available and the expected high demand for such loans, a competitive system will be established to determine which projects will receive loans. Criteria for evaluating and ranking projects are described below:

A. Local need, demand and impact.

The need and demand for affordable multifamily housing for low and moderate income persons in each local area will be used as a basis for determining the award of housing loan funds. A local housing market analysis must be provided and will be used to determine demand for such facilities and to indicate the impact on the community of the proposed project.

B. Income level served.

Projects which serve a higher proportion of lower income households than the minimum required in § 3.1 shall be given a higher priority.

C. Program design.

For eligible organizations applying to become local administrators, the extent to which the program design effectively and appropriately addresses the identified local needs and the priorities. Also, the extent to which the program design is thorough and complete.

D. Leveraging.

The extent to which other federal, local or private below market financing or other housing assistance is

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included in the project will be a significant factor in evaluating proposals.

E. Family housing.

Projects which provide a greater proportion of units with two or more bedrooms shall be given a higher priority.

F. Displacement.

As described in § 6.1 the extent to which a project causes displacement, and the displacement assistance provided by the sponsor shall be a factor in ranking proposals.

* * * * *

Title of Regulation: VR 394-01-104. Congregate Housing.

Statutory Authority: Chapter 9 (§§ 36-141 et seq.) of Title 36 of the Code of Virginia.

Effective Date: October 24, 1988

VR 394-01-104. Congregate Housing.

PART I. PURPOSE OF THE PROGRAM.

§ 1.1. Purpose of the program.

Responding to critical housing problems facing the Commonwealth, as documented in the 1987 Annual Report of the Virginia Housing Study Commission, the Governor and the General Assembly established the Virginia Housing Partnership Revolving Loan Fund. The purpose of the fund is to create and increase the availability of quality housing for low and moderate Virginia residents. The primary purpose of the Congregate Housing and Energy Conservation Loan Rehabilitation Program will be to provide decent, affordable housing opportunities and to expand the number of congregate housing available for the elderly, the mentally disabled and the physically disabled throughout the Commonwealth of Virginia.

PART II. DEFINITIONS.

§ 2.1. Definitions.

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

"Accessibility improvement" means an interior or exterior modification made to an eligible property to compensate for a disabled person's reduced mobility or ability to perform necessary tasks in the home.

"Applicant" is a nonprofit or for-profit corporation or

governmental entity, which has submitted to the state, an application for funding from the Congregate Housing Rehabilitation Program according to the program guidelines.

"Application" is the request, on behalf of the applicant, for funding from the Congregate Housing Rehabilitation Program.

"Appraised value" is the value of the facility as determined by an independent fee appraiser.

"Area median income" means the median income established by the HUD from time to time for various areas of the Commonwealth, or the state median income means the statewide median income as established by the University of Virginia Center for Public Service.

"Assessed value" is the value of the home as determined by the real estate assessment office of the local government body for tax purposes. The applicable assessed value shall be that value which is in effect as of the loan application date.

"Borrower" is the for-profit or nonprofit corporation or governmental entity eligible to receive funding from the Congregate Housing Program.

"DHCD" means the Department of Housing and Community Development.

"Fund" means the Housing Partnership Revolving Loan Fund.

"General improvements" means improvements made for the purpose of making housing more desirable to live in or to make the home more habitable. These improvements must be permanent and may include additions, alterations, renovations, or repairs to the home. Improvements shall not include materials, fixtures, or landscapes of a type or quality which exceed that customarily used in the locality for the properties of the same general type as the property to be improved.

"Gross income" is the total annual income of all residents of a housing unit, from all sources and before taxes or withholding.

"HQS" means the HUD Section 8 Housing Quality Standard.

"HUD" means the Department of Housing and Urban Development.

"Loan application" means the request to the state on behalf of the borrower to obtain funds for the purpose as defined in the Congregate Housing Program Guidelines.

"Loan application date" is the date on which a completed application is received by the State.

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"Locality" means a city or county.

"Program" means the Congregate Housing Program.

"State" means the Department of Housing and Community Development or such other entity as DHCD shall designate.

"VHDA" means the Virginia Housing Development Authority.

PART III. ELIGIBILITY.

§ 3.1. Eligible applicants.

A. Nonprofit organizations incorporated under the laws of the Commonwealth of Virginia;

B. Public entities or;

C. For-profit corporations.

§ 3.2. Eligible properties.

Eligible properties shall:

1. Contain fewer than 30 units;
2. Provide a central food preparation and eating area even if individual units have kitchen facilities.

§ 3.3. Eligible use of loan funds.

Loan funds may be used for the residential living portion of any project and for other facilities which are an integral part of the entire congregate housing facility. Examples of such facilities include clinics, cafeterias and recreational areas that are part of a total residential project. The type of construction activities which are eligible include the following:

A. Purchase/Rehabilitation.

Loan funds may be used to rehabilitate or acquire and rehabilitate existing facilities to appropriately serve the needs of elderly or disabled persons.

B. Rehabilitation.

1. Funds shall be used to bring the property up to the applicable Uniform Statewide Building Code.
2. Energy improvements which exceed the Uniform Statewide Building Code are encouraged. Such improvements should comply and be approved according to special guidelines established by the state.
3. Remaining funds may be used for general improvements.

4. Luxury improvements are prohibited.

5. Upon completion of the rehabilitation the property must comply with zoning and other local requirements for planned use.

C. New construction.

Loan funds may also be used for the construction of new congregate housing. Stripper Oil Well funds will not be used for energy improvements for any project involving new construction.

PART IV. TARGET POPULATION.

§ 4.1. Target populations.

A. Client groups.

The primary target groups to benefit from loans made under this program will be elderly, mentally disabled and physically disabled persons. During the first program year, the state will endeavor to fund at least one residential project to serve each of these three groups.

B. Income requirements.

Loans made under this program will be used only to provide residential facilities for persons that cannot otherwise afford decent housing in the private market. A minimum percentage of the units must be occupied by these persons for the entire term of the loan. The sponsor must select one of three options at the time of application and comply with it for the term of the loan:

Option 1: A minimum of 40% of the units be reserved and occupied by persons with incomes at 40% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service, whichever is higher.

Option 2: A minimum of 50% of the units be reserved and occupied by persons with incomes at 50% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service, whichever is higher.

Option 3: A minimum of 60% of the units are reserved and occupied by persons with income of 60% or less of the area median income as established by HUD or the state median income as established by the University of Virginia, Center for Public Service, whichever is higher.

PART V. PROJECT AUTHORIZATION.

§ 5.1. Maximum project authorization.

A. Maximum dollar amount.

The maximum program loan for developing an individual congregate housing facility is \$250,000.

B. Time period of loan commitment.

Congregate Housing Program loan reservations will be made to project sponsors for an initial six-month period. This will allow time to complete project development activities including arranging for other financing and assistance from other local, state or federal housing programs. Extensions may be granted by the state, if applicable, but under no circumstances to extend six additional months.

PART VI. LOAN TERMS AND CONDITIONS.

§ 6.1. Loan terms and conditions.

A. Interest rate.

The interest rate will be fixed at 2.0%, except that the eligible energy related portion of the loan, if funded from stripper well proceeds, shall have an interest rate of 0%.

B. Term.

The loan term will be 20 years, except that the eligible energy related portion of the loan shall have a term of eight years. Principal payments are deferred and the loan shall be forgiven at the rate of 25% per year beginning in the fifth year.

C. Instrument for securing loan.

1. General provisions. The borrower(s) shall be the sole owner(s) of the property. A title opinion and title insurance will be required for all loans.

2. Lien requirements. A lien will be recorded on every property for which a program loan is made. The lien shall be divided into the amount securing the energy related rehabilitation portion of the loan, and the amount securing the nonenergy related portion of the loan. The nonenergy related portion shall remain in effect until the loan is fully amortized. The energy related portion of the lien shall be deferred the first four years of the program as long as program requirements are met. Starting the fifth year, the energy related portion of the lien will be forgiven at a rate of 25% per year, provided program requirements continue to be met. The state will accept a subordinate position only to an existing mortgage or where the primary rehabilitation financing is being provided from another source.

D. Loan underwriting criteria.

Other underwriting criteria which will apply to these

loans will be established by VHDA. These will include an evaluation of the locational amenities, the experience and credit rating of the sponsors and contractors, architectural and engineering studies, site topography, financial risks and other considerations. Each project will be evaluated to assess its potential cash flow to pay debt service and operating expenses. Services which will be available to residents must be clearly defined and service providers must be identified. The state reserves the right to have outside review of service proposals from appropriate community service agencies.

E. Loan servicing.

VHDA will close the loans, conduct inspections, disburse proceeds, service the loans and provide ongoing management oversight.

F. Loan to value ratio.

Congregate housing for elderly and disabled persons may require additional facilities and amenities not ordinarily found in conventional housing. The cost or value of the installation of such facilities may not, therefore, be reflected in the market value of the housing. In order to encourage the development of properly designed and equipped congregate housing, a loan-to-value ratio of up to 100% will be allowed for projects developed by nonprofit sponsors and up to 90% for other sponsors. Exceptions may be considered by the state under extraordinary circumstances and on a case by case basis.

G. Sale or transfer restrictions.

Loans made under this program shall be assumable as long as the property use, income and occupancy restrictions, housing conditions and other state requirements are maintained.

H. Prepayment of loans.

Prepayment of loans under this program will be prohibited unless approved by the state.

PART VII. EVALUATION CRITERIA.

§ 7.1. Evaluation criteria.

Due to the limited funds available and the expected high demand for these loans, a competitive system will be used in deciding which projects will receive loans. Criteria to rank the applications are described below:

A. Local need, demand and impact.

The need and demand for affordable housing facilities for low income elderly and disabled persons in each local area will be used as a basis for determining the award of housing loan funds. A local housing market analysis must be provided and will be used to determine demand for

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such facilities and to indicate the impact on the community for the proposed project.

B. Income level served.

Projects which serve a higher proportion of lower income households than the minimum required in § 4.1 shall be given higher priority.

C. Service design.

Consideration will be given to projects which provide additional services that will meet the special needs of residents. A proposed home for adults will have to meet governmental licensing requirements, while a facility for mentally disabled will need to be approved by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

D. Leveraging.

The extent to which other federal, local or private below market financing or other housing assistance is included in the project will be a significant factor for evaluating proposals.

E. Target group served.

The state shall endeavor to fund at least one residential facility for each of the three target populations during the first program year.

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-02-4.191. Disproportionate Share Adjustments to Hospitals.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Dates: September 29, 1988 through September 28, 1989

SUMMARY

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled Disproportionate Share Adjustments to Hospitals. This disproportionate share policy will conform the Plan for Medical Assistance to the requirements of § 4112 of the Omnibus Budget Reconciliation Act of 1987 (OBRA).

2. RECOMMENDATION:

/s/ Ray T. Sorrell, Director
Date: September 16, 1988

3. CONCURRENCES:

/s/ Eva S. Teig
Secretary of Health and Human Resources:
Date: September 21, 1988

4. GOVERNOR'S ACTION:

/s/ Gerald L. Baliles, Governor
Date: September 28, 1988

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: September 29, 1988 - 4:23 p.m.

6. **BACKGROUND:** This action amends the methods and standards for establishing payment rates for Inpatient Hospital Care (Attachment 4.19A), by adding minimum uniform criteria in the definition of disproportionate share hospitals and the payment adjustments to such hospitals.

Congress enacted § 4112 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) which established minimum uniform requirements for the states to follow in establishing methods for defining disproportionate share hospitals and determining payment adjustments. The Department of Medical Assistance Services' (DMAS) initial analysis of this legislation indicated that the current State Plan was in compliance with the new criteria and that Virginia qualified under the Special Rule at § 4112 e.

In May, 1988, the Health Care Financing Administration (HCFA) issued Interim Manual Instructions to the State Medicaid Manual, at § IM 6000, which required the states

to "...submit, no later than May 15, 1988, either: an assurance with the appropriate related information indicating compliance with § 4112; or a statement indicating that an amendment is necessary and will be submitted no later than July 1, 1988." The Interim Manual instructions at § IM 6000.5 repeated the Special Rule contained in OBRA 1987.

On May 12, 1988, DMAS assured HCFA that Virginia was in compliance with § 4112 of OBRA 1987 under the Special Rule and provided the required information to demonstrate compliance. On August 8, 1988, HCFA advised, in correspondence dated August 1, 1988, that the Medicare Catastrophic Coverage Act, effective July 1, 1988, made a number of technical and clarifying amendments to § 4112 of OBRA 1987. One of these changes amended the Special Rule to clarify that qualifying states must have payment adjustments in their plans "...based on a pooling arrangement involving a majority of the hospitals participating under the plan." The HCFA correspondence further pointed out that the conference committee report stated that it was Congress' intent that the special rule in § 4112 OBRA 1987 apply only to the State of New York.

The HCFA letter concluded by requesting that DMAS either submit additional information concerning qualification under the special rule or submit an amendment to the State Plan with an effective date of July 1, 1988, which would bring the Commonwealth into compliance with the requirements of § 4112 of OBRA 1987.

Section 4112 of OBRA 1987 addressed two sets of minimum uniform criteria for deeming a hospital eligible for a disproportionate share adjustment, as well as the minimum payment adjustment criteria. The minimum eligibility criteria concern the Medicaid inpatient utilization rate, the low income utilization rate, and certain obstetrical care requirements. Section 4112 provided that a state could use another definition of a disproportionate share hospital as long as it included these elements. The minimum payment criteria concern additional payment amounts related to the disproportionate share adjustment percentage. As with the eligibility criteria, § 4112 allowed states to use their own definition of payment amounts as long as payments were made to qualifying hospitals and the minimum criteria of the new federal law were met.

In addition, § 4112 of OBRA 1987 permitted no more than a 3 year phase-in period for the payment adjustments. As of July 1, 1988, the adjustment must be at least one-third the amount of the full payment adjustment; as of July 1, 1989, the payment must be at least two-thirds the full payment adjustment; and as of July 1, 1990, the states must pay the full amount of the payment adjustment.

The current State Plan provides a more liberal adjustment for disproportionate share hospitals than the OBRA minimum requirements but contains three provisions which do not comply with OBRA:

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1. a hospital must exceed the Medicaid ceiling to receive a disproportionate share adjustment;

2. a hospital's disproportionate share adjustment is limited to an increase of 30% due to Medicaid utilization;

3. the disproportionate share adjustment is added to a provider's peer group ceiling on operating costs. This ceiling is subsequently compared to the provider's allowable operating cost and the provider receives the lower of the two as its prospective operating per diem rate. A provider whose operating cost is either below its ceiling or not very far above it will receive either no benefit from a disproportionate share increase to the ceiling or only a partial benefit.

7. **AUTHORITY TO ACT:** Section 32.1-325 A of the Code of Virginia grants authority to the Board of Medical Assistance Services (the Board) to administer and amend the Plan for Medical Assistance (the Plan), subject to the approval of the Governor. The Code § 32.1-324 C provides for the Director's adoption in lieu of the Board, according to its requirements, when it is not in session. This Code section also provides for the Plan's amendment without conformance to the public notice and comment requirements of Article 2 of the Administrative Process Act.

Section 4112 of OBRA 1987 imposed requirements on states which affect payment to disproportionate share hospitals under § 1902(a)(13)(A) of the Social Security Act. Effective July 1, 1988, the requirements establish minimum uniform criteria in defining disproportionate share hospitals and determining payment adjustments to such hospitals.

The Code of Federal Regulations, at 42 CFR 447.205, contains public notice requirements for amendments the state determines to be significant. The state must give public notice before the effective date of the proposed modification to its institutional provider reimbursement methodology. Due to vague OBRA language and the congressional modification in the subsequent Catastrophic Health Care Act, the Department is unable to comply with this requirement. On the premise that the statute takes precedence over regulation, HCFA is expected to approve this OBRA-conforming Plan amendment.

8. **FISCAL/BUDGETARY IMPACT:** Under Virginia's current prospective payment system, 32 hospitals qualify and receive disproportionate share adjustments. These payments are estimated to be \$2,166,656 for each year of the biennium. These monies are included in the Department's budget. The proposed changes will increase disproportionate share payments to 6 hospitals. The estimated additional payments are approximately \$839,440 for fiscal year 1989 (\$409,647 GF and \$429,793 NGF) and \$1,902,780 for fiscal year 1990 (\$951,390 GF and \$951,390 NGF). These funding needs will be addressed in the October 1, 1988 budget submission.

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective subject to HCFA's approval. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to implement the requirements of § 4112 of OBRA as amended by the Medicare Catastrophic Coverage Act. Failure to conform the State Plan for Medical Assistance to this recent federal legislation would endanger the Department's federal financial participation for disproportionate share adjustments for hospitals.

10. **APPROVAL SOUGHT FOR VR 460-02-4.191:**

Approval of the Governor is sought for an emergency modification of the State Plan for Medical Assistance in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

V. The reimbursement system for hospitals includes the following components:

(1) through (4) [Reserved]

(5) Disporportionate share hospitals defined.

Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling ~~should~~ *shall* be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This ~~should~~ *shall* be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8% ~~should~~ *shall* receive an adjustment to its ceiling. The adjustment ~~should~~ *shall* be set at a percent added to the ceiling for each percent of utilization up to 30%.

Effective July 1, 1988, the following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

A. *Criteria.*

1. *A Medicaid inpatient utilization in excess of 8% for hospitals receiving Medicaid payments in the State, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and*

2. *At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric*

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procedures.

3. Subsection A.2 does not apply to a hospital:

- a. at which the inpatients are predominantly individuals under 18 years of age; or
- b. which does not offer nonemergency obstetric services as of December 21, 1987.

B. Payment Adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the individual hospital's Medicaid utilization. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over 8% shall receive a disproportionate share payment adjustment. The disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8%, times (ii) the lower of the prospective operating cost rate or ceiling.

2. A payment adjustment for hospitals meeting the eligibility criteria in subsection A above and calculated under subsection B (1) above shall be phased in over a 3-year period. As of July 1, 1988, the adjustment shall be at least one-third the amount of the full payment adjustment; as of July 1, 1989, the payment shall be at least two-thirds the full payment adjustment; and as of July 1, 1990, the payment shall be the full amount of the payment adjustment. However, for each year of the phase-in period, no hospital shall receive a disproportionate share payment adjustment which is less than it would have received if the payment had been calculated pursuant to § V (5) of Attachment 4.19A to the State Plan in effect before July 1, 1988.

(6) through (7) [Reserved]

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children.

Statutory Authority: §§ 37.1-179 through 37.1-189 of the Code of Virginia.

Effective Dates: October 10, 1988 through October 9, 1989

Preamble:

In the case of Howard M. Cullum, Commissioner, Etc. v. Faith Mission Home, Inc., Et Al., the Judge of the

Circuit Court of Albemarle ruled in an order entered July 16, 1986, that the statutes and regulations of the Commonwealth of Virginia do not prohibit the therapeutic use of physical punishment in the behavior management of mentally retarded children and adults. This ruling was contrary to the understanding and intent of the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services in promulgating the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children and the Department of Mental Health, Mental Retardation and Substance Abuse Services in promulgating standards for treatment programs to be applied in conjunction with Core Standards for the licensure/certification of residential treatment programs for mentally ill, mentally retarded and/or substance abusing children.

The issues raised by the case of Howard M. Cullum, Commissioner, Etc. v. Faith Mission Home, Inc., Et Al. revealed the need for amendments to the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children and the Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children with respect to requirements governing intrusive aversive therapy and corporal punishment. In the absence of clarifying regulations, the departments were faced with operating without reasonable procedural boundaries on the use of physical punishment. Since the issue involves the health and safety of admittedly vulnerable residents, the departments were concerned with the immediate protection of these residents through emergency regulations while the outstanding legal issues were appealed and adjudicated and there was time to promulgate permanent regulations with the benefit of public comment.

The State Mental Health, Mental Retardation and Substance Abuse Services Board, acting under the authority of the Code of Virginia, promulgated an emergency regulation that was approved by the Governor to be effective from October 10, 1986 through October 9, 1987. This emergency regulation was published in the Virginia Register on October 27, 1986 (3 Virginia Register 149 et seq.). This emergency regulation with the approval of the Governor was extended from October 10, 1987 through October 9, 1988, and was published in the Virginia Register on November 9, 1987 (4 Virginia Register 238 et seq.).

The case of Howard M. Cullum, Commissioner, Etc. v. Faith Mission Home, Inc., Et Al. is still in litigation. Permanent regulations have not been promulgated and cannot be promulgated pursuant to the Administrative Process Act prior to October 9, 1988, the expiration of the current emergency regulation.

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Substance Abuse Services Board meeting in regular session on August 24, 1988 approved proposed permanent regulations for public comment from September 26, 1988 through November 30, 1988 when a public hearing on the proposed regulations will be held.

At the August 24, 1988 meeting the State Mental Health, Mental Retardation and Substance Abuse Services Board also acted favorably on a resolution endorsing a request to the Governor to continue in effect the amendment to the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children and the Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children with respect to requirements governing intrusive aversive therapy and corporal punishment that were promulgated by the Governor of Virginia as emergency regulations until the various outstanding issues are adjudicated and resolved and permanent regulations can be promulgated subsequent to the public hearing in November on the proposed permanent regulations.

The following are a proposed continuation of the emergency revisions and additions that were published in the Virginia Register on November 9, 1987 (4 Virginia Register 238 et seq.) amending the Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children which were initially promulgated and effective on January 1, 1986.

The regulation, as here proposed, is submitted as an emergency regulation until the various outstanding issues are adjudicated and resolved and time is available to promulgate permanent regulations in compliance with the Administrative Process Act, including public participation and comment.

VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children.

PART I. INTRODUCTION.

Article 1. Definitions.

§ 1.1. Definitions.

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

"Advocate" means a person or persons appointed by the Commissioner after consultation with the State Human Rights Director and the Local Human Rights Committee who exercise the duties set forth in Section III A of the

Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health and Mental Retardation.

"Behavior management" means planned and systematic use of various techniques selected according to group and individual differences of the children and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior, and to reduce or to eliminate undesirable behavior. (The term is consistently generic, not confined to those technicalities which derive specifically from behavior therapy, operant conditioning, etc.)

"Corporal punishment" means the inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort.

"Intrusive aversive therapy" means a formal behavior modification technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of noxious or painful stimuli contingent upon the exhibition of such behavior. It may include actions defined in these standards as corporal punishment, but does not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with these regulations, or psychotropic medications which are not used for purposes of intrusive aversive therapy.

"Local human rights committee" means a committee of at least five members broadly representative of professional and consumer groups, appointed by the State Human Rights Committee for each group of community services board or licensed organization after consultation with the commissioner, and whose responsibility shall be to perform the functions specified in applicable human rights regulations. Except where otherwise provided, the term *"Local human rights committee"* shall mean this body or any subcommittee thereof.

"Punishment" means the use of an aversive event or the removal of a positive event following a behavior which decreases, or is intended to decrease, the probability of that behavior. This includes a pain, loss, or penalty inflicted for a fault or mistake.

"Regional advocate" means a person or persons who perform the functions set forth in Part IV of the Rules and Regulations Assuring the Rights of Clients in Community Programs and who are appointed by the Commissioner after consultation with the State Human Rights Director.

"State human rights committee" means a committee of nine members appointed by the board, pursuant to the Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health

and Mental Retardation, and the Rules and Regulations to Assure the Rights of Clients in Community Programs, whose responsibility it shall be to perform the functions specified in those regulations. The term "State human rights committee" includes any subcommittees thereof.

PART II. SERVICE POLICIES AND PROCEDURES.

Article 1. Client Rights.

The following sections are additional requirements to the Core Standards, Part II, Article 9 and Part V, Articles 26 and 27.

§ 2.1. Each program operated, funded or licensed by the Department of Mental Health and Mental Retardation shall guarantee client rights as outlined in the Code of Virginia, § 37.1-84.1 and the applicable regulations promulgated on the rights of clients in community programs.

§ 2.2. Each program shall have written policies and procedures regarding the photographing and audio or audio-video recordings of clients which shall ensure and provide for:

A. The written consent of the client or the client's legally authorized representative shall be obtained before the client is photographed or recorded for research or program publicity purposes.

B. No photographing or recording by program personnel shall take place without the client and/or the client's family or legally authorized representative being informed.

C. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the client.

§ 2.3. Each program shall have written policies and procedures for managing all inappropriate or dangerous client behavior. These policies shall include:

A. Seclusion or restraints shall only be used in accordance with the Code of Virginia, § 37.1-84.1 and the applicable regulations promulgated on the rights of clients in community programs.

B. Time out, which shall only be used in accordance with the Code of Virginia, § 37.1-84.1 and the applicable regulations promulgated on the rights of clients in community programs.

1. Time out shall not exceed 15 minutes at any one time.

C. Program staff shall neither abuse a client verbally nor physically.

§ 2.4. Each client shall be placed in the least restrictive

level of programming appropriate to their functioning and available services.

§ 2.5. Each program shall implement written policies and procedures concerning behavior management that are directed toward maximizing the growth and development of the individual. These policies and procedures shall:

A. Emphasize positive approaches;

B. Define and list techniques that are used and available for use in the order of their relative degree of intrusiveness or restrictiveness;

C. Specify the staff members who may authorize the use of each technique;

D. Specify the processes for implementing such policies and procedures;

E. Specify the mechanism for monitoring and controlling the use of behavior management techniques; and

F. Specify the methods for documenting their use.

§ 2.6. In the list required by § 2.5 B of techniques that are used and available for use, intrusive aversive therapy if allowed shall be designated as the most intrusive technique.

§ 2.7. A behavior management plan utilizing intrusive aversive therapy shall not be implemented with any resident until the Local Human Rights Committee has determined:

A. That the resident or his authorized representative has made an informed decision to undertake the proposed intrusive aversive therapy, and in the case of a minor who is capable of making an informed decision, that the concurrent consent of the parent has been obtained;

B. That the proposed intrusive aversive therapy has been recommended by a licensed clinical psychologist and psychiatrist;

C. That the facility has proved that the proposed intrusive aversive therapy plan does not involve a greater risk of physical or psychological injury or discomfort to the resident than the behaviors that the plan is designed to modify;

D. That there is documentation that all less intrusive behavior management procedures have been tried without success;

E. That more appropriate behaviors are being positively reinforced;

F. That a licensed physician has certified that in his opinion, the intrusive aversive procedure will not endanger the health of the resident and that a physician check the

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resident within 24 hours after any intrusive aversive procedure;

G. If corporal punishment as defined in these regulations is the proposed noxious stimulus, that other noxious stimuli that are recognized as safe and appropriate in the relevant professional literature for use in intrusive aversive therapy have been tried without success;

H. That the aversive treatment technique is measurable and can be uniformly applied;

I. That the aversive treatment program specifies the behavioral objective, the frequency of application of the aversive technique, the time limit for both application of the technique and the overall length of the program, and the collection of behavioral data to determine the program's effectiveness;

J. That the program is developed, implemented and monitored by staff professionally trained in behavior programming, and witnessed by an approved professionally trained staff person; and

K. That the program is subject to both professional and human rights review in addition to informed consent by the resident or client, or authorized representative.

§ 2.8. The Local Human Rights Committee having made the determinations required by § 2.7 shall forward its findings to State Human Rights Committee which shall review and make its recommendations to the Commissioner who may then approve the proposed intrusive aversive therapy plan for a period not to exceed ninety days. The plan shall be monitored through unannounced visits by a designated advocate. In order for the plan to be continued, the Local Human Rights Committee shall again make the determinations required in § 2.7.

§ 2.9. The advocate or regional advocate shall be promptly informed of each application of a noxious stimulus in an approved intrusive aversive therapy program.

§ 2.10. The resident subjected to intrusive aversive therapy procedures and the advocate or regional advocate shall be given an opportunity to obtain an independent clinical review of the necessity and propriety of their use at any time.

Approved by the State Mental Health, Mental Retardation and Substance Abuse Services Board, August 24, 1988

/s/ Jennifer G. Fidura for
Howard M. Cullum, Commissioner
Date: September 1988

Approved by the Governor of Virginia

/s/ Gerald L. Baliles, Governor of Virginia
Date: September 28, 1988

Filed:

/s/ Ann M. Brown, Deputy Registrar of Regulations
Date: September 29, 1988 - 1:45 p.m.

NOTE: The following emergency regulations are promulgated by: The Departments of Corrections, Education, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services.

DEPARTMENT OF CORRECTIONS. VR 230-40-001.

DEPARTMENT OF EDUCATION. VR 270-01-003.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES. VR 470-02-01.

DEPARTMENT OF SOCIAL SERVICES. VR 615-29-02.

Title of Regulation: Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

Statutory Authority: §§ 16.1-286, 53.1-237 thru 53.1-239, 16.1-310 thru 16.1-314, 53.1-249, 22.1-319 thru 22.1-335, 22.1-218, 37.1-179 thru 37.1-189, 37.1-199, 63.1-195 thru 63.1-219, and 63.1-56.1 of the Code of Virginia.

Effective Dates: October 10, 1988 through October 9, 1989.

Preamble:

The Judge of the Circuit Court of Albemarle ruled, in an order entered July 16, 1986, that the statutes and regulations of the Commonwealth of Virginia do not prohibit the therapeutic use of physical punishment in the behavior management of mentally retarded children and adults. This ruling was contrary to the understanding and intent of the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services in promulgating the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

The departments have operated under an emergency regulation since October 10, 1986. In the absence of an extension, the departments must operate without reasonable procedural boundaries on the use of physical punishment. Since the issue involves the health and safety of admittedly vulnerable residents, the departments are concerned with continuing protection to these residents through extension of the emergency regulation while the outstanding issues are adjudicated and resolved and permanent regulations are promulgated.

Recognizing the need to protect these residents, the State Boards of these departments acting under the

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authority of the Code of Virginia, do hereby promulgate an extension of the existing emergency regulation subject to the approval of the Governor.

The effective date of this emergency regulation is October 10, 1988. This emergency regulation shall terminate on October 9, 1989, or upon the earlier effective date of a similar regulation to be promulgated through the full Administrative Process Act.

The following emergency regulation affects the Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children which were promulgated and effective on July 1, 1986.

The regulation, as here proposed, is submitted as an emergency regulation in order that the safety of residents be protected until the outstanding issues are adjudicated and resolved and permanent regulations are promulgated in accord with the requirements of the Administrative Process Act, including full public participation and comment.

VR 230-40-001, 270-01-003, VR 470-02-01, VR 615-29-02. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

PART I. INTRODUCTION.

Article 1. Definitions.

§ 5.94 Definitions.

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

"Corporal punishment" means any type of physical punishment inflicted upon the body the inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort.

"Intrusive aversive therapy" means a formal behavior modification technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of noxious or painful stimuli contingent upon the exhibition of such behavior. It may include actions defined in these standards as corporal punishment.

"Punishment" means retributive, retaliatory and sometimes harsh or abusive reactions to a child's misbehavior. Punishment is defined as a reaction that primarily relieves adult frustration without being rationally designed to teach or correct the children's behavior the

use of an aversive event or the removal of a positive event following a behavior which decreases, or is intended to decrease, the probability of that behavior. This includes a pain, loss, or penalty inflicted for a fault or mistake.

PART V. PROGRAMS AND SERVICES.

Article 24. Prohibited Means of Punishment.

§ 5.94. The following methods of punishment, whether spontaneous or a deliberate technique for effecting behavioral change or part of a behavior management program, shall be prohibited:

1. Deprivation of drinking water or nutritionally balanced meals, snacks, or meals; and drinking water;
2. Prohibition of contacts and visits with family, legal guardian, attorney, probation officer, or placing agency representative;
3. Prohibition of contacts and visits with family or legal guardian except where specifically permitted by other applicable regulations;
3. 4. Limitation of receipt of mail; Delay or withholding of incoming and/or outgoing mail;
4. 5. Humiliating or degrading practices including ridicule or verbal abuse; Any action which is humiliating, degrading, harsh, or abusive;
5. 6. Corporal punishment, including any type of physical punishment inflicted upon the body; except where employed as part of an approved intrusive aversive therapy program specifically permitted by other applicable regulations;
6. 7. Subjection to unclean and unsanitary living conditions;
7. 8. Deprivation of opportunities for bathing and access to toilet facilities; and
8. 9. Deprivation of health care including counseling;
10. Intrusive aversive therapy except where specifically permitted by other applicable regulations; and
11. Administration of laxatives, enemas, or emetics.

