

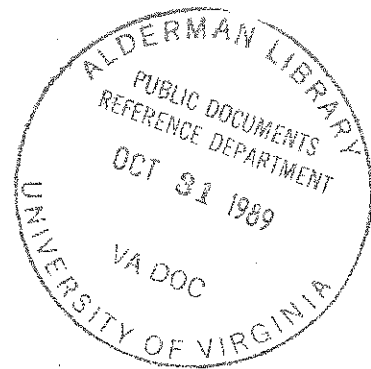
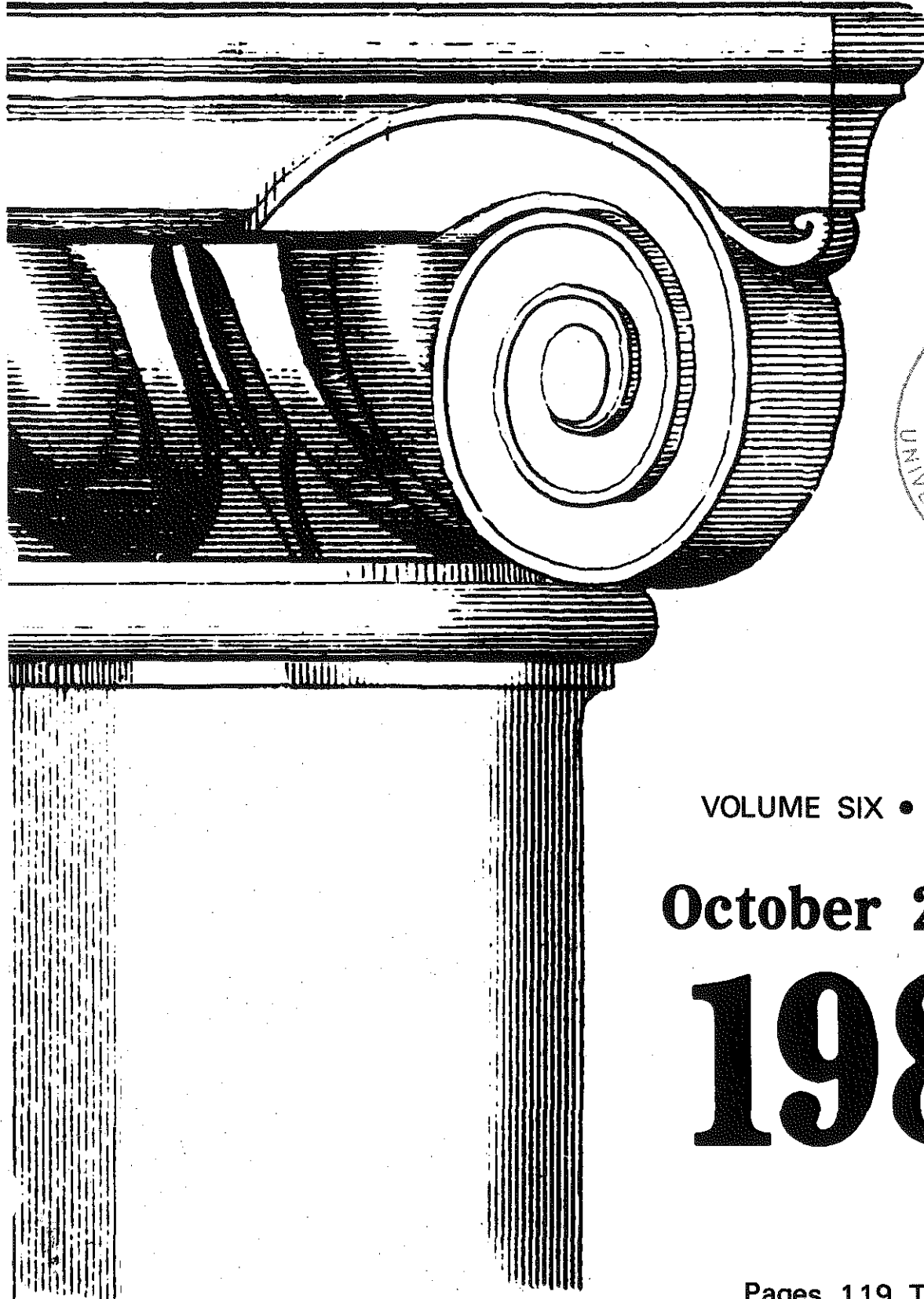
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THE VIRGINIA REGISTER

OF REGULATIONS

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October 23, 1989

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Pages 119 Through 272

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.

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July 1989 through September 1990

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July 12	July 31
July 26	Aug. 14
Aug. 9	Aug. 28
Aug. 23	Sept. 11
Sept. 6	Sept. 25
Final Index - Volume 5	

Volume 6 - 1989-90

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Oct. 4	Oct. 22
Oct. 18	Nov. 6
Nov. 1	Nov. 20
Nov. 15	Dec. 4
Nov. 29	Dec. 18
Dec. 13	Jan. 1 1990
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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.

VIRGINIA EMPLOYMENT COMMISSION

Title of Regulation: VR 300-01-3. Virginia Employment Commission Regulations and General Rules - Benefits.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Public Hearing Date: January 3, 1990 - 10 a.m.
(See Calendar of Events Section for additional information)

Summary:

All three changes involve Part V as it relates to the approval of training programs of claimants for unemployment insurance so as to exempt them from having to actively seek work while in training. The first amendment deletes reference to Section 303 of the Job Training and Partnership Act since that federal law has been amended to delete its own training approval criteria.

The second amendment expands the type of training which can be approved. In addition to the vocational or technical classes already in the regulation, three new types are proposed for approval on the grounds that they will assist unemployment individuals to better compete in the general job market. They are employability assistance/job market orientation classes, G.E.D. classes for those without high school diplomas, and English language classes for citizens or aliens legally entitled to work in this country whose primary language is not English.

The third amendment reduces the weekly class attendance requirement from 30 to 12 hours. This is because many of the programs contemplated for approval are taught at community colleges where 12 hours is considered a full course load, and it is at those institutions where training can frequently be obtained at the least cost to an unemployed individual.

VR 300-01-3. Virginia Employment Commission Regulations and General Rules - Benefits.

PART I. TOTAL AND PART-TOTAL UNEMPLOYMENT.

§ 1.1. Claimant and employer responsibilities.

A. Week of total or part-total unemployment.

1. An individual's week of total or part-total unemployment shall consist of the

seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim and registers at an employment office, except as provided in paragraphs 2 and 3 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment, provided the individual reports as required by subsection C of this section.

2. A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the Commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity next following the commencement of his total or part-total unemployment except as provided in paragraph 3 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment provided the individual reports as required by subsection C of this section.

3. A week of total or part-total unemployment of an individual affected by a mass separation or a labor dispute with respect to which arrangements are made for group reporting by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group reporting is conducted within 13 days next following the first day of unemployment.

B. Employer to furnish employment separation and wage reports upon request of the Commission.

1. Cases of total unemployment. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the Commission informing it that an individual has filed a claim for benefits, such employing unit shall within five calendar days after receipt of such information form complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

- a. The date the worker began working;
- b. The last day on which he actually worked;
- c. A check mark in the block indicating the reason for separation and a brief statement of the reason

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for the separation;

d. Such other information as is required by such form. The employing unit's official name and account number, if any, assigned to the employing unit by the Commission shall appear on the signed report.

e. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

2. Cases involving a mass separation.

a. In lieu of furnishing the Commission an individual separation report for each employee filing a claim as otherwise provided in this section, an employer shall file a list of workers involved in the mass separation with the office nearest such workers' place of employment within 24 hours of the date of separation (except as provided in subdivision b below). Such list shall include the workers' social security account numbers.

b. Where the total unemployment is due to a labor dispute, the employer shall file with the Commission unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request by the Commission, such employer shall furnish to the Commission, the names and social security account numbers of the worker ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.

C. Procedure for worker to follow in filing a claim for benefits.

1. Each claimant shall appear personally at the Commission unemployment insurance office most accessible to him or at a location designated by the Commission, and shall there file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work.

2. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. The Commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.

The Commission shall permit continued claims to be

filed by mail unless special conditions require in-person reporting. Such special conditions may include:

a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;

b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;

c. When, in the opinion of the local unemployment insurance manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;

d. When a claimant who would normally be reporting by mail receives no additional claim cards forms and he wishes to continue claiming benefits.

e. When a claimant requests to report in person due to problems associated with the receipt of mail.

3. Late filing of total or part-total claims. All initial total or part-total unemployment claims shall be effective on the Sunday of the week in which an individual reports to a Commission local office or a location designated by the Commission to file a claim. The only exceptions to the above are:

a. The Commission is at fault due to a representative of the Commission giving inadequate or misleading information to an individual about filing a claim;

b. A previous claim was filed against a wrong liable state;

c. Filing delayed due to circumstances attributable to the Commission;

d. Transitional claim filed within 14 days from the date the Notice of Exhaustion, Form VEC-B-3(a), was mailed to the claimant by the Commission;

e. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;

f. When the wrong type of claim was taken by a local office.

g. With respect to reopened or additional claims only, when the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

4. Late filing of continued total and part-total claims. An individual who shall be deemed to have reported at the proper time if he claims benefit rights within 28 days after the calendar week ending date of his last continued claim filed, or the calendar date on which the initial claim was filed. If the 28th day falls upon a date when the local unemployment insurance office is closed, the final date for late filing shall be extended to the next day the office is open. Failure to file within the time limit shall automatically suspend the claim series and the claimant must file an additional or reopened claim in accordance with subdivision C 3 of this section in order to begin a new claim series.

D. Work search requirement.

Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of § 60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the Commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

E. Adjustment to work search requirement.

In areas of high unemployment as determined by the Commission, defined in § 1 of VR 300-01-1 the Commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 10% - 19.9% to make one job contact with an employer each week.
2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 20% or more.
3. No adjustment will be made for claimants filing claims for benefits through the full-service

unemployment insurance office serving an area experiencing a total unemployment rate below 10%.

PART II. PARTIAL UNEMPLOYMENT.

§ 2.1. Claimant and employer responsibilities.

A. Week of partial unemployment.

With respect to a partially unemployed individual a week of partial unemployment shall consist of a calendar week beginning on Sunday and ending at midnight on Saturday. Total wages payable to partially unemployed workers are to be reported on a calendar week basis.

B. Employer responsibility after the initiation of a first claim for partial benefits.

Upon filing of a new claim for partial benefits in each claimant's benefit year the Commission shall promptly notify the employer of such claimant's weekly benefit amount, the date on which his benefit year commenced, and the effective date of the claim for partial benefits. Similar notice shall likewise be given at least once during the claimant's benefit year to each subsequent employer to whom the claimant is attached during a period of partial unemployment for which he claims benefits. Upon receipt of the notice the employer shall record this information for use in the preparation of the evidence he is required to furnish periodically as required in subsection C below.

C. Employer to furnish evidence of partial unemployment.

1. After the employer has been notified of the benefit year, the weekly benefit amount, and the effective date of the claim for partial benefits of any worker in his employ (subsection B above) the employer shall, within seven days, furnish the employee with written evidence concerning any week or weeks of partial unemployment which ended on or before the receipt of such notice and which began on or after the effective date of the employee's claim for partial benefits. The employer, until otherwise notified, shall, within 14 days after the termination of any pay period which includes a week or weeks of partial unemployment, and which ends after the date of receipt of such notification, furnish the employee with written evidence concerning his partial unemployment with respect to such week or weeks. Written evidence of partial unemployment required by this subsection shall be furnished by means of a Statement of Partial Unemployment, Form VEC-B-31, or other suitable medium approved by the Commission. Such evidence need not be furnished, however, where the worker's earnings for a week of partial unemployment equals or exceeds his weekly benefit amount.

2. The information contained on such medium shall be in ink or typewritten and shall show:

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- a. The name of the employer and employer account number;
- b. The name and social security account number of the worker;
- c. The date delivered to worker;
- d. The calendar week ending date;
- e. The gross amount of wages earned in such week, by day;
- f. The reason and the number of days or hours involved where the worker's earnings were reduced for any cause other than lack of work;
- g. The following certification, or one similar:

"During the week or weeks covered by this report, the worker whose name is entered worked less than full-time and earned less than his weekly benefit amount for total unemployment because of lack of work, or otherwise shown. I certify that to the best of my knowledge, this information is true and correct";

h. A signature (actual or facsimile) by the employer to the above certification or other identification of the authority supplying the evidence.

D. Registration and filing of claim for partial unemployment.

The new claim for benefits for partial unemployment shall be dated to the first day of the beginning of the individual's week of partial unemployment as defined in subsection A of this section. However, in no event shall such new claim be backdated to include a week which ended more than 28 days prior to the date the individual was furnished the Statement of Partial Unemployment, or other written evidence concerning his partial unemployment as provided in subsection C, by the employer.

E. Claimant to present evidence of partial unemployment.

1. Upon filing a claim as specified in subsection D, the Commission shall cause the notice referred to in subsection B to be sent to the employer. Thereafter, the employer shall make available to the claimant the Statement of Partial Unemployment, Form VEC-B-31, or other written evidence concerning his partial unemployment, as provided in subsection C. Such written evidence of partial unemployment shall be presented to the local office within 14 days after it is delivered to him by the employer, and failure to do so, within that time, shall render the claim invalid as to the week or weeks to which the statement or other evidence relates.

2. For each subsequent week the partial claim is continued the employer shall furnish the claimant with the evidence of partial unemployment as provided in subsection C and the claimant shall continue to present such evidence to the local office within 14 days after it is delivered to him by the employer. Failure to do so shall render the claim invalid with respect to the week or weeks to which the statement or other evidence relates.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this subsection, the Commission shall permit the claimant to file a continued claim by mail in the same circumstances applicable to a claimant for total or part-total unemployment compensation.

F. Claimant's search for work.

With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

PART III. INTERSTATE CLAIMS.

§ 3.1. Cooperative agreement.

A. This section shall govern the Commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

B. Week of unemployment.

A week of unemployment for an interstate claimant shall consist of any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Registration for work.

1. Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

2. Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

D. Benefit rights of interstate claimants.

If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available

benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

E. Claims for benefits.

1. Claims for benefits or a waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed and processed in accordance with the type of week in use in the agent state.

2. Claims shall be filed in accordance with agent state regulations for intrastate claims in local unemployment insurance offices or at an itinerant point or by mail.

a. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.

b. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

F. Determination of claims.

1. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state. The liable state may utilize the telephone or mail to directly ascertain facts from the parties.

2. The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

G. Interstate appeals.

1. The agent state shall afford all reasonable cooperation in the holding of hearings in connection with appealed interstate benefit claims.

2. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal

made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state, or the date it was mailed by the claimant, whichever is earlier.

H. Extension of interstate benefit payment to include claims taken in and for Canada.

This section shall apply in all its provisions to claims taken in and for Canada.

PART IV. COMBINING WAGE CREDITS OF MULTI-STATE CLAIMANTS.

§ 4.1 Interstate cooperation.

A. This section, approved by the Secretary of Labor pursuant to § 3304(a) (9) (B), Federal Unemployment Tax Act, and adopted under § 60.2-609 of the Code of Virginia shall govern the Virginia Employment Commission in its administrative cooperation with other states relating to the Interstate Arrangement for Combining Employment and Wages.

B. Filing of claims.

A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the Unemployment Insurance Law of the paying state.

C. Liability for payment of benefits.

Benefits, in all cases, shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state.

D. Determination of claims.

1. Wages paid to a claimant during the paying state's applicable base period, and wages reported for that period by a transferring state as available for the payment of benefits under the arrangement, shall be included by the paying state in determining such claimant's benefit rights.

2. Wages, once they have been transferred and used in a determination which established monetary eligibility for benefits in the paying state, shall be unavailable for determining monetary eligibility for benefits under the Unemployment Insurance Law of the transferring state, except to the extent that wages are usable for redetermination purposes.

3. A combined-wage claimant's monetary and nonmonetary benefit rights shall be determined by the paying state as provided by its Unemployment Insurance Law.

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E. Reports.

Each state, with respect to any combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall:

1. Promptly request each state in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state for a combined-wage claimant, and on his current eligibility under the law of such state.
2. When acting as the transferring state, report promptly upon the request of any state the following:
 - a. The claimant's unused covered wages during the base period of the paying state without restriction for the payment of benefits under the provisions of the paying state's law.
 - b. The current monetary eligibility of the claimant under the law of the transferring state.
3. When acting as the paying state, send to each transferring state a copy of the initial determination, together with an explanatory statement.
4. When acting as the paying state, send to the claimant a copy of the initial determination, noting his rights to appeal.

5. When acting as the paying state, send to each transferring state a statement of the benefits chargeable to each state. This is done at the end of each quarter in which any benefits have been paid, and each statement shall include the benefits paid during such quarter to such state as to each combined-wage claimant. Each such charge shall bear the same ratio to total benefits paid to the combined-wage claimant by the paying state as his wages reported by the transferring state and used in the paying state's monetary determination bear to the total wages used in such determination.

F. Reimbursement of paying state.

A transferring state shall, as soon as practicable after receipt of a statement as set forth in subsection E, reimburse the paying state accordingly.

G. Exception to combining wages.

A claimant's wages shall not be combined, notwithstanding any other provision of this arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the Interstate Benefit payment arrangement shall apply to each claimant.

H. Relation to interstate benefits payment procedures.

Whenever this plan applies, it will supersede any inconsistent provision of the Interstate Benefit Payment Plan and the regulation thereunder.

PART V. MISCELLANEOUS BENEFIT PROVISIONS.

§ 5.1. Disposition of benefit checks payable to a deceased claimant.

If a claimant has met the eligibility requirements of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia and completed all forms prescribed by the Commission prior to his death, upon proof thereof, the check(s) for all benefits due shall be payable to the decedent's estate .

§ 5.2. Commission approval of training other than that under § 303 of the Job Training and Partnership Act or § 236 of the Trade Readjustment Act.

A. Training shall be approved for an eligible claimant under the provisions of § 60.2-613 of the Code of Virginia only if the Commission finds that:

1. Prospects for continuing employment for which the claimant is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits ; .

2. The proposed training course of instruction is vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable. The training course shall require a minimum of 30 hours attendance each week; :

- a. Vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable; or

- b. Employability assistance/job market orientation designed to improve an individual's job seeking skills; or

- c. General Education Development (G.E.D.) classes for those without a high school diploma; or

- d. English language classes for those whose primary language is not English and whose inability to communicate in English would significantly hinder their job search efforts.

3. The proposed training course has been approved by an appropriate accrediting agency or, if none exist in

the state, the training complies with quality and supervision standards established by the Commission, or is licensed by an agency of the state in which it is being given.

4. The claimant has the required qualifications and aptitude to complete the course successfully.

5. The training does not include programs of instructions for an individual which are primarily intended to lead toward a baccalaureate or higher degree from institutions of higher education.

6. The training course shall require a minimum of 12 hours of attendance each week.

B. Benefits may be paid to an otherwise eligible claimant while he is attending training only if the Commission finds with respect to each week that the claimant is enrolled in and regularly attending the course of instruction approved for him by the Commission.

C. A claimant shall request training approval on forms provided by the Commission. The claimant's enrollment and attendance shall be reported to the Commission periodically as directed by the local office to which he reports.

BOARD OF MEDICINE

Title of Regulation: VR 465-07-01. Certification of Optometrists to Treat Certain Diseases including Abnormal Conditions of the Human Eye and its Adnexa with Certain Pharmaceutical Agents.

Statutory Authority: §§ 54.1-2400, 54.1-2900 and 54.1-2957.2 of the Code of Virginia.

Public Hearing Date: December 8, 1989 - 9 a.m.
(See Calendar of Events Section for additional information)

Summary:

The proposed regulations establish requirements for postgraduate studies in didactic and clinical training and for examination for the certification of licensed optometrists to treat certain diseases and abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents to assure delivery of appropriate medical eye care to the citizens of the Commonwealth.

VR 465-07-01. Certification of Optometrists to Treat Certain Diseases including Abnormal Conditions of the Human Eye and its Adnexa with Certain Pharmaceutical Agents.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Approved school" means those optometric and medical schools, colleges, departments of universities or colleges or schools of optometry or medicine currently accredited by the Council on Postsecondary Accreditation or by the United States Department of Education.

"Board" means the Virginia Board of Medicine.

"Certification" means the Virginia Board of Medicine certifying an optometrist to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Certified optometrist" means an optometrist who holds a current license to practice optometry in the Commonwealth of Virginia and is certified to use diagnostic pharmaceutical agents by the Virginia Board of Optometry and has met all of the requirements established by the Virginia Board of Medicine to treat certain diseases of the human eye and its adnexa with therapeutic pharmaceutical agents.

"Examination" means an examination approved by the Board of Medicine for certification of an optometrist to treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Postgraduate clinical training" means a postgraduate program approved by the board to be eligible for certification.

"Protocol" means a set of directions developed by the certified optometrists that defines the procedures for responding to any patient's adverse reaction or emergency.

§ 1.2. Public Participation Guidelines.

Separate Board of Medicine regulations, VR 465-01-01, entitled Public Participation Guidelines which provide for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is incorporated by reference in these regulations.

PART II. APPLICATION FOR CERTIFICATION EXAMINATION.

§ 2.1. Application for certification by examination.

An applicant for certification by examination shall be made on forms provided by the board. Such application shall include the following information and documents.

1. A complete application form;

Proposed Regulations

2. The fee specified in § 7.1 of these regulations to be paid at the time of filing the application;

3. Additional documents required to be filed with the application are:

a. A letter from the Virginia Board of Optometry certifying:

(1) The applicant holds a current license to practice optometry in Virginia, and

(2) The applicant is certified to use diagnostic pharmaceutical agents;

b. Documented evidence that the applicant has been certified to administer cardiopulmonary resuscitation (CPR);

c. Documented evidence of satisfactory completion of the postgraduate training approved and prescribed by the board;

d. Verification of licensure status in other states from the Board of Examiners in Optometry or appropriate regulatory board or agency.

PART III. EXAMINATION.

§ 3.1. Examination for certification.

The following general provisions shall apply to optometrists who apply to take the board's examination for certification to treat the human eye and administer therapeutic pharmaceutical agents.

A. The certification examination for an optometrist to treat the human eye and administer therapeutic pharmaceutical agents shall be in two parts, pharmaceutical and clinical, and shall be taken as a unit.

B. A candidate for certification by the board who fails the examination following three attempts shall take additional postgraduate training approved by the board to be eligible to take further examinations, as required in § 6.1.

PART IV. SCOPE OF PRACTICE FOR AN OPTOMETRIST CERTIFIED TO USE THERAPEUTIC DRUGS.

§ 4.1. Certification.

An optometrist, currently licensed by the Board of Optometry, who has completed didactic and clinical training to ensure an appropriate standard of medical care for the patient and has met all other requirements and has passed an examination administered by the board, shall be certified to administer and prescribe certain therapeutic pharmaceutical agents in the treatment of

certain diseases or abnormal conditions of the human eye and adnexa.

§ 4.2. Therapeutic pharmaceutical agents.

Therapeutic pharmaceutical agents which a certified optometrist may administer and prescribe are all topical and are as follows:

1. Cycloplegics and mydriatics.

a. Atropine Sulfate - 0.5%, 1.0%

b. Homatropine HBr - 2.0%, 5.0%

c. Tropicamide - 0.5%, 1.0%

d. Phenylephrine HCl - 2.5%

2. Local anesthetics.

a. Tetracaine - 0.5%

b. Proparacaine HCl - 0.05%

3. Ophthalmic decongestants/antihistamine combinations.

a. Epinephrine HCl - 0.1%

b. Naphazoline HCl - 0.1%

c. Phenylephrine HCl - 0.125%/Pheniramine Maleate 0.5%

d. Phenylephrine HCl - 0.12%/Pyrilamine Maleate 0.1% Antipyrine 0.1%

e. Naphazoline HCl 0.025%/Pheniramine Maleate 0.3%

f. Naphazoline HCl 0.05%/Antazoline Phosphate 0.05%

4. Antibacterial.

a. Tetracycline

b. Erythromycin

c. Bacitracin

d. Polymyxin B/Bacitracin

e. 0.3% Gentamycin Sulphate Topical Solution

f. Chlorotetracycline

g. Sodium Sulfacetamide - 10%, 15%, 30%

h. Sulfisoxazole - 4.0%

i. Sulfacetamide - 15.0%/Phenylephrine - 0.0125%

5. Miscellaneous.

a. Hydroxypropyl Cellulose Ophthalmic Insert

b. Sodium Chloride Hypertonic - 5.0%

c. Cromolyn Sodium - 4.0%

d. Ophthalmic Irrigation Solution

e. Pilocarpine

§ 4.3. Treatment of certain diseases.