/s/ Jennifer G. Fidura
Coordinating Committee Chair
September 9, 1988

/s/ Gerald L. Ballles
Governor

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September 28, 1988

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: September 29, 1988 - 1:45 p.m.

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-6-4006. Income Tax Withholding Lottery Winnings.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Dates: September 27, 1988 through September 26, 1989.

Preamble:

The 1987 legislation establishing a state-operated lottery and creating the State Lottery Department requires the withholding of state income tax for prizes awarded by the State Lottery Department in excess of \$5,000 and also provides an individual income tax subtraction for prizes awarded by the State Lottery Department of less than \$600.

The Department of Taxation finds that an emergency situation exists necessitating the immediate promulgation of this regulation, that such emergency precludes use of the usual procedures set forth for the promulgation of regulations in the Virginia Administrative Process Act ("APA", § 9-6.14:1 of the Code of Virginia, et seq.), and that promulgation of this emergency regulation is permitted in accordance with the APA.

The precise reason and factual basis for the emergency situation is that the State Lottery Department will be required to begin withholding state income tax on prizes once the state-operated lottery begins awarding prizes. It is therefore necessary to provide immediate guidance to the State Lottery Department personnel on withholding procedures and reporting requirements for lottery winnings until such time as a regulation can be formally adopted under the APA. Additionally, individuals receiving prizes from the State Lottery Department will need to know the state tax implications of such proceeds until such time as a regulation can be formally adopted under the APA.

This emergency regulation shall be adopted upon the signature of the Tax Commissioner and the Governor and shall take effect on September 27, 1988. It will expire upon the adoption of a permanent regulation under the procedures set forth in the APA or on September 26, 1989, whichever is earlier.

The Department of Taxation will receive, consider and respond to any comments or suggestions to reconsider

or revise this emergency regulation which might be submitted by interested persons or groups prior to its expiration.

VR 630-6-4006. Income Tax Withholding Lottery Winnings.

§ 1. Generally.

A. Lottery winnings subject to income tax.

Any lottery prize of \$600 or more shall be subject to state income taxation. To the extent included in federal adjusted gross income, any lottery prize of less than \$600 shall be subtracted from federal adjusted gross income in determining Virginia taxable income. No subtraction is allowed under this section for the first \$599 of a prize of \$600 or more.

B. Withholding from lottery winnings.

The State Lottery Department is required to withhold Virginia income taxes at the rate of 4% on the proceeds from any lottery winning in excess of \$5,000. In the case where a winning exceeds \$5,000, tax is withheld on the entire amount, not merely the amount in excess of \$5,000. The tax must be withheld by the State Lottery Department on the date of actual or constructive payment, whichever is earlier, as prescribed in Treasury Regulation § 31.3402(q)-1.

C. Nonresidents.

Withholding will be required for all nonresident lottery winners. Nonresidents will be required to file a nonresident return when Virginia adjusted gross income, including lottery winnings, exceeds the filing thresholds in Virginia Code § 58.1-321. Any nonresident who has become liable to his state of residence for income tax on lottery winnings or other Virginia source income may be eligible for a credit as provided in Virginia Code § 58.1-332.

D. Estimated tax.

Taxpayers are required to pay estimated taxes in accordance with Virginia Code §§ 58.1-490 through 58.1-496 if their estimated tax liability on all income subject to state taxation exceeds their total withholding and other credits by \$150 or more.

§ 3. Winnings subject to withholding.

Withholding is required on (1) any payment of proceeds in excess of \$5,000; (2) any installment payment of \$5,000 or less, if the aggregate proceeds from a wager exceed or will exceed \$5,000; and (3) any periodic payment of \$5,000 or less, when payments are to be made for the life of a person (or for the lives of more than one person), if it is actuarially determined that the aggregate proceeds from a wager are expected to exceed \$5,000.

The provisions of this section may be illustrated as

Emergency Regulations

follows:

Example 1: "A" purchases a lottery ticket for \$1 in the state lottery from an authorized agent. The drawing is held and "A" wins \$5,000. Since the proceeds of the wager are not greater than \$5,000, the State Lottery Department is not required to withhold or deduct any amount from "A's" winnings.

Example 2: Assume the same facts as in Example 1 except that "A" wins \$5,001. The State Lottery Department must deduct and withhold tax at a rate of 4% from \$5,001 or 200.04.

Example 3: "B" purchases a lottery ticket for \$1 in the state lottery from an authorized agent. The lottery drawing is held and "B" wins the grand prize, \$50,000 payable at the rate of \$1,000 a month. The State Lottery Department must deduct and withhold tax at a rate of 4% on each monthly payment. Therefore, the State Lottery Department would withhold 4% X \$1,000 = \$40.00 from each monthly payment.

Example 4: "C" purchases a ticket for \$1 in the state lottery from an authorized agent. The drawing is held and "C" wins \$1,000 a year for the rest of "C's" life. It is actuarially determined that "C's" life expectancy is 10 years. Based on that determination, the proceeds from the wager paid to "C" will exceed \$5,000. Therefore, the State Lottery Department must deduct and withhold 4% X \$1,000 = \$40.00 from each year's payment.

§ 4. Forms and reporting.

The State Lottery Department is required to report every lottery winning of \$600 or more on Form W-2G, along with state withholding amounts on proceeds in excess of \$5,000. Form W-2G must be prepared and filed in accordance with the regulations promulgated by the Internal Revenue Service and this regulation. The State Lottery Department shall not be required to report any winning of less than \$600.

The State Lottery Department shall file state income tax withholding returns in accordance with Virginia Code § 58.1-472, including the provisions of Chapter 899 of the 1988 Acts of the Assembly.

Except as otherwise provided above, the provisions of Chapter 3, Article 16 of Title 58.1 of the Code of Virginia and the Virginia Income Tax Withholding Regulations shall apply to amounts withheld by the State Lottery Department.

* * *

ORDER ADOPTING AN EMERGENCY REGULATION OF THE DEPARTMENT

Pursuant to the authority vested in the Department of

Taxation by § 58.1-203 of the Code of Virginia, and in accordance with § 9-6.14:9 of the Code of Virginia,

IT IS ORDERED that the following regulation be, and the same is hereby adopted

VR 630-6-4006: Income Tax Withholding
Lottery Winnings

IT IS FURTHER ORDERED that this regulation shall be adopted upon the signature of the Governor and shall become effective on September 27, 1988 and remain in effect until September 26, 1989.

IT IS FINALLY ORDERED that this regulation be published and filed as required by the provisions of §§ 58.1-204, 9-6.14:9 and 9-6.14:22 of the Code of Virginia.

Enter: VIRGINIA DEPARTMENT OF TAXATION

/s/ W. H. Forst, Tax Commissioner
Date: September 15, 1988

/s/ Gerald L. Baliles, Governor
Date: September 23, 1988

/s/ Joan W. Smith
Registrar of Regulations
Date: September 27, 1988 - 2:53 p.m.

STATE WATER CONTROL BOARD

Title of Regulations:

VR 680-21-01.11. Chlorine Standard and Policy.
VR 680-21-07.2. Outstanding State Resource Waters.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Effective Dates: September 29, 1988 through September 28, 1989

Summary:

VR 680-21-01.11 establishes numerical standards and an implementation policy for chlorine in surface waters of the Commonwealth. Further, the regulation prohibits the use of chlorine or other halogen compounds for disinfection purposes or other treatment purposes including biocide applications. This prohibition applies to any treatment facility with a permitted flow of 20,000 gallons per day or more discharging to waters containing endangered or threatened species as identified in VR 680-21-07.2 or to waters classified as natural trout waters. Discharges of less than 20,000 gallons per day to these waters, are required to dechlorinate to a non-detectable chlorine residual.

VR 680-21-07.2 recognizes waters which the General Assembly, the Board or other state agencies have

Emergency Regulations

determined to be of special ecological or recreational significance to the State including scenic rivers, trout streams, and waters containing endangered or threatened species. Recognition as Outstanding State Resource Waters subjects those waters to the protections found in the anti-degradation policy and, in the case of waters containing trout and endangered or threatened species, to the prohibition in VR 680-21-01.11 on the use of chlorine or other halogen compounds.

Basis of Emergency:

Section 62.1-44.15(3a) of the Code of Virginia authorizes the Board to establish water quality standards and policies for any State waters consistent with the purpose and general policy of the State Water Control Law. Further, this section requires that the Board, at least once every three years, review the standards and policies, and as appropriate, propose revisions and changes to the standards and policies.

As part of the last triennial review, the Board adopted revisions to VR 680-21-01.11, Chlorine in Surface Waters, and VR 680-21-07.2, Outstanding State Resource Waters. These prohibited the use of chlorine or other halogen compounds for disinfection by dischargers of more than 20,000 gallons per day to waters containing endangered or threatened species. Based on this action, Appalachian Power Company filed suit in the Circuit Court of the City of Roanoke. The judge has, on a procedural matter, declared that VR 680-21-01.11 and VR 680-21-07.2 are invalid and has remanded them for the Board's further consideration.

As a result, these regulations are now without force as to Appalachian Power Company and significantly more open to challenge by other owners. The inability of the State Water Control Board to enforce these regulations on Appalachian Power Company and possibly other owners statewide poses an unacceptable threat to the environment.

Data on chlorine clearly show that there are toxic effects to trout and other species at levels below the generally achievable detection level. In addition, any toxic compound handled has the potential for spill or release to the environment. Even though small deviations from the Virginia Pollutant Discharge Elimination System permit limits of other compounds may not pose a threat to the environment, that is not the case with chlorine. Because of the magnitude of the threat posed by chlorine (and the other halogen-based disinfectants: bromine, bromine chloride, hypochloride and chlorine dioxide) and the value of trout and threatened and endangered species, the Board feels that the protection of these resources requires a ban on the discharge of chlorine to those waters.

Therefore, the State Water Control Board, pursuant to

§ 62.1-44.15(3a) of the Code of Virginia, and with the concurrence of the Governor of the Commonwealth pursuant to § 9-6.14.4.1 of the Code of Virginia, adopts the following emergency regulation, effective upon filing with the Registrar of Regulations.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded.

The State Water Control Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered:

BY: /s/ Richard N. Burton, Executive Director
Date: September 27, 1988

APPROVED BY: /s/ John W. Daniel, II
Secretary of Natural Resources
Date: September 27, 1988

APPROVED BY: /s/ Gerald L. Baliles, Governor
Date: September 28, 1988

FILED WITH: /s/ Joan W. Smith
Registrar of Regulations
Date: September 29, 1988 - 12:02 p.m.

* * *

VR 680-21-01.11. Chlorine in Surface Waters.

A. Standard.

1. The average daily concentration of total residual chlorine (TRC) in freshwater shall not exceed 11 parts per billion (ug/l) and the average daily concentration of chlorine produced oxidant (CPO) in saline waters (annual mean salinity of 5 parts per thousand or greater) shall not exceed 7.5 parts per billion (ug/l).

2. The one-hour average concentration of total residual chlorine (TRC) in freshwater shall not exceed 19 parts per billion (ug/l) and the one hour average concentration of chlorine produced oxidant (CPO) in saline waters shall not exceed 13 parts per billion (ug/l).

B. Policy.

The Board, pursuant to § 62.1-44.05(3) of the Code of Virginia (1950), as amended, hereby sets forth its policy for implementation of the chlorine standard in surface waters of the Commonwealth. These concentrations shall apply to all surface waters of the Commonwealth except where the permittee can demonstrate to the Board that exceptions may be allowed without resulting in damage to

aquatic life.

1. Mixing zones may be established on a case-by-case basis according to Section VR 680-01-2C. Since Section VR 680-21-01.2C does not allow acutely toxic concentrations within the mixing zone, chlorine residuals within the mixing zone shall not exceed the one hour average of 19 ug/l TRC in freshwater or 13 ug/l CPO in saline waters.

2. Effluent limitations on chlorine shall be imposed to assure compliance with paragraphs A.1 and A.2 at the boundary of the mixing zone and paragraph A.2 within the mixing zone. These effluent limitations shall be calculated presuming complete mixing.

3. The permittee may present to the Board site specific analytical data showing that a modified effluent limit will result in compliance with Sections A.1 and A.2 of the Standard.

4. Exceptions to these concentrations may be allowed only upon a case-by-case demonstration by the permittee to the Board for the following situations:

a. The nature of the receiving waters or the nature and composition of the chlorine discharged are such that this TRC or CPO concentration is not necessary to protect aquatic life.

b. Receiving streams such as drainage ditches whose nature is such that they cannot reasonably be expected to support the propagation and growth of aquatic life and do not provide reasonable beneficial uses with respect to aquatic life. Compliance shall nonetheless be required where these waters discharge into other State waters capable of sustaining reasonable beneficial uses. In such situations, the Board may place effluent limits at the confluence of these two waters.

5. Notwithstanding the foregoing, chlorine or other halogen compounds¹ shall not be used for disinfection purposes or other treatment purposes including biocide applications for any treatment facility with a permitted flow of 20,000 gallons per day or more discharging to waters containing endangered or threatened species as identified in Section VR 680-21-07.2 or to waters classified as natural trout waters. For dischargers of less than 20,000 gallons per day, dechlorination to a nondetectable chlorine residual of chlorinated discharges shall be required for discharges to such waters.

Variance to this requirement shall not be made unless it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development, that the degree of waste treatment necessary to preserve the existing quality can not be economically or socially justified, and that the present and anticipated uses of such water will be preserved

and protected.

¹ Bromine, bromine chloride, hypochloride and chlorine dioxide.

VR 680-21.07.2. Outstanding State Resource Waters.

The following section recognizes waters which the General Assembly, Board and/or other State agencies have determined to be of special ecological or recreational significance to the State. The designation of a Scenic River and the significance of this designation are the subject of the Scenic Rivers Act (§ 10.1-400 et seq. of the Code of Virginia). The listing of Outstanding State Resource Waters that follows constitutes those waters which the Board has designated as high quality state resource waters subject to the protections found in the anti-degradation policy in Section VR 680-21-01.3.

A. Scenic Rivers.

The purpose of the Scenic Rivers Act is to provide for identification, preservation, and protection of certain rivers which possess natural beauty of high quality to assure their use and enjoyment for their scenic, recreational, geologic, fish and wildlife, historic, cultural or other values. According to the Act "in all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channelization, locks, canals, or other uses which change the character of a stream or waterway or destroy its scenic values, full consideration and evaluation of the river as a scenic resource shall be given before alternative plans for use and development are approved."

The following have been included by the General Assembly in the Scenic Rivers System:

POTOMAC RIVER BASIN

Potomac River Subbasin

SR-1 Goose Creek from its confluence with the Potomac River upstream to the Fauquier-Loudoun County line (about 28 miles).

SR-2 Catoctin Creek in Loudoun County from its confluence with the Potomac River upstream to the Town of Waterford.

Shenandoah River Subbasin

SR-3 The Shenandoah River in Clarke County from the Warren-Clarke County line to Lockes Landing.

JAMES RIVER BASIN

SR-4 The Saint Marys River in Augusta County within the George Washington National Forest.

Emergency Regulations

SR-5 Rivanna River from its confluence with the James River upstream to the Fluvanna-Albemarle County line.

SR-6 Appomattox River from the Route 36 bridge crossing in the City of Petersburg upstream to the abutment dam located about 1.3 miles below Lake Chesdin (about 5 miles).

SR-9 The James River from Orleans Street extended in the City of Richmond westward to the 1970 corporate limits of the City.

SR-10 The Upper James River from a point two miles below Eagle Rock to the Route 630 bridge in Springwood, 14+/- miles.

RAPPAHANNOCK RIVER BASIN

SR-11 The Rappahannock River from its headwaters near Chester Gap to the confluence of Deep Run at the Fauquier/Stafford County line, 64+/- miles.

ROANOKE RIVER BASIN

SR-7 Roanoke (Staunton) River from Brookneal upstream to Long Island.

CHOWAN AND DISMAL SWAMP BASIN

Chowan River Subbasin

SR-8 The Nottoway River in Sussex County from the Route 40 bridge at Stony Creek to the Southampton County line.

B. Trout Streams.

Trout streams that are Class I and II according to the Commission of Game and Inland Fisheries Classification System are indicated by Trout Stream subclassifications i and ii in this booklet.

C. Waters Containing Endangered or Threatened Species.

The following waters provide essential or critical habitat for endangered or threatened species which have been identified by the United States Fish and Wildlife Service under the Endangered Species Act of 1973, as amended. If the U.S. Fish and Wildlife Service identifies new waters containing endangered or threatened species, the Board shall consider the need to protect these beneficial uses in reviewing discharge permits and other actions until such time as the waters are officially added to the list in this section.

TENNESSEE AND BIG SANDY RIVER BASINS

Clinch River Subbasin

Powell River from river mile 136 (south of Jonesville) downstream to the Tennessee/Virginia line (river mile

115.8 - total 20.2 miles).

Endangered Species:

Appalachian monkeyface pearly mussel	Quadrula sparsa
Birdwing pearly mussel	Conradilla caelata
Cumberland monkeyface pearly mussel	Quadrula intermedia
Dromedary pearly mussel	Dromus dromas
Fine-rayed pigtoe pearly mussel	Fusconaia cuneolus
Shiny pigtoe pearly mussel	Fusconaia edgariana

Threatened Species:

Slender chub	Hybopsis cahnii
Yellowfin madtom	Noturus flavipinnis

Clinch River from river mile 323 (Richlands) downstream to the Tennessee/Virginia State line (river mile 202.1).

Endangered Species:

Appalachian monkeyface pearly mussel	Quadrula sparsa
Birdwing pearly mussel	Conradilla caelata
Fine-rayed pigtoe pearly mussel	Fusconaia cuneolus
Green blossom pearly mussel	Dysnomia torulosa gubernaculum
Pink mucket pearly mussel	Lampsilis orbiculata
Shiny pigtoe pearly mussel	Fusconaia edgariana

Clinch River from the Scott/Russell County line (at Bangor - river mile 244.2) downstream to the Tennessee boundary (river mile 202.1).

Threatened Species:

Slender chub	Hybopsis cahnii
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Copper Creek from 2 miles above its confluence with the Clinch River (at river mile 211.6).

Endangered Species:

Fine-rayed pigtoe pearly mussel	Fusconaia cuneolus
Shiny pigtoe pearly mussel	Fusconaia edgariana

Copper Creek from Dickensonville (river mile 56) in Russell County downstream to its confluence with the Clinch River.

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Threatened Species:

Yellowfin madtom *Noturus flavipinnis*

Holston River Subbasin

North Fork Holston River from river mile 93.3 (near Broadford) downstream to the Smyth/Washington County line (river mile 82.1)

Endangered Species:

Shiny pigtoe pearly mussel *Fusconaia edgariana*

North Fork Holston River from the Smyth/Washington County line (river mile 82.1) to the Tennessee/Virginia boundary (river mile 5).

Threatened Species:

Spotfin chub *Hybopsis monacha*

Middle Fork Holston River from river mile 43 (in Marion) downstream to river mile 18.4.

Endangered Species:

Tan riffle shell mussel *Dysnomia walkeri*

Middle Fork Holston River from river mile 6.5 to river mile 3.2 near Osceola.

Threatened Species:

Spotfin chub *Hybopsis monacha*

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 27, 1988

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE880028

Ex Parte, in re: Consideration of
adoption of a Policy for Recovery
of costs association with Take-or-Pay
Liability

ORDER ADOPTING POLICY STATEMENT

On August 7, 1987, the Federal Energy Regulatory Commission ("FERC") entered Order No. 500 in its attempt to mitigate the effects of take-or-pay liability.¹ In that Order, FERC announced its adoption, on an interim basis, of two pass-through mechanisms to spread the liability associated with take-or-pay contracts throughout all segments of the gas industry. As we noted in our July 6, 1988 Order for Notice and Comment, as a result of FERC's action, large amounts of take-or-pay liability are being or have been authorized to be passed from interstate gas pipelines to downstream gas utilities, including those in Virginia. Some Virginia gas utilities are currently passing take-or-pay related costs through their purchase gas adjustment ("PGA") clauses to their customers. Because of the potential impact these costs may have on Virginia gas utilities and their ratepayers, we have initiated the instant docket to consider adoption of a policy which will provide for the opportunity to recover these costs in the most equitable and efficient manner possible. We considered the following policies:

- (1) Automatic recovery of take-or-pay costs in the same manner that contract demand charges are recovered through utility purchase gas adjustment clauses (hereafter policy option 1);
- (2) Allocation of costs associated with fixed surcharges to both firm and interruptible gas commodity costs (hereafter policy option 2);
- (3) Recovery of take-or-pay fixed surcharges on the basis of estimated gas transportation volumes and commodity sales. If this approach were adopted, a utility would be permitted an opportunity to recover the costs associated with fixed take-or-pay surcharges during a defined time period. The opportunity to recover these costs would be the same as the opportunity to recover any other costs during the specified period. A formula could be developed to determine the acceptable estimates of throughput, including known and definite load losses, customer growth, normal weather, and the utility's ability to compete. The take-or-pay fixed surcharges would terminate at the end of the specified time period (hereafter, policy option 3).
- (4) Allocation of take-or-pay liability on the basis of customer purchase deficiencies. This policy

alternative would use a base purchase period against which recent sales purchases could be compared. Costs associated with fixed take-or-pay surcharges could be apportioned in relation to the decreases in sales volumes purchased by gas customers. This policy alternative resembles the Order No. 500 allocation mechanism employed by FERC (hereafter policy option 4).

In our July 6th Order, the Commission invited interested parties, including the Staff and jurisdictional gas companies, to file written comments addressing the factual or legal issues related to the four policy alternatives described above. In addition, interested parties were given the opportunity to request oral argument.

In response to that invitation, twenty-two parties filed comments, and nine requested oral argument. Parties filing comments included: Southwestern Virginia Gas Company ("Southwestern"), United Cities Gas Company ("United"), James River Corporation ("James River"), General Electric Company ("GE"), Commonwealth Gas Pipeline Corporation ("Pipeline"), Columbia Gas of Virginia ("Columbia"), Lynchburg Gas Company ("Lynchburg"), Northern Virginia Natural Gas and Shenandoah Gas Company ("WGL Companies"), the City of Richmond ("City"), Hadson Gas Systems, Inc. ("Hadson"), Westvaco Corporation ("Westvaco"), Anheuser-Busch Companies et al. (Anheuser-Busch), Virginia Industrial Gas Users ("Industrial Users"), Virginia Natural Gas, Inc., ("VNG"), Suffolk Gas Company ("Suffolk"), Allied-Signal, Inc. ("Allied"), Commonwealth Gas Services, Inc. ("Services"), and Roanoke Gas Company ("Roanoke"). The Commission's Staff ("Staff") also filed comments. The Division of Consumer Counsel did not participate in this proceeding. On July 20, 1988, we issued an order reserving the afternoon of July 29, 1988, for oral argument.

I. SUMMARY OF COMMENTS AND ARGUMENT

Many of the local gas distribution companies, Pipeline, and industrial customers served by both LDCs and Pipeline supported policy option 1, i.e., recovery of take-or-pay related fixed surcharges through the demand portion of the PGA, in their comments. Commentators supporting option 1 or a variation thereof included Pipeline, Lynchburg, Columbia, WGL, Westvaco, Anheuser-Busch, Cos., Inc., Celanese Fibers, Inc., Owens-Illinois Company, IBM, Allied, and VNG. Advocates of this policy alternative generally argued that since the customers, not the utility, received the benefits of lower wholesale costs of natural gas through the PGA, it was appropriate for these customers to now receive take-or-pay costs through the PGA as offsets to the earlier savings.

Several of the gas utilities supporting option 1 argued that the Commission could not adopt any policy that purposefully disallowed recovery of take-or-pay costs by means of an allocation scheme which would not permit recovery of these costs, nor could it disallow these costs absent a showing that they were imprudently incurred.

These companies stated that any disallowance of these costs would, absent a showing of imprudence, violate the filed rate doctrine. Nantahala Power & Light Co. v. Thornburg, 76 U.S. 953 (1986). Appalachian Power Co. v. Public Service Comm'n of West Va., 812 F.2d 898 (4th Cir. 1987). They asserted that these cases held that the Commission could not find that federally-mandated take-or-pay costs were imprudently incurred by Virginia utilities as a group or individually in the context of this proceeding. Indeed one commentator suggested that these cases could be read as preempting the Commission from disallowing Pipeline's recovery of Order No. 500 take-or-pay demand charges. Pipeline's Comments at 25.

Commentators supporting option 1 did so because they found it to be administratively convenient and because it assured complete cost recovery. In addition, many of the industrial end users favoring PGA treatment for take-or-pay dollars depend upon transportation of spot purchases or interruptible sales service to satisfy the bulk of their gas supply needs. End users receiving such services are generally not subject to the PGA of the gas utilities serving them for those services.

Many of these same commentators took the position that the second and third policy options would not allow gas utilities to compete with alternate fuels since addition of associated surcharges would render gas service noncompetitive with the prices of these fuels. Several parties further urged the Commission to reject the cumulative deficiency approach as a form of illegal retroactive ratemaking, and as difficult to administer, given the diverse and changing customer population of LDCs.

Some of the commentators supported options other than PGA recovery or modifications of PGA recovery. For example, United Cities supported recovery of take-or-pay costs on a volumetric throughput basis to be applied to all sales and transportation services. In support of this option, United Cities noted that it would recover costs from the broadest possible base of customers.

Columbia and Lynchburg's joint comments urged that recovery of the fixed surcharges should reflect the distinct nature of the costs. They maintained that reformation costs, which are essentially forward-looking, should be charged through the PGA to both firm and interruptible sales customers. However, because past take-or-pay liabilities represent transitional costs, Lynchburg and Columbia submitted that these costs should be shared between sales and transportation classes on a volumetric basis. During oral argument, these parties stated that if the Commission did not wish to consider any modification of the four policy options under consideration, they would support policy option 3.

The City of Richmond's comments focused upon the appropriate allocation policy for Pipeline. The City urged the Commission to implement option 4 and require Pipeline to allocate costs on the same basis those costs

were incurred. Such a sales deficiency approach, in the City's opinion, would be fair, provide appropriate economic signals, and create stability for future take-or-pay cost decisions.

While the Industrial Users' comments recommended that the Commission should permit recovery of take-or-pay costs in the same manner that contract demand charges were recovered through PGA clauses, they also noted that the Commission should find a way for Virginia gas utility shareholders to bear a portion of the costs associated with take-or-pay. The Industrial Users stated that the Commission should recognize the need for flexibility among Virginia utilities to take account of their differing circumstances.

Joint comments filed by VNG and Suffolk joined other Pipeline customers to emphasize the uniqueness of Pipeline's treatment from that of LDCs. They then urged the Commission to employ the purchase deficiency methodology used by the FERC in Order No. 500 to allocate take-or-pay costs among Pipeline's customers but not to use such an approach for LDCs. VNG and Suffolk stated that the cumulative deficiency methodology matched the purchase patterns that resulted in the cost allocation to Pipeline to the customers engaging in such purchasing practices. Finally, VNG and Suffolk urged the Commission to adopt policy option 3 only if:

1. all ceilings were eliminated on interruptible rates to enable LDCs to take full advantage of the market opportunities to recover take-or-pay costs;
2. the Commission also authorized flexible take-or-pay surcharges to enable LDCs to respond to the market;
3. the Commission allowed LDCs with a margin sharing feature to collect take-or-pay costs prior to any sharing of margin with firm customers; and
4. the fixed amortization periods were eliminated to recognize the variable nature of the price differential between gas prices and prices of competing fuels.

Services' comments observed that all four of the policy options under consideration were flawed. Of the four, Services noted that it supported policy option 3 if the amortization period was flexible to allow full recovery of take-or-pay costs. Services supported this approach because it believed that take-or-pay costs were incurred to serve all markets and customers of Services and other LDCs or provide a more market oriented industry, thereby benefitting both sales and transportation customers alike. Therefore, it believed that all of its sales and transportation customers should pay these costs.

Services criticized option 1, PGA flow through of these surcharges, as placing too much of a burden on firm sales customers. Services noted that "...the filed tariffs of Services [did] not break tariff rates into demand and commodity components. All costs [were] rolled into the

State Corporation Commission

weighted average cost of gas, making determination of contract demand charges difficult." Services' Comments at 23.

Services found policy option 2 unacceptable because it could force interruptible sales customers to transportation or completely off-line as they converted to alternative fuel. It characterized policy option 4 as unworkable. Services noted that it would be nearly impossible for it to make determinations regarding customer purchase deficiencies for over 62,000 retail customers. Due to a constantly changing customer base, Services asserted that adoption of policy option 4 would leave unanswered questions such as how to treat customers who no longer have gas service, modify the type of service they receive, or join the system as new customers.

Roanoke also submitted comments. In its comments, it urged the Commission to join Virginia LDCs in their participation in FERC proceedings involving interstate pipelines and to encourage LDCs to develop and implement initiatives for the passthrough of take-or-pay surcharges finally approved. In addition, Roanoke supported a variation of policy options 1 and 3.

Roanoke urged the Commission to adopt policies permitting it to amortize the recovery of take-or-pay costs from firm service customers over a sixty-month period, together with interest, at the same rates from time to time allowed on customer deposits and refunds. Roanoke also suggested that firm customers be credited with periodic surcharge collections from interruptible sales customers during a five year amortization period under a special incremental surcharge tariff designed to recover from interruptible sales the difference between the PGA adjusted commodity sales rate and as much as the equivalent value of No. 2 fuel oil. Roanoke stated that the foregoing mechanism would permit it to recover fixed and volumetric surcharges related to take-or-pay liability in the same manner that contract demand charges are recovered under Roanoke's PGA. In this way, Roanoke believed it could recover a portion of its take-or-pay costs from industrial customers, who, in Roanoke's opinion, were primarily responsible for creating this cost burden.

In its filed comments, GE took the position that because industrials and other end users within the Commonwealth did not participate in the writing of take-or-pay contracts, they should not participate in the dissolving of these contracts. GE cautioned that tampering with gas prices would cause every end user with the capability to do so to start burning oil.

Finally, the Commission's Staff filed comments. Its comments observed that all the players in the industry, including interstate pipelines, local utilities, and end users contributed to take-or-pay problems. The Staff stated that efforts to assess take-or-pay culpability directly to any of these groups would be highly subjective and difficult to prove. The Staff's comments identified various sources of take-or-pay costs. For example, a portion of take-or-pay

costs are associated with buying-out-or-down problem contracts and may be a source of prospective benefits. Staff further noted that there were some historical benefits associated with the incurrence of take-or-pay costs. Staff Comments at 4. Staff noted that significant savings to end users resulted from spot market purchases. The Staff believed that jurisdictional utilities received no direct benefit from the savings associated with spot purchases and therefore, it could not support a direct assessment of take-or-pay costs to these local utilities. Staff Comments at 6.

Staff also characterized take-or-pay costs as an obstacle to open access transportation and the associated competitive benefits. Viewed in this light, take-or-pay costs may be considered in the nature of an access fee for nondiscriminatory transportation. Staff generally supported recovery of take-or-pay costs through a volumetric surcharge, provided that the policy was applied with flexibility and sensitivity to each LDC's competitive situation. Staff acknowledged that a volumetric surcharge option had certain flaws and recommended that where gas competition with alternate fuels was rendered impossible after application of the surcharge, the Commission permit recovery of these costs through an alternative mechanism.

The Staff also joined many of the other commentators and recognized that alternative approaches for allocation of Pipeline's take-or-pay liability may be appropriate in light of Pipeline's unique characteristics. These characteristics include Pipeline's readily identifiable customer population and the significant portion of Pipeline's nongas costs attributable to take-or-pay costs.

II. THE COMMISSION'S JURISDICTIONAL AUTHORITY

As we noted in our July 6th Order for Notice and Comment, the FERC has properly recognized our authority to reallocate the fixed surcharges related to take-or-pay and buyout and buydown transactions in Order No. 500:

The Commission [FERC] does not believe that Nantahala precludes state regulators from designing LDC rates, or, in appropriate circumstances, from reviewing the prudence of LDCs' purchasing decisions insofar as they affect take-or-pay costs Therefore, the Commission believes state regulators could consider reclassifying take-or-pay costs billed as a fixed charge as commodity costs and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum possible extent as well as subjecting them to market forces. Alternatively, state agencies may wish to consider the option of not reclassifying fixed take-or-pay charges and instead allocating such charges to the LDC's customers based on their cumulative purchase deficiencies.