Diseases which may be treated by an optometrist certified by the board are hordeolum, conjunctivitis, pingueculitis, blepharitis, inflamed pterygium, chalazion, dry eye, removal of superficial conjunctival foreign bodies (when such removal can be achieved by irrigation or with a cotton tipped applicator) excluding surgery or other invasive modalities.

§ 4.4. Standards of practice.

A. A certified optometrist after seeing and treating any patient who has failed to improve significantly shall refer the patient to an ophthalmologist.

B. The certified optometrist shall establish a written protocol to manage patient emergencies and referral of patients for treatment to an ophthalmologist.

PART V.
RENEWAL OF CERTIFICATION.

§ 5.1. Renewal of certification.

Every optometrist certified by the board shall renew his certification biennially on or before July 1 and pay the prescribed fee in § 7.1 in each odd number year.

§ 5.2. Renewal requirement.

Every optometrist certified by the board must submit proof of current certification to administer cardiopulmonary resuscitation (CPR) for renewal of certification.

§ 5.3. Expiration of certification.

An optometrist who allows his certification to expire shall be considered not certified by the board. An optometrist who proposes to resume the treatment of the human eye and administer therapeutic pharmaceutical agents shall make a new application for certification and pay a fee prescribed in § 7.1.

PART VI.
POSTGRADUATE TRAINING.

§ 6.1. Postgraduate training required.

Every applicant applying for certification to treat the human eye and administer therapeutic pharmaceutical agents shall be required to complete a full-time approved postgraduate training program prescribed by the board.

A. The approved postgraduate program shall be The Virginia Ocular therapy for the Optometric Practitioner 750B conducted by the Pennsylvania College of Optometry or any other postgraduate program approved by the board.

B. Upon documented evidence of completing the required postgraduate training program, the applicant may apply to sit for the certification examination administered by the board.

C. The certification shall be a two-part comprehensive examination in accordance with § 3.1 of these regulations.

D. An applicant shall be certified to administer cardiopulmonary resuscitation (CPR).

PART VII.
FEES.

§ 7.1. Fees required by the board.

A. Application fee for the examination to be certified to treat the human eye and administer therapeutic pharmaceutical agents shall be \$300. The examination fee is nonrefundable. Upon written request 21 days prior to the scheduled examination and payment of a \$100 fee, an applicant may be rescheduled for the next administration of the examination.

B. Fee for biennial renewal of certification shall be \$125.

C. Fee for reinstating an expired certification shall be \$150.

D. The fee for a letter of good standing/verification to another state for a license shall be \$10.

E. Fee for reinstatement of a revoked certificate shall be \$750.

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF HEALTH PROFESSIONS
 BOARD OF MEDICINE
 1601 ROLLING HILLS DRIVE
 RICHMOND, VIRGINIA 23229-5005

APPLICATION
 TO PRACTICE AS A
 CERTIFIED OPTOMETRIST

SECURELY PASTE
 A PASSPORT SIZE
 PHOTOGRAPH

To The Board of Medicine of Virginia:

I hereby make application for a certificate to practice as a certified optometrist in the State of Virginia and submit the following statements:

2. List in chronological order all professional practice since graduation (eg. hospital department, outpatient centers, etc.). Also list all periods of absences from work and non-professional activity/employment of more than three months. Please account for all time. If engaged in private practice, list hospital or other professional practice.

From	To	Location and Complete Address	Position Held

1. NAME IN FULL (PLEASE PRINT OR TYPE)

(LAST)	(FIRST)	(MIDDLE/MAIDEN)	(JR./SR.)
(STREET)		(CITY)	(STATE) (ZIP CODE)
(DATE OF BIRTH) MO. DAY YR.	(PLACE OF BIRTH)	SOCIAL SECURITY NUMBER	
(GRADUATION DATE) MO. DAY YR.	(PROF. SCH. DEGREE)	(SCHOOL, CITY, STATE)	

 APPLICANTS DO NOT USE SPACES BELOW THIS LINE - FOR OFFICE USE ONLY

APPROVED BY: _____

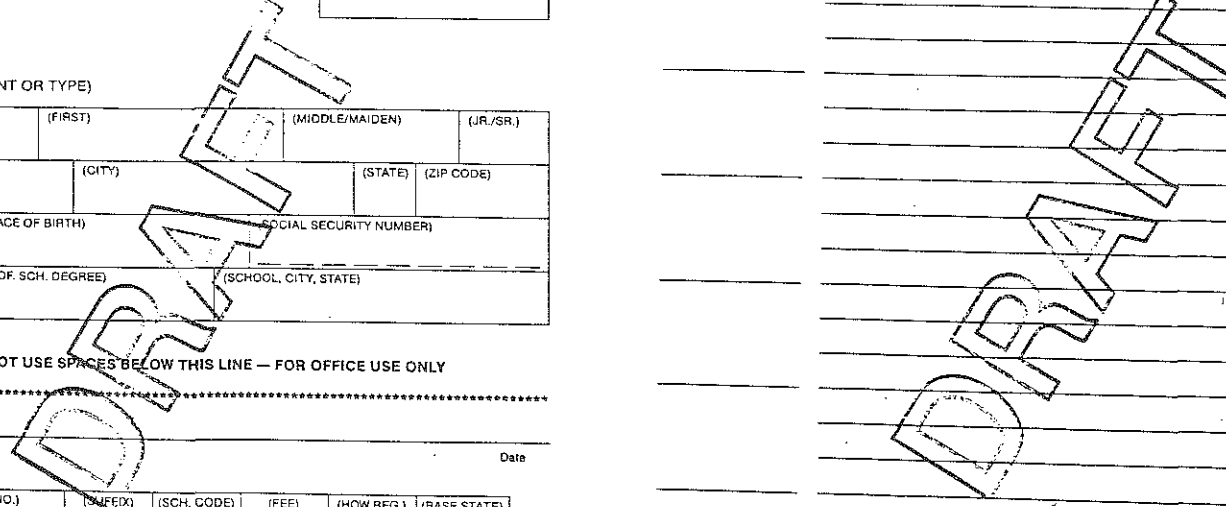
Date _____

(CLASS)	(LICENSE NO.)	(FEE)	(SCH. CODE)	(FEE)	(HOW REG.)	(BASE STATE)
(LICENSE NO.)		(EXPIRATION DATE)		(DATE ISSUED)		

(ADDRESS CHANGE)

(STREET)	(CITY)	(STATE)	(ZIP CODE)
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* PLEASE SUBMIT ADDRESS CHANGES IN WRITING IMMEDIATELY!
 * PLEASE ATTACH CERTIFIED CHECK OR MONEY ORDER. APPLICATIONS WILL NOT BE PROCESSED WITHOUT THE APPROPRIATE FEE. DO NOT SUBMIT FEE WITHOUT AN APPLICATION. IT WILL BE RETURNED.



ALL QUESTIONS MUST BE ANSWERED: If any of the following questions is answered YES, explain and substantiate with documentation.

- 3. I hereby certify that I studied optometry and received the degree of _____ on _____ from _____.
- 4. Do you hold a current license to practice Optometry in Virginia? _____. If YES, give license number _____.
- 5. List all states in which you have been certified to use diagnostic pharmaceutical agents. _____
- 6. List all didactic and clinical postgraduate training in the medical care of the human eye and administration of diagnostic and therapeutic pharmaceutical agents. _____
- 7. Do you currently hold a certificate to administer cardiopulmonary resuscitation (CPR)? _____. If YES, provide a certified copy of certification. _____
- 8. Have you ever been convicted of a violation of/or Pled Nolo Contendere to any Federal, State, or local statute, regulation or ordinance, or entered into any plea bargaining relating to felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence). Yes ____ No ____
- 9. Have you ever had any membership in a state or local professional society revoked, suspended, or sanctioned in any manner? Yes ____ No ____
- 10. Have you voluntarily withdrawn from any professional society while under investigation? Yes ____ No ____
- 11. Have you had any malpractice suits brought against you in the last ten years? If so, how many, and provide a letter from your attorney explaining each case. Yes ____ No ____
- 12. Have you ever been physically or emotionally dependent upon the use of alcohol/drugs or treated by, consulted with, or been under the care of a professional for substance abuse? If so, please provide a letter from the treating professional. Yes ____ No ____
- 13. Have you ever received treatment for/or been hospitalized for a nervous, emotional or mental disorder? If so, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis. Yes ____ No ____
- 14. Do you have a serious physical disease or diagnosis which could affect your performance or professional duties? If so, please provide details. Yes ____ No ____
- 15. Have you ever been adjudged mentally incompetent or been voluntarily committed to a mental institution? Please provide Yes ____ No ____

6. AFFIDAVIT OF APPLICANT:

I, _____, being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents.

I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present) and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Virginia Board of Medicine any information, files or records requested by the board in connection with the processing of individuals and groups listed above, any information which is material to me and my application.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my certificate to practice as a certified optometrist in the state of Virginia.

RIGHT THUMB PRINT
IF RIGHT THUMB IS MISSING, USE LEFT AND SO INDICATE.

THIS MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

Signature of Applicant

NOTARY: City/County of _____ State of _____
Subscribed and Sworn to before me this _____ day of _____ 19____
My Commission Expires _____
Notary Public

(NOTARY SEAL)

Proposed Regulations

VIRGINIA BOARD OF MEDICINE
1601 Rolling Hills Drive
Richmond, VA 23229-5005

EXAM

Please complete top portion and forward one form to each state Board where you hold or have held a certification for administration of certain therapeutic pharmaceutical agents. Extra copies may be photo-copied if needed.

NOTE: Some states require a fee, paid in advance, for providing clearance information. To expedite, you may wish to contact the applicable state/s.

CLEARANCE FROM OTHER STATE BOARD

I was granted license # _____ on _____ by the state of _____. The Virginia Board of Medicine request that I submit evidence that my license in the state of _____ is in good standing. You are hereby authorized to release any information in your files, favorable or otherwise, directly to the Virginia Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005. Your earliest attention is appreciated.

Signature _____

(Please print or type name) _____

Executive Office of State Board:

Please complete and return this form to the Virginia Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005.

State of _____ Name of licensee _____

License/Certification No. _____ Date Issued _____

Licensed/Certified through (check one)

_____ National examination _____ State Board examination

_____ Reciprocity/Endorsement from _____

_____ Other _____

License/Certificate is Current _____ Lapsed _____

Has applicants License/Certificate ever been suspended or revoked?

_____ ? If so, for what reason? _____

Derogatory Information, if any _____

(BOARD SEAL)

Signature _____

Title _____

State Board _____

Please print or type name of hospital place of employment:

(Name of applicant - Please Print) _____

The Virginia Board of Medicine, in its consideration of a candidate for licensure, depends on information from persons and institutions regarding the candidate's employment, training, and qualifications and staff privileges.

Please complete this form to the best of your ability and return it to the Board so the information you provide can be given consideration in the processing of this candidate's application in a timely manner.

I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present) and governmental agencies and instrumentalities (local, state, federal or foreign) to release to the Virginia Board of Medicine any information, files or records requested by the Board in connection with the processing of my application.

Signature of Applicant _____

1. Date and type of service: This optometrist served with us as _____

from (month) _____ (year) _____ to (month) _____ (year) _____

2. Please evaluate:

(Please indicate with check mark)

	Poor	Fair	Good	Superior
Professional knowledge				
Clinical judgement				
Relationship with patients				
Ethical/professional conduct				
Interest in work				
Ability to communicate				

3. Recommendation: (Please indicate with check mark) 1. Recommend highly and without reservation _____

2. Recommend as qualified and competent _____

3. Recommend with some reservation (explain) _____

4. Do not recommend (explain) _____

4. Of particular value to us in evaluating any candidate are comments regarding any notable strengths and weaknesses (including personal demeanor). We would appreciate such comments from you.

5. The above report is based on: (Please indicate with check mark) 1. Close personal observation _____

2. General impression _____

3. A composite of evaluations _____

4. Other _____

Date: _____

Signed: _____

(This report will become a part of the applicant's file and may be reviewed by the applicant upon demand)

(Please print or type name) _____

Proposed Regulations

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-26. Aid to Dependent Children (ADC) Program - Deprivation Due to the Incapacity of a Parent.

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

Public Hearing Date: N/A - Written comments may be submitted until December 23, 1989.

(See Calendar of Events section for additional information)

Summary:

Eligibility for assistance in the Aid to Dependent Children (ADC) program is based on a child being deprived of parental maintenance, care, and guidance due to the death, continued absence, or incapacity of at least one parent. When determining if a child is deprived based on the incapacity of a parent, federal regulations require the limited employment opportunities of the handicapped parent to be considered. This regulation expands Virginia's ADC program policy to require local eligibility staff to evaluate the limited employment opportunities of a handicapped parent when making a determination as to whether a child is deprived on the basis of his parent's incapacity.

VR 615-01-26. Aid to Dependent Children (ADC) Program - Deprivation Due to the Incapacity of a Parent.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Handicapped individuals" means any person who has a physical or mental impairment that results in a substantial deterrent to employment.

"Incapacity" means having a physical or mental impairment that substantially limits employment.

"Limited employment opportunities" means the types of jobs from which the handicapped individual is disqualified, the geographical area to which the individual has reasonable access, and the individual's job experience and training.

"Support" means the provision of a basis for subsistence.

PART II. PHYSICAL OR MENTAL INCAPACITY OF A PARENT.

§ 2.1. A child is deprived of parental support or care if either parent has a physical or mental defect, illness, or disability and that incapacity substantially reduces or prevents the parent from providing support or care. Incapacity may be total or partial, permanent or temporary, but must be expected to last for a period of at least 30 days. In making the determination of a parent's ability to provide care and support, the local social services agency must take into account the limited employment opportunities of handicapped individuals. The applicant or recipient must establish the existence of an impairment that substantially limits employment opportunities.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements.

Statutory Authority: §§ 62.1-44.34:11, 62.1-44.34:12 and 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

December 14, 1989 - 7 p.m.

December 18, 1989 - 7 p.m.

January 4, 1990 - 7 p.m.

(See Calendar of Events section for additional information)

Summary:

The federal financial responsibility requirements for petroleum underground storage tanks (UST) require owners or operators of petroleum USTs to demonstrate financial assurance of \$1 million per occurrence and an annual aggregate of \$1 million or \$2 million. These requirements became effective on January 24, 1989. This proposed regulation will enable the State Water Control Board to administer the program in Virginia and use the Virginia Underground Petroleum Storage Tank Fund to cover costs in excess of the required financial assurance for corrective action and third party liability.

The proposed Petroleum Underground Storage Tank Financial Requirements regulation requires owners, operators, and petroleum storage tank vendors to provide per occurrence financial responsibility of \$50,000 for corrective action and \$150,000 for third party liability. It also requires owners, operators and vendors to maintain from \$200,000 to \$2 million annual aggregate financial responsibility based on number of tanks owned. Those with 1-8 USTs are required to maintain \$200,000 of aggregate assurance. Those with 9-16, 17-24, 25-33, 34-100, and 101 or more USTs will be required to maintain \$400,000, \$600,000, \$800,000, \$1 million, and \$2 million annual aggregate assurance respectively.

The Virginia Petroleum Underground Storage Tank

Proposed Regulations

Fund will be used to cover costs due to a release in excess of the \$50,000/\$150,000 per occurrence amounts up to \$1 million. Per occurrence amounts above the \$1 million level may be covered by the federal UST fund or may be the responsibility of the owner, operator, or vendor. The fund will also be used to demonstrate annual aggregate coverage above the proposed sliding state requirement of \$200,000 to \$800,000 up to \$1 million. Use of the fund in this manner should be as stringent as the federal requirements.

Financial responsibility assurance can be shown using insurance, self-insurance, surety bonds, letters of credit, guarantees, trust funds, and state funds. The proposed regulation creates a financial test for self-insurance to be used in lieu of the federal test where the proposed required annual aggregate amount of financial responsibility is from \$200,000 to \$800,000.

The proposed regulation restricts reimbursement from the fund for moneys expended by owners, operators and vendors for corrective action prior to the effective date of this proposed regulation and enables state-lead and owner/operator-lead cleanups costing in excess of minimum financial responsibility requirements (\$50,000/\$150,000).

The State Water Control Board would administer the program. Owners, operators or vendors would upon request be asked to use their financial responsibility mechanisms in the event of a release.

VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements.

§ 1. Definitions.

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

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator or petroleum storage tank vendor.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by worker's compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage

in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank, to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V and VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation); excluding those steps which would normally be considered an owner's or operator's responsibility such as replacement of a failing underground storage tank.

"Department of Waste Management" means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under § 6.B or § 6.C of this regulation. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" is any expense that an owner or operator, or petroleum storage tank vendor, or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Underground Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, or political subdivision of a state.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of this regulation and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having

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responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum storage tank vendor" means a person who manufactures, sells, installs, or services an underground petroleum storage tank, its connective piping and associated equipment.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner, operator or petroleum storage tank vendor of an underground storage tank through one of the mechanisms listed in §§ 6 through

12, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator or petroleum storage tank vendor.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
 - a. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
 - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
 - c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4a or 4b of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Stormwater or wastewater collection system;

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7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

§ 2. Applicability.

A. This regulation applies to owners and operators of all petroleum underground storage tank (UST) systems regulated under VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements Regulation) and petroleum storage tank vendors except as otherwise provided in this section.

B. Owners and operators of petroleum UST systems and petroleum storage tank vendors are subject to these requirements if they are in operation on or after the date for compliance established in § 3.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this regulation.

D. The requirements of this regulation do not apply to owners and operators of any UST system described in § 1.2 B or C of VR 680-13-02.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 3.

§ 3. Compliance dates.

Owners of petroleum underground storage tanks and petroleum storage tank vendors are required to comply with the requirements of this regulation by the following dates:

1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification

Administration; January 24, 1989.

2. All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

3. All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.

4. All petroleum UST owners not described in subdivisions 1 through 3 of this section, including all local government entities; October 26, 1990.

5. All petroleum storage tank vendors; October 26, 1990.

§ 4. Amount and scope of required financial responsibility.

Note: Requirements of subdivisions B 5 and B 6 of this section are as stringent as the federal regulation for demonstration of annual aggregate financial responsibility. The staff has included requirements of subdivisions B 1 through B 4 for demonstration of annual aggregate financial responsibility amounts for owners or operators and petroleum storage tank vendors of 1 to 33 tanks. The Virginia Underground Petroleum Storage Tank Fund described in § 21 will be used to demonstrate financial responsibility requirements for the amounts above the levels in B 1 through B 4 up to the federal requirement of \$1 million. The board expressly requests comments on requirements of subdivisions B 1 through B 4 of this section including whether these requirements are as stringent as the federal regulation.

A. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

1. \$50,000 for corrective action;

2. \$150,000 for compensating third parties for bodily injury and property damage.

B. Owners or operators of petroleum underground storage tanks and petroleum storage tank vendors must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

1. For owners or operators and petroleum storage tank vendors of 1 to 8 petroleum underground storage tanks, \$200,000; and

2. For owners or operators and petroleum storage tank vendors of 9 to 16 petroleum underground storage

tanks, \$400,000; and

3. For owners or operators and petroleum storage tank vendors of 17 to 24 petroleum underground storage tanks, \$600,000; and

4. For owners or operators and petroleum storage tank vendors of 25 to 33 petroleum underground storage tanks, \$800,000; and

5. For owners or operators and petroleum storage tank vendors of 34 to 100 petroleum underground storage tanks, \$1 million; and

6. For owners or operators and petroleum storage tank vendors of 101 or more petroleum underground storage tanks, \$2 million.

C. For the purposes of subsections B and F only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

D. Except as provided in subsection E, if the owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

1. Taking corrective action;

2. Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

3. Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections A and B of this section.

E. If an owner or operator or petroleum storage tank vendor uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

F. Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. Petroleum storage tank vendors shall review annually the amount of aggregate assurance provided for the number of petroleum underground storage tanks manufactured, sold, serviced or installed, said review date being the day which is 130 days prior to the anniversary of the date on which the mechanism demonstrating financial responsibility became effective.

1. If the number of petroleum underground storage

tanks for which assurance must be provided increases above a categorized amount specified in § 4 B, the owner or operator or petroleum storage tank vendor shall demonstrate financial responsibility in the appropriate new amount specified in § 4 B of annual aggregate assurance, by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective.

2. If assurance is being demonstrated by a combination of mechanisms, the owner or operator or petroleum storage tank vendor shall demonstrate financial responsibility in the appropriate amount specified in § 4 B of annual aggregate assurance, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or Guarantee) to provide assurance.

G. The amounts of assurance required under this section exclude legal defense costs.

H. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator and petroleum storage tank vendor.

§ 5. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an owner or operator or petroleum storage tank vendor may use any one or combination of the mechanisms listed in §§ 6 through 12 to demonstrate financial responsibility under this regulation for one or more underground storage tanks.

B. An owner or operator or petroleum storage tank vendor may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the owner or operator or petroleum storage tank vendor are not consolidated with the financial statements of the guarantor.

§ 6. Financial test of self-insurance.

Note: Requirements of subsections D and E of this section are identical to the federal regulation. The staff has included requirements of subsections B and C for meeting the financial test of self-insurance for owners or operators and petroleum storage tank vendors of 1 to 33 tanks in lieu of the federal test for self-insurance. The board expressly requests comments on requirements of subsections B and C of this section including whether these requirements are as stringent as the federal regulation.

A. An owner or operator, petroleum storage tank vendor, or guarantor, may satisfy the requirements of § 4 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator or petroleum storage tank vendor, or guarantor of 1 to 33

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tanks must meet the requirements of subsections B or C, and F of this section, as applicable under § 4 B, based on year-end financial statements for the latest completed fiscal year. To pass the financial test of self-insurance, the owner or operator or petroleum storage tank vendor, guarantor of greater than 33 tanks, or combination of these individuals, must meet the requirements of subsections D or E, and F of this section, as applicable under § 4 B, based on year-end financial statements for the latest completed fiscal year.

B.1. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a tangible net worth of at least equal to the total of the applicable aggregate amount required by § 4 B 1 through 4 B 4 based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility;

2. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 and the Department of Waste Management under VR 672-10-1 §§ 10.5.L, 10.7 C, 10.7 E, 9.7 C, 9.7 E, 10.7 G, 9.7 G (Virginia Hazardous Waste Management Regulations); and

b. The sum of current plugging and abandonment cost estimates for which a financial test is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63;

3. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must comply with either subdivision a or b below:

a.(1) The fiscal year-end financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must be examined by an independent certified public accountant and be accompanied by the accountants report of the examination; and

(2) The firms year-end financial statements cannot include an adverse auditors opinion, a disclaimer of opinion, or a "going concern" qualification.

b.(1)(a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(b) Report annually the firms tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A; and

(2) The firms year-end financial statements, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a letter signed by the chief financial officer worded identically as specified in Appendix I /Alternative I.

C.1. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a tangible net worth of at least equal to the total of the applicable aggregate amount required by § 4 B 1 through 4 B 4 based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility;

2. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must also meet the financial test requirements of VR 672-10-1 § 10.7 G 6 Virginia Hazardous Waste Management Regulations, substituting the appropriate amounts specified in § 4 B 1 through 4 B 4 for the "amount of liability coverage" and "tangible net worth" each time specified in that section.

3. The fiscal year-end financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The firms year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must obtain a special report by an independent certified public accountant stating that:

a. He has compared the data that the letter from the chief financial officer specified as having been derived from the latest year-end financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, with the amounts in such financial

statements; and

b. In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

6. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D.1. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a tangible net worth of at least ten times:

a. The total of the applicable aggregate amount required by § 4 B 5 or § 4 B 6, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the board under this section;

b. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 and the Department of Waste Management under VR 672-10-1 §§ 10.5.L, 10.7.C, 10.7.E, 9.7.C, 9.7.E, 10.7.G, 9.7.G (Virginia Hazardous Waste Management Regulations); and,

c. The sum of current plugging and abandonment cost estimates for which a financial test is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR § 144.63.

2. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a tangible net worth of at least \$10 million.

3. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must either:

a. File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

b. Report annually the firms tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

4. The firm's year-end financial statements, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going

concern" qualification.

5. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative III.

E.1. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must meet the financial test requirements of VR 672-10-1 § 10.7 G 6, substituting the appropriate amounts specified in § 4 B 5 and § 4 B 6 for the "amount of liability coverage" each time specified in that section.