The Commission can exercise its jurisdiction only within its legitimate sphere, which in this instance

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involves establishing cost allocation procedures and rates for recovery by pipelines of take-or-pay costs from their jurisdictional customers. The development of cost allocation procedures and rates for the LDCs are matters to be determined by state regulatory authorities. Order No. 500, III FERC Stats. & Regs., Para. 30,761 at 30,790 (Aug. 14, 1987).

FERC has properly acknowledged our authority to prescribe the design for the rates and charges of jurisdictional gas utilities. Section 1(b) of the Natural Gas Act of 1938 ("NGA"), 15 U.S.C. § 717(b) (1982), and the Hinshaw Amendment, 15 U.S.C. § 717 (c), clearly reserve this area to the regulatory authority of States. The Hinshaw Amendment granted an exemption from Federal regulatory jurisdiction to natural gas companies if both the receipt and ultimate consumption of gas occur within a single state, provided the rates, service, and facilities are subject to regulation by a state commission. A certification by a state commission to the FERC that the state is exercising such jurisdiction constitutes conclusive evidence of such regulatory power or jurisdiction. 15 U.S.C. § 717(c).

We have certified to FERC that we regulate one such pipeline - Commonwealth Gas Pipeline Corporation. LDCs are gas companies operating in the local distribution of natural gas. Hence the cases cited by commentators addressing wholesale election power transactions in interstate commerce are inapposite because those cases, unlike the instant case, refer to matters directly affecting wholesale rates which are within the FERC's jurisdiction. Here, the gas companies we regulate are within our jurisdiction under the provisions of the Federal law.

Our authority to design rates for our jurisdictional gas companies under the Virginia Constitution, statutes, and case law is unquestioned. As Commonwealth Gas Services, Inc. has observed in its comments at page 16,

Article IX, Section 2 of the Virginia Constitution grants to this Commission the power and charges the Commission with the duty of regulating the rates, charges and services of public utilities within the Commonwealth. Title 56 of the Code of Virginia, dealing with public service companies, and particularly Chapter 10 thereof dealing with heat, light, power, water and other utility companies generally, sets forth the power and authority of the Commission to consider and determine rates, tolls, charges and schedules of public utilities to be just and reasonable and to insure that such rates, tolls, and charges are related to aggregate actual cost incurred by the public utility in servicing its customers. Such rates also are to provide a 'fair return on the public utility's rate base used to serve those jurisdictional customers.' Va. Code Ann. § 56-235.2 (Repl. Vol. 1986).

Indeed as the Virginia Supreme Court has observed:

In fixing rates within the limits of what is confiscatory

to the utility on the one side, and exorbitant as against the public on the other side . . . there is a reasonably wide area within which the Commission is empowered to exercise its legislative discretion.

Norfolk v. Chesapeake and Potomac Tel. Co. of Va., 192 Va. 292,300 (1951).

III. STATEMENT OF POLICY

The Commission obviously enjoys considerable flexibility under both Federal and Virginia statutes to design a mechanism for recovery of take-or-pay liability. Review of the comments demonstrates that all of the policy alternatives have associated problems which must be addressed.

One of the approaches under consideration was the cumulative deficiency methodology to allocate costs associated with the take-or-pay liabilities. We are compelled to find that the cumulative deficiency methodology should be rejected for LDCs. As virtually every LDC that participated in this proceeding has noted, such a methodology would be impossible to administer given the diversity of respective LDC customer populations.

Further, we reject the second policy alternative-allocation of costs associated with the fixed surcharges to both firm and interruptible gas commodity costs. This policy could have a deleterious effect on an LDC's ability to retain interruptible customer loads. As the WGL Companies' comments have observed, any surcharge affecting the rate charged to interruptible customers would probably make that rate less attractive vis-a-vis other fuels. Imposing additional take-or-pay expenses on interruptible customers would, for example, force the WGL Companies to experience reductions in margins on their interruptible sales. Reduced margins are directly absorbed by utilities outside of a rate case. In view of the large percentage of take-or-pay exposure already included in FERC-approved surcharges, additional charges in interruptible rates will inappropriately reduce WGL and other utilities' margins. WGL Comments at 13-14.

The third methodology is, in our opinion, inappropriate because, as VNG and other commentators have noted, it too will severely constrain the relative ability of Virginia LDCs to compete with alternate fuels. To the extent that Virginia utilities must depend on industrial loads for a large percentage of their operating revenues, both the financial viability of these companies and the stability of the base gas rates charged to their firm customers may be jeopardized by the adoption of this policy alternative.

After review of this record, we are compelled to find that option 1 is the most appropriate course of action. While no one option under consideration allocates costs in a completely equitable manner, this approach has the advantages of being easy to administer and assuring complete recovery of take-or-pay related costs. In addition, this approach will not unduly complicate the efforts of

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Virginia utilities to compete with alternate fuels.

Additionally, a slightly different tack must be taken as to the division of take-or-pay costs for LDCs serving multiple jurisdictions, e.g., WGL. As to these companies, a cumulative deficiency approach must be used to split the Virginia jurisdictional portion of take-or-pay costs out of the total company costs. Once these costs have been identified, then the jurisdictional company may proceed to recover the identified jurisdictional portion of these costs through its PGA.

Finally, we find that the record supports treating Commonwealth Gas Pipeline as a unique entity. As virtually every party to this proceeding has noted, Pipeline is unique by virtue of, among other things, its limited customer pool and the extremely high percentage of its gas costs which are take-or-pay related. Pipeline's limited number of customers allows a more precise measurement of the benefits associated with take-or-pay. Additionally, Pipeline's unique circumstances provide for a better identification of the causes of take-or-pay liability. Consequently we find that Pipeline should be permitted to develop a mechanism for recovery of its take-or-pay related costs separate and distinct from the policy established herein for LCDs. Its recovery mechanism should reflect the historic as well as the prospective benefits derived from gas purchasing practices which have increased take-or-pay liability. In developing this recovery mechanism, we encourage Pipeline to work actively with its customers. Should Pipeline and its customers be unable to reach agreement with regard to a recovery of the take-or-pay costs in an expeditious manner, this Commission will not hesitate to prescribe a recovery mechanism.

Accordingly, IT IS ORDERED that all jurisdictional gas distribution utilities may recover the fixed demand charges associated with take-or-pay liability and contract reformation through their purchase gas adjustment clauses. It is further Ordered that Pipeline shall forthwith file tariffs complying with the principles identified above with regard to take-or-pay liability. It is finally Ordered that there being nothing further to be done herein, this matter is hereby dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each gas utility subject to the jurisdiction of this Commission; Gail S. Marshall, Esquire and William Bilenky, Esquire, Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, Richmond, Virginia 23219; Allan McClain, President, Southwestern Virginia Gas Company, P.O. Drawer 5391, Martinsville, Virginia 24115; Richard D. Gary, Esquire, P.O. Box 1535, Richmond, Virginia 23212; Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; Nicholas J. Bush, Suite 300, 1129 20th Street, N. W., Washington, D. C. 20036-3403; Marjorie H. Brant, Esquire, Columbia Gas of Virginia, P.O. Box 117, Columbus, Ohio 43216-0117; Donald R. Hayes, Esquire, Northern Virginia Natural Gas, 1100 H Street, N.

W., Washington, D. C. 20080; David B. Kearney, Assistant City Attorney, City of Richmond, Department of Public Utilities, P.O. Box 26505, Richmond, Virginia 23261-6505; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-9970; Louis R. Monacell, Esquire, Christian, Barton, Epps, Brent & Chappell, 909 East Main Street, Richmond, Virginia 23219-3095; Guy T. Tripp, III, Esquire, Hunton & Williams, P. O. Box 1535, Richmond, Virginia 23212; James C. Dimitri, Esquire, Christian, Barton, Epps, Brent & Chappell, 909 East Main Street, Richmond, Virginia 23219-3095; John S. Graham, III, Esquire, One James Center, 901 East Cary Street, Richmond, Virginia 23219; Dr. Carl J. Schleck, James River Corporation, P.O. Box 2218, Richmond, Virginia 23217; D. K. Johnson, 1501 Roanoke Boulevard, Salem, Virginia 24153; Wilbur H. Hazlegrove, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 720, Roanoke, Virginia 24004-0720; and the Commission's Divisions of Energy Regulation, Accounting and Finance, and Economic Research and Development.

Lacy, COMMISSIONER, concurring in part and dissenting in part:

For the last two years Virginia natural gas companies and customers have been anticipating the flow-down of costs associated with the buy-out or buy-down of take-or-pay contracts. During that time, we have examined the legality, practicality, and fairness of the available options for recovery of these costs. While no solution is ideal, all involved do agree that these costs are transitional in nature and must be resolved before the natural gas industry can realize its market potential.

The cost recovery mechanism chosen by the majority, automatic recovery through the PGA clause, while the least complex to administer, does not reflect a fair allocation of cost recovery. I believe recovering take-or-pay acquisition costs from a broader customer base, including sales, transportation, and interruptible customers, lessens the financial burden to any one class of customer and more accurately reflects a philosophy that responsibility for these costs cannot be assigned to any one segment of the industry. In my opinion, such a mechanism, combined with the flexibility for each local gas distribution company to justify some variant or modification to allow continued competitive operations, while administratively more complex than the PGA, represents a reasonable and more equitable resolution to this difficult but transitional situation.

I concur with the majority holding regarding take-or-pay related costs for Commonwealth Gas Pipeline.

¹Regulation of Natural Gas Pipelines After Partial Well head Decontrol, Docket No. RM87-34-000, III FERC Stats. & Regs., Paragraph 30,761 (Order No. 500) (hereafter Order No. 500).

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State Corporation Commission

AT RICHMOND, SEPTEMBER 20, 1988

REGULATION OF TELEPHONE COMPANIES -
CASE NO. PUC880035

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC880035

Ex Parte: In the matter of
promulgating an experimental
plan for the optional regulation
of telephone companies

ORDER FOR PUBLICATION

In 1987, the Commission established a Task Force to study regulatory alternatives that might foster greater incentives than existing cost of service regulation for Virginia's telecommunications utilities. For nearly two decades, these traditional utilities have been beset by encroaching competition and burgeoning technology. While technology holds the promise of the expansion of service offerings, traditional regulation can dampen incentives to venture into new fields. Strict tariffs can impede the flexibility to price goods and services in line with unregulated competitors.

As a result of the extensive work done by the Task Force and the final report it submitted on July 1, 1988, the Commission now has available for consideration an experimental plan which, if implemented, would modify for a trial period the methods of regulating any Virginia local telephone company voluntarily choosing to participate. The objective of this plan is to determine to the extent possible, the degree of competitive freedom that local telephone companies may be afforded consistent with the public interest and with the duty of certificated utilities to afford reliable and affordable monopolistic services.

The Commission, pursuant to § 12.1-28 of the Code of Virginia, initiates this proceeding to invite comment from the public and from the affected telephone companies on the advisability of implementing this experimental plan, or some modification thereof, for the optional regulation of local telephone companies.

WHEREFORE, IT IS ORDERED:

(1) That this matter is hereby docketed and shall be assigned Case No. PUC880035;

(2) That the Commission's Division of Communications forthwith cause a copy of the following notice to be published once a week for two consecutive weeks in newspapers having general circulation throughout the Commonwealth:

NOTICE BY THE STATE CORPORATION
COMMISSION OF ITS CONSIDERATION OF AN
EXPERIMENTAL PLAN FOR THE OPTIONAL

The Virginia State Corporation Commission has initiated a proceeding to consider the implementation of an optional, experimental plan that would alter the methods of regulating those local telephone companies choosing to participate during the years 1989-1992.

The Commission invites interested persons, including local telephone companies and all their customers, to comment in writing or request a hearing on the implementation of such an experimental plan. A copy of the proposed plan may be examined at the Commission's Document Control Center, Floor B-1, Jefferson Building, Bank and Governor Streets, Richmond, Virginia, Monday through Friday, during the hours of 8:00 a.m. to 5:00 p.m., or during regular business hours at the telephone company business offices where customers may pay telephone bills.

Interested persons may submit written comments concerning the proposed plan on or before October 31, 1988, by filing an original and fifteen (15) copies of same with George W. Bryant, Jr., Clerk, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216 and making reference to Case No. PUC880035. Anyone wishing to be heard on the proposed plan must file an original and fifteen (15) copies of a request for hearing with Mr. Bryant at the address specified above no later than October 31, 1988. Requests for oral argument must also make reference to Case No. PUC880035. In the absence of a request for such argument, the Commission may act on the proposed plan after considering all written comments.

STATE CORPORATION COMMISSION

(3) That this Order further constitutes Notice of the above to all who shall be served by mail, or otherwise, with a copy.

An ATTESTED COPY, with a copy of the Experimental Plan, shall be sent by the Clerk to each local exchange telephone company operating in Virginia as set out in Appendix A attached hereto; to each certificated interexchange carrier operating in Virginia as set out in Appendix B attached hereto; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; to the Commission's office of General Counsel; and to the Commission's Divisions of Communications, Accounting and Finance, and Economic Research and Development.

EXPERIMENTAL PLAN FOR ALTERNATIVE
REGULATION OF VIRGINIA TELEPHONE
COMPANIES
VIRGINIA STATE CORPORATION COMMISSION

The following is the text of an experimental plan being considered for adoption by the State Corporation

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Commission of Virginia which is intended to modify for a trial period the current methods of regulating any local telephone company operating in Virginia which voluntarily chooses to embrace the plan for purposes of the experiment.

The objective of this plan is to determine to the extent possible, the degree of competitive freedom that local telephone companies may be afforded that is consistent with the overall public interest and with the duty of such companies to provide economical telephone services of a monopoly nature.

Addenda A which is attached to the text is intended to generate public consideration of possible modifications to the basic proposal, and may be freely addressed by all who wish to comment.

1. The plan would be implemented for a three-year trial period beginning January 1, 1989, and will be optional with the individual companies.

2. Should a company elect to proceed under the plan, but later desire to end its participation, it may do so, with leave of the Commission. Any company granted permission to terminate the plan will thereafter be subject to traditional rate base/rate of return regulation on a prospective basis. The Commission retains the right to terminate a company's participation in a plan, in whole or in part, on its own motion, or upon complaint, if it finds good cause to do so, including a determination that any practices under the plan are abusive or detrimental to the public interest. In this regard, the Commission intends to monitor closely all aspects of a company's performance under the plan.

3. The plan would be evaluated in the fourth year, while continuing in effect during that evaluation year.

4. During the four years the plan is in effect, any changes found to be necessary to the policies and procedures established under this plan would be given prospective effect only.

5. An initial voluntary rate reduction would be part of the plan, based upon March 31, 1988, Annual Informational Filings (AIFs) and a range of return on equity of 12%-14%.

6. During the plan years all rates would become interim rates.

7. Monopoly services are those services listed in the attached chart (Appendix A) as Potentially Competitive, Discretionary, or Basic, together with all other services of a company not identified on Attachment A as Actually Competitive. Services falling within the Monopoly category will remain subject to current regulatory oversight, modified, however, by subsequent paragraph 9.

8. Rate regrouping due to growth in access lines would

continue in order to avoid rate discrimination between similarly sized exchanges.

9. Potentially Competitive services, as defined in Appendix A, would be allowed flexible tariff status with the right to adjust rates for such services on an expedited basis subject to Commission notification. Prices may be increased or decreased at the company's discretion. Tariffs must be filed at least 30 days prior to the effective date, which is consistent with current tariff filing procedures. Filings which include rate reductions must include supporting data demonstrating the rate is not below cost.

10. The rate base, costs and revenues from the Actually Competitive services enumerated in Appendix A will be transferred below the line for AIF purposes, and will not be subject to price regulation.

11. Services and capabilities of a monopoly nature that are essential components of competitive services must be offered on an unbundled basis in the tariffs. When these services and capabilities are used by competitive services, the associated revenue of these monopoly components will be attributed to monopoly operations based on the tariff rates.

12. Prior Commission approval will be required to introduce any rates, charges and conditions that vary according to customers' geographic location.

13. All services currently not subject to regulation will continue in an unregulated status.

14. Tariffs shall continue to be filed for all services except Actually Competitive services.

15. For purposes of the Staff's monitoring during the experimental trial period, the company shall initially file with the Staff, under proprietary protection, current price lists for services, except Yellow Pages, in the Actually Competitive category. Such lists shall be updated at the end of each year during the trial period.

16. Solely for monitoring purposes, the company shall file quarterly a per books rate of return statement, under proprietary protection, for the aggregate of all its services, except CPE. Annually, the company shall file a non-proprietary traditional AIF based upon Monopoly service rate base, costs, and revenues. The rate of return statement will reflect per-books results, making adjustments for:

- a. ITC capital expense and its associated tax savings;
- b. Restatements from GAAP to regulatory accounting;
- c. Removal of out-of-period revenue and expense amounts that relate to occurrences prior to the implementation of the trial plan; and,
- d. Removal of out-of-period amounts that are a direct

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result of the plan, as agreed upon and reported by the Task Force Financial Monitoring Subcommittee.

17. In the event the company seeks any increase in the prices of any Basic or Discretionary services during the trial period, the company must file a rate application conforming to the rules adopted in Case No. PUE850022.

a. The financial results in this filing would include rate base, costs, and revenues from services in Potentially Competitive, Discretionary, and Basic service categories.

b. In addition, all rate base, costs, and revenues from services in the Actually Competitive category, except CPE, will be imputed to regulated financial results and considered in determining the company's revenue need.

18. During the trial period, the company's approved overall return on equity would be set at a range of 12% to 14%. Return on equity and return on rate base will be calculated by using a 13-month average common equity and a 13-month average rate base number, as agreed upon and reported by the Task Force Financial Monitoring Subcommittee.

19. If the company is found to have earned in excess of its authorized return on Potentially Competitive, Basic, and Discretionary services in the year preceding, an appropriate refund will be made. If it is determined that existing rates will result in an over-recovery to Potentially Competitive, Basic, and Discretionary services during the next 12 month period, rates for the future will be reduced. If neither condition is found to exist, the Commission, upon motion by the company, will order that the interim rates for the previous year be made permanent. All actions in this paragraph will be taken only after notice and opportunity for hearing.

20. The Commission will monitor separately the financial results from Actually Competitive services.

21. Service quality results shall be filed by the company on a quarterly or monthly basis as directed by the Staff.

a. These reports may be expanded to include results not contained in the present service reports.

b. The company will report on the seven categories of service recommended by the service subcommittee.

c. The SCC Staff will analyze the service observation reports and take immediate action to resolve any service quality problems.

22. The costs associated with services in the Actually Competitive category (as set out in Appendix A) must be decided by a cost allocation methodology.

a. The Commission's Staff and each company shall,

during the first year the plan is in effect, negotiate procedures for separating competitive and regulated accounts.

b. During each succeeding year of the plan after the first year, the cost allocations arrived at initially will be monitored and refined by agreement between the staff and the company, as necessary.

c. The Commission will, at any time, act to determine proper cost allocations if the company and Staff's negotiations are not fruitful or if third parties disagree with the negotiated allocations reached by the company and Staff.

d. The cost allocations arrived at may be expected to form the basis for a proper division of costs between regulated and nonregulated services for the future operations of the company following the termination of the plan. The cost allocations will also be used to assist in an overall evaluation of the plan as provided for in paragraph 26 hereof.

23. Upon the request of the staff, the company will file such other and further information with respect to any services or practices of the company as may be required of public service companies under current Virginia law, or any amendments thereto.

24. Thirty days prior to offering a new service, the company shall notify in writing the Staff, the Attorney General, and all certificated interexchange carriers of the new service offering.

a. Simultaneous with such notification, the company shall designate the service category into which the new service is classified.

b. Any interested party shall be afforded an opportunity, by timely petition to the SCC, to propose that the new service be classified in a different category; however, the filing of such petition shall not result in postponement of the new service offering.

c. Any such proceeding to determine the proper classification of a new service offering shall be completed within 90 days following the effective date of the new service offering.

25. Interexchange carriers' access charges are not included in the categories of services set out in the Commission's plan for pricing purposes. Pricing for such services will be considered separately in accordance with the procedures adopted in Case No. PUC870012. For monitoring purposes, access services will be included in the categories as shown on Appendix A.

26. Within six months following the conclusion of the third year of the plan's adoption and implementation by a telephone company, that company will prepare and submit to the Commission a detailed, written report which is

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satisfactory to the Commission, and which describes and documents the perceived effects of the plan-benefits and detriments - upon the company and upon its customers, for both regulated and unregulated goods, services and equipment of whatever nature and wherever sold, used or provided.

The purpose to be served by this report is to provide an informed basis upon which the Commission can design and execute subsequent policy and predicate future action in appropriate response to the competitive and technological forces which are then identified as impacting the field of communications and information transfer.

20. IXC Coinless Telephone Service
21. Four-wire Service Terminating Arrangements
22. Concentrator-Identifier Equipment
23. Emergency Number "911" Service
24. Public Data Network
25. Direct Inward Dialing
26. Extended Area Calling
27. Hunting Arrangements
28. PBX Night, Sunday, etc. Arrangements
29. Split Supervisor Drops
30. Identified Outward Dialing

APPENDIX A

MARKET CLASSIFICATIONS OF LEC SERVICES SUMMARY*

Competitive Services

Actually Competitive	Potentially Competitive
1. Yellow Page Advertising	1. Bulk Private Line
2. Customer Premises Equipment	2. Bulk Special Access
3. Inside Wiring	3. Operator Call Completion Services
4. CENTREX Intercom & Features	4. 3-Way Calling
5. Public Telephones and Booths	5. Call Forwarding
6. Billing & Collection Processing, Rendering, Inquiry	6. Time-of-Day Service
7. Mobile Services	7. Weather Forecast Service
8. Paging Services	8. C.O. Data Sets
9. Speed Calling	9. Toll Restriction
10. Apartment Door Answering	
11. C.O. LANS	

Monopoly Services

Discretionary	Basic
1. Non-list & Non-pub-Numbers	1. Access to Switched Network (DTLs)
2. Preferred (Vanity) Numbers	2. Exchange Usage
3. Additional Listings & Bold Type	3. Switched Access
4. Operator Verification & Interrupt	4. MTS/WATS/800
5. Call Waiting	5. Basic Service Charges
6. Remote (Fixed) Call Forwarding	6. Optional Calling Plans
7. DTMF Signaling (Touch-Tone, U-Touch)	7. CENTREX Exchange Access & Usage
8. B&C Security Functions	8. B&C With DNP
9. Special Billing Numbers	9. ANI & Recording
10. Referral Service (customized Intercept)	10. Directory Assistance
11. Transfer Arrangements	11. Maintenance Visit (Trouble Isolation)
12. Exclusion	12. "Single" Private Line & Special Access
13. Call Restriction	13. Operator Service - Emergency & Troubles
14. Make Busy Arrangements	14. Intercept (Standard)
15. Break Rotary Hunt	15. White Page Listing
	16. List Service
	17. Number Screening (Selective Class of Call Screening)
	18. FX Service
	19. Semi-Public Telephone Service

A Range of Return of Equity would be set at 11% to 16%. If a company's return on a full company basis was less than 11%, a rate increase would be granted if after investigation, it was determined that the under-earnings are attributed to the provision of monopoly and potentially competitive services.

If a company's return on a full company basis exceeds 16%, a rate decrease would be granted if after investigation, it was determined that the over-earnings relate to an unreasonable over-earning in the monopoly and potentially competitive services.

Rates for Basic Monopoly Services will be considered to be unreasonable if earnings on those services are in excess of 12%. If the return on a full company basis is not in excess of 16%, rates for Basic Monopoly Services may be reduced or a sharing mechanism may be applied to earnings in excess of 12%.

STATE LOTTERY DEPARTMENT

STATE LOTTERY DEPARTMENT (AND STATE LOTTERY BOARD)

Title of Regulation: VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Effective Date: December 1, 1988

Summary:

The State Lottery Department is promulgating public participation guidelines which include methods for the identification and notification of interested parties, and specific means of seeking input from interested persons or groups.

These promulgated regulations will replace temporary guidelines currently in force.

VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

§ 1. Generally.

A. In developing any regulation, the State Lottery Board ("board") and the State Lottery Department ("department") are committed to obtaining comments from interested people.

B. Anyone who is interested in participating in the process of developing regulations should notify the department in writing. This notification should be sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

1. The department will maintain a list of the people who notified the department in writing.

2. The department will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in § 4 of these guidelines.

§ 2. Identification of needed regulations.

A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

B. The department and board, at their discretion, may consider any regulatory request or change.

§ 3. Identification of interested parties.

Before the department develops a regulation, it will identify persons who would be either interested in or

affected by the proposal. The methods for identifying interested parties shall include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia State Chamber of Commerce. This list will be used to identify groups which might be interested in the regulation.

2. Using department files to identify people who have raised questions or expressed an interest in the regulations.

3. Using a list, compiled by the department, of persons who previously participated in public proceedings.

4. Obtaining annually from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

§ 4. Notification of interested parties.

A. Generally.

The department will prepare a Notice of Intended Regulatory Action ("Notice") before developing any regulation. The notice will identify the subject matter and purpose of the new regulation(s). The notice will specify a time deadline and location for interested persons to submit written comments.

B. Notifying those interested.

The methods for notifying interested persons will include, but not be limited to, the following:

1. Sending the notice to all persons identified as interested parties through the methods described in § 3 above;

2. Publishing the notice in the Virginia Register of Regulations (Virginia Register); and

3. Requesting that groups, associations, and organizations to whom the notice is sent publish the notice in newsletters or journals or use other means available to them to inform their members.

§ 5. Public participation in regulation development.

A. Initial comment.

After interested parties have responded to the notice, the department will determine the level of interest.

1. If sufficient interest exists, the department may

State Lottery Department

schedule informal meetings before the development of the regulation. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.

2. Instead of informal meetings, the department may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice.

3. The department may decide that the notice resulted in receipt of enough information so that it can develop the regulation without an informal meeting or additional written comments.

B. Preparing a working draft.

After the initial public input on the intended regulatory action, the department will develop a working draft of the proposed regulation for the board to review, revise and approve, after consultation with the director.

§ 6. Submission of regulation under the Administrative Process Act.

1. After the drafting process ends, the board-approved regulation will be submitted to the Registrar of Regulations under the Administrative Process Act (APA), Title 9, Chapter 1.1:1, of the Code of Virginia. The board-approved regulation will be published as a proposed regulation in the Virginia Register.

2. The department will furnish a copy of the regulation published in the Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulation.

3. If the department elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the department that they will participate in the public hearing will be set out. People who choose to participate in the public hearing will be asked to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

4. When the board issues an order adopting a regulation, the department may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in the Virginia Register and will specify the issue number.

§ 7. Publication and distribution of final regulation.

1. The board will adopt all final regulations after consultation with the director. The final regulations will be submitted for publication in the Virginia Register.

2. The board will order the department to print all adopted final regulations and make appropriate distribution.

3. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the department and compliance with the department's regulations.

* * * * *

NOTICE: The proposed State Lottery Regulations published in 4:22 2454-2482 August 1, 1988, have been separated into two regulations. VR 447-01-2, Administration Regulations, includes areas specifically related to administration only, and VR 447-02-1, Instant Game Regulations, includes areas specifically related to instant lottery games.

Title of Regulation: VR 447-01-2. Administration Regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Effective Date: December 1, 1988

Summary:

Regulations published together as one set of regulations in the August 10, 1988, issue of the Register have been separated into areas specifically related to administration only. The administered regulations establish the general operational parameter for the department and the board including definitions, requirements for approval of banks and depositories, board procedures for conducting business and promulgating regulations, procedures for appeals of licensing actions, standards for agency procurement and procedures for procurement appeals and disputes.

In addition to editorial revisions, significant changes from the proposed regulations include the following which were taken primarily from the comments provided during the normal review process by the Office of the Attorney General and the Department of Planning and Budget:

1. Clarification of subaccounts within the Special Reserve Fund of the State Lottery Fund;

2. Transfer of responsibility so that the State Treasurer, with concurrence of the director, approves banks to provide services;

3. Removal of requirement for contract review by the Office of the Attorney General;

4. Clarification of public notice for RFP's and public opening of IFB's;

5. Addition of provision by which purchase orders or contracts may be terminated for the convenience of

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the department; and

6. Former restriction changed to absolute prohibition against employees with responsibility for procurement from having financial interest in contracts with department vendors.

VR 447-01-2. Administration Regulations.

PART I. GENERAL PARAMETERS.

§ 1.1. Definitions.

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

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means and includes any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America whose principal place of business is within the Commonwealth of Virginia and which is designated [by the State Treasurer] to perform functions, activities or services in connection with the operations of the lottery for the deposit and handling of lottery funds, the accounting of those funds and the safekeeping of records.

"Bearer instrument" means a lottery ticket which has not been signed by or on behalf of a person or a legal entity. Any prize won on an unsigned ticket is payable to the holder, or bearer, of that ticket.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the state lottery law.

"Book," "ticket book," or "pack" generally means a set quantity of individually wrapped unbroken, consecutively numbered, fanfolded instant game tickets [which all bear an identical book or pack number] which is unique to that book or pack among all the tickets printed for a particular game.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for

purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposal. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposal, is accepted.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means an agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services.

"Department" means the State Lottery Department created by the state lottery law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or state agency, which performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or
4. The accounting [of for] lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money against a bank account on a set day based on the balance owed by the bank account holder to the lottery department or due to the bank account holder from the lottery department.

["Erroneous ticket" means an instant lottery ticket which has been forged, counterfeited or altered.]

"Game" means any individual or particular type of lottery authorized by the board.

"Goods" means any material, equipment, supplies, [and] printing [, and automated data processing hardware and software].

"Household" means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes.

["Informalities" means defects or variations of a bid from the exact requirements of the Invitation for Bid which do not affect the price, quality, quantity, or delivery

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schedule for the goods or services being purchased.]

"Instant game" means a game that uses preprinted tickets with a latex covering over a portion of the ticket. The covering is scratched off by the player to reveal immediately whether the player has won a prize or entry into a prize drawing.

"Instant ticket" means a ticket for an instant game.

"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"License approval notice" means the form sent to the retailer by the lottery department notifying him that his application for a license has been approved and giving him instructions for obtaining the required surety bond and setting up his lottery bank account.

"Lottery" or "state lottery" means the lottery or lotteries established and operated in response to the provisions of the state lottery law.

"Lottery retailer" or "lottery sales retailer" or "retailer" means a person licensed by the director to sell and dispense lottery tickets, materials or lottery games for instant or on-line lottery games, or both.

"Lottery license" or "retailer license" means the official document issued by the department to a person authorizing him to sell or dispense lottery tickets, materials or lottery games at a specified location in accordance with all regulations, terms and conditions, and instructions and directives issued by the board and the director.

"Low-tier winner" or "low-tier winning ticket" means an instant game ticket which carries a cash prize of \$25 or less or a prize of additional unplayed instant tickets.

["~~Minor informalities~~" means ~~defects or variations of a bid or proposal from the exact requirements of the Invitation for Bid or the Request for Proposal, which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.~~]

"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common

concern.

"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.

"Notice of Intent to Award" means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

"Pack" means the same thing as "book."

"Performance bond" means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

["~~Person~~" means an ~~individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.~~ "~~Person~~" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.]

["~~Person~~" means a natural person and may extend and be applied to bodies politic and corporate unless the context indicates otherwise.]

"Prize" means any cash or noncash award to holders of winning tickets.

"Procurement" means the procedures for obtaining goods or services. It includes all activities from the planning steps and preparation and processing of a request through the processing of a final invoice for payment.

"Protest" means a complaint about an administrative action or decision brought by a vendor to the department with the intention of receiving [~~action. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board a remedial result~~].

"Request for Information (RFI)" means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

"Request for Proposals (RFP)" means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.

"Responsible vendor" means a person or firm who has

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the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance; and
4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his commission and, in the case of instant game sales, any discount or adjustment allowed for the retailer's payment of prizes of less than \$600.

"Services" means any work performed by a vendor where the work is primarily labor or duties and is other than providing equipment, materials, supplies or printing.

"Sole source" means a product or service which is [available only from one vendor practicable].

"Solicitation" means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department [or telephone calls by the department] to obtain bids or proposals or information for the purpose of entering into a contract.

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Ticket number" means the preprinted unique number or combination of letters and numbers which identifies that particular ticket as one of a series of tickets.

"Validation code" means the multi-letter or multi-number code which appears among the play symbols under the latex covering on an instant ticket. The validation code is used to verify prize winning tickets.

"Validation number" means the unique number or number-and-letter code printed on the front of an instant ticket sometimes under a latex covering bearing the words "Do not remove," "Void if removed" or similarly worded label.