2. The fiscal year-end financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. If the financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must obtain a special report by an independent certified public accountant stating that:

a. He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

5. The owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative IV.

F. To demonstrate that it meets the financial test under subsections B through E of this section, the chief financial officer of the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, must sign, within 120 days of the close of each financial

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reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate Alternative I through IV, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

G. If an owner or operator or petroleum storage tank vendor using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator or petroleum storage tank vendor must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

H. The board may require reports of financial condition at any time from the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals. If the board finds, on the basis of such reports or other information, that the owner or operator, petroleum storage tank vendor, guarantor, or combination of these individuals, no longer meets the financial test requirements of § 6 B or C or D or E and F, the owner or operator or petroleum storage tank vendor must obtain alternate coverage within 30 days after notification of such a finding.

I. If the owner or operator or petroleum storage tank vendor fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator or petroleum storage tank vendor must notify the board of such failure within 10 days.

§ 7. Guarantee.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

1. A firm that:

- a. Possesses a controlling interest in the owner or operator or petroleum storage tank vendor;
- b. Possesses a controlling interest in a firm described under subdivision A 1a of this section; or
- c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator or petroleum storage tank vendor; or

2. A firm engaged in a substantial business relationship with the owner or operator or petroleum storage tank vendor and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 6 B or C or D or E and F based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and must deliver the letter to the owner or operator or petroleum storage tank vendor. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator or petroleum storage tank vendor. If the board notifies the guarantor that he no longer meets the requirements of the financial test of § 6 B or C or D or E and F, the guarantor must notify the owner or operator or petroleum storage tank vendor within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator or petroleum storage tank vendor receives the notification, as evidenced by the return receipt. The owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in § 19 C.

C. The guarantee must be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator or petroleum storage tank vendor who uses a guarantee to satisfy the requirements of § 4 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 8. Insurance and group self-insurance pool coverage.

A.1. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools must comply with Virginia Code § 62.1-44.34:12 and the State Corporation Commission Bureau of Insurance Regulation No. 33.

B. Each insurance policy must be amended by an endorsement worded identically as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets must be replaced with the relevant

information and the brackets deleted.

C. Each insurance policy must be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this regulation, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11.

§ 9. Surety bond.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond must be worded identically as specified in Appendix V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator or petroleum storage tank vendor fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The owner or operator or petroleum storage tank vendor who uses a surety bond to satisfy the requirements of § 4 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

§ 10. Letter of credit.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose

letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit must be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An owner or operator or petroleum storage tank vendor who uses a letter of credit to satisfy the requirements of § 4 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under § 17. This standby trust fund must meet the requirements specified in § 12.

D. The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator or petroleum storage tank vendor by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator or petroleum storage tank vendor receives the notice, as evidenced by the return receipt.

§ 11. Trust fund.

A. An owner or operator or petroleum storage tank vendor may satisfy the requirements of § 4 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator or petroleum storage tank vendor. The wording of the trust agreement must be identical to the wording specified in Appendix VII, and must be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator or

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petroleum storage tank vendor may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this regulation is substituted for all or part of the trust fund, the owner or operator or petroleum storage tank vendor may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator or petroleum storage tank vendor for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator or petroleum storage tank vendor such funds as the board specifies in writing.

§ 12. Standby trust fund.

A. An owner or operator or petroleum storage tank vendor using any one of the mechanisms authorized by §§ 7, 9 and 10 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement must be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner or operator or petroleum storage tank vendor may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§ 13. Substitution of financial assurance mechanisms by owner or operator or petroleum storage tank vendor.

A. An owner or operator or petroleum storage tank vendor may substitute any alternate financial assurance mechanisms as specified in this regulation, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 4.

B. After obtaining alternate financial assurance as specified in this regulation, an owner or operator or petroleum storage tank vendor may cancel a financial assurance mechanism by providing notice to the provider

of financial assurance.

§ 14. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator or petroleum storage tank vendor.

1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or group self-insurance pool coverage may not occur until 60 days after the date on which the owner or operator or petroleum storage tank vendor receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in § 15, the owner or operator or petroleum storage tank vendor must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator or petroleum storage tank vendor must immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with § 16 B.

§ 15. Reporting by owner or operator or petroleum storage tank vendor.

A. An owner or operator must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to be reported under § 5.4 or § 6.2 of VR 680-13-02.

B. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board if the owner or operator or petroleum storage tank vendor fails to obtain alternate coverage as required by this regulation within 30 days after the owner or operator or petroleum storage tank vendor receives notice

of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
3. Failure of a guarantor to meet the requirements of the financial test,
4. Other incapacity of a provider of financial assurance.

C. An owner or operator or petroleum storage tank vendor must submit the appropriate forms listed in § 16 B documenting current evidence of financial responsibility to the board as required by §§ 6 I and 14 B.

D. An owner or operator must certify compliance with the financial responsibility requirements of this regulation as specified in the new tank notification form when notifying the board of the installation of a new underground storage tank under § 2.3 of VR 680-13-02.

E. The board may require an owner or operator or petroleum storage tank vendor to submit evidence of financial assurance as described in § 16 B or other information relevant to compliance with this regulation at any time.

§ 16. Recordkeeping.

A. Owners or operators and petroleum storage tank vendors must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this regulation for an underground storage tank until released from the requirements of this regulation under § 18. An owner or operator and petroleum storage tank vendor must maintain such evidence at the underground storage tank site or the owner's or operator's and petroleum storage tank vendor's place of business in this Commonwealth. Records maintained off-site must be made available upon request of the board.

B. Owners or operators and petroleum storage tank vendors must maintain the following types of evidence of financial responsibility:

1. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain a copy of the instrument worded as specified.
2. An owner or operator or petroleum storage tank vendor using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such

evidence must be on file no later than 120 days after the close of the financial reporting year.

3. An owner or operator or petroleum storage tank vendor using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. An owner or operator or petroleum storage tank vendor using an insurance policy or group self-insurance pool coverage must maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5.a. An owner or operator or petroleum storage tank vendor using an assurance mechanism specified in §§ 6 through 11 must maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator or petroleum storage tank vendor must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

§ 17. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1.a. The owner or operator or petroleum storage tank vendor fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or petroleum storage tank vendor, or the owner or operator has notified the board pursuant to Parts V and VI of VR 680-13-02 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subdivision B 1 or B 2a or B 2b of this section are satisfied.

B. The board may draw on a standby trust fund when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and

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opportunity to comply, has not conducted corrective action as required under Part VI of VR 680-13-02; or

2. The board has received either:

a. Certification from the owner or operator or petroleum storage tank vendor and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or,

b. A valid final court order establishing a judgment against the owner or operator or petroleum storage tank vendor for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this regulation and the board determines that the owner or operator has not satisfied the judgment.

c. If the board determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2a of this section and valid court orders under subdivision B 2b of this section.

§ 18. Release from the requirements.

An owner or operator is no longer required to maintain financial responsibility under this regulation for an underground storage tank after the tank has been properly closed or a change-in-service properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII of VR 680-13-02.

§ 19. Bankruptcy or other incapacity of owner, operator, petroleum storage tank vendor or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator or petroleum storage tank vendor as debtor, the owner or operator or petroleum storage tank vendor must notify the board by certified mail of such commencement and submit the appropriate forms listed in § 16 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator or petroleum storage tank vendor by certified mail of such commencement as required under the terms of the guarantee specified in § 7.

C. An owner or operator or petroleum storage tank vendor who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The owner or operator or petroleum storage tank vendor must obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator or petroleum storage tank vendor does not obtain alternate coverage within 30 days after such notification, he must immediately notify the board in writing.

D. Within 30 days after receipt of written notification that the Virginia Underground Petroleum Storage Tank Fund has become incapable of covering costs in excess of those specified in § 4 up to \$1 million, for paying for assured corrective action or third-party compensation costs, the owner or operator or petroleum storage tank vendor must obtain alternate financial assurance in accordance with Subpart H of 40 CFR Part 280.

§ 20. Replenishment of guarantees, letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator or petroleum storage tank vendor shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required, or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by § 4 of this regulation. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

§ 21. Virginia Underground Petroleum Storage Tank Fund (Fund).

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A. The Fund will be used for costs in excess of the financial responsibility requirements specified under § 4 A up to \$1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party claims shall not exceed \$950,000 per occurrence. Third party disbursements for accidental releases with no corrective actions shall not exceed \$850,000 per occurrence. No combined corrective action and third party disbursements from the fund shall exceed \$800,000 per occurrence, except as specified in subdivision C 2 of this subsection. The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment. Third party liability claims against the Fund shall only be paid in accordance with final court orders where the board has been represented or in cases of an agreed settlement between the third party and the board.

2. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to \$1 million which are reasonable and have been approved by the board will be reimbursed from the Fund.

3. Joint owner or operator and board managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI of VR 680-13-02 may proceed to pay for those costs up to the first \$50,000. An accounting of all costs incurred shall be submitted to the board and those costs which are reasonable and approved by the board will be applied to the owner or operator financial responsibility requirement. After the owner or operator meets the financial responsibility requirement the site will become a state managed cleanup. In order to have an orderly transition from the owner or operator managed cleanup to a board managed cleanup, the owner or operator shall only initiate activities associated with Part VI §§ 6.4 through 6.8 of VR 680-13-02 which can be completed within the owner or operator financial responsibility requirement.

Owners or operators who cannot complete a corrective action activity within the financial responsibility requirement, shall make available upon demand by the board the unexpended financial requirement moneys for the board's use in continuing a state managed cleanup at the site. The foregoing does not

relieve owners or operators of their responsibility to conduct activities associated with Part VI §§ 6.1 through 6.3 of VR 680-13-02.

4. No owner or operator, either or both, shall receive reimbursement from the Fund for any costs or damages incurred:

(a) Where the owner or operator, his employee or agent, or anyone within the privity or knowledge of the owner or operator, has violated substantive environmental regulations under VR 680-13-02 or this regulation; or

(b) Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee or agent, or anyone within the privity or knowledge of the owner or operator; or

(c) Where the owner or operator, his employee or agent, or anyone within the privity or knowledge of the owner or operator, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI of VR 680-13-02 or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI of VR 680-13-02.

5. No person shall receive reimbursement from the Fund for third party bodily injury or property damage claims:

(a) Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the claimant, his employee or agent, or anyone within his privity or knowledge; or

(b) Where the claim has been reimbursed or is reimbursable, by an insurance policy, self-insurance program or other financial mechanism.

B. The Fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified under § 4 B 1 through § 4 B 4 up to the \$1 million annual aggregate required by 40 CFR Part 280, Subpart H for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

C. This Fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect

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human health and the environment.

2. Costs incurred by the board for taking both corrective action and third party liability claims up to \$1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in VR 680-13-02 § 1.1 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by Virginia Code § 62.1-44.34:11.

D. The board shall seek recovery of Fund moneys expended for corrective action in accordance with Virginia Code § 62.1-44.34:11 where the owner or operator has violated substantive environmental regulations under VR 680-13-02 or this regulation.

E. The board shall have the right of subrogation for moneys expended from the Fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of moneys expended by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to the effective date of this regulation.

G. No disbursements shall be made from the Fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

§ 22. Notices to the State Water Control Board.

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Executive Director
State Water Control Board
2111 North Hamilton Street
P.O.Box 11143
Richmond, Virginia 23230-1143

§ 23. Delegation of authority.

The executive director, or in his absence a designee acting for him, may perform any act of the board

provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I

LETTER FROM CHIEF FINANCIAL OFFICER

Note: Alternatives III and IV of this appendix are identical to the federal regulation. The staff has included Alternatives I and II for meeting the financial test of self-insurance for owners or operators and petroleum storage tank vendors of 1 to 33 tanks in lieu of the federal test for self-insurance. The board expressly requests comments on Alternatives III and IV of this section including whether these alternatives are as stringent as the federal regulation. [Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the owner or operator*, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. "compensating third parties for bodily injury and property damage" caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]; [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements)]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator " or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation for each state of business operations (specify state):

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	Amount
Closure (§§ 264.143 and 265.143)	\$
Post-Closure Care (§§ 264.145 and 265.145)	\$
Liability Coverage (§§ 264.147 and 265.147)	\$
Corrective Action (§ 264.101(b))	\$
Plugging and Abandonment (§§ 144.63)	\$
Virginia Hazardous Waste Management Regulations:	
Closure (VR 672-10-1 §§ 10.7.C. and 9.7.C)	\$
Post-Closure Care (VR 672-10-1 §§ 10.7.E and 9.7.E.)	\$
Liability Coverage (VR 672-10-1 §§ 10.7.G. and 9.7.G.)	\$
Corrective Action (VR 672-10-1 § 10.5.L.2.)	\$
Plugging and Abandonment (40 CFR § 144.63)	\$
TOTAL	\$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of § 6.B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of § 6.C are being used to demonstrate compliance with the financial test requirements.]