"Vendor" means one who can sell, supply or install

goods or services for the department.

§ 1.2. Generally.

The purpose of the state lottery is to produce revenue consistent with the integrity of the Commonwealth and the general welfare of its people. The operations of the State Lottery Board and the State Lottery Department will be conducted efficiently, honestly and economically.

§ 1.3. State Lottery Board.

A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. It may also request information from the public. The board may have additional meetings as needed. (See Part [VI III], Board Procedures.)

B. Inspection of department records.

At the board's request, the department shall produce for review and inspection the department's books, records, files and other information and documents.

§ 1.4. Director.

The director shall administer the operations of the State Lottery Department following the authority of the Code of Virginia and these regulations.

§ 1.5. Ineligible players of the lottery.

Board members, officers or employees of the lottery, or any person residing in the same household as any board member, officer or employee may not purchase tickets or receive prizes of the lottery.

§ 1.6. Advertising.

A. Generally.

Advertising may include but is not limited to print advertisements, radio and television advertisements, billboards, point of purchase and point of sale display materials. The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.

B. Lottery retailer advertising.

Any lottery retailer may use his own advertising materials if the department has approved its use in writing before it is shown to the public. [The department shall develop written guidelines for giving such approval.]

C. The department may provide information displays or other material to the retailer. The retailer shall position the material so it can be seen easily by the general

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public.

D. The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

E. The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded [; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery].

F. The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.

§ 1.7. Operations of the department.

A. Generally.

The department shall be operated in a manner which considers the needs of the Commonwealth, the public-at-large, the convenience of the ticket purchasers, and winners of lottery prizes.

B. Employment.

The department shall hire people without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

1. All employees shall be recruited and selected in a manner consistent with the policies which apply to classified positions.

2. Sales and marketing employees are exempt from the Virginia Personnel Act.

C. Internal operations.

The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.

2. Internal operations apply to automated and manual systems.

D. External operations.

The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

E. Apportionment of lottery revenue.

Moneys received from lottery sales will be divided approximately as follows:

50 percent	Prizes
45 percent	State Lottery Fund Account ([On and] after July 1, 1989, administrative costs of the lottery shall not exceed 10 percent of gross sales.)
5 percent	Lottery retailer discounts

F. State Lottery Fund Account.

The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Prior to the start of the first lottery game, the account will be funded from the proceeds of a Department of Treasury loan or loans (treasury loan). Thereafter, funding will be from gross sales.

[1. Within the State Lottery Fund, there shall be established a "Special Reserve Fund" which shall contain the following subaccounts:]

[1. a.] An "Operations Special Reserve Fund" subaccount for administrative and operations costs will be created in the State Lottery Fund account. [~~The~~ At all times on and after July 1, 1989, the] amount of the Operations Special Reserve Fund will be [~~approximately 10%~~ not less than 2.5%] of the [total annual estimated] gross lottery revenue [to be generated] from sales. Commencing with lottery operations, but prior to initial sales, all funds derived from the start-up treasury loan(s) shall be deposited to the Operations Special Reserve Fund. Except as otherwise provided in these regulations, start-up treasury loan fund balances shall remain in the Operations Special Reserve Fund until exhausted, until transferred to the Lottery Start-up Payback Special Reserve Fund or until 12 months after initial lottery sales at which time any fund balance from the start-up treasury loan(s) shall revert to the General Fund.

[2. b.] A "Lottery Prize Special Reserve Fund" subaccount will be created in the State Lottery Fund account and will be used when lottery prize pay-outs exceed department cash on hand. Immediately prior to initial lottery sales, \$500,000 shall be transferred to the Lottery Prize Special Reserve Fund from start-up treasury loan funds in the State Lottery Fund. Thereafter, 5.0% of monthly

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gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

[~~a.~~ (1)] The calculation of the 5.0% will be made for each instant or on-line game.

[~~b.~~ (2)] The funding of this subaccount may be adjusted at any time by the board.

[~~3.~~ 2.] Until July 1, 1989, or when start-up funds are totally repaid, a special subaccount titled "Lottery Start-up Payback Special Reserve Fund" will be established to retire the start-up treasury loan(s).

a. Five percent of the state lottery fund balance, excluding funds derived from start-up treasury loan(s), at the beginning of each month will be placed in this subaccount. The director may increase this percentage when, in his judgment, sufficient funds remain in the State Lottery Fund to meet other needs and shall increase the percentage when necessary to retire the treasury loan(s) within the first 12 months from initial lottery sales.

b. The director may, at any time, direct the transfer from the State Lottery Fund balance to the "Lottery Start-up Payback Special Reserve Fund" of all or any portion of any funds derived from the start-up treasury loan(s) which, in his judgment are no longer required to fund lottery operations.

c. The director may, from time to time, direct the transfer of all or a portion of the Lottery Start-up Payback Special Reserve Fund to the General Fund of the Treasury to retire all or a portion of the start-up treasury loan(s). The director shall ensure that the entire amount of the start-up treasury loan(s) is repaid within the first 12 months of lottery sales.

[~~4.~~ 3.] Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director or the internal auditor with concurrence of the State Comptroller, State Treasurer and the Auditor of Public Accounts.

G. Administrative and operations costs.

Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.

H. Audit of lottery revenues.

The cost of any audit shall be paid from the State Lottery Fund.

1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.

2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.

I. Other matters.

The board and director may address other matters not mentioned in these regulations which are needed or desired for the efficient and economical operation and administration of the lottery.

PART [~~V.~~ II.] BANKS AND DEPOSITORIES.

[~~§ 5-1.~~ § 2.1.] Approval of banks.

The [~~director~~ State Treasurer], with the concurrence of the [~~Department of the Treasury~~ director], and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

A. A bank or banks shall serve as agents for electronic funds transfers between the department and lottery retailers as required by these regulations and by contracts between the department, the State Treasury, retailers, and the banks.

B. In selecting the bank or banks to provide these services, the [~~director~~ State Treasurer] and the [~~Department of the Treasury~~ director] shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.

C. There shall be no limit on the number of banks approved under this section.

[~~§ 5-2.~~ § 2.2.] Approval of depositories.

The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers.

[~~§ 5-3.~~ § 2.3.] Compensation.

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A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.

B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.

C. Depositories will be compensated based on vouchers for services rendered.

[~~§ 5-4~~ § 2.4.] Depository for transfer of tickets.

A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.

B. In instances where a retailer wishes delivery of tickets or other materials sooner than scheduled by a lottery depository, the retailer may use his own depository or transfer agent. However, use of a retailer's depository or transfer agency shall have the department's advance approval.

C. In determining whether to use depositories for transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.

PART [~~VI~~ III.] LOTTERY BOARD PROCEDURES.

Article 1.

Board Procedures for the Conduct of Business.

[~~§ 6-1~~ § 3.1.] Officers of the board.

A. Chairman and vice-chairman.

The board shall have a chairman and a vice-chairman who shall be elected by the board members.

B. Term of officers.

The board will elect its officers annually at its January meeting to serve for the calendar year.

[~~§ 6-2~~ § 3.2.] Board meetings.

A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information from the public.

B. Special meetings.

The board may hold additional meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. Notice of special meetings shall be given to all board members at least two calendar days before the meeting. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

C. Quorum.

Three or more board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.

D. Conflict of Interest.

If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.

[~~§ 6-3~~ § 3.3.] Committees of the board.

A. Ad hoc committees.

The board chairman may at his discretion appoint such ad hoc committees as he deems necessary to assist the board in its work.

B. Purpose of committees.

An ad hoc committee may be established to advise the board on a matter referred to it or to act on a matter on behalf of the board if so designated.

1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.

a. Three members shall constitute a quorum.

b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.

c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.

2. A committee established to act in an advisory capacity to the board may include members of the

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general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

c. All actions of advisory committees shall be presented to the board in the form of recommendations.

Article 2.

Procedures for Appeals on Licensing Actions.

[§ 6-4. § 3.4.] Hearings on denial, suspension or revocation of a retailer's license.

A. Generally.

An applicant who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked may appeal the licensing decision and request a hearing on the licensing action.

B. Hearings to conform to Administrative Process Act provisions.

The conduct of license appeal hearings will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia relating to Case Decisions.

1. An initial hearing consisting of an informal fact finding process will be conducted by the director in private to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to Court Review.

[§ 6-5. § 3.5.] Procedure for appealing a licensing decision.

A. Form for appeal.

Upon receiving a notice that (i) an application for or the renewal of a license has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, the applicant or

licensed retailer may appeal in writing for a hearing on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer.

2. The appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in [§ 6-5-A § 3.5.A].

B. Where to file appeal.

An appeal to be mailed shall be addressed to:

State Lottery Director
State Lottery Department
Post Office Box 4689
Richmond, Virginia 23220

An appeal to be hand delivered shall be delivered to:

State Lottery Director
State Lottery Department
Bookbindery Building
2201 West Broad Street
Richmond, Virginia 23220

1. An appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by [§ 6-5-A § 3.5.A].

2. Delivery to State Lottery Department regional offices or to lottery sales personnel by hand or by mail is not effective.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. Content of appeal.

The appeal shall state:

1. The decision of the director which is being appealed;

2. The basis for the appeal;

3. The retailer's license number or the Retailer License Application Control Number; and

4. Any additional information the appellant may wish to include concerning the appeal.

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[~~§ 6-6~~, § 3.6.] *Procedures for conducting informal fact finding licensing hearings.*

A. Director to conduct informal hearing.

The director will conduct an informal fact finding hearing with the appellant for the purpose of resolving the licensing action at issue.

B. Hearing date and notice.

The director will hold the hearing as soon as possible but not later than 30 days after the appeal is filed. A notice setting out the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing.

C. Place of hearings.

All informal hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

D. Conduct of hearings.

The hearings shall be informal. They shall not be open to the public.

1. The hearings will be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department [~~at no cost~~]. The transcript shall become part of the department's records.

3. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the director's prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

6. The director may exclude information at any time which he believes is not germane or which repeats information already received.

7. The director shall declare the hearing completed when both parties have finished presenting their information.

E. Director to issue written decision.

Normally, the director shall issue his decision within 15 days after the conclusion of an informal hearing. However, for a hearing with a court reporter, the director shall issue his decision within 15 days after receipt of the transcript of the hearing. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. Appeal to board for hearing.

After receiving the director's decision on the informal hearing, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the director's decision on the informal hearing;

2. Mailed to:

*Chairman, State Lottery Board
State Lottery Department
Post Office Box 4689
Richmond, Virginia 23220*

OR

Hand delivered to:

*Chairman, State Lottery Board
State Lottery Department
Bookbindery Building
2201 West Broad Street
Richmond, Virginia 23220*

3. The same procedures in [~~§ 6-5-B~~, § 3.5.B.] for filing the original notice of appeal govern the filing of the notice of appeal of the director's decision to the board.

4. The appeal shall state:

a. The decision of the director which is being appealed;

b. The basis for the appeal;

c. The retailer's license number or the Retailer License Application Control Number; and

d. Any additional information the appellant may wish to include concerning the appeal.

[~~§ 6-7~~, § 3.7.] *Procedures for conducting formal licensing hearings.*

A. Board to conduct formal hearing.

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The board will conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

B. Number of board members hearing appeal.

Three or more members of the board are sufficient to hear an appeal. If the chairman of the board is not present, the members present shall choose one from among them to preside over the hearing.

C. Board chairman may designate an ad hoc committee to hear appeals.

The board chairman at his discretion may designate an ad hoc committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. [If the chairman of the board is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.]

D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.

E. Notice, time and place of hearing.

A notice setting the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.

F. Conduct of hearings.

The hearings shall be conducted in accordance with the provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

1. The hearings will be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department [~~at no cost~~]. The transcript shall become part of the department's records.

3. The provisions of §§ 9-6.14:12 through 9-1.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

G. Board's decision.

Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However,

for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained in the department and become a part of the case file.

2. The written decision will contain:

a. A statement of the facts to be called "Findings of Facts";

b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and

c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

H. Court review.

After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the Administrative Process Act.

Article 3.

Procedures for Promulgating Regulations

[~~§ 6-8.~~ § 3.8.] Board procedures for promulgating regulations.

A. Generally.

Except for temporary regulations issued under the exemption provided by the Virginia Lottery Law, the board shall promulgate regulations, in consultation with the director, in accordance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia).

1. The board will provide for a public participation process to be set out in "Guidelines for Public Participation in Regulation Development and Promulgation."

2. Public hearings may be held if the subject matter of a proposed regulation and the level of interest generated through the public participation process warrant them.

B. Temporary regulations.

Temporary regulations to be issued under the exemption provided by law will be adopted by the board at public meetings. The public may provide written comments on newly adopted temporary regulations. The board will

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consider these comments for later revisions to the regulations.

PART [~~VII~~ IV.] PROCUREMENT.

[~~§ 7-1~~ § 4.1.] Procurement in general.

A. To promote the free enterprise system in Virginia, the State Lottery Department will purchase goods or services by obtaining competitive bids whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.

[~~B. The Office of the Attorney General shall review each contract for more than \$10,000 before the department signs it.]~~

[~~C. B.] The director may request other state agencies to review contracts before the department signs them.~~

[~~D. C.] The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.~~

[~~D. When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities."]~~

[~~§ 7-2~~ § 4.2.] Exemption and restrictions.

A. Purchase of goods and services may be exempted from the competitive bidding procedure when the director determines [in writing that] the best interests of the Commonwealth will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.

B. All purchases shall be made in compliance with the standards of ethics in [~~§ 7-19~~ § 5.19] of these regulations.

C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.

D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the [~~Virginia State~~] Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.

[~~§ 7-3~~ § 4.3.] Requests for Information.

A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.

B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.

C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers [or other publications].

1. [~~The number of RFIs made for each good or service will be decided on a case-by-case basis. Additional RFIs may be published for a good or a service, as determined on a case-by-case basis.]~~

2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.

D. All costs of developing and presenting the information furnished will be paid for by the vendor.

E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia. [~~The department shall have no further obligation to any vendor who furnishes information.]~~

[~~F. The department shall have no obligation to any vendor who furnishes information.]~~

[~~G. F.] The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.~~

[~~§ 7-4~~ § 4.4.] Request for Proposals.

A. A written Request for Proposal (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.

B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.

C. The department shall [~~make publish or post~~] a public notice of the RFP.

1. [~~All solicitations shall be posted on a bulletin board at the State Lottery Department.] The notice may [also] be: mailed to vendors who responded to~~

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a Request for Information; published in general circulation newspapers in areas where the contract will be performed; [posted at the department's central office in a public area used to post purchase notices;] if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.

2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve competition in the private sector.

D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.

E. The department will evaluate each vendor proposal.

1. The evaluation will consider the vendor's response to the factors in the RFP.

2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.

F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.

G. Award of RFP Contract.

1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.

2. Price will be considered but need not be the only determining factor.

3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.

[§ 7-5, § 4.5.] Invitations for Bids.

A. A written Invitation for Bid (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.

B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.

1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.

2. It may contain other optional data.

C. Public notice of the IFB shall be given.

1. The IFB may be mailed to potential bidders. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted at the department's central office in a public area used to post purchase notices, and shall be given to any other interested vendor.

2. The publication of the IFB notice will consider the means which will best serve competition in the private sector.

D. Receiving IFB's.

1. Bids shall be received until the date and time set forth in the IFB.

2. Late bids shall not be considered.

E. Opening IFB's.

Bids shall be publicly opened and [the following items shall be] read aloud [: :]

[1. Name of bidder;

2. Unit or lot price, as applicable; and

3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.]

F. Evaluating IFB's.

The department shall evaluate each vendor bid.

1. The evaluation shall consider whether the bid responds to the factors in the IFB.

2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.

3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.

G. Award of IFB contract.

The department shall award the contract to the lowest responsible bidder.

[§ 7-6, § 4.6.] Sole source contracts.

A. A sole source contract shall be made when there is only one source available for goods or services.

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B. The director will state in writing for the file that only one source was determined to be available, the vendor selected, the goods or services contracted for and the date of the contract.

C. If the contract is over \$10,000, on the day the director awards the contract, he will post the written statement in a public area used to post purchase notices at the department's central office.

[§ 7-7. § 4.7.] *Emergency purchase contract.*

A. An emergency purchase contract shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action.

B. The department will state in writing the nature of the emergency, the vendor selected, the goods or services contracted for and the date of the contract.

C. If the contract is over \$10,000, on the day the director awards the contract, he will post the written statement in a public area used to post purchase notices at the department's central office.

[§ 7-8. § 4.8.] *Procedures for small purchases.*

A. Generally.

Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$10,000.

B. Price quotations.

Price quotations may be obtained through oral quotations in person or by telephone.

C. Written confirmation.

If the contract is [~~\$1,200~~ \$2,000] or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over [~~\$1,200~~ \$2,000].

D. Except in the case of an emergency under [§ 7-7 § 4.7], the department will attempt to obtain at least three quotations.

E. In letting small purchase contracts, the department may consider factors in addition to price.

[§ 7-9. § 4.9.] *Time to submit and accept [information proposals or bids RFI's, RFP's or IFB's].*

A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.

1. All vendors shall take responsibility for their chosen method of delivery to the department.

2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.

3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.

4. All vendors who received [~~invitations~~ solicitations] will be notified of any changes in the [~~bidding~~] process times and dates or if a [~~bid~~ solicitation] is cancelled.

B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date [and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period]. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.

[§ 4.10. Questions on bids.

Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.]

[§ 7-10. § 4.11.] *How to modify or withdraw proposals or bids.*

A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.

B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.

1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.

2. A proposal or bid may be withdrawn after opening if the director receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.

[§ 7-11. § 4.12.] *Rejection of bids.*

The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. [Vendors so identified shall be notified in writing by the department.] New bids may be requested at a time which meets the needs of the department.

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[~~§ 7-12~~, § 4.13.] *Testing of product.*

Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.

[~~§ 7-13~~, § 4.14.] *Proposal bid or performance security.*

A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.

1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.

2. When required, security will not be waived.

B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.

[~~§ 7-14~~, § 4.15. ~~Contract or purchase order may not be assigned.~~ *Assignment of contracts.*]

A vendor may not assign any contract to another party without permission of the director.

[~~§ 7-15~~, § 4.16.] *Strikes, lockouts or acts of God.*

Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.

[~~§ 7-16~~, § 4.17.] *Remedies for the department on goods and services which do not meet the contract.*

A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.

B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. [This remedy shall be in addition to any other remedy provided by law.]

[~~§ 7-17~~, § 4.18.] *Administration of contracts.*

A. Generally.

The department will follow procedures in administering

its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.

B. Records.

The department shall keep all records relating to a contract for three years after the end of a contract.

1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.

2. Records shall be open to the public except for proprietary information for which protection has been properly requested.

C. Change orders.

1. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.

2. The department shall send the changes in writing to the vendor. Vendors who [~~change~~ deviate from] the contract without receiving the written changes from the department do so at their own risk.

D. Cancellation orders.

The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations [as provided in § 5.16 A and B].

E. Overshipments and overruns.

The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.

F. Inspection, acceptance and rejection of goods or services.

1. The department shall be responsible for inspecting, accepting or rejecting goods or services [~~purchased~~ under contract].

2. In rejecting goods or services, the department will notify the vendor as soon as possible.

3. The department will state the reasons for rejecting the goods or services and request prompt replacement.

4. Replacement goods or services shall be made available at a date acceptable to the department [and vendor].

G. Complaints.

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The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.

H. Invoice processing.

To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Title 11, Chapter 7, Article 2.1 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.

I. Default actions.

Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.

[J. Termination for convenience of the department.

1. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

2. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.

3. If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.

4. Within 120 days after receipt of the notice of termination, or such longer period as the department

for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia.]

[§ 7-18. § 4.19.] Vendor background.

A. A vendor shall allow the department to check his background. The background check may extend to any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.

B. Before contracting with the department, the vendor shall sign an agreement with the department to allow a criminal investigation of the entities and persons named in [§ 7-18-A § 4.18 A].

C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.

[§ 7-19. § 4.20.] Ethics in contracting.

A. Generally.

[Except for more stringent requirements set forth in this section,] the department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Title 11, Chapter 7, Article 4 of the Code of Virginia.

B. Employee role with vendors [~~restricted prohibited~~].

A department employee who has responsibility to buy from a vendor [~~shall may~~] not [~~participate in any transaction when~~] :

1. [~~The employee is Be~~] employed by the vendor at the same time;

2. [~~The employee, his Have a~~] business associate or a member of his household [~~is be~~] an officer, director, trustee, partner or [~~has hold~~] a similar position with a vendor and [~~plays play~~] a role in soliciting contracts for the vendor;

3. [~~The employee, Himself or~~] his business associate or a member of his household [~~owns or controls own or control~~] an interest in the vendor of at least 5.0%;

4. [~~The employee, Himself or~~] his business associate or a member of his household [~~has have~~] a financial

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interest in [~~the~~ a] contract [procured for the department];

5. [~~The employee, Himself or~~] his business associate or a member of his household [~~is negotiating negotiate~~] or [~~has have~~] an arrangement about prospective employment with a vendor.

C. Offers, requests, or acceptance of gifts.

No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.

D. Kickbacks.

No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.

E. Vendors to give certified statement on ethics in contracting.

Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.

F. Department employees to give notice of subsequent employment with vendors.

Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year [of] terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.

G. Any contract which violates the contracting ethics in the Code of Virginia and these regulations may be voided and rescinded immediately by the department.

PART [~~VIII~~ V.] PROCUREMENT APPEALS AND DISPUTES.

[§ ~~8-2~~ 5.1.] Generally.

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this regulation applies to all vendors. [~~It sets out the procurement appeals and disputes process to be used by the director until November 30, 1988.~~] In the event of a protest on a procurement action, the vendor shall follow the remedies available in this regulation. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will

conduct a hearing on each appeal [or he shall designate a hearing officer to preside over the hearing].

[§ ~~8-2~~ 5.2.] Appeals, protests, time frames and remedies related to solicitation and award of contracts.

A. If a vendor is considered ineligible or disqualified.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

B. If a vendor is not allowed to withdraw a bid in certain circumstances.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

a. The certified check shall be payable to the State Lottery Department.

b. The cash bond shall name the State Lottery Department as obligor.

c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. If a vendor is considered not responsible for certain contracts.

1. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a

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responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

D. If a vendor protests an award or decision.

1. Any vendor or potential vendor may protest the award or the department's decision to award a contract. The written protest shall be filed within 10 days after the [~~vendor receives the department's decision award on the announcement of the decision to award is posted or published, whichever occurs first~~].

2. If the protest depends upon information contained in public records pertaining to the purchase, then a [~~five~~ 10] day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the [~~vendor receives the department's decision award or the announcement of the decision to award is posted or published, whichever occurs first~~].

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

[§ ~~8.3~~ § 5.3.] Appeals, time frames and remedies related to contract disputes and claims.

A. Generally.

In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Contract claims.

Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

[~~3. The vendor shall notify all other vendors bidding on the disputed contract within 10 days after the appeal has been filed with the director.~~]

[~~4. 3.~~] Nothing in this regulation shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.

[~~5. 4.~~] Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

[~~6. Unless specified in the contract, the director will not grant claims for money or other relief. Claims for money or other relief not in the contract, shall be referred to the Office of the Attorney General for resolution. The resolution between the Attorney General and vendor will be included as part of the director's decision.~~]

[~~7. 5.~~] The director's decision will state the reasons for the action.

C. Claims relief.

Relief from administrative procedures, liquidated damages, or [~~minor~~] informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

[§ ~~8.4~~ § 5.4.] Form and content of appeal to the director.

A. Form for appeal.

The vendor shall make the appeal to the director in writing. The appeal shall be mailed to the State Lottery Director, State Lottery Department, P.O. Box 4689,

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Richmond, Virginia 23220 or hand delivered to the department's central office at the Bookbindery Building, 2201 West Broad Street, Richmond, Virginia 23220.

B. Content of appeal.

The appeal shall state the:

1. Decision of the department which is being appealed;
2. Basis for the appeal;
3. Contract number;
4. Other information which identifies the contract; and
5. Reasons for the action.

C. Vendor notification.

The director's decision on an appeal will be sent to the vendor by registered mail, return receipt requested.

1. The director shall follow the time limits in the regulations and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.
2. The director's decision will state the reasons for the action.

[§ 8-5. § 5.5.] State Lottery Department appeal hearing procedures.

A. Generally.

The director [or the appointed hearing officer] will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.
2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.
3. Legal counsel may represent the vendor or the department. Counsel is not required.
4. The director may exclude evidence which [it feels is not germane or repeats information already received he determines is repetitive or not relevant to the dispute under consideration].
5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.

6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

B. Public hearings for appeals.

1. Hearings shall be open to the public. The director may adjourn the public hearing to discuss and reach his decision in private.
2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.
3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

C. Order during the hearing.

Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.
2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

[3. Other vendors may present their response, the relief they desire, if any, and their witnesses and evidence. The director and the department may ask questions of each party and witness.]

[4. 3.] The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

[5. 4.] After all evidence has been presented, the director shall reach his decision in private.

[§ 8-6: § 5.6.] Notice, time and place of hearings.

A. Notice and setting the time.

All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

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2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

B. Place of hearings.

All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

[§ 5.7.] Who may take part in the appeal hearing.

A. Generally.

The director may request specific people to take part in the hearing.

B. Hearings on ineligibility, disqualification, responsibility or denial of a request to withdraw a bid.

The protesting vendor and the department shall participate.

[C. Hearings on an award or decision.

The protesting vendor, the vendor who received the contract, any other vendor who bid on the contract, and the department may participate.]

[D. C.] Hearings on claims or disputes.

The protesting vendor and the department shall participate.

[§ 5.8.] Director's decision.

A. Generally.

The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.

B. Hearings with court reporter.

For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director [if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing].

C. Format of decision.

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."

2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.

3. The decision will be signed by the director.

D. Copies of the decision.

Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

[§ 5.9.] Appeal to courts.

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor [may not has no automatic right of] appeal [of] a decision to award, an award, a contract dispute, or a claim with the department.

B. Nothing in these regulations shall prevent the director from taking legal action against a vendor.

* * * * *

Title of Regulation: VR 447-02-1. Instant Game Regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Effective Date: December 1, 1988

Summary:

Regulations published together as one set of regulations in the August 10, 1988, issue of the *Register* have been separated into areas specifically related to instant lottery games. The regulations include standards and requirements for licensing retailers for instant games, specific operational parameters for the conduct of instant games, validation procedures and payment of instant game prizes.

In addition to editorial revisions, significant changes from the proposed regulations include the following which were taken primarily from the comments provided during the normal review process by the Office of the Attorney General and the Department of Planning and Budget:

1. Elimination of responsibility for board to decide the length of an instant game;

2. Addition of specific details regarding ticket price range, restrictions on give-aways, and elimination of provision that the department may sell at reduced price or give away tickets in connection with special promotions;

3. Addition of service charge assessment of retailers if electronic funds transfer reports insufficient funds;

4. Clarification of ticket sales for cash only;

5. Definition of "person" for purposes of licensing;

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6. *Specification of amount of surety bond;*
7. *Elimination of issuance of temporary licenses after December 1, 1988;*
8. *Addition of provision that annual license renewal fee will be set by board at its November meeting each year; and*
9. *Restatement of requirement for claim forms.*

VR 447-02-1. Instant Game Regulations.

PART [~~H.~~ I.]
LICENSING OF RETAILERS FOR INSTANT GAMES.

[~~§ 2-1.~~ § 1.1.] *Licensing.*

Generally.

The director may license as lottery retailers for instant games persons who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

[*For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.]*

[~~§ 2-2.~~ § 1.2.] *Eligibility.*

A. *Eighteen years of age and bondable.*

Any person who is 18 years of age or older and who is bondable may submit an application for licensure, except no person may submit an application for licensure:

1. *Who will be engaged solely in the business of selling lottery tickets; or*
2. *Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or*
3. *Who is a vendor of lottery tickets or material or data processing services, or whose business is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.*

B. *Application not an entitlement to license.*

The submission of an application for licensure does not in any way entitle any person to receive a license to act

as a lottery retailer.

[~~§ 2-3.~~ § 1.3.] *Application procedure.*

Filing of forms with the department.

Any eligible person shall first file an application with the department on forms supplied for that purpose, along with the required fees as specified elsewhere in these regulations. The applicant shall complete all information on the application forms in order to be considered for licensing. The forms to be submitted include:

1. *Retailer License Application;*
2. *Personal Data Form(s); and*
3. *Preliminary Marketing Evaluation Form.*

[~~§ 2-4.~~ § 1.4.] *General standards for licensing.*

A. *Selection factors for licensing.*

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. *The financial responsibility and security of the applicant, to include:*
 - a. *A credit and criminal background investigation;*
 - b. *Outstanding state tax liability;*
 - c. *Required business licenses, tax and business permits;*
 - d. *Physical security at the place of business, including insurance coverage.*
2. *The accessibility of his place of business to the public, to include:*
 - a. *The hours of operation;*
 - b. *The availability of parking and transit routes, where applicable;*
 - c. *The location in relation to major employers, schools, or retail centers;*
 - d. *The population level and rate of growth in the market area;*
 - e. *The traffic density, including levels of congestion in the market area.*
3. *The sufficiency of existing lottery retailers to serve the public convenience, to include:*

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a. The number of and proximity to other lottery retailers in the market area;

b. The expected sales volume and profitability of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of business;

c. Sales history of business and market area;

d. Volume of customer traffic in place of business.

B. Additional factors for selection.

The director may develop [and, by administrative order, publish] additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

[§ 2-5. § 1.5.] Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond from a surety company entitled to do business in Virginia. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. [Unless otherwise provided under subsection C of this section,] the surety bond shall be in the amount and penalty [specified by the director in the "License Approval Notice" of \$5,000] and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on renewal of license.

A lottery retailer applying for renewal of a license shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the license renewal period; and

2. Submit the surety company's letter or certificate with the required license renewal fee to the State

Lottery Department.

C. Sliding scale for surety bond amounts.

The [director department] may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

[§ 2-6. § 1.6.] Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate [echecking bank] account to be used exclusively for lottery business in a bank participating in the Automatic Clearing House (ACH) system.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed or due from the purchase of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department to record establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank to another, he must submit a

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newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

[§ 2.7, § 1.7.] License term and renewal.

A. License term.

A general license for an approved lottery retailer shall be issued for a one-year period.

B. License renewal.

A general license shall be renewed annually at least 30 days before its expiration date and shall be accompanied by the appropriate fee(s) as specified elsewhere in these regulations. The director may implement a staggered, monthly basis for annual license renewals and allow for the proration of annual license fees to credit licensees for the time remaining on their current license when the staggered renewal requirement is imposed. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Temporary license.

[The director may issue a temporary license for the convenience of the department based on terms and conditions he deems appropriate, provided that: No temporary licenses shall be issued after November 30, 1988.]

1. [The temporary license term shall expire immediately upon receipt of approval of a general license, but in no case shall the temporary license term extend beyond November 30, 1988; or All temporary licenses expire not later than December 1, 1988.]

2. [The temporary license term shall expire on the date the director specifies in a notice to the license applicant that his application for a general license has been denied. On the date specified Upon expiration of a temporary license] , the applicant shall stop the sale of tickets and surrender to a department representative his temporary license and department property and make settlement of his lottery account.

D. Amended license term.

An amended license issued under the requirements of [§ 2.9-C § 1.9 C] shall be valid for the remainder of the period of the license it replaces.

E. Special license.

The director may issue special licenses to persons for specific events and activities. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest.

[§ 2.8, § 1.8.] License fees.

A. License application fee.

The fee for a license application for a lottery retailer general license [to sell instant game tickets] shall be [an amount as approved by the board \$25]. The general license fee [to sell instant game tickets] shall be paid for each location to be licensed. This fee is nonrefundable.

B. License renewal fee.

The annual fee for renewal of a lottery retailer general license [to sell instant game tickets] shall be an amount [as approved fixed] by the board [at its November meeting for all renewals occurring in the next calendar year]. [The renewal fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer.] The renewal fee shall be paid for each location for which a license is renewed. This fee is nonrefundable. The renewal fee shall be submitted at least 30 days before a retailer's general license expires.

C. Amended license application fee.

The fee for processing an amended license application for a lottery retailer general license shall be an amount as approved by the board [at its November meeting for all amendments occurring in the next calendar year]. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license application shall be submitted in cases where a business change occurs as specified in [§ 2.9-B § 1.9 B].

[§ 2.9, § 1.9.] Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid for any of the following reasons:

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1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship);
3. Change in the business owners listed in the original application form for which submission of a Personal Data Form is required under the license application procedure.

C. Amended application required.

A licensed lottery retailer who anticipates a change as listed in subsection B shall notify the department of the anticipated change at least 15 calendar days before it takes place and submit an amended application. The director shall review the changed factors in the same manner that would be required for a review of an original application.

[~~§ 2-10~~, § 1.10.] Display of license.

License displayed in general view.

Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

[~~§ 2-11~~, § 1.11.] Denial, suspension, revocation or nonrenewal of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person has been:

1. Convicted of a felony;
2. Convicted of a crime involving moral turpitude;
3. Convicted of any fraud or misrepresentation in any connection;
4. Convicted of bookmaking or other forms of illegal gambling.

B. Grounds for refusal to license partnership or corporation.

The director may refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A.

C. Grounds for suspension, revocation or refusal to renew license.

After notice and a hearing, the director may suspend, revoke, or refuse to renew a license for any of the following reasons:

1. Failure to properly account for lottery tickets received, for prizes claimed and paid or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms and conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims.

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules and regulations of the department.

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing application process;

9. Failure to comply with lottery game rules.

10. Failure to meet minimum point of sale standards.

D. Notice of intent to suspend, revoke or deny renewal of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny renewal of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. [Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.]

E. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

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F. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

[§ ~~2-12~~, § 1.12.] *Responsibility of lottery retailers.*

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

[§ ~~2-13~~, § 1.13.] *Display of material.*

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any retailer's lottery material that has not been approved for use by the department.

[§ ~~2-14~~, § 1.14.] *Inspection of premises.*

Access to premises by department.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director [for or] state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

[§ ~~2-15~~, § 1.15.] *Examination of records; seizure of records.*

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records

pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

[§ ~~2-16~~, § 1.16.] *Audit of records.*

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

[§ ~~2-17~~, § 1.17.] *Reporting requirements and settlement procedures.*

Instructions for purchasing tickets, reporting transactions and settling accounts.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

[§ ~~2-18~~, § 1.18.] *Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.*

A. Forms of payment for tickets; deposit of lottery receipts.

Each lottery retailer shall purchase the tickets distributed to him. The moneys for payment of these tickets shall be deposited to the credit of the State Lottery Fund by the department. The retailer shall make payments to the department by Electronic Funds Transfers (EFT); however, the director reserves the right to specify one or more of the following alternative forms of payment under such conditions as he deems appropriate:

- 1. Cash;*
- 2. Cashier's check;*
- 3. Certified check;*
- 4. Money order; or*
- 5. Business check.*

B. Payment due date.

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Payments shall be due as specified by the director in the instructions to retailers regarding the purchasing and payment of tickets and the settlement of accounts.

C. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be assessed an interest charge on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

D. Service charge for dishonored EFT transfer or bad check.

The director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

E. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt that are incurred by the department and the agencies to which the debt is referred.

[§ 2-19. § 1.19.] Training of retailers and their employees.

Retailer training.

Each retailer or his designated representative or representatives is required to participate in training given by the department in the operation of each game. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

[§ 2-20. § 1.20.] License termination by retailer.

Voluntary termination of license.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART [~~III~~. II.] INSTANT GAMES.

[§ 2-1. ~~Director's duties and responsibilities.~~ § 2.1. Development of instant games.]

The director shall select, operate, and contract for the operation of instant games which meet the general criteria set forth in these regulations. The [~~director board~~] shall determine the specific details of each instant game after consultation with the [~~board director~~]. These details include, but are not limited to:

[1. The length of the game;]

[2. 1.] Prize amounts and prize structure,

[3. 2.] Types of noncash prizes, if any, and

[4. 3.] The amount and type of any jackpot or grand prize which may be awarded.

[§ 2-2. § 2.2.] Prize structure.

The prize structure for any instant game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each instant game shall be approved in advance by the board.

B. Prizes may be cash or noncash awards, including instant game tickets.

[§ 2-3. § 2.3.] Ticket price.

A. The [sale] price of a [lottery] ticket for each game will be determined by the board [and will be between \$.25 and \$15]. Lottery retailers may not discount the sale price of instant game tickets or offer free tickets as a promotion with the sale of instant tickets. This section shall not prevent a retailer from giving away free instant tickets with the purchase of other goods or services [customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery].

B. This section shall not apply to the redemption of a winning instant ticket the prize for which is another free ticket.

C. Lottery tickets purchased by nonlottery retailers from licensed lottery retailers may be given away and used as promotional items.

[D. As a part of special promotional events or activities, the board may approve the sale by the department of instant tickets at a reduced price or the distribution of instant tickets at no charge.]

[§ 2-4. § 2.4.] Sales, gift of tickets to minors prohibited.

An instant game ticket shall not be sold to, purchased

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by, or given as a gift to any individual under 18 years old.

[~~§ 2.5.~~ § 2.5.] Odds of winning.

The director shall publicize the overall odds of winning a prize in each instant game. The odds may be printed on the ticket or contained in informational materials, or both.

[~~§ 2.6.~~ § 2.6.] End of game.

Each instant game will end when all tickets have been sold or on a date announced in advance by the director. The director may suspend or terminate an instant game without advance notice if he finds that this action will serve and protect the public interest.

[~~§ 2.7.~~ § 2.7.] Sale of tickets from expired games prohibited.

No instant game tickets shall be sold after that game ends.

[~~§ 2.8.~~ § 2.8.] Licensed retailers' commissions.

A. Licensed retailers shall receive a 5.0% discount on all instant game tickets purchased from the department for resale by the retailer.

B. The director may award cash bonuses or other incentives to retailers. The board shall approve any bonus or incentive system. The director will publicize any such system in rules of the game(s) to which it applies.

[~~§ 2.9.~~ § 2.9.] Price for ticket packs.

For each pack, retailers shall pay the retail value, less the 5.0% retailer discount and less the value of the low-tier winning tickets in the pack. For example, for a pack of tickets with a retail value of \$500, and guaranteed low end prize structure of \$165, the retailer would pay \$310: \$500 (the pack value) minus \$165 for low-tier winners, less the retailer's \$25 discount.

[~~§ 2.10.~~ § 2.10.] Purchase of instant tickets.

A. Retailers shall purchase books of tickets directly from the department or through designated depositories.

B. Retailers shall pay for tickets via an electronic funds transfer (EFT) initiated by the department.

1. The department will initiate the EFT after tickets are delivered to the retailer. The schedule will be determined by the director.

2. If, for any reason, an electronic funds transfer is refused, the retailer shall be [~~subject to~~ assessed service charge,] interest and penalty charges as provided for in these regulations.

3. The director may approve another form of payment for designated retailers under conditions to be determined by the director.

4. If the director permits payment by check and if payment on any check is denied, the retailer shall be [~~subject to~~ assessed service charge,] interest and penalty charges as provided for in these regulations.

C. Once tickets are accepted by a retailer, the department will not replace mutilated or damaged tickets, unless specifically authorized by the director.

D. Ticket sales to retailers are final.

1. The Department will not accept returned tickets except as provided for elsewhere in these regulations or with the director's advance approval.

2. The retailer is responsible for lost, stolen or destroyed tickets unless otherwise approved by the director.

[~~§ 2.11.~~ § 2.11.] Retailers' conduct.

A. Retailers shall sell instant tickets at the price fixed by regulation, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash [, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means]. A ticket shall not be purchased with [credit cards,] food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies or with the department's specific approval.

D. Tickets shall be sold during all normal business hours unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. Retailers shall not sell instant tickets after the announced end of an instant game.

G. Retailers shall not break apart ticket packs to sell instant tickets except to sell tickets from the same pack at separate selling stations within the same business establishment.

H. Retailers shall not exchange ticket books or tickets with one another or sell ticket books or tickets to one another.

I. On the back of each instant ticket sold by a retailer, the retailer shall print or stamp the retailer's name,

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address and retailer number. This shall be done in a manner that does not conceal any of the preprinted material.

J. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold and a prize is claimed.

[§ ~~2-12~~ § 2.12.] Returns of unsold tickets.

A. After the date announced by the director as the end of an instant game, each retailer may return all unbroken ticket books and one partly-sold book per cash register on the retailer's premises.

B. Retailers shall return unsold tickets to the department or to the depository which services the retailer for the department within 21 calendar days after the end of each instant game or after any final prize drawing.

C. The department will show the value of each retailer's unsold tickets in the department's accounting records. However, no funds will be returned to the retailer until after the settlement procedures are completed.

[§ ~~2-13~~ § 2.13.] Settlement of accounts after game ends. (See Part [~~IV~~ III] of these regulations for payment of prizes before the game ends.)

Because players may redeem low-tier prize-winning tickets directly through the department instead of through the retailer where the ticket was purchased, and because the retailer already has been granted an allowance for such low-tier winning tickets sold through his establishment, it is necessary to reconcile each retailer's account against returned, unsold tickets after the instant game ends.

A. Within 30 calendar days after an instant game ends, the department will calculate the amount of low-tier prizes paid by the department on winning tickets sold by each retailer.

B. If a retailer's credit for returned unsold tickets is less than the dollar amount of low-tier prizes paid by the department on tickets sold by that retailer, the department will give the retailer written notice of the amount owed to the department by the retailer.

C. If a retailer's credit for returned unsold tickets exceeds the dollar amount of low-tier prizes paid by the department on tickets sold by that retailer, the retailer will receive written notice of the amount owed by the department to the retailer.

D. A retailer shall inform the department of any discrepancies between its records and the department's

records as stated in the notice within seven calendar days after the notice is received.

E. After a discrepancy, if any, is corrected, the department will use electronic funds transfers to collect moneys due to the department or to pay moneys owed to the retailer. However, the director may specify another form of payment to settle these accounts.

[§ ~~2-14~~ § 2.14.] If low-tier prizes paid by department after game account settled. (See Part [~~IV~~ III] of these regulations for payment of prizes before settlement.)

Retailers shall reimburse the department for low-tier prizes paid by the department on tickets sold by the retailer. Reimbursement shall be made even if the retailer's account for that game has been settled.

A. The department will provide the retailer with an invoice and supporting documentation on prizes paid.

B. Any discrepancies between the department's invoice and the retailer's records shall be brought to the department's attention within seven days after the invoice is received.

C. After any discrepancies are resolved, the department shall use an electronic funds transfer to collect the amount owed by the retailer, unless the director specifies another form of payment.

[§ ~~2-15~~ § 2.15.] If larger prizes are paid by retailer after game account settled. (See Part [~~IV~~ III] of these regulations for payment of prizes before settlement.)

The department will reimburse a retailer for prizes of between \$26 and \$599 paid up to 180 days after an instant game ends. Reimbursement will be made even if the retailer's account for that game has been settled.

A. A retailer shall follow all ticket validation and prize payment procedures for the game for which the ticket was sold.

B. The director may require the retailer to submit the ticket and a completed prize claim form before the retailer is reimbursed.

PART [~~IV~~ III.] PAYMENT OF PRIZES FOR INSTANT GAMES.

[§ ~~4-1~~ § 3.1.] Prize winning tickets.

Prize-winning instant tickets are those that have been validated and determined in accordance with the rules of the department to be official prize winners. Criteria and specific rules for winning prizes shall be published for each instant game and available for all players. Final validation and determination of prize winning tickets remains with the department.

State Lottery Department

[~~§ 4.2~~ § 3.2.] Unclaimed prizes.

All instant game winning tickets shall be submitted for payment as prescribed in these regulations within 180 days after the announced end of the game or of the event which caused the ticket to be a winning entry, whichever is later.

A. Any non-low-tier instant game prize which has been won as a result of a drawing but which is not claimed within 180 days after the instant game drawing shall revert to the State Lottery Fund.

B. Any non-low-tier instant game prize which has been won other than by drawing, but which is not claimed within 180 days after the announced end of the instant game shall revert to the State Lottery Fund.

C. Any instant game low-tier prize-winning ticket which has been purchased but which is not claimed within 180 days after the announced end of the instant game shall revert as a bonus commission to the account of the retailer which sold the instant game low-tier prize-winning ticket.

[~~§ 4.3~~ § 3.3.] Using winners' names.

The department shall have the right to use the names of prize winners. Photographs of prize winners may be used with the permission of the winners. No additional consideration shall be paid by the department for this purpose.

[§ 4.4. § 3.4.] No prize paid to people under 18.

No prize shall be claimed by or paid to any individual under 18 years of age.

[~~§ 4.5~~ § 3.5.] Where prizes claimed.

Winners may claim instant game prizes from the retailer from whom the ticket was purchased or the department in the manner specified in these regulations.

[§ 4.6. § 3.6.] Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations or in any other manner which the director may determine.

[§ 4.7. § 3.7.] How prize claim entered.

A prize claim shall be entered in the name of [a single individual] person or legal entity. If the prize claimed is \$600 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations.

B. A claim may be entered in the name of an

organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service.

1. If the department, a retailer or these regulations require that a claim form be filed, the FEIN shall be shown on the claim form.

2. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

3. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

[~~§ 4.8~~ § 3.8.] Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize to the estate of a deceased prize winner, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

[~~§ 4.9~~ § 3.9.] No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

[~~§ 4.10~~ § 3.10.] Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the director and employees of the department, terminates upon payment of a lottery prize.

[~~§ 4.11~~ § 3.11.] Delay of payment allowed.

The director or the board may refrain from making payment of the prize pending a final determination by the director, the board or by a court of competent jurisdiction under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of

State Lottery Department

any ticket presented for payment; or

4. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act.

No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

[~~§ 4.12.~~ § 3.12.] When periodic prize payment may be delayed.

The director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation. Delayed payments shall continue to be paid according to the original payment schedule after the director's decision is given.

[~~§ 4.13.~~ § 3.13.] Ticket is bearer instrument.

A ticket that has been legally issued by a lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

[~~§ 4.14.~~ § 3.14.] Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification and the submission of a prize claim form if one is required, unless otherwise delayed in accordance with these regulations.

[~~§ 4.15.~~ § 3.15.] Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

[~~§ 4.16.~~ § 3.16.] Penalty for counterfeit or altered ticket.

Knowingly presenting a counterfeit or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

[~~§ 4.17.~~ § 3.17.] Lost, stolen, destroyed tickets.

The department is not [~~responsible~~ liable] for lost, stolen or destroyed tickets.

[~~§ 4.18.~~ § 3.18.] Erroneous or mutilated ticket.

The department is not [~~responsible~~ liable] for erroneous or mutilated tickets. The director, at his option, may replace an erroneous or mutilated ticket with an unplayed ticket for the same or a later instant game.

[~~§ 4.19.~~ § 3.19.] Retailer to pay low-tier prizes.

Low-tier prizes (those of \$25 or less in cash or free instant game tickets) shall be paid by the retailer who sold the winning ticket, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

[~~§ 4.20.~~ § 3.20.] Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If payment of a prize by a check presented to a claimant by a retailer is denied for any reason, the retailer is subject to the same [service charge] interest and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for low-tier prizes during all normal business hours.

4. Prize claims shall be paid only at the location specified on the license.

[~~§ 4.21.~~ § 3.21.] Retailer to validate winning ticket.

Before paying a prize claim, the retailer shall validate the winning ticket. The retailer shall follow validation procedures listed in these regulations or obtained from the department.

[~~§ 4.22.~~ § 3.22.] When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize-winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

[~~§ 4.23.~~ § 3.23.] No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims paid in error.

[~~§ 4.24.~~ § 3.24.] Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

[~~§ 4.25.~~ § 3.25.] Prizes of less than \$600.

A retailer may elect to pay instant prizes between \$26

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and \$599 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. If the retailer elects to pay prizes of up to \$599, the following terms and conditions apply:

1. The retailer shall execute an agreement with the department to pay higher prize limits.

2. The retailer shall pay all prizes [of agreed to up to] \$599 or less on validated tickets [presented to that retailer].

3. The retailer shall display special informational material provided by or approved by the department informing the public of the exceptional prize payments available from that retailer.

[4. Nothing in this section shall be construed to prevent the department from accepting an agreement from a retailer to pay prize amounts \$26 more but less than \$599.]

[§ 4.26, § 3.26.] Additional validation requirements.

Before paying any prize between \$26 and \$599, the retailer shall:

1. Require the claimant to fill out a prize claim form;

2. Inspect the ticket to assure that it conforms to each validation criterion listed in these regulations and to any additional criteria the director may specify;

3. Report to the department the ticket number, validation code and validation number of the ticket; and

4. Obtain an authorization number for prize payment from the department.

[§ 4.27, § 3.27.] When prize shall be claimed from the department.

The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall send or present to the department a completed claim form and the signed ticket.

2. If a ticket holder is unable to return to the retailer from which the ticket was purchased, a completed claim form and the signed ticket may be presented or mailed to the department.

3. If the prize amount is over the limit paid by the retailer from which the ticket was purchased, a completed claim form and the signed ticket shall be

presented or mailed to the department.

[§ 4.28, § 3.28.] Prizes of \$5,000 or less.

Prizes of \$5,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

[§ 4.29, § 3.29.] Prizes of more than \$5,000.

Prizes of more than \$5,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

[§ 4.30, § 3.30.] When claims form required.

A claims form for a winning ticket may be obtained from any department office or any lottery sales retailer.

A. Claims forms shall be required to claim any prize from the department's central and regional offices.

B. Claims forms shall be required to claim prizes of between \$26 and \$599 from lottery retailers.

C. The department or any lottery retailer may [, in their discretion,] require claims forms to claim prizes of [\$100 \$25] or less from a lottery retailer.

[§ 4.31, § 3.31.] Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

A. If the claim is not valid, the department will notify the ticket holder promptly.

B. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

C. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

[§ 4.32, § 3.32.] Withholding, notification of prize payments.

A. When paying any prize of \$600 or more, the department shall:

1. File the appropriate income reporting form(s) with the state Department of Taxation and the federal Internal Revenue Service; and

State Lottery Department

2. Withhold any moneys due for delinquent debts listed with the Department of Taxation's set-off debt collection program.

[~~§ 4.32.~~ § 3.33.] Grand prize event.

If an instant game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director.

2. Participation in the drawing(s) shall be limited to those tickets which are actually received and validated by the department on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent instant game. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each instant game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

[~~§ 4.34.~~ § 3.34.] Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

[~~§ 4.35.~~ § 3.35.] Valid ticket described.

To be valid, a Virginia lottery game ticket shall meet all of the validation requirements listed here:

1. The ticket shall have been issued by the department in an authorized manner.

2. The ticket shall not be altered, unreadable, reconstructed, or tampered with in any way.

3. The ticket shall not be counterfeit in whole or in part.

4. The ticket shall not have been stolen or appear on any list of void or omitted tickets on file with the department.

5. The ticket shall be complete and not blank or partly blank, miscut, misregistered, defective, or printed or produced in error.

6. The ticket shall have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one ticket number, exactly one validation

code, and exactly one validation number. These items shall be present in their entirety, legible, right side up, and not reversed in any manner.

7. The validation number of an apparent winning ticket shall appear on the department's official list of validation numbers of winning tickets provided by the vendor of the instant tickets. A ticket with that validation number shall not have previously been paid.

8. The ticket shall pass all additional confidential validation requirements set by the department.

[~~§ 4.36.~~ § 3.36.] Invalid ticket.

An instant ticket which does not pass all the validation requirements listed [~~here~~ in these regulations] and any validation requirements contained in the rules for its instant game is invalid. An invalid ticket is not eligible for any prize.

[~~§ 4.37.~~ § 3.37.] Replacement of ticket.

The director may replace an invalid ticket with an unplayed ticket from the same or another instant game. If a defective ticket is purchased, the department's only liability or responsibility shall be to replace the defective ticket with an unplayed ticket from the same or another instant game or to refund the purchase price, at the department's option.

[~~§ 4.38.~~ § 3.38.] When ticket is partially mutilated or not intact.

If an instant ticket is partially mutilated or if the ticket is not intact but can still be validated by other validation tests, the director may pay the prize for that ticket.

[~~§ 4.39.~~ § 3.39.] Director's decision final.

All decisions of the director regarding ticket validation shall be final.

[~~§ 4.40.~~ § 3.40.] When prize payable over time.

Unless the rules for any specific instant game provide otherwise, any cash prize of \$500,000 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts each year until the total payments equal the prize amount.

[~~§ 4.41.~~ § 3.41.] Rounding total prize payment.

When a prize or share is to be paid over time, [except for the first payment,] the director may round the actual amount of the prize or share [to the nearest \$1,000] to facilitate purchase of an appropriate funding mechanism.

[~~§ 4.42.~~ § 3.42.] When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

<p>RETAILER LICENSE APPLICATION</p> Virginia Lottery P.O. Box 4689 Richmond, Virginia 23220 Processing Fee: \$25.00 (non-refundable) Make check payable to: Virginia Lottery	<p style="text-align: center;">DO NOT WRITE IN THIS BLOCK</p> Date Received: _____ Control # _____ Security: _____ License # _____ Final Action: _____ Final Action Date: _____									
NOTE: Please print or type. Read Applicant Instructions before completing application. Attach additional sheets if necessary for any questions.										
TYPE OF APPLICATION										
1. INDICATE TYPE OF APPLICATION: <input type="checkbox"/> Single Location <input type="checkbox"/> Multiple Locations List main company address below, and attach a retail location form for each retail location that will be selling tickets. a. Business Name: _____ Phone Number: () _____ b. Street Address: _____ City/County: _____ State: _____ Zip: _____ c. Mailing Address: _____ City/Town: _____ State: _____ Zip: _____										
BUSINESS/ORGANIZATION INFORMATION										
2. INDICATE TYPE OF BUSINESS/ORGANIZATION. a. <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership or Joint Venture <input type="checkbox"/> Trust <input type="checkbox"/> Corporation or Subsidiary <input type="checkbox"/> Association, Fraternal or Civic (including Non-Profit) <input type="checkbox"/> Governmental List below the names of individuals for your type of business as defined in the instruction booklet. b. <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>Name (Last name first)</th> <th>Name (Last name first)</th> <th>Name (Last name first)</th> </tr> <tr> <td>1. _____</td> <td>2. _____</td> <td>3. _____</td> </tr> <tr> <td>4. _____</td> <td>5. _____</td> <td>6. _____</td> </tr> </table> c. FOR EACH NAME LISTED ABOVE ATTACH A PERSONAL DATA FORM. If there are more names than the spaces above, please list them on a separate sheet and also attach a Personal Data Form for each of them. 3. HAS BUSINESS/ORGANIZATION EVER BEEN CONVICTED OF A GAMBLING RELATED OFFENSE OR OTHER CRIME? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details on a separate sheet. 4. ATTACH LIST OF OTHER CURRENT STATE OR LOCAL BUSINESS LICENSES HELD. Include License Number. 5. HAS BUSINESS OPERATED UNDER A DIFFERENT NAME? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide details on separate sheet.		Name (Last name first)	Name (Last name first)	Name (Last name first)	1. _____	2. _____	3. _____	4. _____	5. _____	6. _____
Name (Last name first)	Name (Last name first)	Name (Last name first)								
1. _____	2. _____	3. _____								
4. _____	5. _____	6. _____								
FINANCIAL INFORMATION										
6. BANK (List primary business bank) <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>Bank Name</th> <th>Account #</th> </tr> <tr> <td>_____</td> <td>_____</td> </tr> <tr> <th>Bank Address</th> <th></th> </tr> <tr> <td>_____</td> <td>_____</td> </tr> </table> 7. ARE YOU CURRENTLY BONDED? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list bond company, type & limits on separate sheet. 8. FEDERAL EMPLOYER I.D. # _____ VIRGINIA TAX I.D. # _____ 9. ARE ALL STATE TAXES CURRENT? <input type="checkbox"/> Yes <input type="checkbox"/> No		Bank Name	Account #	_____	_____	Bank Address		_____	_____	
Bank Name	Account #									
_____	_____									
Bank Address										
_____	_____									

10. DISCLOSURE STATEMENT (Read Carefully)

I, the undersigned do hereby certify that I have not knowingly made a false statement of material fact on this application and that I have read and understand the License Terms and Conditions enclosed with this Retailer License Application. If the Lottery issues a license pursuant to this application, the State Lottery Department and I will be bound by all the requirements contained in the License Terms and Conditions. I understand that untruthful or misleading answers are cause for denial of the application and/or termination of any lottery license. I authorize the Virginia State Lottery Department and/or the Department of State Police to investigate any or all matters set forth in this Retailer License Application pursuant to §581-4009 of the State Lottery Law including but not limited to financial records, financial sources, state tax records and criminal history. I understand that further information may be requested of me in regard to this investigation. I waive any rights or causes of action, based upon disclosure of otherwise confidential information, that I may have against the Virginia State Lottery, the Virginia State Police, and/or any other individual or agency disclosing or releasing such information to the Virginia State Lottery or the Virginia State Police.

APPLICANT/AUTHORIZED AGENT OF BUSINESS/ORGANIZATION	TYPE OR PRINT NAME	TITLE
_____	_____	_____
_____	SIGNATURE	DATE
_____	_____	_____

ROUTING INSTRUCTIONS: White Copy-Agency Yellow Copy-Security Pink Copy-Marketing Gold Copy-Applicant

<p>PERSONAL DATA FORM</p> Virginia Lottery P.O. Box 4689 Richmond, Virginia 23220 Note: Submit Personal Data Form for each individual listed in Question 2b of the Retailer License Application.	<p style="text-align: center;">DO NOT WRITE IN THIS BLOCK</p> Date Received: _____ Control # _____ Security Recommendation: _____ License # _____ Accept <input type="checkbox"/> Not Accept <input type="checkbox"/> Date: _____ By: _____																						
NOTE: Please print or type. Read Applicant Instructions before completing Personal Data Form. Attach additional sheets if needed.																							
1. a. Business Name: _____ Phone () _____ (As listed on retailer license application) b. Street Address: _____ City/County _____ State _____ Zip _____ c. Mailing Address: _____ City/Town _____ State _____ Zip _____																							
2. YOUR NAME DATE OF BIRTH <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>Last Name</th> <th>First</th> <th>Middle</th> <th>Sex</th> <th>Race</th> <th>Month</th> <th>Day</th> <th>Year</th> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>Place of Birth - County or City</th> <th>Place of Birth - State or Country</th> <th>Social Security Number</th> </tr> <tr> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </table>		Last Name	First	Middle	Sex	Race	Month	Day	Year	_____	_____	_____	_____	_____	_____	_____	_____	Place of Birth - County or City	Place of Birth - State or Country	Social Security Number	_____	_____	_____
Last Name	First	Middle	Sex	Race	Month	Day	Year																
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Place of Birth - County or City	Place of Birth - State or Country	Social Security Number																					
_____	_____	_____																					
3. a. Current Street Address: _____ City/County _____ State _____ Zip _____ Home Phone () _____ b. Have you been a permanent Virginia resident for the past year? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, attach a list of other states in which you have resided.																							
4. YOUR RELATIONSHIP <input type="checkbox"/> Owner <input type="checkbox"/> Principal <input type="checkbox"/> Officer/Board Member <input type="checkbox"/> TO BUSINESS <input type="checkbox"/> Partner <input type="checkbox"/> Stockholder (10% or more) <input type="checkbox"/> Other _____																							
5. List two credit references: 1. _____ 2. _____																							
6. Current Bank _____ Account # _____ Bank Address _____ City/Town _____ State _____ Zip _____ (If more than one account, attach list of all account numbers)																							
7. If any of the following questions are answered yes, please attach a separate sheet with complete details. a. Have you ever been convicted of a felony, illegal gambling, fraud or had any business license revoked or suspended in Virginia or any other state? <input type="checkbox"/> Yes <input type="checkbox"/> No b. Ever filed for bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No																							

8. DISCLOSURE STATEMENT (Read Carefully)

I, the undersigned do hereby certify that I have not knowingly made a false statement of material fact on this application and that I have read and understand the License Terms and Conditions enclosed with this Retailer License Application. If the Lottery issues a license pursuant to this application, the State Lottery Department and I will be bound by all the requirements contained in the License Terms and Conditions. I understand that untruthful or misleading answers are cause for denial of the application and/or termination of any lottery license. I authorize the Virginia State Lottery Department and/or the Department of State Police to investigate any or all matters set forth in this Retailer License Application pursuant to §581-4009 of the State Lottery Law including but not limited to financial records, financial sources, state tax records and criminal history. I understand that further information may be requested of me in regard to this investigation. I waive any rights or causes of action, based upon disclosure of otherwise confidential information, that I may have against the Virginia State Lottery, the Virginia State Police and/or any other individual or agency disclosing or releasing such information to the Virginia State Lottery or the Virginia State Police.

TYPE OR PRINT NAME	TITLE
_____	_____
SIGNATURE	DATE
_____	_____

NOTARY PUBLIC

State of _____ County/City of _____


To wit, this day _____ (signature of person named in record) personally appeared before me in the County/City aforesaid, and under oath authorized the Virginia State Police to search the files of the Central Criminal Records Exchange for any criminal history record and report the results of such search to the Virginia State Lottery Department.

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

My commission expires _____, 19 _____

Notary Public

NOTE: This form may be copied.

RETAILER LOCATION FORM  Virginia Lottery P.O. Box 4689 Richmond, Virginia 23220 Please include this form when returning the Retailer License Application.	DO NOT WRITE IN THIS BLOCK	
	Date Received:	Control #
Preliminary Evaluation:	License #	Final Action Date:

NOTE: This form must be filled out for each location selling Lottery Tickets.

STORE INFORMATION

Store Name: _____ Business Name (if Different): _____
 Street Address: _____ City/County: _____ State: _____ Zip: _____
 Owner or Authorized Agent: _____
 Is the proprietor on premises daily? Yes No Business Telephone: () _____
 How long has business been in operation at this location? Years _____ Months _____
 Number of cash registers _____ Average weekly in-store customer count _____
 Average weekly cash register receipts \$ _____

AUTHORIZED CONTACT PERSON(S)

Please list contact persons at this location authorized to receive and sign for Lottery Tickets starting with primary contact person then alternatives. Please type or print.

PRIMARY _____ ALTERNATE _____
 ALTERNATE _____ ALTERNATE _____
 ALTERNATE _____ ALTERNATE _____

TYPE OF BUSINESS

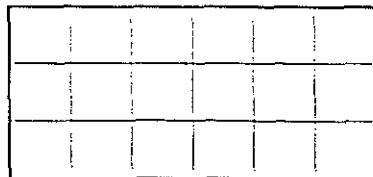
- Grocery/Supermarket Convenience Restaurant Specialty/Non-Grocery
 Drug/Variety Auto/Gas Service Bar/Tavern Other (Specify) _____

BUSINESS HOURS

Day of Week	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Opening Time							
Closing Time							

Total Weekly Hours _____

STREET MAP



Indicate Retailer Location.
 Draw & Identify Closest Intersection.

You May Include Additional Comments Below
 To Support Your Selection as a Lottery Retailer.

AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS

DATE _____

Retailer Name (As Shown on Bank Account)	Retailer Lottery I.D.
--	-----------------------

I (we) hereby authorize the VIRGINIA STATE LOTTERY DEPARTMENT, hereinafter called LOTTERY, to initiate debit and credit entries to my (our) Checking account or Savings account indicated below. It is agreed that these withdrawals, deposits, and adjustments may be made by the Electronic Fund Transfer System --EFT) under the rules of the Virginia State Lottery and the National and Local Automated Clearing House (ACH) Associations.


Depository Name		
Branch		
Address		
City	State	Zip
Bank Account Number		

Please staple to the original form a Check marked in ink "VOID" (Checking account) or a Deposit Slip (Savings account) from your financial institution and account.


This authority is to remain in full force and effect until LOTTERY and DEPOSITORY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford LOTTERY and DEPOSITORY a reasonable time to act on it.