Fill in the information for Alternative III if the criteria of § 6.D are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative IV if the criteria of § 6.E are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . \$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$
3. Sum of lines 1 and 2 \$
4. Total tangible assets \$

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6] \$.....
6. Tangible net worth [subtract line 5 from line 4] \$
7. Is line 6 at least equal to line 1 above? Yes ... No ...
8. Is line 6 at least equal to the sum of line 1 plus 10 times line 2? Yes ... No ...
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? Yes ... No ...
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? Yes ... No ...
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? Yes ... No ...
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] Yes ... No ...
13. If you did not answer Yes to one of lines 9 through 12, please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines 4 through 8 above and the financial statements for the latest fiscal year.

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . \$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$
3. Sum of lines 1 and 2 \$
4. Total tangible assets \$
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6] \$
6. Tangible net worth [subtract line 5 from line 4] \$
7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$
8. Is line 6 at least equal to line 1 above? Yes ... No ...

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9. Is line 6 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.] Yes ... No ...

11. Is line 7 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets \$

13. Current liabilities \$

Net working capital [subtract line 13 from line 12] . \$

15. Is line 14 at least equal to the sum of line 1 plus 6 times the sum of line 2? Yes ... No ...

16. Current bond rating of most recent bond issue
Yes ... No ...

17. Name of rating service Yes ... No ...

18. Date of maturity of bond Yes ... No ...

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? Yes ... No ...

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

ALTERNATIVE III

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . \$

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$

3. Sum of lines 1 and 2 \$

4. Total tangible assets \$

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6]
\$

6. Tangible net worth [subtract line 5 from line 4] \$

7. Is line 6 at least \$10 million? Yes ... No ...

8. Is line 6 at least 10 times line 3? Yes ... No ...

9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? Yes ... No ...

10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? Yes ... No ...

11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? Yes ... No ...

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] Yes ... No ...

ALTERNATIVE IV

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$

3. Sum of lines 1 and 2 \$

4. Total tangible assets \$

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line or add that amount to line 6].
\$

6. Tangible net worth [subtract line 5 from line 4] \$

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] \$

8. Is line 6 at least \$10 million? Yes ... No ...

9. Is line 6 at least 6 times line 3? Yes ... No ...

10. Are at least 90% of assets located in the U.S.? [If "No," complete line 11]. Yes ... No ...

11. Is line 7 at least 6 times line 3? Yes ... No ... [Fill in either lines 12-15 or lines 16-18:]

12. Current assets \$

13. Current liabilities \$

14. Net working capital [subtract line 13 from line 12]
\$

15. Is line 14 at least 6 times line 3?

Yes ... No ...

16. Current bond rating of most recent bond issue
Yes ... No ...
17. Name of rating service Yes ... No ...
18. Date of maturity of bond Yes ... No ...
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? Yes ... No ...

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For Alternatives I, II, III, and IV complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

APPENDIX II

GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator*] of [business address].

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of § 6.B or C or D or E and F of the Virginia Petroleum Underground Storage Tank Financial Requirement Regulation VR 680-13-03, and agrees to comply with the requirements for guarantors as specified in § 7.B of VR 680-13-03.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3. of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.] This guarantee satisfies VR 680-13-03 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or

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damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of § 17 of VR 680-13-03 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of § 6.B or C or D or E and F of VR 680-13-03, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to VR 680-13-02 and VR 680-13-03.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of VR 680-13-03 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of VR 680-13-03 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary:

APPENDIX III

ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

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for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Pool"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix III of VR 680-13-03 and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self-Insurance Pool]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Group Self-Insurance Pool]

[Address of Representative]

APPENDIX IV

CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Group Self-Insurance Pool]:

Address of [Insurer or Group Self-Insurance Pool]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Group Self Insurance Pool], [the "Insurer" or "Pool"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden

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accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Groups liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Pool"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§ 6 through 11 of VR 680-13-03.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Pool"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of VR 680-13-03 and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]
[Type name] [Title], Authorized Representative of
[name of Insurer or Group Self Insurance Pool]
[Address of Representative]

APPENDIX V

PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]* Type of organization: [insert "individual" "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.
Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond: Per occurrence \$
Annual aggregate \$

Surety's bond number:

Know All Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the

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payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §§ 62.1-44.34:8 through § 62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (VR 680-13-03), to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part VI of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in VR 680-13-03, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason

of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of VR 680-13-02 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with VR 680-13-02 and the Board's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under § 17 of VR 680-13-03.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the

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wording of this surety bond is identical to the wording specified in Appendix V of VR 680-13-03 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation:
Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

APPENDIX VI

IRREVOCABLE STANDBY LETTER OF CREDIT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution] [Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)] Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No in your favor, at the request and for the account of [owner or operator* name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No.... and

(2) your signed statement reading as follows: "I certify

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. that the amount of the draft is payable pursuant to regulations issued under authority of §§ 62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to § 2.3 of VR 680-13-02 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator*] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03 (Virginia Petroleum Underground Storage Tank Financial Requirements Regulation).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

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Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of owner or operator in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of VR 680-13-03 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII

TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator*], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es)

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate. of the facility(ies) where the tanks are located that are covered by the standby trust agreement;

Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "VR 680-13-03" is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either

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"sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert, owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 4 of VR 680-13-03.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters,

would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such

securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the

Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason

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of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of VR 680-13-03 as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

[Signature of Witness]
[Name of Witness]
[Title]
[Seal]

APPENDIX VIII

CERTIFICATION OF ACKNOWLEDGEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of

County of

On this [date], before me personally came [owner or operator*] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to

such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]
My Commission expires:

* Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.

APPENDIX IX

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator or petroleum storage tank vendor] hereby certifies that it is in compliance with the requirements of VR 680-13-03 (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanisms used to demonstrate financial responsibility under VR 680-13-03 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator or petroleum storage tank vendor]
[Name of owner or operator or petroleum storage tank vendor] [Title] [Date]
[Signature of notary]
[Name of notary] [Date] My Commission expires:

APPENDIX X

CERTIFICATION OF VALID CLAIM

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator*] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[].

[Signatures] [Signature(s)]

Owner or Operator *Claimant(s)*

Attorney for *Attorney(s) for*
Owner or Operator *Claimant(s)*

(Notary) Date *(Notary) Date*

** Note: Where this document is to be utilized by a petroleum storage tank vendor, then the words "petroleum storage tank vendor" shall be substituted for "owner or operator" where appropriate.*

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.

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 125-01-7. Other Provisions.

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

Effective Date: November 23, 1989

Summary:

Numerous regulations are being amended some of which relate to (i) corporations not being required to be represented by attorneys at initial or appeal hearings with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings, (ii) statutory reference changes to the Wine Franchise Act, (iii) permitting more alcoholic beverage advertising inside retail licensee establishments through the use of printed paper and cardboard materials which are not obtained from manufacturers, bottlers or wholesalers, (iv) regulation subsection and subdivision changes, (v) the sale of ice and the cleaning and servicing of equipment, and (vi) changing licensee record keeping requirements for beer and 3.2 beverages to two years.

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.

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 /representation .

~~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. Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the hearing officers.~~

§ 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.

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.

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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 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.

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§ 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 /representation .

~~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. Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the board.~~

§ 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.

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~~ 2.3 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~~ 2.3 of Title 4 of the Code of Virginia, including arbitration proceedings when necessary pursuant to the Code of Virginia §§ 4-118.10 and ~~4-118.30~~ 4-118.50.

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 context clearly indicates otherwise:

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"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~~ 4-118.43 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~~ 4-118.43 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 subdivisions 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 subdivision 2 f~~ of subsection G or ~~paragraph subdivision 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

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between the same parties, depending upon the same 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~~ *subdivision 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 of the hearing; or (iii) to permit entry upon designated land or other property in the

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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~~ subdivision 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 subserved thereby and the party who obtained the admission fails to satisfy the board that withdrawal or 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 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.

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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 ADOPTION OR AMENDMENT OF REGULATIONS.

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

A. Applicability.

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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.

Rule-making 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. Rule-making 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 *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 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 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 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 events and events of a charitable or cultural nature in accordance with § 10 of VR 125-01-2;

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 "neekers," 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.

A. Definition.

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As used in this § 2, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages [offered for sale in this Commonwealth].

B. The use of advertising materials inside licensed retail establishments [is permitted shall be] subject to the following [requirements provisions] :

1. The use of advertising materials consisting of anything other than printed matter appearing on paper or cardboard stock is prohibited except for items listed in subdivision B 3 of this section.

2. The use of advertising materials consisting of printed matter appearing on paper or cardboard stock is permitted provided that such materials are listed in, and conform to any restrictions set forth in, subdivision B 3 of this section. Any such materials may be obtained by a retail licensee from any source other than manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers and wholesalers may supply only those items they are expressly authorized to supply to retail licensees by the provisions of subdivision B 3.

3. [The following categories of] Advertising materials [described in the following categories] may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:

a. Works of art so long as they are not supplied by manufacturers, bottlers, or wholesalers of alcoholic beverages.

b. Materials displayed in connection with the sale of over-the-counter novelty and specialty items in accordance with § 6 of VR 125-01-2.

c. Materials used 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 and events of a charitable or cultural nature by distilleries, wineries and breweries [, subject to the provisions of § 10 B of VR 125-01-2] .

d. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages.

e. Draft beer and wine knobs, bottle or can openers, beer and wine cut case cards, beer and wine clip-ons and beer and wine table tents, [provided that each of the foregoing items must comply with the subject to the] provisions of § 8 of VR 125-01-3.

f. Wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which [shall be have been] shipped in the case.

g. Point-of-sale entry blanks [;] relating to [contest contests] and sweepstakes, may be affixed to cut the case cards as defined in § 8 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 such service is offered to] all retail licensees equally and [after obtaining the wholesaler has obtained] 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.

h. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2.

i. Advertising materials [making that make] reference to [brands or manufacturers brand] of alcoholic [beverages beverage] not offered for sale in Virginia [so long as or to any manufacturer whose alcoholic beverage products are not sold in Virginia, provided] the materials are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages.

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

a: 1. Such materials shall contain no depictions of an alcoholic beverage product and no reference to any brands of alcoholic beverages;

b: 2. Such materials shall contain no more than two minor references to the name of the alcoholic beverage manufacturer or its corporate logo;

e: 3. Such materials are limited to posters of reasonable size and table tents;

d: 4. 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 § 8 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. D. 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 paragraph subdivision A & B 3 of this section.

C. E. 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 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 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.

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 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 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.

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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.

§ 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 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. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold.

3. 4. Wearing apparel distributed shall be in adult sizes;

4. 5. Point-of-sale order blanks, relating to novelty and specialty items, may be affixed to cut case cards as defined in § 9 F 8 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 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;
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

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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; and

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

VR 125-01-3. Tied House.

§ 1. 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 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.

§ 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.

§ 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.

§ 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.

§ 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.

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.

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

A. Minimum deposit.

Wholesalers shall collect in cash, at or prior to the time

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of delivery of any beer or beverages sold to a retail licensee, the following minimum deposit charges on the containers:

Bottles having a capacity of not more than 12 oz. ...	\$0.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz.	\$0.04
Cardboard, fibre or composition cases other than for 1-1/8 or 2-1/4 gallon kegs	\$0.02
Cardboard, fibre or composition cases for 1-1/8 or 2-1/4 gallon kegs	\$0.50
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

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.

§ 7. Solicitation of licensees by wine, beer and beverage solicitor salesmen or representatives.

A. Generally.

A permit is not required 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 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 or representative of any wholesaler engaged in the sale of wine, beer or beverages, but not holding a license therefor in this Commonwealth, or 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.

D. Solicitation and promotion under the regulation may include educational programs regarding wine, 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.

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 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 and four beers.

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

H. Cleaning and servicing equipment.

Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

I. Sale of ice.

Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

J. Sanctions and penalties.

Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1 A, wholesaler or retailer who violates, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4-79.1 D of the Code of Virginia.

§ 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.

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 125-01-7. 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 Commonwealth of alcoholic beverages or beverages lawfully purchased within this State Commonwealth 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 *Commonwealth* of alcoholic beverages or beverages lawfully purchased outside of this State *Commonwealth* 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 *subdivision* 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.

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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 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 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.

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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 § 58.1-700, of the Code of Virginia, which records shall at all times during business hours . The records shall be available for inspection and copying by any member of the board or its agents at any time during business hours . Licensees of the board may commit these records to use microfilm , microfiche, disks or other available technologies for the storage of at any time during the period specified herein their records .~~

B. Retail licensees generally .

Retail licensees shall keep *complete and accurate records , including invoices*, of the purchases and sales of alcoholic beverages , and beverages, and also records of the purchases and sales of foods food 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 records .

C. Mixed beverage restaurant licensees.

In addition to the requirements of paragraphs subsections A and B hereof, and separate and apart therefrom, above, 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 . The following additional records actions shall also be taken :

1. Upon On 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

currently held in inventory on the premises by the licensee.

2. Once a year, each licensee at least annually on forms prescribed by the board shall submit on prescribed forms 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 an annual review report . The report is due within 30 days after the end of the mixed beverage license year and shall include :

a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages ; and 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, 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 subdivision 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, *hors d'oeuvres*, 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 a licensee shall not 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 the gross receipts. [Food shall include *hors d'oeuvres*.]

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 fide 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 subdivision B.3.b and B 4 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.

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

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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.
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 [~~located on lands ceded by the Commonwealth to the United States or~~] owned by the government of the United States, or any agency thereof, is ~~located on land~~ [~~provided such lands are 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 [~~sale of food cooked or prepared on the premises for consumption thereon 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 [~~food meals~~].

[If the special mixed beverage licensed place is located in a food court composed of other places engaged in the sale of meals or light lunches, the gross receipts from the combined sales of food cooked or prepared on the premises for consumption within the food court at all places engaged in the sale of meals or light lunches shall be not less than 45% of the gross receipts from the combined sales of alcoholic beverages, mixed beverages, beverages as defined in § 4-99 and food. Alcoholic beverages, mixed beverages and beverages as defined in § 4-99 may be sold and consumed only in those areas and places within the food court as designated by the board.]

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 $\frac{1}{2}$ of one percent 0.5% or more of alcohol by volume, and not more than three and $\frac{2}{10}$ ths percent 3.2% 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 § 4-118.43 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 § 4-118.43 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 § 4-118.43 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

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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.

BOARD FOR BRANCH PILOTS

Title of Regulation: VR 535-01-01. Branch Pilot Regulations.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Effective Date: November 30, 1989

Summary:

The adopted regulation continues the current requirement for all Branch Pilots and Limited Branch Pilots to be licensed and to meet certain apprenticeship and examination requirements before becoming licensed. All pilots must apply annually for license renewal and appear before the board or a board committee where they must present evidence of a recent satisfactory physical examination, of appropriate federal licenses and of continued competence to pilot the waters authorized by their license in order to qualify for continued licensure. Branch Pilots may pilot vessels only in those waters specified on their licenses. All pilots must comply with specific standards of conduct requirements.

The adopted regulation has been reorganized from its current two parts (License and Professional Conduct, and Maintenance of Complement, Penalties and Notices Procedures) to four parts (Initial License, License Renewal, Change of License, and Standards of Conduct) to add to clarity and ease of reference.

Part IV, Standards of Conduct, has added new and strengthened current provisions concerning penalties for criminal conviction; for failing to inform the board of criminal convictions, of disciplinary actions taken by the United States Coast Guard or the National Transportation Safety Board, or of violations of statutes relating to piloting; and for performing pilot duties while under the influence of alcohol or drugs. Licensees are required to submit to a medical test to determine whether they are under the influence of drugs within 24 hours after a collision, grounding or other incident involving personal injury, death, environmental hazard or damage to a vessel in excess

of \$100,000. The results of said test must be reported in writing to the board and a finding of pilot impairment may result in license suspension or revocation.

Minor language changes were made to §§ 2.1 and 3.1 of the proposed regulation.

VR 535-01-01. Branch Pilot Regulations.

PART I.

INITIAL LICENSE AND PROFESSIONAL CONDUCT .

§ 1.1. Initial licensing.

~~1.1.1~~ Each pilot to whom a State branch has been issued shall also procure and maintain a valid United States pilot license for the same waters as his branch.

~~1.1.2~~ Evidence of the United States pilot license shall be immediately filed with the Clerk of the BOARD.

~~1.1.3~~ Any pilot failing to comply with ~~1.1.2~~ above shall be prohibited from performing any of the duties of his office.

A. Any person wishing to obtain a license as a Limited Branch Pilot shall meet the following qualifications:

1. Satisfactorily complete a two year apprenticeship in a program approved by the board;

2. Satisfactorily complete a comprehensive examination which shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:

a. Written

b. Practical oral examination; [and]

3. Satisfactory performance by complying with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia [; and .]

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five year apprenticeship in a program approved by the board;

2. Hold a limited branch pilot license in good standing;

3. Pass a practical examination approved by the board and administered by the board's Examining Committee;

4. Hold an unrestricted, unlimited Inland Masters License and a First Class Pilot License issued by the United States Coast Guard. A copy of this license shall

be filed with the clerk of the board immediately; and

5. Qualify in accordance with § 54.1-905 of the Code of Virginia.

§ 1.2. License renewal.

1.2.1. Each pilot to whom a branch is issued or renewed shall, within fifteen day of the date thereof, appear before the clerk of the appropriate circuit court and shall qualify in accordance with Article 3, Chapter 16, Title 54 of the Code of Virginia.

1.2.2. Evidence of such qualification required by 1.2.1 shall be immediately filed with the Clerk of the BOARD.

1.2.3. Any pilot who fails to comply with 1.2.2 above shall be prohibited from performing any duties of his office.

§ 1.3. Physical qualifications for licensing.

1.3.1. The BOARD reserves the right to require any pilot to whom a branch has been issued, or any pilot seeking renewal of a branch, to submit evidence to the BOARD that the pilot is free of any physical, emotional, or psychological impairments which may affect his ability to perform the duties of his office.

1.3.2. Any pilot attaining the age of 72 years shall, at the time of his compliance with Section 54-536 of the Code, file with the BOARD a certificate of one or more physicians attesting to his physical condition to perform the duties of his office.

§ 1.4. Qualifying for license renewal.

1.4.1. Each pilot to whom a branch is issued shall make a minimum of two trips inbound from Cape Henry and two trips outbound to Cape Henry. These trips are to be made during the twelve month period for which the branch is issued.

1.4.2. Each pilot to whom a branch is issued for the James the Potomac, or the York River shall, in addition to 1.4.1 above, make at least one trip up and one trip down the river(s) for which the branch is issued. These trips are to be made during the twelve month period for which the branch issued.

1.4.3. Each pilot to whom a branch is issued for Cape Charles shall, in addition to 1.4.1 above, make at least one trip from Cape Henry to Cape Charles and one trip from Cape Charles to Cape Henry.

1.4.4. Such trips as required by 1.4.1, 1.4.2, and 1.4.3 above shall be made as a pilot of ships or sounding trip.

1.4.5. Upon the showing of good cause, the BOARD may waive the requirements of 1.4.2 and 1.4.3 when in its judgment the pilot is otherwise qualified.

§ 1.5. No pilot shall at any time perform any of the duties of his office whether ashore or afloat while under the influence of alcohol, or while under the influence of any narcotic drug or other self-administered intoxicant or drug of any nature.

§ 1.6. In addition to the responsibilities imposed by Section 54-536 of the Code of Virginia, each pilot shall at all times, whether ashore or afloat, be accountable to the BOARD for any action or personal conduct which may bring or tend to bring discredit to the Commonwealth or to the service of piloting.

§ 1.7.

1.7.1. Each pilot shall properly represent his turn, and when ordered, he shall report to the location at the time specified in the order.

1.7.2. Failure to respond to an order and/or tardiness in reporting to ships or shore locations shall be deemed an infraction of these regulations.

§ 1.8. Each pilot shall, as soon as possible under the circumstances, report his finishing time and other required information relating to the particulars of the ship.

§ 1.9. Each pilot shall immediately file with the BOARD a complete account of any violation of the statutes of Virginia or the United States relating to pilotage. Each pilot shall also report all collisions, groundings, other maritime mishaps of any description that may occur during the discharge of the pilot's duties.

PART II.

MAINTENANCE OF COMPLEMENT, PENALTIES, AND NOTICE PROCEDURES LICENSE RENEWAL

§ 2.1. There shall at all times be maintained a sufficient complement of pilots, whether ashore or afloat, to provide expedient and competent pilotage service in the Commonwealth.

§ 2.1. License renewal.

Each pilot seeking renewal of license shall complete a renewal application, comply with the following regulations and appear before the board or its License Renewal Committee which shall determine if he possesses the qualifications to be renewed.

A. Limited branch pilot license renewal.

1. Possess a valid [Federal First Class] Pilot License issued [by the United States Coast Guard] for the same waters as his limited branch; and

2. Furnish to the board evidence of a satisfactory physical examination conducted within the

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immediately preceding 12 months.

B. Full branch pilot license renewal.

1. Possess a valid unlimited Federal Inland Masters License;
2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 12 months;
3. Furnish to the board evidence that he has transited the waters embraced by his license during the 12 month period for which the license is issued;
4. Upon the showing of good cause, the board may waive the requirements of subdivision 3 above when in its judgment the pilot is otherwise qualified; and
5. Qualify in accordance with § 54.1-906 of the Code of Virginia.

§2.2 The board shall be notified of all violations of Virginia statutes or rules about which any license is informed.

§2.3 Whenever it is alleged that a pilot has violated any of the provisions of Chapter 16 of Title 54 of the Code of Virginia, or of these regulations, that pilot may, in accordance with Sections 54-520 and 54-534 of the Code of Virginia, be fined an amount not to exceed \$1,000.00; or his branch may be suspended and/or revoked entirely.

§2.4 Whenever these rules require notice to be given to the BOARD, any pilot shall be deemed in compliance when the notice is filed with the President, Vice President, or Clerk of the BOARD.

PART III. CHANGE OF LICENSE.

§ 3.1. Change of license.

In order to extend a license, an applicant must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a [Federal] First Class Pilot License [issued by the United States Coast Guard] for that additional area and pass a practical examination approved by the board and administered by the board's Examination Committee.

PART IV. STANDARDS OF CONDUCT.

§ 4.1. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal

as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having been elapsed. Any plea of nolo contendere shall be considered conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude;

3. Failing to report to the board in writing the results of any disciplinary action taken by the United States Coast Guard or the National Transportation Safety Board within 30 days of that action;

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health safety, and welfare;

5. Negligence in the performance of duties;

6. Violating or cooperating with other in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia, as amended, or any regulation of the board;

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship;

8. Failing to file immediately with the board a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the board a complete account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties;

9. Failing to submit evidence to the board within 30 days after the board's request that the licensee is free of any physical, emotional, or psychological impairments which may affect his ability to perform the duties of a pilot;

10. Failing to submit to the board within 14 days the written results of an appropriate medical test which shows the licensee to be free of the influence of alcohol or any medication (controlled substance or otherwise) and which was accomplished within 24 hours after any vessel which a Virginia licensed pilot

was piloting was involved in a collision, grounding or other incident involving personal injury, death, environmental hazard or damage to a vessel in excess of \$100,000;

11. Performing or attempting to perform any of the duties of his office while under the influence of alcohol, or any medication (controlled substance or otherwise) to the extent that he is unfit for the performance of the duties of his office; or

12. An indication of impairment on a test furnished under subdivision 10 above.

All previous regulations of the Board for Branch Pilots are repealed upon the effective date of these regulations.

These regulations shall be effective November 30, 1989.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.

Statutory Authority: § 53.1-68 of the Code of Virginia.

Effective Date: December 1, 1989

Summary:

This regulation is a part of a two-part set of regulations which is being promulgated to facilitate the evaluation of requests by localities for construction reimbursement. While the other regulation, "Regulations for State Reimbursement of Local Correctional Facility Construction Costs," sets forth criteria to assess need and establish priorities, this regulation is designed to serve as a guideline for evaluating submitted construction plans and specifications.

The regulation addresses construction and design requirements for building materials, equipment and systems in secure detention facilities, and construction and design requirements for less secure facilities, nonsecure facilities and lockups. Included in the document are criteria for physical design and construction of facilities as well as parameters for the materials to be used. Provisions are applicable for new construction, renovation, or expansion of facilities.

This regulation does not involve operational requirements which are addressed in separate regulations entitled, "Minimum Standards for Jails and Lockups."