Retailer Address		
City	State	Zip
EFT Authorization Name	Signature	
EFT Authorization Name	Signature	

BANK FOR LOTTERY USE ONLY

TRANSIT ROUTING NUMBER	ACCOUNT NUMBER INFORMATION
 TRANSIT ABA	

A-1 WHITE: "LOTTERY COPY" YELLOW: "BANK COPY" PINK: "RETAILER COPY"

VIRGINIA LOTTERY		LICENSED RETAILER
BUSINESS ADDRESS		
EXPIRES	RETAILER NO.	
BY AUTHORITY OF THE STATE LOTTERY LAW OF 1987, AS AMENDED, THE ABOVE-NAMED RETAILER IS DULY AUTHORIZED AS INDICATED TO SELL LOTTERY TICKETS IN VIRGINIA. INSTANT GAME TICKETS ONLY		
THIS CERTIFICATE MUST BE PROMINENTLY DISPLAYED AT ALL TIMES		_____ KENNETH W. THORSON DIRECTOR, VIRGINIA LOTTERY NON-TRANSFERABLE
REV 8/88		

VIRGINIA LOTTERY P.O. BOX 4689 RICHMOND, VIRGINIA 23220	SHIPPER NO. PACKAGE ID	INVOICE	PAGE INVOICE NUMBER
DELIVER TO:	CHAIN NO.	RETAILER NO.	INVOICE DATE
	LSR #	LOTTERY SALES REP NAME	
	DAY	STOP #	LOCATION CONTACT
DELIVERED BY (SIGNATURE)	DATE	RECEIVED BY (SIGNATURE)	DATE

VIRGINIA LOTTERY	EXPIRES	AUTHORIZED RETAILER
BUSINESS NAME		
RETAILER NO.		
KENNETH W. THORSON DIRECTOR, VIRGINIA LOTTERY NON-TRANSFERABLE		
REV 7/88 MUST BE PRESENTED WHEN ACCEPTING TICKETS		

1. DO NOT DESTROY CERTIFICATE OR IDENTIFICATION CARD.
2. Carefully detach along perforated lines.
3. Display certificate in a **PROMINENT PLACE** in your business location.
4. Identification card **MUST** be presented when purchasing or accepting tickets.
5. If retailer authorization is suspended, revoked or voluntarily discontinued, return certificate identification card, and stamp to the Lottery.

WHITE—LOTTERY HEADQUARTERS YELLOW—REGIONAL OFFICE GOLDENROD—CHAIN HQ. PINK—LOTTERY RETAILER

**VIRGINIA LOTTERY
STATEMENT**

P.O. Box 4689
Richmond, Virginia 23220
(804) 367-9130 ext. 37

REFERENCE	DATE	GAME	DESCRIPTION	AMOUNT



Virginia Lottery Department

Agreement to Pay Mid-Tier Prizes

This agreement is entered into between _____ and
the Virginia Lottery Department. retailer

Payment of Mid-Tier Prizes is a retailer benefit. It provides extraordinary customer service, generates new customer visits and promotes customer loyalty.

Retailer agrees to pay all instant lottery validated winning tickets of \$100.00 or less. The retailer agrees to pay prizes of up to the specified limit during the hours of 8:00 a.m. to 8:00 p.m., or as otherwise specified by the Lottery Director.

In consideration of this agreement by retailer, the Virginia Lottery agrees to supply special display materials, at no charge, to participating retailers paying Mid-Tier Prizes. Those materials will identify your location as a special lottery payment center and retailer's signature on this agreement requires retailer to display the materials provided in retailer's store.

This agreement shall remain in effect, unless terminated in writing by the retailer or the Virginia Lottery Department.

Retailer

Virginia Lottery Department

Name

Name

Title

Title

Date

Date

Note: Both copies must be signed by retailer and Lottery representative
White copy for retailer
Canary copy for agency



RETAILER ADVERTISING APPROVAL FORM

Please read the guidelines for advertising approval before completing this form. Retailer lottery advertising is subject to the restrictions of the Lottery Law, specifically, "...no funds shall be expended for the primary purpose of inducing persons to participate in the lottery."

Business Name _____ Retailer I.D.# _____

Address _____ Retailer Contact _____

City, State, Zip _____

Description of Advertising (attach copy of ad if possible)

Point of Sale _____ Interior sign
counter card
window sign
door sign
other (describe)

Newspaper ad
Date(s) ad will appear _____
Headline _____
Words used _____

Radio/Television ad
Date(s) ad will appear _____
Tagline _____
Words used _____

Other
Please describe (include dates of usage and exact wording) _____

Advertising approved Yes No Not sure

If not approved or if not sure, indicate reason. _____

Lottery employee signature _____ Date _____

Retailer contact signature _____ Date _____

White copy to retailer, yellow copy to LSR/CAR, pink copy to Lottery

WINNER CLAIM FORM - FOR PRIZES OF MORE THAN \$25
MAIL TO: Virginia Lottery, Box C-32100, Richmond, VA, 23261-2100
INSTRUCTIONS TO CLAIMANT
1. GAME NO. Black 2-digit number from front of ticket.
2. PACK NO. Black 10-digit number from front of ticket.
3. VALIDATION NO. 12 digit number from front of ticket.
4. PRIZE AMOUNT \$ 00
5. NAME LAST NAME - PLEASE PRINT FIRST NAME MI
6. ADDRESS
7. CITY 8. STATE
9. ZIP CODE 10. PHONE NUMBER
11. COUNTRY CODE 12. SOCIAL SECURITY NO. M F
13. U.S. CITIZEN RESIDENT ALIEN NON-RESIDENT ALIEN 14. SEX OR
15. DATE PURCHASED (MM-DD-YY) 16. DATE OF BIRTH (MM-DD-YY)
OPTIONAL INFORMATION
17. HOW OFTEN DO YOU PURCHASE INSTANT TICKETS (CHECK ONE)
18. NUMBER OF TICKETS PURCHASED AT ONE TIME? (CIRCLE ONE)
UNDER PENALTY OF PERJURY, I DECLARE THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER CORRECTLY IDENTIFY ME AS THE RECIPIENT OF THIS PAYMENT. I UNDERSTAND THAT ANY PERSON WHO, WITH INTENT TO DEFRAUD, FALSELY MAKES, FORGES OR COUNTERFEITS A LOTTERY TICKET IS IN VIOLATION OF STATE LAW. I ALSO AUTHORIZE THE VIRGINIA LOTTERY TO USE MY NAME AND PHOTOGRAPH FOR ANY REASONABLE PUBLICITY IT CONSIDERS DESIRABLE.
CLAIMANT'S SIGNATURE DATE

Virginia Register of Regulations



RETAILER GUIDELINES FOR USING ADVERTISING APPROVAL FORM

Retailers who want to advertise that they sell lottery tickets need to be aware of certain advertising restrictions. The lottery law contains a provision that limits the lottery advertising to "...reasonably informing the public concerning..." at least one of the following:

1. type(s) of lotteries to be conducted;
2. price of tickets or shares in the lottery;
3. number and size of prizes and the odds of winning prizes;
4. way in which winning tickets or shares are selected;
5. way in which prizes are paid to winners;
6. frequency of drawings;
7. type(s) of locations at which tickets or shares may be sold; and
8. disposition of lottery revenues to the General Fund.

Retailers may list the names of winners, and the amount they won, in lottery advertising. (Provided, of course, that those winners have given permission to release their names.) This listing of winners is entirely voluntary, for the retailer as well as for the winners themselves.

The law further states that "...no funds shall be expended for the primary purpose of inducing persons to participate in the lottery."

All print ads (newspapers, magazines, free shoppers, flyers, etc.), all radio and television commercials, and all signs (interior and exterior) must be approved by the Virginia Lottery BEFORE they appear. Each ad or commercial within a continuing series must have separate approval. (**IMPORTANT:** All advertising materials you receive from the Virginia Lottery or your Lottery Sales Representative have been approved and may be used immediately. If your vendors--TV, radio, newspapers, printers, etc.--need written proof of ad approval, you need a form. Otherwise, completion of a form is at the discretion of the Lottery Sales Representative or Corporate Account Representative. For obvious cases, verbal approvals are acceptable and would require no form.

Lottery Sales Representatives and Corporate Account Representatives are responsible for the review of all retailer advertising. After each review, they must fill out a retailer advertising approval form in this manner:

1. Indicate the business name, address, retailer identification number, and primary retailer contact.
2. Write a brief description of the advertising, including all words used. Attach a copy if one is available.
3. Indicate whether or not the advertising should be approved by checking "yes" or "no" or "not sure."

Here are some general guidelines they will follow to determine if your proposed advertising complies with all restrictions:

1. Does the retailer advertising include factual statements that inform the public concerning at least one of the eight points listed? This is mandatory: All advertising must mention at least one of these eight points.
2. Does the retailer advertising mention the odds of winning? This is permissible, but is not mandatory. Any mention of the odds of winning must be a truthful, factual representation of the odds of winning, and it must not overstate the odds of winning.
3. Does the retailer advertising directly address the public with a statement using the word "you" such as "You can win \$5,000 instantly"? This is not permissible and does not comply with the law restricting lottery advertising. A statement that is too direct (such as "You can win \$5,000 instantly") will be considered an inducement to participate in the lottery, and the advertisement could not be approved.

Lottery Sales Representatives and Corporate Account Representatives who review retailer advertising for compliance with lottery law will use the criteria set forth here. They also will check advertising produced by the lottery for additional guidelines. After reviewing it in this context, if they still cannot determine whether or not the retailer advertising fits within the restrictions set forth in the lottery law, then they will send an example of the retailer advertising, with the retailer approval form marked "Not Sure," to the Director of Marketing of the Virginia Lottery for a ruling.

If they approve your advertising, completion of the form is at their discretion. For obvious cases, verbal approval is acceptable and no form is necessary.

If they cannot approve the retailer advertising, they will check the box marked "No" on the approval form and indicate the reason they did not approve it. They will sign and date the approval form, have the retailer contact sign and date the form, and distribute it--one to you, one for their files, and one to the Director of Marketing.

If your retailer advertising is not approved, the Sales Rep or Corporate Account Rep will help you revise the advertising so that it falls within the lottery's restrictions. After you make changes that satisfy all advertising restrictions, they will fill out another retailer advertising approval form (describe the advertising, check "Yes," sign the form, have the retailer sign and date the form, and distribute as usual). Lottery retailer advertising is governed by the same restrictions as lottery advertising; all advertising submitted by a retailer must be reviewed and evaluated.

Still have questions about retailer advertising approval? Please direct all concerns to the Director of Marketing, Virginia Lottery, 2201 W. Broad St., Richmond, VA 23220.

GOVERNOR

DEPARTMENT OF WASTE MANAGEMENT

Title of Regulation: **VR 672-10-1. Virginia Hazardous Waste Management Regulations.**

Governor's Comment:

I have no objection to the regulations as presented.

/s/ Gerald L. Baliles
Date: September 23, 1988

* * * * *

Title of Regulation: **VR 672-20-10. Solid Waste Management Regulations.**

Governor's Comment:

I have no objection to the regulations as proposed.

/s/ Gerald L. Baliles
Date: September 23, 1988

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-03. Toxics Management Regulation.**

Governor's Comment:

After close scrutiny of these regulations and extended hearings for public consideration, the State Water Control Board has developed effective procedures to test for and to eliminate toxic discharges into Virginia's public waters. These regulations are necessary for the protection of the Commonwealth's water quality and I approve their promulgation.

/s/ Gerald L. Baliles
Date: September 23, 1988

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Chesapeake Bay Local Assistance Board intends to consider promulgating regulations entitled: **Public Participation Procedures for the Formation and Promulgation of Regulations**. The purpose of the proposed regulation is to establish procedures consistent with the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia), for public involvement in the development or modification of the board regulations. These procedures are intended to replace emergency public participation procedures previously adopted by the board and approved by the Governor.

Statutory Authority: § 10.1-2103 of the Code of Virginia.

Written comments may be submitted until November 10, 1988.

Contact: Scott Crafton, Regulatory Assistance Coordinator, Chesapeake Bay Local Assistance Department, 701 Eighth Street Office Bldg., Richmond, Va. 23219, telephone (804) 225-3440 or SCATS 225-3440

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Chesapeake Bay Local Assistance Board intends to consider promulgating regulations entitled: (i) **Chesapeake Bay Preservation Area Designation Criteria** and (ii) **Chesapeake Bay Preservation Area Management Criteria**. The purpose of the proposed regulation is to provide criteria, consistent with the requirements of the Chesapeake Bay Preservation Act, for local governments to use to protect the water quality of the bay and its tributaries from degradation that may result from the use and development of land, especially those activities near the bay and its tributaries.

Statutory Authority: § 10.1-2107 of the Code of Virginia.

Written comments may be submitted until December 9, 1988.

Contact: Scott Crafton, Regulatory Assistance Coordinator, Chesapeake Bay Local Assistance Department, 701 Eighth Street Office Bldg., Richmond, Va. 23219, telephone (804) 225-3440 or SCATS 225-3440

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Education intends to consider amending regulations entitled: **VR 270-02-0000. Certification Regulations for Teachers**. Amendments to the regulation is in response to federal legislation (P.L. 99-457) requiring that personnel serving special education students meet the highest standard in the Commonwealth. Accordingly, the certification regulations for speech-language pathologists are being revised.

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

Written comments may be submitted until December 31, 1988.

Contact: Dr. Lissa Power Cluver, Associate Director, Special Education Programs, Department of Education, P. O. Box 6Q, Richmond, Va. 23216-2060, telephone (804) 225-2873

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Education intends to consider amending regulations entitled: **Requirements for Renewing a (Virginia Teaching) Certificate**. The purpose of the proposed action is to amend the recertification requirements for all certified educational personnel by changing the requirement for certificate renewal from 90 clock hours of professional development work (three semester hours college credit and three semester hours of college credit or noncredit) to the accrual of 180 professional development points as outlined in the proposed Individualized Recertification Point System for certified personnel.

Statutory Authority: §§ 22.1-298 and 22.1-299 of the Code of Virginia.

Written comments may be submitted until November 15, 1988.

Contact: Dr. Thomas A. Elliott, Administrator Director, Department of Education, P. O. Box 6Q, Richmond, Va. 23216-2060, telephone (804) 225-2094 or SCATS 225-2094

General Notices/Errata

VIRGINIA STATE BOARD OF OPTICIANS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Board of Opticians intends to consider amending regulations entitled: **VR 505-01-1. Rules and Regulations of the Board of Opticians.** The purpose of the proposed action is to solicit public comment on the existing regulation as to its effectiveness, efficiency, clarity and cost of compliance and to address visual screening and the use of auto refractors and similar devices in accordance with its Public Participation Guidelines and Chapter 14.1 of Title 54 of the Code of Virginia.

Statutory Authority: § 54-1.28(5) of the Code of Virginia.

Written comments may be submitted until November 11, 1988.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

VIRGINIA REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Real Estate Board intends to consider amending regulations entitled: **Virginia Real Estate Board Regulations, Real Estate License Laws and Fair Housing Laws.** The Virginia Real Estate Board proposes to undertake an annual review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary.

Statutory Authority: § 54-740 of the Code of Virginia.

Written comments may be submitted until November 1, 1988.

Contact: Joan L. White, Assistant Director, Virginia Real Estate Board, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8552, toll-free 1-800-552-3016 or SCATS 367-8552

BOARD FOR RIGHTS OF THE DISABLED

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Rights of the Disabled intends to consider promulgating regulations entitled: **Nondiscrimination Under State Grants and Programs.** The purpose of the proposed regulation is to

assure nondiscrimination on the basis of disability under state grants and programs.

Statutory Authority: § 51.01-33 (A)(7) of the Code of Virginia.

Written comments may be submitted until October 31, 1988.

Contact: Bryan K. Lacy, Systems Advocacy Attorney, Department for Rights of the Disabled, 101 N. 14th St., 17th Fl., Richmond, Va. 23219, telephone (804) 225-2042, toll-free 1-800-552-3962 or SCATS 225-2042

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Social Services intends to consider promulgating regulations entitled: **Foster Care Policy.** The purpose of the proposed action is to revise and amend the foster care policy in order to promote statewide consistency in practice and service delivery and to better serve the interest of children in foster care and their families.

Statutory Authority: § 63.1-55 of the Code of Virginia.

Written comments may be submitted until October 31, 1988.

Contact: Pamela T. Fitzgerald, Child Welfare Supervisor, Department of Social Services, 8007 Discovery Dr., Nelson Bldg., Richmond, Va. 23229, telephone (804) 662-9081 or SCATS 662-9081

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Social Services intends to consider amending regulations entitled: **Mandatory Telephone Standard in the Food Stamp Program.** The purpose of the proposed action is to reduce the administrative burden on local agencies and on clients by mandating the use of a state computed telephone standard for food stamp households entitled to use it.

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

Written comments may be submitted until October 26, 1988, to Guy Lusk, Division of Benefit Programs, 8007 Discovery Dr., Richmond, Virginia 23229.

Contact: Burt Richman, Food Stamp Program Supervisor, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229, telephone (804) 662-9046 or SCATS 662-9046

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to comply with the requirements of the Clean Water Act which requires the adoption of water quality standards for § 307(a) toxic pollutants (including the parameter ammonia). The specific sections of the Water Quality Standards being considered for amendment are VR 680-21-01 through 680-21-03 and VR 680-21-06.

The proposed changes have the potential to impact every VPDES permit holder in the Commonwealth of Virginia. The range of impact varies from one of additional monitoring costs through upgrades to existing wastewater treatment facilities.

Applicable laws and regulations include the State Water Control Law, VR 680-14-01 (Permit Regulation), and §§ 303(c)(2)(B) and 307(a) of the Clean Water Act.

Further information, including a fact sheet on the proposal and the applicable laws and regulations, may also be reviewed at the board's regional offices. Addresses and telephone numbers for the offices are:

Piedmont Regional Office, 2201 West Broad Street, Richmond, Virginia 23230, (804) 367-1006

Southwest Regional Office Intersection Route 19 and 825, Abingdon, Virginia 24210, (703) 628-5183

Tidewater Regional Office, 287 Pembroke II, Virginia Beach, Virginia, (804) 363-3913

Valley Regional Office, 116 North Main Street, Bridgewater, Virginia 22812, (703) 828-2595

West Central Regional Office, 5312 Peters Creek Road, N.W., Roanoke, Virginia 24019, (703) 982-7432

Northern Regional Office, 5515 Cherokee Avenue, Suite 404, Alexandria, Virginia 22312, (703) 750-9111

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m., December 1, 1988, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230.

Contact: Mr. Alan J. Anthony, Office of Environmental Research and Standards, State Water Control Board, P. O. Box 11143, Richmond, Va. 23230, telephone (804) 367-0791 or SCATS 367-0791

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to revise VR 680-21-04, Groundwater Standards including the Antidegradation Policy to ensure complete and uniform compliance with the standards for the protection of human health and the environment.

The amendments may revise the current policy and standards and should greatly enhance understanding of the standard thereby enabling more complete and uniform compliance. The changes are likely to have an impact on holders of VPDES and VPA permits. However, the exact impact is not known at this time.

Applicable laws and regulations include the State Water Control Law; VR 680-14-01, Permit Regulation; and § 303 of the Clean Water Act.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until November 29, 1988, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230.

Contact: Russell P. Ellison, Office of Water Resources Management, State Water Control Board, P. O. Box 11143, Richmond, Va. 23230, telephone (804) 367-6350 or SCATS 367-6350

GENERAL NOTICES

DEPARTMENT FOR THE AGING

Notice of Intent to Develop State Application for Funding under Title III of the Older Americans Act, As Amended

Notice is hereby given that the Department for the Aging will develop an application for funding pursuant to Title III of the Older Americans Act, as amended. The application will be for a two-, three-, or four-year period to be determined by the department. The department anticipates submitting the application to the federal Administration on Aging in August, 1989. Prior to submission, there will be a public comment period, including at least one public hearing.

The application will:

1. Identify the Virginia Department for the Aging as the sole state agency which has been designated to develop and administer Title III programs in Virginia;
2. Identify the geographic boundaries of each Planning

General Notices/Errata

and Service Area in Virginia and the Area Agency on Aging designated for each Planning and Service Area;

3. Include a plan developed in accordance with guidelines issued by the Commissioner of the Administration on Aging for the distribution and proposed use of Title III funds within Virginia;

4. Set forth statewide program objectives to implement the requirements of Title III; and

5. Provide prior federal fiscal year information related to low-income minority and rural older persons in Virginia.

Statutory Authority: § 2.1-373 of the Code of Virginia.

Written comments may be submitted until March 31, 1989.

Contact: J. James Cotter, Director, Division of Program Development and Management, Virginia Department for the Aging, 700 E. Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271 or toll-free in Virginia 1-800-552-4464/TDD ☎

COUNCIL ON THE ENVIRONMENT

Public Notice

This is PUBLIC NOTICE of the intention of the Council on the Environment to include Virginia's 1987 and 1988 legislative changes to the Coastal Primary Sand Dune Protection Act, State 401 Certification under the Federal Clean Water Act, the State's tributyltin (TBT) regulations, and the Chesapeake Bay Initiatives in Virginia's Coastal Resources Management Program.

Virginia's Coastal Resources Management Program (VCRMP) was approved under the Federal Coastal Zone Management Act in October 1986. The program is a coordination of existing state regulations and policies and a networking of state agencies to provide for environmentally sound development and resource conservation in Virginia's Tidewater area described in Executive Order 13 as all those counties and localities which, in whole or in part, lie east of the "fall line." The Council on the Environment, under the Secretary of Natural Resources, manages the program.

These inclusions in the VCRMP are routine program implementations (RPIs) rather than program amendments because they constitute further detailing of the VCRMP rather than substantial changes to the enforceable and advisory policies of the program.

These RPIs are described briefly below:

RPI No. 1 - The inclusion of the 1987 and 1988 legislative changes to the Coastal Primary Sand Dune Protection Act. The Act, which was amended in 1985

so as not to prohibit erosion control in Sandbridge, was again amended in 1987 in order to more clearly delineate the Sandbridge area and to ensure that the rights of adjacent property owners were not infringed upon. The 1988 amendment deleted the requirement that adjacent property owners shall indicate by written agreement their consent to the proposed construction.

RPI No. 2 - The addition of State Water Control Board Section 401 Certification of applications for Section 404 permits to the U.S. Army Corps of Engineers. Section 401 Certification and Section 404 permitting are part of the Federal Clean Water Act of 1977. The Virginia State Water Control Board assumed the responsibility for Section 401 Certification in 1977 and authority is described in Virginia State Code Section 62.1-44.2 et seq. Prior to approval of the Clean Water Act, the Water Board issued Certifications of Reasonable Assurance.

RPI No. 3 - The inclusion of state regulations and policies regarding the use of tributyltin (TBT) in the Virginia Pesticide Use and Application Act and in the State Water Control Board's Water Quality Standards. TBT is a pesticide used in marine anti-foulant paint. It is extremely toxic to many marine species and its use is detrimental to the aquatic ecology of Virginia's waters. The Departments of Game and Inland Fisheries, Agriculture and Consumer Services, Virginia Marine Resources Commission and the State Water Control Board share the responsibility of enforcing the regulations.

RPI No. 4 - The inclusion of the programs and policies of Virginia's Chesapeake Bay Initiatives in the VCRMP. These initiatives are a comprehensive set of projects and programs planned and implemented as Virginia's Chesapeake Bay Program by various state agencies with interstate and intrastate coordination by the Council on the Environment under the Secretary of Natural Resources.

Public comment on these changes, including, but not limited to, their content and inclusion as RPIs rather than amendments should be directed within three weeks to:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management
Washington, D.C. 20235
Attn: Director, OCRM

The formal text of these RPIs, comments by affected state agencies and copies of the VCRMP program document may be viewed at the above address and at the Council office, 903 Ninth Street Office Building, Richmond, Va. 23219. For information please contact Laura M. Lower, Coastal Resources Program Analyst at (804) 786-4500.

DEPARTMENT OF HEALTH

Notice

The 1987 State Medical Facilities Plan is now available for purchase. The Plan contains statistics descriptive of health services and facilities in Virginia and, in instances where projection methodologies have been adopted, it includes estimates of future need. Adopted by the Virginia Statewide Health Coordinating Council, this Plan would be of interest to parties engaged in the development of applications for certificates of public need or other health system planning activities. Copies may be obtained at a price of \$12 (including postage) by writing to: Division of Health Planning, Virginia Department of Health, James Madison Building, Room 1010, 109 Governor Street, Richmond, Virginia 23219.

Notice of Intended Public Participation Virginia WIC Program

Notice is hereby given that the Special Supplemental Food Program for Women, Infants and Children (WIC) intends to solicit additional public comments regarding the manner in which it manages its vendor operations. Interested parties will have the opportunity to comment on the WIC authorization process for grocery stores, pharmacies and military commissaries. Information on WIC vendor limitation and selection criteria, as well as other related aspects of WIC Program administration may be obtained by writing to the Virginia Department of Health, Division of Public Health Nutrition/WIC, 109 Governor Street, 6th Floor, Richmond, Virginia 23219.

Comments may be submitted in writing to the above address between September 26, 1988, and November 25, 1988, or they may be presented at the following public hearings:

October 31, 1988 - 7 p.m.

Board of Supervisors Meeting Room, 401 McIntire Road, 2nd Floor, Room 7, Charlottesville, Virginia

October 31, 1988 - 7 p.m.

Municipal Building, 215 Church Avenue, Council Chambers, 4th Floor, Roanoke, Virginia

November 7, 1988 - 7 p.m.

Henrico Government Center, Parham at Hungary Springs Road, Board of Supervisors Room, Richmond, Virginia

November 15, 1988 - 7 p.m.

Massey Building, 4100 Chain Bridge Road, Board of Supervisors Meeting Room, "A" Level, Fairfax, Virginia

November 16, 1988 - 7 p.m.

Virginia Beach Public Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia

November 16, 1988 - 7 p.m.

University of Virginia Southwest Center, Highway 19 North,

Room 1, Abingdon, Virginia

NOTICES TO STATE AGENCIES

RE: 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: Jane Chaffin, Virginia Code Commission, P.O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01

NOTICE OF COMMENT PERIOD - RR02

PROPOSED (Transmittal Sheet) - RR03

FINAL (Transmittal Sheet) - RR04

EMERGENCY (Transmittal Sheet) - RR05

NOTICE OF MEETING - RR06

AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08

DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained from Jane Chaffin at the above address.

ERRATA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

Title of Regulation: VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

Publication: 5:1 VA.R. 87-88 October 10, 1988

Correction to the Emergency Regulation:

Page 87, § 1.2 should read, "The invalidity of *any one* of these guidelines shall not affect the validity...."

Page 88, § 4.3 (top), third line should have a *close parenthesis* symbol after the word "Virginia."

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-03. Toxics Management Regulation.

Publication: 4:26 VA.R. 3149-3160 September 26, 1988

General Notices/Errata

Correction to the final regulation:

Page 3149, § 1., under definition for "biological monitoring or biomonitoring", the last sentence of the definition should not be a separate paragraph, but part of subdivision 2.

Page 3156, SIC 2759 should read "Commercial printing , *not elsewhere classified* . The underlined language was dashed through in error.

Page 3160, SIC 3823 should read "Industrial instruments for measurement, display, and control of process variables; and related products."

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- Ⓜ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

STATE BOARD OF ACCOUNTANCY

October 24, 1988 - 10 a.m. – Open Meeting
October 25, 1988 - 8 a.m. – Open Meeting
October 26, 1988 - 8 a.m. – Open Meeting
Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. Ⓜ

A meeting to (i) review enforcement cases; (ii) regulations; (iii) correspondence; (iv) applications for certificate and licensure; and to (v) consider routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, Va. 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

DEPARTMENT FOR THE AGING

November 29, 1988 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. Ⓜ

December 1, 1988 - 10 a.m. – Public Hearing
Loudoun County Administration Building, 18 North King Street, Board of Supervisors Meeting Room, Leesburg, Virginia

December 8, 1988 - 10 a.m. – Public Hearing
W. W. Scott Senior Center, 307 South Park Street, Marion, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to adopt regulations entitled: **VR 110-01-02. Area Agencies on Aging.** The proposed regulation sets forth the methods for (i) designating a planning and service area and an area agency on aging and (ii) suspending or terminating the designation of an area agency on aging.

Statutory Authority: § 2.1-373 (a)(7) of the Code of Virginia.

Written comments may be submitted until December 9, 1988.

Contact: J. James Cotter, Division Director, Department for the Aging, 700 E. Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-4464 or SCATS 225-2271

November 29, 1988 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. Ⓜ

December 1, 1988 - 10 a.m. – Public Hearing
Loudoun County Administration Building, 18 North King Street, Board of Supervisors Meeting Room, Leesburg, Virginia

December 8, 1988 - 10 a.m. – Public Hearing
W. W. Scott Senior Center, 307 South Park Street, Marion, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to adopt regulations entitled: **VR 110-01-03. Area Plans for Aging Services.** The proposed regulation regulates the process by which an Area Agency on Aging develops and implements its Area Plan for Aging Services.

Statutory Authority: § 2.1-373 (a)(7) of the Code of Virginia.

Written comments may be submitted until December 9, 1988.

Contact: J. James Cotter, Division Director, Virginia Department for the Aing, 700 E. Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-4464 or SCATS 225-2271

Calendar of Events

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November 29, 1988 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ☐

December 1, 1988 - 10 a.m. - Public Hearing
Loudoun County Administration Building, 18 North King Street, Board of Supervisors Meeting Room, Leesburg, Virginia

December 8, 1988 - 10 a.m. - Public Hearing
W. W. Scott Senior Center, 307 South Park Street, Marion, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to adopt regulations entitled: **VR 110-01-04. Financial Management Policies Applicable to Area Agencies on Aging.** The proposed regulation provides policies and standards for an Area Agency on Aging in the administration of federal and state grants to provide supportive and nutrition services to older persons.

Statutory Authority: § 2.1-373 (a)(7) of the Code of Virginia.

Written comments may be submitted until December 9, 1988.

Contact: J. James Cotter, Division Director, Virginia Department for the Aging, 700 E. Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-4464 or SCATS 225-2271

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November 29, 1988 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ☐

December 1, 1988 - 10 a.m. - Public Hearing
Loudoun County Administration Building, 18 North King Street, Board of Supervisors Meeting Room, Leesburg, Virginia

December 8, 1988 - 10 a.m. - Public Hearing
W. W. Scott Senior Center, 307 South Park Street, Marion, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to adopt regulations entitled: **VR 110-01-05. Long-Term Care Ombudsman Program.** The proposed regulation describes the policies by which the Department for the Aging establishes and operates the Office of the State Long-Term Care Ombudsman and designates/supervises area or local ombudsman entities.

Statutory Authority: § 2.1-373 (a)(7) of the Code of Virginia.

Written comments may be submitted until December 9, 1988.

Contact: J. James Cotter, Division Director, Virginia Department for the Aging, 700 E. Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-4464 or SCATS 225-2271

VIRGINIA AGRICULTURAL COUNCIL

† **November 18, 1988 - 10 a.m. - Open Meeting**
Holiday Inn - Airport, 5203 Williamsburg Road, Sandston, Virginia

A meeting of the council called by the chairman. The Honorable Curry A. Roberts, Secretary of Economic Development, will be present at the meeting. Any business that may come before the members of the council will be considered.

Contact: Henry H. Budd, Assistant Secretary, 1100 Bank St., Room 203, Washington Bldg., Richmond, Va. 23219, telephone (804) 786-2373 or SCATS 786-2373

ALCOHOLIC BEVERAGE CONTROL BOARD

November 1, 1988 - 9:30 a.m. - Open Meeting
November 15, 1988 - 9:30 a.m. - Open Meeting
November 29, 1988 - 9:30 a.m. - Open Meeting
December 13, 1988 - 9:30 a.m. - Open Meeting
December 27, 1988 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Rd., P. O. Box 27491, Richmond, Va. 23261, telephone (804) 367-0616

STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS

† **December 2, 1988 - 9 a.m. - Open Meeting**
Travelers Building, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to (i) approve minutes of the September 30, 1988 meeting; (ii) review and discuss enforcement cases; and (iii) review correspondence.

Calendar of Events

Virginia State Board of Architects

† **December 16, 1988 - 9 a.m. - Open Meeting**
Travelers Building, 3600 West Broad Street, Richmond,
Virginia. ☒

A meeting to (i) approve minutes of the September 29, 1988 meeting; (ii) discuss enforcement cases; (iii) review applications; and (iv) discuss correspondence.

Virginia State Board of Land Surveyors

October 27, 1988 - 9 a.m. - Open Meeting
Travelers Building, 3600 West Broad Street, Richmond,
Virginia. ☒

A meeting to (i) approve minutes of the August 5, 1988, meeting; (ii) review applications; (iii) review and discuss enforcement files; and (iv) review general correspondence.

Virginia State Board of Professional Engineers

† **November 9, 1988 - 9 a.m. - Open Meeting**
Travelers Building, 3600 West Broad Street, Richmond,
Virginia. ☒

A meeting to (i) approve the minutes of the August 30, 1988 meeting; (ii) review applications; and (iii) review and discuss enforcement files and general correspondence.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

VIRGINIA CATTLE INDUSTRY BOARD

December 6, 1988 - 11:45 a.m. - Open Meeting
Red Lion Inn, Blacksburg, Virginia

December 7, 1988 - 9 a.m. - Open Meeting
Virginia Cattlemen's Association Office, Daleville, Virginia

A winter board meeting to review research projects.

Contact: Reggie Reynolds, Secretary, P. O. Box 176, Daleville, Va. 24083-0176, telephone (703) 992-1992

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **October 26, 1988 - 10 a.m. - Open Meeting**
James J. McCoart Administration Building, Board of Supervisors Meeting Room, Prince William, Virginia

The fourth meeting of the Chesapeake Bay Local Assistance Department to conduct general board business.

Contact: Melany Earnhardt, Administrative Assistant, Eight Street Office Bldg., Room 701, Richmond, Va. 23219, telephone (804) 225-3440 or SCATS 225-3440

LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

November 3, 1988 - 5:30 p.m. - Open Meeting
December 1, 1988 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P. O. Box 40, Chesterfield, Va. 23832, telephone (804) 748-1236

CHILD DAY-CARE COUNCIL

November 1, 1988 - 4 p.m. - Public Hearing
Municipal Building, 215 Church Avenue, S.W., Room 450, Roanoke, Virginia

November 2, 1988 - 4 p.m. - Public Hearing
Hugh Mercer Elementary School, 2100 Cowan Boulevard, AV Room, Fredericksburg, Virginia

November 3, 1988 - 2 p.m. - Public Hearing
Yorktown Victory Center, Route 238, Yorktown, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to adopt regulations entitled: **VR 175-02-01. Minimum Standards for Licensed Child Care Centers.** This regulation lists the standards that child care centers licensed by the Department of Social Services must meet. The following issues are addressed in the regulation: administration, personnel, staffing/supervision, physical environment, admission policies and procedures, special care provisions, emergencies, and program and services which include: management of behavior, nutrition and food service, daily schedule, and activities.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 28, 1988.

Contact: Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Va. 23229, telephone (804) 662-9025, toll-free 1-800-552-7091 or SCATS 662-9025

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Calendar of Events

November 1, 1988 - 4 p.m. – Public Hearing
Municipal Building, 215 Church Avenue, S.W., Room 450,
Roanoke, Virginia

November 2, 1988 - 4 p.m. – Public Hearing
Hugh Mercer Elementary School, 2100 Cowan Boulevard,
AV Room, Fredericksburg, Virginia

November 3, 1988 - 2 p.m. – Public Hearing
Yorktown Victory Center, Route 238, Yorktown, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to adopt regulations entitled: **VR 175-04-01. Criminal Record Checks.** This regulation establishes the criminal record check procedures that employees and volunteers of a child care center must follow. The regulation includes the following topics: individuals required to obtain certificates, routing of certificates, validity of certificates, duplicate certificates, and maintenance and responsibility of certificates by facilities.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 28, 1988.

Contact: Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9025, toll-free 1-800-552-7091 or SCATS 662-9025

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November 1, 1988 - 4 p.m. – Public Hearing
Municipal Building, 215 Church Avenue, S.W., Room 450,
Roanoke, Virginia

November 2, 1988 - 4 p.m. – Public Hearing
Hugh Mercer Elementary School, 2100 Cowan Boulevard,
AV Room, Fredericksburg, Virginia

November 3, 1988 - 2 p.m. – Public Hearing
Yorktown Victory Center, Route 238, Yorktown, Virginia

Title of Regulation: **General Procedures and Information for Licensure.**

Notice: Refer to Notice of Comment Period for this regulation listed under Department of Social Services.

INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

November 10, 1988 - 8:30 a.m. – Open Meeting

December 9, 1988 - 8:30 a.m. – Open Meeting
Department of Social Services, 1603 Santa Rosa Drive,
Tyler Building, Suite 210, Richmond, Virginia. ☒

Regularly scheduled monthly meetings to discuss administrative and policy areas related to the Interdepartmental Licensure and Certification of Residential Facilities for Children.

Contact: John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Licensure and Certification, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-7124 or SCATS 662-7124

VIRGINIA COLLEGE BUILDING AUTHORITY

† **October 26, 1988 - 9:30 a.m. – Open Meeting**
James Monroe Building, 101 North 14th Street, Treasurer's Office, 3rd Floor Conference Room, Richmond, Virginia. ☒

A meeting of the Board of Commissioners, related to the Equipment Leasing Program of the Authority.

Contact: Pat Watt, Director of Debt Management, James Monroe Bldg., 101 N. 14th St., 3rd Floor, Richmond, Va. 23219, telephone (804) 225-4931, 225-4927 or SCATS 225-4927

BOARD OF COMMERCE

October 27, 1988 - 11 a.m. – Open Meeting
Travelers Building, 3600 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia. ☒

A quarterly business meeting of the board. The agenda will include status reports on the examination study request for proposals and the director's report.

Contact: Catherine Walker Green, Policy Analyst, 3600 W. Broad St., 5th Fl., Richmond, Va. 23230, telephone (804) 367-8564 or toll-free 1-800-552-3016 (VA only)

BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

† **November 9, 1988 - 10:30 a.m. – Open Meeting**
Virginia Beach Pavilion, Director's Conference Room,
Virginia Beach, Virginia. ☒

A meeting to discuss proposals from localities requesting matching grant funds from the board.

Contact: Jack E. Frye, P. O. Box 1024, Gloucester Point, Va. 23062, telephone (804) 642-7121

Calendar of Events

VIRGINIA COUNCIL ON COORDINATING PREVENTION

October 24, 1988 - 6:30 p.m. - Public Hearing
Virginia Highlands Community College, Route 375, off
Route 140, Room 220, Abingdon, Virginia. ☒ (Interpreter
for deaf provided if requested)

October 25, 1988 - 6:30 p.m. - Public Hearing
Luther Jackson Intermediate School, 3020 Gallows Road,
Fairfax, Virginia. ☒ (Interpreter for deaf provided if
requested)

October 26, 1988 - 6:30 p.m. - Public Hearing
James City County Human Resources Center, Olde Towne
Road, Williamsburg, Virginia. ☒ (Interpreter for deaf
provided if requested)

October 27, 1988 - 6:30 p.m. - Public Hearing
City Council Chambers, 7th and Main Streets, City Hall,
2nd Floor, Charlottesville, Virginia. ☒ (Interpreter for deaf
provided if requested)

A public hearing to solicit comments on the 1990-92
Comprehensive Prevention Plan of Virginia. The
Council will use these comments in formulating its
recommendations and comments on the prevention
plan for the Governor.

Contact: Harriet M. Russell, P. O. Box 1797, Richmond,
Va. 23214, telephone (804) 786-1530

STATE BOARD OF CORRECTIONS

† **November 15, 1988 - 10 a.m. - Open Meeting**
6900 Atmore Drive, Board of Corrections Board Room,
Richmond, Virginia. ☒

A regular monthly meeting to consider such matters
as may be presented to the board.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore
Dr., Richmond, Va. 23225, telephone (804) 674-3235

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

November 15, 1988 - Written comments may be submitted
until this date.

Title of Regulations: VR 230-40-001. Core Standards
for Interdepartmental Licensure and Certification of
Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed
under the Department of Social Services.

* * * * *

November 30, 1988 - 10 a.m. - Public Hearing

Title of Regulations: VR 230-40-001. Core Standards
for Interdepartmental Licensure and Certification of
Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed
under the Department of Social Services.

VIRGINIA BOARD OF COSMETOLOGY

December 2, 1988 - 10 a.m. - Public Hearing
Travelers Building, 3600 West Broad Street, Room 395,
Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Virginia Board of
Cosmetology intends to amend regulations entitled: VR
235-01-02. Virginia Board of Cosmetology Regulations.
The proposed amendments establish the requirements
for licensure for cosmetologists, cosmetology
instructors, and cosmetology schools and establishes
standards of practice and fees.

Statutory Authority: § 54-1.28(5) of the Code of Virginia.

Written comments may be submitted until November 26,
1988.

Contact: Roberta L. Banning, Assistant Director,
Department of Commerce, 3600 W. Broad St., Richmond,
Va. 23230-4917, telephone (804) 367-8590 or toll-free
1-800-552-3016 (VA only)

VIRGINIA BOARD OF DENTISTRY

December 1, 1988 - 8 a.m. - Open Meeting
December 2, 1988 - 8 a.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling
Hills Drive, Richmond, Virginia. ☒

A meeting to consider (i) board business; (ii) formal
hearings; and (iii) to discuss proposed regulations.

Contact: N. Taylor Feldman, Executive Director, Board of
Dentistry, 1601 Rolling Hills Dr., Richmond, Va. 23229,
telephone (804) 662-9906 or SCATS 662-9906

STATE BOARD OF EDUCATION

October 27, 1988 - 9 a.m. - Open Meeting
October 28, 1988 - 9 a.m. - Open Meeting
James Monroe Building, 101 North 14th Street, Conference
Rooms D & E, Richmond, Virginia. ☒

† **December 8, 1988 - 9 a.m. - Open Meeting**
† **December 9, 1988 - 9 a.m. - Open Meeting**
James Monroe Building, 101 North 14th Street, Conference
Rooms C & D, Richmond, Virginia. ☒

Calendar of Events

† **January 12, 1989 - 9 a.m.** – Open Meeting
† **January 13, 1989 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Conference Rooms D & E, Richmond, Virginia. ☒

The Board of Education will hold its regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. The public is reminded that the Board of Vocational Education may convene, if required.

Contact: Margaret Roberts, James Monroe Bldg., 101 N. 14th St., 25th Fl., Richmond, Va. 23219, telephone (804) 225-2540

DEPARTMENT OF EDUCATION (STATE BOARD OF)

November 15, 1988 – Written comments may be submitted until this date.

Title of Regulation: VR 270-01-003. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed under the Department of Social Services:

* * * * *

November 30, 1988 - 10 a.m. – Public Hearing

Title of Regulation: VR 270-01-003. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed under the Department of Social Services:

STATE EDUCATION ASSISTANCE AUTHORITY

December 12, 1988 - 10 a.m. – Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☒

Notice is hereby given in accordance § 9-6.14.7.1 of the Code of Virginia that the State Education Assistance Authority intends to adopt regulations entitled: **VR 275-02-1. Regulations Governing the Edvantage Loan Program.** This regulation establishes policies to govern the administration of the Edvantage loan program on the part of participating lenders and institutions of higher education.

Statutory Authority: §§ 23-30.42 and 23-38.64 of the Code of Virginia.

Written comments may be submitted until December 12, 1988.

Contact: Randy A. Craig, Manager, Technical Services, State Education Assistance Authority, 6 N. Sixth St., Suite 300, Richmond, Va. 23219, telephone (804) 786-2035, toll-free 1-800-792-5626 (In Virginia) or SCATS 786-2035

JOINT MEETING OF THE VIRGINIA EMERGENCY RESPONSE COUNCIL AND THE STATE HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

† **November 16, 1988 - 10 a.m.** – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia

Review of finance subcommittee report and review of training and response activities with reference to the Virginia Hazardous Materials Emergency Response Program. Review and discussion of the Community Right-to-Know policy developed to implement Title III of SARA.

Contact: Addison E. Slayton, Jr., Department of Emergency Services, 310 Turner Rd., Richmond, Va. 23225, telephone (804) 674-2497

VIRGINIA EMPLOYMENT COMMISSION

Advisory Board

† **November 2, 1988 - 1 p.m.** – Open Meeting
† **November 3, 1988 - 9 a.m.** – Open Meeting
Radisson Hotel, Hampton, Virginia

A regular meeting of the board to conduct general business.

Contact: Ron Montgomery, 703 E. Main St., Richmond, Va. 23219, telephone (804) 786-1070

COUNCIL ON THE ENVIRONMENT

† **November 3, 1988 - 7:30 p.m.** – Open Meeting
Clinch Valley College, Wise, Virginia. ☒

A quarterly meeting of the council to discuss environmental matters of concern to the Commonwealth. The public is invited to address the council during the public forum period of the meeting. An agenda will be available at the meeting or may be obtained prior to the meeting by calling or writing to the office in Richmond.

Contact: David J. Kinsey, Special Projects Coordinator, Council on the Environment, 903 Ninth Street Office Bldg., Richmond, Va. 23219, telephone (804) 786-4500 or SCATS 786-4500

Calendar of Events

LOCAL EMERGENCY PLANNING COMMITTEE OF FAIRFAX COUNTY - TOWN OF VIENNA - CITY OF FAIRFAX - TOWN OF HERNDON

November 10, 1988 - 10 a.m. - Open Meeting
Wood Municipal Center, Old Lee Highway, Fairfax,
Virginia

The committee is meeting in accordance with SARA
Title III in order to carry out the provisions required
within.

Contact: Melanie Pearson, Community Information
Coordinator, 4031 University Dr., Suite 400, Fairfax, Va.
22030, telephone (703) 246-2331

FRANKLIN, ISLE OF WIGHT AND SOUTHAMPTON EMERGENCY PLANNING COMMITTEE

† November 15, 1988 - 7 p.m. - Open Meeting
† December 20, 1988 - 7 p.m. - Open Meeting
Public Safety Building, Franklin, Virginia. ☒

A meeting to review status of Emergency Response
Plan.

Contact: Jim Wagenbach, Chief of Emergency Services,
Public Safety Building, 1005 Main St., Franklin, Va. 23851,
telephone (804) 562-8581

VIRGINIA OF FUNERAL DIRECTORS AND EMBALMERS

October 25, 1988 - 9 a.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling
Hills Drive, Koger Center-West, Richmond, Virginia

A general board meeting to include certifying
candidates for the November examination. Proposed
regulations and HJR 50 may be discussed.

November 14, 1988 - 9 a.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling
Hills Drive, Koger Center-West, Richmond, Virginia

November 15, 1988 - 9 a.m. - Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, The
Commerce Center, Richmond, Virginia

November 14, 1988 - A general board meeting.
Proposed regulations may be discussed.

November 15, 1988 - A meeting to administer
examinations for the Board of Funeral Directors and
Embalmers.

Contact: Mark L. Forberg, Executive Secretary, 1601
Rolling Hills Dr., Richmond, Va. 23229-5005, telephone
(804) 662-9907

BOARD OF GAME AND INLAND FISHERIES

October 27, 1988 - 1:30 p.m. - Open Meeting
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia. ☒

The following Committees of the Board will meet on
the 27th, beginning at 1:30 p.m. to discuss
administrative and related matters which will be
reported to the full board at its meeting on Friday,
October 28, 1988:

Finance Committee - 1:30 p.m.
Wildlife and Boat - 3 p.m.
Law and Education - 4:30 p.m.

October 28, 1988 - 9:30 a.m. - Open Meeting
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia. ☒

The board will act on fish regulation proposals for the
1989-90 season; to act on a proposal amending the
taxidermy rules, and a proposal to eliminate the
Wednesday closing day on the Pamunkey River for
shooting waterfowl.

Committee reports will be given. General
administrative matters to be considered.

Presentation of the 1988 Morgan Award under the
Hunter Safety Program.

† October 28, 1988 - 9:30 a.m. - Public Hearing
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia. ☒

A public hearing on the advisability of adopting, or
amending and adopting proposed regulations. Any
interested citizen present shall be heard. If the board
is satisfied that the proposed regulations, or any part
thereof, are advisable, in the form in which published
or as amended as a result of the public hearing, the
board may adopt such proposals at that time, acting
upon the proposals separately or in block.

Contact: Norma G. Adams, Agency Regulatory Coordinator,
4010 W. Broad St., Richmond, Va. 23230, telephone (804)
367-1000, toll-free 1-800-237-5712 (HOTLINE) or SCATS
367-1000

DEPARTMENT OF GENERAL SERVICES

Art and Architectural Review Board

November 4, 1988 - 10 a.m. - Open Meeting
† December 2, 1988 - 10 a.m. - Open Meeting
Main Conference Room, Virginia Museum of Fine Arts,
Richmond, Virginia.

The board will advise the Director of the Department

Calendar of Events

of General Services and the Governor on architecture of state facilities to be constructed and works of art to be accepted or acquired by the Commonwealth.

Contact: M. Stanley Krause, AIA, AICP, Architect, Rancorn, Wildman & Krause, Architects, P. O. Box 1817, Newport News, Va. 23601, telephone (804) 867-8030

VIRGINIA BOARD OF GEOLOGY

† November 14, 1988 - 10 a.m. - Open Meeting
Travelers Building, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to (i) approve minutes of the September 15, 1988, meeting; (ii) review applications; and (iii) discuss correspondence.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

STATE HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

Training Study Committee

† November 17, 1988 - 10 a.m. - Open Meeting
Holiday Inn Conference Center, Koger Center South, 1021 Koger Center Boulevard, Richmond, Virginia

The meeting will focus on the formation of a permanent Hazardous Materials Training Committee to include membership, committee functions and responsibilities.

Contact: Captain Lou Stark, Chairman, Newport News Fire Department, 2400 Washington Ave., Newport News, Va. 23607, telephone (804) 247-8404

STATE BOARD OF HEALTH

November 7, 1988 - 9 a.m. - Open Meeting
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☐

Schedule of Board of Health meetings adopted May 10, 1988, and revised September 9, 1988:

November 7, 1988
December 15-16, 1988
January 17-18, 1988.

Contact: Sarah H. Jenkins, Legislative Analyst/Secretary to the Board, Department of Health, Commissioner's Office, 109 Governor St., Suite 400, Richmond, Va. 23219, telephone (804) 786-3561 or SCATS 786-3561

DEPARTMENT OF HEALTH (STATE BOARD OF)

NOTE: CHANGE IN PUBLIC HEARING DATE
November 3, 1988 - 2 p.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Health intends to amend regulations entitled: **VR 355-28-01.02. Regulations for Disease Reporting and Control.** These regulations explain the requirements for reporting communicable diseases, toxic substances related diseases, and cancer to the health department, including defining who is required to report, which diseases are reportable, and what mechanisms are available for reporting. The amendments to the regulation are proposed as a result of current national disease control initiatives, recent changes to the Code of Virginia, or both. They will enable the Virginia Department of Health to monitor diseases of public health importance, including conditions which have only recently achieved such importance.

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

Written comments may be submitted until October 31, 1988.

Contact: Diane Woolard, M.P.H., Senior Epidemiologist, Virginia Department of Health, 109 Governor St., Richmond, Va. 23219, telephone (804) 786-6261 or SCATS 786-6261

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October 31, 1988 - 7 p.m. - Public Hearing
Board of Supervisors Meeting Room, 401 McIntire Road, Second Floor, Room 7, Charlottesville, Virginia

October 31, 1988 - 7 p.m. - Public Hearing
Municipal Building, 215 Church Avenue, Council Chambers, Fourth Floor, Roanoke, Virginia

November 7, 1988 - 7 p.m. - Public Hearing
Henrico Government Center, Parham and Hungary Springs Road, Board of Supervisors Room, Richmond, Virginia

November 15, 1988 - 7 p.m. - Public Hearing
Massey Building, 4100 Chain Bridge Road, Board of Supervisors Meeting Room, "A" Level, Fairfax, Virginia

November 16, 1988 - 7 p.m. - Public Hearing
Virginia Beach Public Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia

November 16, 1988 - 7 p.m. - Public Hearing
University of Virginia Southwest Center, Highway 19 North, Room 1, Abingdon, Virginia

See the General Notices section of this register for

Calendar of Events

information concerning a notice of intended public participation on the Virginia WIC Program. Comments may be submitted in writing between September 26, 1988, and November 25, 1988, or they may be presented at the public hearings.

Contact: Paul W. Matthias, Director, Department of Health, Division of Public Health Nutrition/WIC, 109 Governor St., 6th Fl., Richmond, Va. 23219

DEPARTMENT OF HEALTH REGULATORY BOARDS

Task Force on Anabolic Steroids

† **October 25, 1988 - noon** – Open Meeting
Koger Conference Center, Koger Building, Suite 124, Richmond, Virginia. ☒

The Task Force will continue its review of anabolic steroids use and misuse among minors in response to House Joint Resolution 88 of the 1988 General Assembly.

Contact: Robert A. Nebiker, Deputy Director, 1601 Rolling Hills Dr., Richmond, Va. 23219, telephone (804) 662-9904 or SCATS 662-9904

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

October 26, 1988 - 9:30 a.m. – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: Ann Y. McGee, Director, 805 E. Broad St., 9th Fl., Richmond, Va. 23219, telephone (804) 786-6371 or SCATS 786-6371

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **November 2, 1988 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia. ☒

A monthly council meeting. The agenda is available on request.

Contact: Marla G. Richardson, 101 N. 14th St., 9th Fl., Richmond, Va. 23219, telephone (804) 225-2638

HOPEWELL INDUSTRIAL SAFETY COUNCIL

November 1, 1988 - 9 a.m. – Open Meeting

December 6, 1988 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, City of Hopewell, 300 N. Main St., Hopewell, Va. 23860, telephone (804) 541-2298

COUNCIL ON INDIANS

October 26, 1988 - 2 p.m. – Open Meeting
NOTE: CHANGE OF MEETING DATE
Ninth Street Office Building, Cabinet Conference Room, 6th Floor Richmond, Virginia. ☒

A regular meeting to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Special Assistant, Virginia Council on Indians, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9285 or SCATS 662-9285

LIBRARY BOARD

October 29, 1988 - 9 a.m. – Open Meeting
NOTE: CHANGE OF TIME
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Meeting Room A, Virginia Beach, Virginia. ☒

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Lee Fargo, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, Va. 23219, telephone (804) 786-2334

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **November 2, 1988 - 3 p.m.** – Open Meeting
Treasurer's Building, 29 Court Square, Treasurer's Conference Room, Winchester, Virginia

Guest speaker Stuart Ashton from the Department of Waste Management will be discussing the Superfund Amendments and Reauthorization Act-1986; a series of regulations for handling hazardous materials emergencies in local communities. Topics to be addressed include responsibilities of the Local Emergency Planning Committee as well as area businesses.

Contact: Lynn Miller, Fire Chief, 126 N. Cameron St.,

Calendar of Events

Winchester, Va. 22601, telephone (703) 665-5621

COMMISSION ON LOCAL GOVERNMENT

October 24, 1988 - 10:30 a.m. – Open Meeting
Chincoteague Volunteer Fire Company, 401 South Main Street, Meeting Room, 2nd Floor, Chincoteague, Virginia

Oral presentations regarding the Town of Chincoteague, Accomack County annexation action.

October 24, 1988 - 7:30 p.m. – Public Hearing
Chincoteague Volunteer Fire Company, 401 South Main Street, Meeting Room, 2nd Floor, Chincoteague, Virginia

Public hearing regarding the Town of Chincoteague, Accomack County annexation action.

Contact: Ted McCormack, Assistant Director, Ninth Street Office Bldg., Room 901, Richmond, Va. 23219, telephone (804) 786-6508

LONG-TERM CARE COUNCIL

† **November 3, 1988 - 9:30 a.m. – Open Meeting**
Ninth Street Office Building, Room 622, Cabinet Conference Room, Richmond, Virginia. ☒

A meeting to conduct business pertaining to developing increased long-term care services for disabled or chronically ill people of all ages.

Contact: Thelma E. Bland, 700 East Franklin St., 10th Fl., Richmond, Va. 23219-2327, telephone (804) 225-2271

LONGWOOD COLLEGE

Board of Visitors

† **October 27, 1988 - noon – Open Meeting**
† **October 28, 1988 - 9 a.m. – Open Meeting**
Longwood College, Virginia Room, Farmville, Virginia. ☒

A regular quarterly meeting of governing board to consider business pertaining to the institution.

Contact: Dr. William F. Dorrill, President, Longwood College, Farmville, Va. 23901, telephone (804) 392-9211 or SCATS 265-4211

STATE LOTTERY BOARD

† **October 26, 1988 - 1 p.m. – Open Meeting**
Department of Motor Vehicles, 2300 West Broad Street, Agcroft Room, Richmond, Virginia. ☒

A regularly scheduled planning and review session of

the board. No action will be taken.

† **October 27, 1988 - 9 a.m. – Open Meeting**
Department of Motor Vehicles, 2300 West Broad Street, Agcroft Room, Richmond, Virginia. ☒

A regularly scheduled monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-9433 or SCATS 367-9433

MARINE RESOURCES COMMISSION

† **November 1, 1988 - 9:30 a.m. – Open Meeting**
† **December 6, 1988 - 9:30 a.m. – Open Meeting**
Newport News City Council Chambers, 2400 Washington Avenue, Newport News, Virginia

The Virginia Marine Resources Commission will meet on the first Tuesday of each month at 9:30 a.m. It hears and decides cases on fishing licensing, oyster ground leasing, environmental permits in wetlands, bottomlands, coastal sand dunes and beaches. It hears and decides appeals made on local wetlands board decisions.

Fishery management and conservation measures are discussed by the commission. The commission is empowered to exercise general regulatory power within 15 days, and is empowered to take specialized marine life harvesting and conservation measures within 5 days.

Contact: Sandra S. Schmidt, Secretary to the Commission, 2401 W. Avenue, P. O. Box 756, Newport News, Va. 23607, telephone (804) 247-2208

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

December 8, 1988 – 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 Medical Assistance Services intends to amend regulations entitled: **State Plan for Medical Assistance. VR 460-03-3.1100. Elimination of Preauthorization for Routine Eye Services.** This regulation proposes to remove the prior authorization requirement currently on routine eye services.

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

Written comments may be submitted until December 8, 1988, to C. Mack Brankley, Director, Division of Operations and Provider Relations, 600 East Broad Street, Suite 1300,

Calendar of Events

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) 786-7933

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October 24, 1988 - 10 a.m. - Public Hearing
Department of Social Services, 11166 Main Street, Fairfax, Virginia

November 9, 1988 - 1988 - 2 p.m. - Public Hearing
Patrick Henry College, Route 108 North to College Drive, Room B-1, Martinsville, Virginia

November 10, 1988 - 11 a.m. - Public Hearing
Norfolk Department of Public Health, 400 Colley Avenue, Auditorium, Norfolk, Virginia

November 14, 1988 - 10 a.m. - Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☐

November 18, 1988 - 10:30 a.m. - Public Hearing
City Hall Council Chambers, 1113 East Beverly St., 2nd Floor, Staunton, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **State Plan for Medical Assistance. VR 460-03-3.1501. Organ Transplantation.** These regulations propose to discontinue the coverage of liver transplants.

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

Written comments may be submitted until December 8, 1988, to Stephen B. Riggs, D.D.S., Director, Health Services Review, 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) 786-7933

GOVERNOR'S ADVISORY BOARD ON MEDICARE AND MEDICAID

† **November 1, 1988 - 2 p.m. - Open Meeting**
Hyatt Hotel, I-64 and West Broad Street, Richmond, Virginia. ☐

An open meeting to discuss (i) amendments to the Medicaid State Plan; and (ii) other business pertinent to the board.

Contact: Jacqueline Fritz, 600 E. Broad St., Suite 1300, Richmond, Va. 23219, telephone (804) 786-7933

VIRGINIA STATE BOARD OF MEDICINE

† **December 20, 1988 - 9 a.m. - Public Hearing**
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. ☐

A meeting to receive public comments on the use of therapeutic drugs by Doctors of Optometry.

Ad Hoc Committee on Optometry

† **November 1, 1988 - 9:30 a.m. - Open Meeting**
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, Board Room 1, Richmond, Virginia. ☐

A meeting to develop regulations for optometrists to dispense therapeutic drugs and discuss any other items which may come before this ad hoc committee.

Chiropractic Examination Committee

† **October 27, 1988 - noon - Open Meeting**
Embassy Suite Hotel, 2925 Emerywood Parkway, Richmond, Virginia. ☐

The committee will meet in open and executive sessions for the purpose of reviewing and developing chiropractic questions for the January, 1989 exam.

Credentials Committee

December 3, 1988 - 8:15 a.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, 2nd Floor, Board Room 1, Richmond, Virginia. ☐

The Credentials Committee will meet to conduct general business, interview, and review medical credentials of applicants applying for licensure in Virginia in open and Executive Session and discuss any other items which may come before this committee.

Informal Conference Committee

October 28, 1988 - 9 a.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. ☐

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia.

Calendar of Events

Legislative Committee

† November 1, 1988 - 2 p.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. ☒

A meeting to develop regulations for licensure by endorsement, examination and discuss any other items which may come before the committee.

Contact: Eugenia K. Dorson, Board Administrator, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, Va. 23229-5005, telephone (804) 662-9925

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

October 26, 1988 - 9:30 a.m. - Open Meeting
Arlington Community Services Board, 1801 North George Mason Drive, Arlington, Virginia. ☒

A regular monthly meeting. The agenda will be published on October 19 and may be obtained by calling Jane Helfrich.

Joint Board Liaison Committee

October 31, 1988 - 9 a.m. - Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia. ☒

A quarterly meeting of the Joint Board Liaison Committee comprised of representatives of the Boards of Education; Health; Mental Health, Mental Retardation and Substance Abuse Services; Rehabilitative Services; and Social Services. Agenda items include topics of common interest and the development of joint policies relative to clients who are mutually served.

Contact: Jane V. Helfrich, State Board Staff, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3921

Public Education Advisory Group

† November 2, 1988 - 10 a.m. - Open Meeting
James Madison Building, 109 Governor Street, 13th Floor, Richmond, Virginia. ☒

A meeting to continue development of the Long-Term Public Education Plan.

Contact: Martha J. Mead, Director, Legislation and Public Relations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-9048 or SCATS 786-9048

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

November 15, 1988 - Written comments may be submitted until this date.

Title of Regulation: VR 470-02-01. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed under the Department of Social Services.

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November 30, 1988 - 10 a.m. - Public Hearing

Title of Regulation: VR 470-02-01. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.

NOTICE: Refer to Notice of Comment Period listed under the Department of Social Services.

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November 30, 1988 - 10 a.m. - Public Hearing
Henrico County Government Center, Parham and Hungary Springs Road, Administration Building, Board Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled: VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children. These regulations establish minimum program requirements for licensed facilities serving mentally ill, mentally retarded and substance abusing children. The purposes of the proposed revisions are to increase the level of protection and safety provided to children in out of home care and assure that the methods of discipline and treatment which are used are therapeutically sound and reasonable.

Statutory Authority: §§ 37.1-10 and 37.1-179.1 of the Code of Virginia.

Written comments may be submitted until November 30, 1988.

Contact: Barry P. Craig, Director of Licensure, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3472

† November 30, 1988 - 9 a.m. - Open Meeting
Fort Magruder Inn and Conference Center, Route 60 East, Williamsburg, Virginia. (Interpreter for deaf provided if

Calendar of Events

requested)

Meeting of Virginia' Early Intervention Coordinating Council for Part H, P.L. 99-457. The council is to advise and assist the DMHMRSAS as lead agency to administer Part H, in the development and implementation of a statewide interagency, multidisciplinary system of early intervention services for infants and toddlers with disabilities ages birth through two.

Contact: Michael Fehl, Ed.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3710

Mental Retardation Advisory Council

† **November 18, 1988 - 9 a.m.** - Open Meeting
James Madison Building, 109 Governor Street, 8th Floor
Conference Room, Richmond, Virginia. ☐

A quarterly meeting. The meeting will include general discussion, recommendations and approval of issues and topics to be addressed by the council during FY 1989.

The time period from 10 a.m. to 11 a.m. will be set aside for public comments on MR Programs, Issues, Concerns.

Contact: Stanley J. Butkus, Ph.D., Director, Office of Mental Retardation Services, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-1746 or 786-3710

Substance Abuse Advisory Council

† **October 27, 1988 - 10 a.m.** - Open Meeting
James Madison Building, 109 Governor Street, 13th Floor
Conference Room, Richmond, Virginia. ☐

The meeting will address issues of a general nature related to substance abuse and its impact throughout the Commonwealth of Virginia.

Contact: Frank Patterson, SA Program Consultant, Office of SA Services, 109 Governor St., Richmond, Va. 23219, telephone (804) 786-3906, SCATS 786-3906 or 786-5313 ☐

GOVERNOR'S MIGRANT AND SEASONAL FARMWORKERS BOARD

† **November 2, 1988 - 10 a.m.** - Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond,
Virginia. ☐

A regular meeting of the board.

Contact: Marilyn Mandel, Division Director, Department of Labor and Industry, P. O. Box 12064, Richmond, Va. 23241,

telephone (804) 786-2385 or SCATS 786-2385

DEPARTMENT OF MINES, MINERALS AND ENERGY

December 12, 1988 - 10 a.m. - Public Hearing
Mountain Empire Community College, Dalton-Cantrell
Building Auditorium, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to adopt regulations entitled: **VR 480-05-2. Rules and Regulations Governing the Certification of Diesel Engine Mechanics in Underground Coal Mines.** These regulations prescribe the qualifications and other requirements, and the conditions of use, for a certificate of competency as an underground diesel engine mechanic.

Statutory Authority: §§ 45.1-1.3(4) and 45.1-12 of the Code of Virginia.

Written comments may be submitted until December 12, 1988.

Contact: Bill Edwards, Policy Analyst, Department of Mines, Minerals and Energy, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-0330

COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG LOCAL EMERGENCY PLANNING COMMITTEE

† **November 7, 1988 - 3 p.m.** - Open Meeting
Montgomery County Courthouse, 3rd Floor, Board of
Supervisors Room, Christiansburg, Virginia. ☐

Development of a Hazardous Materials Emergency Response Plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P. O. Box 3726, Radford, Va. 24143, telephone (703) 639-9313 or SCATS 676-4012

VIRGINIA STATE BOARD OF NURSING

October 25, 1988 - 1 p.m. - Open Meeting
Department of Health Regulatory Boards, 1601 Rolling
Hills Drive, Richmond, Virginia. ☐

A meeting of the Virginia Board of Nursing to respond to public comment on proposed regulations and take action on regulations if such action cannot be taken at meeting scheduled September 26-28, 1988. Other matters under the jurisdiction of the board may be considered.

Contact: Corinne F. Dorsey, R.N., Executive Director,

Calendar of Events

Board of Nursing, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9909 or SCATS 662-9909

Informal Conference Committee

November 4, 1988 - 8:30 a.m. – Open Meeting
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒
(Interpreter for deaf provided if requested)

A meeting to inquire into allegations that certain licensees may have violated laws and regulations governing the practice of nursing in Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9909, toll free 1-800-533-1650, or SCATS 662-9909

BOARD OF OPTOMETRY

November 12, 1988 – 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 Board of Optometry intends to amend regulations entitled: **VR 510-01-1. Regulations of the Board of Optometry.** The proposed regulations establish a minimum series of procedures to be performed and documented during eye examinations by optometrists.

Statutory Authority: § 54-376 of the Code of Virginia.

Written comments may be submitted until November 12, 1988.

Contact: Moira C. Lux, Executive Director, Virginia Board of Optometry, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9910

BOARD OF COMMISSIONERS TO EXAMINE PILOTS

December 12, 1988 - 10 a.m. – Open Meeting
Virginia Port Authority, World Trade Center, Suite 600, Norfolk, Virginia. ☒

The board will meet to conduct routine business at its regular quarterly business meeting.

Contact: David E. Dick, Virginia Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8531 or (804) 552-3016

PRIVATE SECURITY SERVICES ADVISORY COMMITTEE

October 27, 1988 - noon – Open Meeting

Wintergreen Conference Center, Wintergreen, Virginia

A meeting to discuss business of the committee.

Contact: Paula J. Scott, Staff Executive, 805 E. Broad St., Richmond, Va. 23219, telephone (804) 786-4000 or SCATS 786-4000

VIRGINIA BOARD OF PSYCHOLOGY

† **November 3, 1988 - 9 a.m. – Open Meeting**
Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) discuss general board business including the state and national examinations; (ii) conduct identification of any necessary revisions to the Regulations Governing the Practice of Psychology, effective June 22, 1988; and (iii) conduct credentials review consisting of licensure applications, technical assistant registrations and residency registrations.

Contact: Stephanie Sivert, Executive Director or Phyllis Henderson, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9913

VIRGINIA REAL ESTATE BOARD

October 26, 1988 - 10 a.m. – Open Meeting
Department of Alcoholic Beverage Control, 501 Montgomery Street, Hearing Room, Alexandria, Virginia

The Virginia Real Estate Board will meet to conduct a formal administrative hearing:

Virginia Real Estate Board v. Robert P. Logan.

Contact: Sylvia Bryant, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8524

December 7, 1988 - 8:30 a.m. – Open Meeting
December 8, 1988 - 8:30 a.m. – Open Meeting
Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A regular business meeting of the board. The agenda will consist of investigative cases (files) to be considered, files to be reconsidered, matters relating to fair housing, property registration and licensing issues (e.g., reinstatement, eligibility requests).

Additionally, a work session for regulatory review of licensing regulations is anticipated to be scheduled for December 8, 1988.

Contact: Joan L. White, Assistant Director, Virginia Real Estate Board, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 367-8552, toll-free 1-800-552-3016 or SCATS

367-8552

BOARD OF REHABILITATIVE SERVICES

† November 2, 1988 - 9:30 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The board will (i) hear the report of the Secretary of Health and Human Resources on the Woodrow Wilson Rehabilitation Center, (ii) take action on bylaws amendments, (iii) receive committee reports, and (iv) conduct the regular business of the board.

Finance Committee

† November 1, 1988 - 7 p.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will receive the quarterly financial report from the department, and will discuss audit findings for recommended action to the board.

Legislation and Evaluation Committee

† November 1, 1988 - 7 p.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will (i) redefine the role and function of standing committees, (ii) consider statewide transportation needs of disabled and (iii) develop methodology for evaluation of various departmental programs.

Program Committee

† November 1, 1988 - 7 p.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will consider department recommendations for amendments to current vocational rehabilitation regulations.

Contact: James L. Hunter, Board Administrator, 4901 Fitzhugh Ave., Richmond, Va. 23230, telephone (804) 367-6446, toll-free 1-800-552-5019 ☎, SCATS 367-6446 or 367-0280 ☎

STATE BOARD OF SOCIAL SERVICES

November 16, 1988 - 2 p.m. - Open Meeting
November 17, 1988 - 9 a.m. - Open Meeting
Best-Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia. ☒

December 14, 1988 - 2 p.m. - Open Meeting

December 15, 1988 - 9 a.m. - Open Meeting
Department of Social Services, 8007 Discovery Drive, Richmond, Virginia. ☒

A work session and formal business meeting.

Contact: Phyllis Sisk, Administrative Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9236 or SCATS 662-9236

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

November 15, 1988 - 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 Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intend to amend regulations entitled: VR 230-40-001, VR 270-01-003, VR 470-02-01, VR 615-29-02. **Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.** The proposed regulation amends and clarifies those sections of the regulations that define which facilities are subject to regulation under the Core Standards.

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179.1, 63.1-196.4 and 63.1-217 of the Code of Virginia.

Written comments may be submitted until November 15, 1988.

Contact: Linda Struck, Assistant Coordinator, Office of the Coordinator, Interdepartmental Licensure and Certification, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9025, toll-free 1-800-552-7091 or SCATS 662-9025

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November 30, 1988 10 a.m. - Public Hearing
Henrico County Government Center, Parham and Hungary Springs Road, Administration Building, Board Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intend to amend regulations entitled: VR 230-40-001, VR 270-01-003, VR 470-02-01, VR 615-29-02. **Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.** The purpose of the proposed action is to amend and clarify those sections of the regulations which address discipline or punishment and to assure that the methods of treatment and discipline which are used

Calendar of Events

are therapeutically sound and responsible.

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-179.1, 63.1-196.4 and 63.1-217 of the Code of Virginia.

Written comments may be submitted until November 30, 1988.

Contact: John J. Allen, Jr. Coordinator, Office of the Coordinator, Interdepartmental Licensure and Certification, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-7124, toll-free 1-800-552-7091 or SCATS 662-7124

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December 9, 1988 – 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 Virginia Department of Social Services intends to adopt regulations entitled: **VR 615-50-6. Compliance with Service Program Policy Requirements.** The purpose of the proposed action is to establish the philosophy and a system of monitoring for service program policy.

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

Written comments may be submitted until December 12, 1988.

Contact: Elizabeth B. Whitley, Chief, Bureau of Management Services, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9140 or toll-free 1-800-522-7091

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December 10, 1988 – 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 Social Services intends to repeal existing regulations and adopt new regulations entitled: **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** These proposed regulations set forth the criteria an agency must meet to obtain a license to place children for foster care or adoption.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until December 10, 1988.

Contact: Liz Lion, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9025, toll-free 1-800-552-7091 or SCATS 662-9025

STATE BOARD OF SOCIAL SERVICES AND CHILD DAY-CARE COUNCIL

November 1, 1988 - 4 p.m. – Public Hearing
Municipal Building, 215 Church Avenue, S.W., Room 450, Roanoke, Virginia

November 2, 1988 - 4 p.m. – Public Hearing
Hugh Mercer Elementary School, 2100 Cowan Road, AV Room, Fredericksburg, Virginia

November 3, 1988 - 2 p.m. – Public Hearing
Yorktown Victory Center, Route 238, Yorktown, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services and Child Day-Care Council intend to adopt and amend regulations entitled: **General Procedures and Information for Licensure.** This regulation describes the rights and responsibilities of licensees and the Department of Social Services during the licensing process. The following issues are addressed in the regulation: the license, the licensing process, allowable variances, informal appeal process, complaint investigation, revocation and denial, licensing office locations and schedule of fees.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 28, 1988.

Contact: Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229, telephone (804) 662-9025, toll-free 1-800-552-7091 or SCATS 662-9025

DEPARTMENT OF TAXATION

November 15, 1988 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **Virginia Declaration of Estimated Income Tax by Individuals as follows:**

VR 630-2-490.1. Definitions.

VR 630-2-490.2. Delcarations of Estimated Tax.

VR 630-2-492. Failure by Individual to Pay Estimated Tax.

These regulations set forth the filing threshold for filing a declaration of estimated income tax and provide guidance as to when the addition to tax for the underpayment of estimated income tax is

Calendar of Events

applicable.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until November 15, 1988.

Contact: Danny M. Payne, Director, Tax Policy Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

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November 15, 1988 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled **Fiduciary Estimated Tax as follows:**

- VR 630-5-490. Definitions, Delcaration.**
- VR 630-5-491. Installment Payments.**
- VR 630-5-492. Additions to the Tax.**

These regulations provide guidance to estates and trusts in complying with the new requirements relating to the estimated tax.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be may until November 15, 1988.

Contact: Danny M. Payne, Director, Tax Policy Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 367-8010 or SCATS 367-8010

COMMONWEALTH TRANSPORTATION BOARD

† **October 26, 1988 - 10 a.m. - Open Meeting**
Natural Bridge Hotel, Natural Bridge, Virginia. ☐
(Interpreter for deaf provided if requested)

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.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, Va. 23219, telephone (804) 786-9950

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

November 1, 1988 - 10 a.m. - Public Hearing
Virginia Department of Transportation - Central Office, 1221 East Broad Street, Auditorium, Richmond, Virginia

November 2, 1988 - 10 a.m. - Public Hearing
Virginia Department of Transportation - Suffolk District Office, 1700 North Main Street, Auditorium, Suffolk, Virginia

November 4, 1988 - 10 a.m. - Public Hearing
James McCoart Administration Building, Prince William County Government Complex, 1 County Complex Court, Auditorium, Prince William, Virginia

November 10, 1988 - 10 a.m. - Public Hearing
Virginia Department of Transportation - Staunton District Office, Route 11 (Commerce Road) near the North Corporate Limits of Staunton, Auditorium, Staunton, Virginia

November 15, 1988 - 1 p.m. - Public Hearing
Virginia Highlands Community College, located off Route 140 between Route 11 and Exit 7, Route 81, Auditorium, Abingdon, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Transportation intends to adopt regulations entitled: **VR 385-01-08. Subdivision Street Requirements.** These proposed regulations prescribe the requirements and administrative procedures for the addition of subdivision streets into the secondary system of state highways.

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

Written comments may be submitted until October 31, 1988, to Gerald E. Fisher, Secondary Roads Engineer, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Va. 23219.

Contact: D.L. Camper, Assistant Secondary Roads Engineer, Virginia Department of Transportation, 1401 E. Broad St., Richmond, Va. 23219, telephone (804) 786-2745 or SCATS 786-2745

TREASURY BOARD

November 16, 1988 - 9 a.m. - Open Meeting
December 21, 1988 - 9 a.m. - Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, 3rd Floor, Richmond, Virginia. ☐

A regular monthly meeting of the board.

Contact: Betty A. Ball, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., 3rd Fl., Richmond, Va. 23219, telephone (804) 225-2142

VIRGINIA BOARD OF VETERINARY MEDICINE

October 26, 1988 - 8:30 a.m. - Open Meeting

Calendar of Events

Department of Health Regulatory Boards, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A general board meeting and informal conference formal hearing.

Contact: Terri H. Behr, Executive Secretary, 1601 Rolling Hills Dr., Richmond, Va. 23229, telephone (804) 662-9915

BOARD FOR THE VISUALLY HANDICAPPED

December 8, 1988 - 11 a.m. - Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A bi-monthly meeting to review policy and procedures of the Virginia Department for the Visually Handicapped. The board reviews and approves the department's budget, executive agreement, and operating plan.

Contact: Diane E. Allen, Executive Secretary Senior, 397 Azalea Ave., Richmond, Va. 23277, telephone (804) 371-3145, toll-free 1-800-622-2155, SCATS 371-3145 or 371-3140/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

October 25, 1988 - 1 p.m. - Open Meeting
November 22, 1988 - 1 p.m. - Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☒

A regular monthly meeting of the 13 agency representatives that comprise the council. The council is designed to facilitate the timely delivery of appropriate services to handicapped children and youth in Virginia.

Contact: Glen R. Slonneger, Jr., Department for the Visually Handicapped, 397 Azalea Ave., Richmond, Va. 23227, telephone (804) 371-3140

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

October 26, 1988 - 8:30 a.m. - Open Meeting
October 27, 1988 - 8:30 a.m. - Open Meeting
Holiday Inn, I-64 and U.S. Route 60, Covington, Virginia

October 26, 1988 - Council members will visit vocational programs in the Alleghany Highlands area.

October 27, 1988 - Business session: reports will be received from council committees, the Virginia

Department of Education, the Governor's Job Training Coordinating Council, and the Virginia Community College System.

Contact: George S. Orr, Jr., Executive Director, Virginia Council on Vocational Education, P. O. Box U, Blacksburg, Va. 24063-1035

STATE WATER CONTROL BOARD

October 24, 1988 - 7 p.m. - Public Hearing
Hampton City Council Chambers, 22 Lincoln Street, City Hall, 8th Floor, Hampton, Virginia

A public hearing to receive comments on the proposed VPDES permit for Garland S. Edmonds, single family residence, the issuance or denial of the permit, and the effect of the discharge on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, State Water Control, P. O. Box 11143, 2111 N. Hamilton St., Richmond, Va. 23230, telephone (804) 367-6829

November 29, 1988 - 2 p.m. - Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ☒

A public meeting to receive comments on possible adoption of water quality standards for Section 307(a) toxic pollutants (including the parameter ammonia).

Contact: Alan J. Anthony, Office of Environmental Research and Standards, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230, telephone (804) 367-0791 or SCATS 367-0791

November 29, 1988 - 7 p.m. - Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia

A public meeting to receive comments on possible amendments to the Groundwater Standards section of the Water Quality Standards, including the Antidegradation Policy.

Contact: Russell P. Ellison, Office of Water Resources Management, State Water Control Board, P. O. Box 11143, Richmond, Va. 23230, telephone (804) 367-6350

December 1, 1988 - 7 p.m. - Open Meeting
Municipal Office, 150 East Monroe Street, Multi-Purpose Room, Wytheville, Virginia

A public meeting to receive comments on possible adoption of water quality standards for Section 307(a) toxic pollutants (including the parameter ammonia).

Contact: Alan J. Anthony, Office of Environmental Research and Standards, State Water Control Board, P. O.

Calendar of Events

Box 11143, Richmond, Va. 23230, telephone (804) 367-0791 or SCATS 367-0791

December 12, 1988 - 9 a.m. - Open Meeting
December 13, 1988 - 9 a.m. - Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ☒

A regular quarterly meeting.

Contact: Doneva A. Dalton, State Water Control Board, P. O. Box 11143, 2111 N. Hamilton St., Richmond, Va. 23230, telephone (804) 367-6829

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November 14, 1988 - 2 p.m. - Public Hearing
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal existing regulations and adopt new regulations entitled: **VR 680-16-16. Richmond-Crater Interim Water Quality Management Plan.** This new regulation is to replace all previously approved water quality plans for major municipal and industrial discharges to the Upper James and Appomattox Estuaries in Planning Districts 15 (Richmond Regional) and 19 (Crater).

Statutory Authority: § 62.1-44.15(3) of the Code of Virginia.

Written comments may be submitted until 4 p.m., December 9, 1988, to Doneva Dalton, Hearing Reporter, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas D. Modena, Supervisor, Water Resources Development, State Water Control Board, 2201 W. Broad St., Richmond, Va. 23220, telephone (804) 367-1006 or SCATS 367-1006

COMMISSION ON VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

† **October 31, 1988 - 1 p.m. - Open Meeting**
† **November 1, 1988 - 9 a.m. and noon - Open Meeting**
† **November 1, 1988 - 10 a.m. - Public Hearing**
Holiday Inn Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia

The hearing will solicit comments regarding the Commission on VASAP Policy and Procedure Manual, including the Certification Manual. In addition to the hearing the Commission will also hold a quarterly business meeting.

Contact: Deborah R. Kallgren, Public Information Officer, Commission on VASAP, 1001 E. Broad St., Old City Hall

Bldg., Box 28, Suite 245, Richmond, Va. 23219, telephone (804) 786-5895

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **November 3, 1988 - 3 p.m. - Open Meeting**
† **November 4, 1988 - 8 a.m. - Open Meeting**
Campus Center, Jamestown Road, Williamsburg, Virginia

A meeting to receive reports from several committees of the board and to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College.

An informational release will be available four days prior to the board meeting for those individuals or organizations who request it.

Contact: Office of University Relations, James Blair Hall, College of William and Mary, Room 308, Williamsburg, Va. 23185, telephone (804) 253-4226

COUNCIL ON THE STATUS OF WOMEN

† **November 14, 1988 - 8:30 p.m. - Open Meeting**
† **November 15, 1988 - 9 a.m. - Open Meeting**
Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

Meetings of the Standing Committees of the Virginia Council on the Status of Women.

Contact: Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

VIRGINIA WORLD TRADE COUNCIL

November 9, 1988 - 9 a.m. - Open Meeting
Department of Planning and Budget, Conference Room, Room 409, Richmond, Virginia

A meeting to discuss activities associated with the state government exporting projects.

Contact: Ettore T. Brown, Administrative Staff Specialist, Department of World Trade, 6000 World Trade Center, Norfolk, Va. 23510, telephone (804) 683-2856

Calendar of Events

LEGISLATIVE MEETINGS

JOINT SUBCOMMITTEE STUDYING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS)

November 15, 1988 - 10 a.m. - Open Meeting
December 8, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

A working session to discuss AIDS related issues. HJR 31

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING ALL-TERRAIN VEHICLES

November 1, 1988 - 2 p.m. - Open Meeting
December 1, 1988 - 2 p.m. - Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ☐

A regular meeting of the committee. SJR 6

Contact: Alan B. Wambold, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591 or Amy Wachter, Committee Clerk, Senate of Virginia, P. O. Box 396, Richmond, Va. 23203, telephone (804) 786-5742

VIRGINIA CODE COMMISSION

November 28, 1988 - 9:30 a.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☐

The commission will continue with the revision of Title 46.1 (Motor Vehicle Laws) of the Code of Virginia.

Contact: Joan W. Smith, Registrar of Regulations, Virginia Code Commission, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING PRENEED CONTRACTS FOR FUNERAL SERVICES

November 14, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☐

December 13, 1988 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,

Richmond, Virginia. ☐

November 14 - Meeting and working session. HJR 50

December 13 - Public hearing. HJR 50

Contact: Persons wishing to speak should contact: Anne R. Howard, House Clerk's Office, P. O. Box 406, Richmond, Va. 23203, telephone (804) 786-7681. For additional information contact: Suzanne Elkin, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING CRIMINAL DEFENSE SYSTEMS FOR THE INDIGENT

November 2, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

The subcommittee will meet for the purpose of receiving information on most conviction remedies and defense systems in capital cases and other related issues. HJR 141

Contact: Mary Devine, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING HEAD AND SPINAL INJURED CITIZENS

† October 27, 1988 - 10 a.m. - Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☐

A working session. HJR 135

Contact: Jeffrey A. Finch, House of Delegates, P. O. Box 406, Richmond, Va. 23203, telephone (804) 786-2227

JOINT SUBCOMMITTEE STUDYING LABOR FORCE NEEDS OF THE 1990's

October 25, 1988 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Public hearing with joint subcommittee and task force appointed by subcommittee followed by a working session for the task force. HJR 159

Contact: Persons wishing to speak contact: Anne R. Howard, House Clerk's Office, P. O. Box 406, Richmond, Va. 23203, telephone (804) 786-7681. For additional information contact: Terry M. Barrett, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING THE FREEDOM OF INFORMATION ACT

November 17, 1988 - 10 a.m. - Open Meeting
December 9, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

The subcommittee will meet to discuss certain issues pertaining to the Virginia Freedom of Information Act and certain other public access laws contained in the Code of Virginia. HJR 100

Contact: Angela Bowser, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING THE AVAILABILITY AND AFFORDABILITY OF LIABILITY INSURANCE, THE ANTITRUST EXEMPTION OF INSURERS AND THE REINSURANCE COSTS ASSOCIATED WITH LIABILITY INSURANCE

† October 27, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Testimony will be given by representatives from the Office of the Virginia Attorney General on issues pertinent to this study of the Insurance industry. HJR 120

Contact: C. W. Cramme', III, Deputy Director, or Terry Barrett, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

HOUSE OF DELEGATES COMMITTEE ON MINING AND MINERAL RESOURCES

† November 15, 1988 - - Open Meeting
Division of Mined Land Reclamation, Conference Room, Big Stone Gap, Virginia
† November 16, 1988 - - Open Meeting
Tour of Mine, Big Stone Gap, Virginia
† November 17, 1988 - - Open Meeting
Division of Administration, Big Stone Gap, Virginia

This will be a three-day meeting. The focus of the meeting will be to tour an actual mine site, to be briefed on various aspects of the mining processes and to review potential 1989 legislative initiatives that relate to mining. SJR 59 and HJR 110.

Contact: Mike Abbott, Information Officer, Department of Mines, Minerals and Energy, Big Stone Gap, Va., telephone (703) 532-2244

OFF-SITE ROAD IMPROVEMENTS SUBCOMMITTEE

October 28, 1988 - 9:30 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

The subcommittee will receive testimony from the public on the subject of off-site road improvements. HJR 125

Contact: Dr. Jack Austin, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING THE ECONOMIC FEASIBILITY OF EXPANDING RECREATIONAL OPPORTUNITIES IN CERTAIN STATE PARKS AND REGIONS OF THE COMMONWEALTH

† November 1, 1988 - 11 a.m. - Open Meeting
Cumberland Plateau Planning District Commission Office, Lebanon, Virginia

After a brief meeting with local officials, the subcommittee will tour potential park sites in Russell and Washington Counties. HJR 130

Contact: Martin G. Farber, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING SALES AND USE TAX EXEMPTIONS

October 27, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ☐

A regular meeting to study SJR 70.

Contact: Regina McNally, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591 or Amy Wachter, Committee Clerk, Senate of Virginia, P. O. Box 396, Richmond, Va. 23203, telephone (804) 786-5742

STATUTES OF LIMITATIONS AND ACCRUAL OF CAUSES OF ACTION SUBCOMMITTEE

October 31, 1988 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Third meeting and working session of the interim for this study committee.

Contact: Mary P. Devine, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208,

Calendar of Events

telephone (804) 786-3591

Sales and Use Tax Exemptions, Joint Subcommittee Studying Vocational Education, Virginia Council on

CHRONOLOGICAL LIST

OPEN MEETINGS

October 24

Accountancy, State Board of
Local Government, Commission on

October 25

Accountancy, State Board of
Funeral Directors and Embalmers, Virginia Board of
† Health Regulatory Boards, Department of
- Task Force on Anabolic Steroids
Nursing, Virginia State Board of
Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of
Related Services to Handicapped Children

October 26

Accountancy, State Board of
† Chesapeake Bay Local Assistance Board
† College Building Authority, Virginia
Health Services Cost Review Council, Virginia
Indians, Council on
† Lottery Board, State
Mental Health, Mental Retardation and Substance
Abuse Services Board, State
Real Estate Board, Virginia
† Transportation Board, Commonwealth
Veterinary Medicine, Virginia Board of
Vocational Education, Virginia Council on

October 27

Architects, Professional Engineers, Land Surveyors and
Certified Landscape Architects, State Board of
- Virginia State Board of Land Surveyors
Commerce, Board of
Education, State Board of
Game and Inland Fisheries, Board of
† Head and Spinal Injured Citizens, Joint
Subcommittee Studying
† Liability Insurance, the Antitrust Exemption of
Insurers and the Reinsurance Costs Associated with
Liability Insurance, Joint Subcommittee Studying the
Availability and Affordability of
† Longwood College
- Board of Visitors
† Lottery Board, State
† Medicine, Virginia State Board of
- Chiropractic Examination Committee
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Substance Abuse Advisory Council
Private Security Services Advisory Committee

October 28

Education, State Board of
Game and Inland Fisheries, Board of
† Longwood College
- Board of Visitors
Medicine, Virginia State Board of
- Informal Conference Committee

October 29

Library Board

October 31

Mental Health, Mental Retardation and Substance
Abuse Services Board, State
- Joint Board Liaison Committee
Statutes of Limitations and Accrual of Causes of
Action Subcommittee
† Virginia Alcohol Safety Action Program, Commission
on

November 1

Alcoholic Beverage Control Board
All-Terrain Vehicles, Joint Subcommittee Studying
Hopewell Industrial Safety Council
† Marine Resources Commission
† Medicare and Medicaid, Governor's Advisory Board
on
† Medicine, Virginia State Board of
- Ad Hoc Committee on Optometry
- Legislative Committee
† Recreational Opportunities in Certain State Parks
and Regions of the Commonwealth, Joint
Subcommittee Studying the Economic Feasibility of
Expanding
† Rehabilitative Services, Board of
- Finance Committee
- Legislation and Evaluation Committee
- Program Committee
† Virginia Alcohol Safety Action Program, Commission
on

November 2

Criminal Defense Systems for the Indigent, Joint
Subcommittee Studying
† Employment Commission, Virginia
- Advisory Board
† Higher Education for Virginia, State Council of
† Local Emergency Planning Committee - Winchester
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
- Public Education Advisory Group
† Migrant and Seasonal Farmworkers Board,
Governor's
† Rehabilitative Services, Board of

November 3

Chesterfield County, Local Emergency Planning

Calendar of Events

Committee of
† Employment Commission, Virginia
- Advisory Board
† Environment, Council on the
† Long-Term Care Council
† Psychology, Virginia Board of
† William and Mary, The College of
- Board of Visitors

November 4

General Services, Department of
- Art and Architectural Review Board
Nursing, Virginia State Board of
- Informal Conference Committee
† William and Mary, The College of
- Board of Visitors

November 7

Health, State Board of
† Montgomery/Town of Blacksburg Local Emergency
Planning Committee, County of

November 9

† Conservation and Development of Public Beaches,
Board on
† Architects, Professional Engineers, Land Surveyors
and Certified Landscape Architects, State Board of
- Professional Engineers, Virginia State Board of
World Trade Council, Virginia

November 10

Children, Interdepartmental Licensure and Certification
of Residential Facilities for
- Coordinating Committee
Fairfax County, Town of Vienna, City of Fairfax, Town
of Herndon, Local Emergency Planning Committee of

November 14

Funeral Directors and Embalmers, Virginia Board of
Funeral Services, Joint Subcommittee Studying
Preneed Contracts for
† Geology, Virginia Board of
† Women, Council on the Status of

November 15

Acquired Immunodeficiency Syndrome (AIDS), Joint
Subcommittee Studying
Alcoholic Beverage Control Board
† Corrections, State Board of
† Franklin, Isle of Wight and Southampton Emergency
Planning Committee
Funeral Directors and Embalmers, Virginia Board of
† Mining and Mineral Resources, House of Delegates
Committee on
† Women, Council on the Status of

November 16

† Emergency Response Council and the State
Hazardous Materials Emergency Response Advisory
Council, Joint Meeting of the Virginia
† Mining and Mineral Resources, House of Delegates

Committee on
Social Services, State Board of
Treasury Board

November 17

Freedom of Information Act, Joint Subcommittee
Studying
† Hazardous Materials Emergency Response Advisory
Council, State
- Training Study Committee
† Mining and Minerals Resources, House of Delegates
Committee on
Social Services, State Board of

November 18

† Agricultural Council, Virginia
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Mental Retardation Advisory Council

November 22

Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of
Related Services to Handicapped Children

November 28

Code Commission, Virginia

November 29

Alcoholic Beverage Control Board
Water Control Board, State

November 30

† Mental Health, Mental Retardation and Substance
Abuse Services, Department of

December 1

All-Terrain Vehicles, Joint Subcommittee Studying
Chesterfield County, Local Emergency Planning
Committee of
Dentistry, Virginia Board of
Water Control Board, State

December 2

† Architects, Professional Engineers, Land Surveyors
and Certified Landscape Architects, State Board of
Dentistry, Virginia Board of
† General Services, Department of
- Art and Architectural Review Board

December 3

Medicine, Virginia State Board of
- Credentials Committee

December 6

Cattle Industry Board, Virginia
Hopewell Industrial Safety Council
† Marine Resources Commission

December 7

Cattle Industry Board, Virginia

Calendar of Events

Real Estate Board, Virginia

December 8

Acquired Immunodeficiency Syndrome (AIDS), Joint Subcommittee Studying
† Education, State Board of Real Estate Board, Virginia Visually Handicapped, Board for the

December 9

Children, Interdepartmental Licensure and Certification of Residential Facilities for
- Coordinating Committee
† Education, State Board of Freedom of Information Act, Joint Subcommittee Studying the

December 12

Pilots, Board of Commissioners to Examine Water Control Board, State

December 13

Alcoholic Beverage Control Board Water Control Board, State

December 14

Social Services, State Board of

December 15

Social Services, State Board of

December 16

† Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, State Board of
- Virginia State Board of Architects

December 20

† Franklin, Isle of Wight and Southampton Emergency Planning Committee

December 21

Treasury Board

December 27

Alcoholic Beverage Control Board

January 12, 1989

† Education, State Board of

January 13

† Education, State Board of

PUBLIC HEARINGS

October 24

Coordinating Prevention, Virginia Council on Local Government, Commission on Medical Assistance Services, Department of Water Control Board, State

October 25

Coordinating Prevention, Virginia Council on Labor Force Needs of the 1990's, Joint Subcommittee Studying

October 26

Coordinating Prevention, Virginia Council on

October 27

Coordinating Prevention, Virginia Council on

October 28

† Game and Inland Fisheries, Board of Off-site Road Improvements Subcommittee

October 31

Health, Department of

November 1

Child Day-Care Council Social Services and Child Day-Care Council, State Board of Transportation/Commonwealth Transportation Board, Department of
† Virginia Alcohol Safety Action Program, Commission on

November 2

Child Day-Care Council Social Services and Child Day-Care Council, State Board of Transportation/Commonwealth Transportation Board, Department of

November 3

Child Day-Care Council Health, Department of Social Services and Child Day-Care Council, State Board of

November 4

Transportation/Commonwealth Transportation Board, Department of

November 7

Health, Department of

November 9

Medical Assistance Services, Department of

November 10

Medical Assistance Services, Department of Transportation/Commonwealth Transportation Board, Department of

November 14

Medical Assistance Services, Department of Water Control Board, State

November 15

Health, Department of

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Taxation, Department of
Transportation/Commonwealth Transportation Board,
Department of

November 16
Health, Department of

November 18
Medical Assistance Services, Department of

November 29
Aging, Department for the

November 30
Corrections, Department of
Education, Department of
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
Social Services, Department of

December 1
Aging, Department for the

December 2
Cosmetology, Virginia Board of

December 8
Aging, Department for the

December 12
Education Assistance Authority, State
Mines, Minerals and Energy, Department of

December 13
Funeral Services, Joint Subcommittee Studying
Preneed Contracts for

December 20
† Medicine, Virginia State Board of

Calendar of Events