Preface:

These standards for design and construction will be the minimum permitted in Virginia for new facilities

and shall be incorporated into expansion and renovation programs. They are promulgated to complement existing criteria published in the Virginia Uniform Statewide Building Code, State Health Department Regulations, and § 504 of the Rehabilitation Act of 1973.

[Localities considering the "direct supervision" concept for jail management shall submit a written request to the Board of Corrections for a variance to these standards at the beginning of the project. The request shall include, at a minimum, a detailed description of the management concept for the facility anticipated staffing levels, and the specific variances being requested.]

A needs assessment is necessary to determine the size of facility and the daily demands which affect design. The needs assessment shall be completed prior to the beginning of design and is required in order to qualify for reimbursement of state funds for construction.

In order to meet the daily demands of the client population and staff, the minimum designs for jails shall provide for a number of essential custodial functions. Operationally, space is needed for security posts, control station, visiting, intake, holding, processing, examining, clothing storage, laundry, food service, dining, waiting and reception areas for the public, and exercise (both indoor and outdoor). For administration and support, space is needed for general housing, isolation, classification, counseling, support of volunteer programs, canteen, library, medical, supply receiving, mechanical equipment, storage areas, staff lounge, restrooms and administrative offices. The State Board of Corrections' "Minimum Standards for Local Jails and Lockups" shall be utilized as a guideline to determine functional relationships of required areas in jail facilities. With proper planning, all of these can be adequately provided in a cost/space effective manner.

The design concept must allow for flexibility in housing on the basis of inmate classification by age, sex, security needs and, whenever possible, pre/post sentence separation. When determining building design, consideration shall be given to traffic patterns for ease of movement throughout the jail, physical and operational security, elimination of blind spots, and efficiency and economy of staffing. Jail facilities should be designed to allow for the possibility of future expansion.

VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.

PART I. INTRODUCTION.

§ 1.1. Definitions.

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

"Administrative area" means an area of the jail dedicated to maintaining the operation of the jail facility.

"Approved type" means an item as approved by the Department of Corrections.

"A.S.T.M." means the American Society for Testing and Materials.

"Capacity (Design Capacity)" means the maximum number of persons the facility has been constructed to house without the addition of extra beds.

"CCTV" means closed circuit television.

"Central control point" means a secured space which maintains the safety and security of the jail through electronic equipment for surveillance, communication, fire and smoke detection, emergency functions and regulation of ingress and egress to cells, dayrooms, corridors and other space within the jail.

"Classification cell" means a cell for short term holding for purposes of classification prior to being assigned to general population or other housing.

"Dayroom" means a secure area adjacent to an inmate living area, with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

"Dormitory" means an area designed for accommodating two to 20 inmates in secure housing or for two to 25 inmates in less-secure housing. In addition to water closets, showers, lavatories, tables, and bunks, the dormitory may include other design items not always found in single cells; such as benches and storage areas.

"Enlargement/Expansion" means to expand the current detention facility by the construction of additional area(s) as may be determined by need or as required by law or regulation.

"Facility" means a jail or lockup, including buildings and site.

"IMC" means Intermediate Metal Conduit.

"Inmate housing area" means a single person cell, multi-occupancy cell, dormitory or group of such cells (pod) or dormitories which provide accommodations for sleeping, approved personal effects, and personal hygiene.

"Interior security walls" means walls within but not a part of [the a] security perimeter which are utilized to restrict movement within the secure area, including but

not limited to [cells,] cell pods, dormitories, corridors, inmate activity areas, admissions areas, [counseling/treatment program] areas.

"Jail" means a facility that is operated by or for a locality or public authority for the detention of persons who are charged with or convicted of law violations.

["Jailor" means that individual who is responsible for the day to day security operation of the jail within the secure perimeter, such as, Supervisor of Security.]

"Less secure housing" means a facility or [area] housing [area] for work/study release, weekenders, and other inmates of minor security consideration and which may be located outside the jail security perimeter walls.

"Life safety operations" means the function of certain electrical, mechanical and other building equipment provided for the purpose of ensuring the safety of building occupants in the case of a fire or similar emergency situation.

"Lockup" means a facility operated by or for a local government for detention of persons for a short period of time as determined by the Board of Corrections.

"Maximum custody inmates" means persons who cannot be allowed to mingle physically with other inmates without close supervision, normally because of assaultive and aggressive behavior or high escape risk.

"Medium custody inmates" means those persons who require staff supervision and secure accommodations against escape, but who will be allowed to participate in group activities.

"Minimum custody inmates" means those inmates classified as not dangerous or likely to escape, but are of sufficient concern to [be housed in a less restrictive environment require a minimum level of security] .

["Minimum Standards for Local Jails and Lockups" means operational standards available from the Department of Corrections.]

"Natural lighting" means lighting available either by cell or room windows to exterior or from a source within 20 feet of room or cell and visible from the room or cell.

"New construction" means to build a detention facility to replace an outdated detention facility or to establish a detention facility as may be determined by need or required by law or regulation.

["Nonsecure construction" means a building classification with a nonrestrained occupancy classification.]

"Pod" is a group of cells clustered together.

"Renovation" means the alteration or other modification of existing detention facility or piece of equipment for the purpose of modernizing or changing the use of capability of such detention facility or equipment as may be determined by need or required by law or regulation. Renovation does not include work on or replacement of a detention facility or equipment which may be generally associated with normal wear and tear and included in routine maintenance. Renovation renders the facility, item or area superior to the original.

"Repair" means the correction of deficiencies in a detention facility or equipment which have either been damaged or worn by use, but which can be economically returned to service without replacement.

"Replacement" means the construction of a detention facility in place of a like detention facility or the purchasing of equipment to replace equipment which has been so damaged or outlived its useful life that it cannot be economically renovated or repaired.

"Room" means a cell without plumbing fixtures. Rooms are utilized when inmates have control of the individual room doors and are free to circulate from rooms to dayrooms at will.

"Routine maintenance" means the normal and usual type of repair or replacement necessary as the result of periodic maintenance inspections or normal wear and tear of a detention facility or equipment.

"Sally port" means a safety vestibule as a defined space that promotes security by the use of two or more interlocking doors.

"Sally port, vehicular" means a drive-in or drive-through made secure preferably by remotely controlled electrically operated interlocking doors for entrance and exit. It is normally located in close proximity to the facility intake area.

"Secure area" means all spaces within the secure area of the facility, including but not limited to cells, cell pods, dormitories, corridors, inmate activity areas, admissions areas, and counseling/treatment areas.

"Secure housing" means housing for all inmates-maximum, medium and minimum, which is not classified as less secure.

"Security perimeter walls" means the outer limits of the jail or lockup proper where walls, floor and roof/ceiling are used to prevent egress by inmates or ingress by unauthorized persons or contraband.

"Special purpose cells" means cells within the security perimeter which may include isolation, segregation, medical or other special purposes cells.

"Supervision" means the act or process of performing

watchful and responsible care over prisoners in one's charge. Supervision, which ensures the safety of corrections officers, requires more than mere observation or surveillance. It is an active process.

"Temporary holding cell/area" means a cell used to hold one or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or a cell used to temporarily hold one or more persons until they can be moved to general housing areas after booking.

PART II. ADMINISTRATION.

§ 2.1. Legal basis.

The Virginia State Board of Corrections is charged by § 53.1-68 of the Code of Virginia with the responsibility for establishing minimum standards for the construction, equipment, administration and operation of local correctional facilities and lockups. Compliance with these standards is necessary in order to qualify for reimbursement of any new construction, renovation or expansion project. This guide was approved by the State Board of Corrections at a regular meeting held on [??? September 20, 1989] . It supersedes the "Guide for Minimum Standards for the Design and Construction of Jail Facilities" adopted by the Board of Corrections in 1978.

Other sections relating to the above are §§ 53.1-1, 53.1-5, 53.1-10, 53.1-69, 53.1-70, 53.1-80, 53.1-81, 53.1-82, 53.1-83, and 53.1-125 of the Code of Virginia.

PART III. CONSTRUCTION AND DESIGN REQUIREMENTS FOR BUILDING MATERIALS, EQUIPMENT AND SYSTEMS FOR SECURE DETENTION FACILITIES.

§ 3.1. Building systems.

The requirements set forth herein establish the standards for building materials, equipment, and systems to be designed and constructed in detention facilities (jails) within the Commonwealth of Virginia. The building components denoted herein are intended to relate the facilities security and custody level and expected use conditions, with the materials, equipment and systems expected performance, particularly related to strength, safety and durability characteristics. Of equal importance is matching the performance levels of the various components which make up a security barrier or system. They must be comparable and compatible.

The prime security perimeter of a detention facility is composed of a complete security envelope consisting of walls, roofs, floors, ceilings, doors, door locks and other hardware, windows, and glazing. These and other components will be covered within the context of this section.

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It is mandatory that all construction conform to the current Virginia Uniform Statewide Building Code, other applicable laws, rules and regulations and all operational standards set forth in the Virginia Board of Corrections' "Minimum Standards for Local Jails and Lockups." All work shall be done in accordance with acceptable design and construction practices and material shall be installed in accordance with manufacturers' recommendations.

A. Structural systems - walls, floors, roofs, ceilings.

1. Wall systems - general. Walls encompassing areas occupied by inmates without constant supervision shall provide a secure barrier to prevent unauthorized access. Their construction shall provide a deterrent against the penetration through the building's exterior or interior walls.

a. Exterior walls - masonry and concrete.

(1) General. Exterior walls shall be of masonry, concrete, or other approved fireproof building material equal in strength and durability.

(2) Masonry. Walls or partitions that serve as perimeter security (may be exterior or interior wall), shall be a minimum of eight inches nominal thickness with horizontal metal wall reinforcing, spaced not more than 16 inches on center starting eight inches above floor and with minimum vertical wall reinforcing of No. 4 reinforcing steel bars not more than eight inches on center the entire height of the wall. Hollow masonry block cell cores shall be filled solid with concrete or course grout in accordance with A.S.T.M. C476.

(a) All masonry mortar shall be type "M" 2,500 p.s.i. mortar.

(b) When security walls do not rest on a concrete footing located below the level of the finished concrete floor slabs, the first row of masonry block wall construction shall be dowelled into the concrete floor slabs using minimum of No. 4 reinforcing bars spaced a maximum of eight inches on center. Dowels shall extend a minimum of three inches into concrete slab and shall be 12 inches in length. Cores of block shall be filled solidly with mortar, grout or concrete. Where top course of masonry block is not dowelled into upper roof/ceiling, secure partition with steel angles located on both sides.

(3) Concrete. May be cast in place or precast reinforced high strength concrete, minimum of 4,000 p.s.i. compressive strength (28-day strength). Minimum thickness shall be four inches.

b. Interior walls - masonry, concrete, steel.

(1) General.

(a) Interior walls shall be of masonry, concrete, steel plate or other approved fireproof building material equal in strength and durability.

(b) Interior security walls separating secure building areas shall be extended up to the underside of roof or floor construction.

(c) All masonry mortar shall be type "M" 2,500 p.s.i. mortar.

(d) All interior exposed walls and partitions in security areas shall have a smooth hard finish, properly sealed and painted with a washable type paint or other approved durable finish with a flame spread rating of 25 or less (A.S.T.M. E-84).

(2) Masonry.

(a) Perimeter security wall shall comply with requirements of subdivision A 1 a (2) of this section when wall serves as a perimeter security wall.

(b) Interior security walls, inmate housing areas, and control stations shall all comply with the requirements of subdivision A 1 a (2) of this section except: minimum wall thickness shall be six inches. Reinforcing bars shall be spaced not more than 16 inches on center; however, reinforcing bars may be eliminated altogether if block cores are filled solid with 5,000 p.s.i. concrete or grout.

(c) Masonry which is dowelled or tied into floor and roof/ceiling surfaces shall comply with the requirements of subdivision A 2 b of this section except that dowels shall be spaced not more than 16 inches on center.

(3) Concrete shall comply with requirements of subdivision A 1 a (3) of this section.

(4) Steel plate walls shall not be less than 3/16 inch thick and shall be securely attached to structural slabs in floor and roof or ceiling by means of approved bolted, riveted or welded connections. All bolted connections shall have upset or welded thread to prevent removal of fasteners.

(5) Bar grille partitions shall be 2 1/4" x 3/8" steel bar frame with vertical 7/8 inch round double ribbed bars spaced approximately four inches on center and 2 1/4" x 3/8" horizontal steel bars spaced approximately 16 inches on center. Steel to be of open hearth or tool resistant grade according to the use intended.

(6) Woven rod partitions shall be fabricated from 3/8 inch diameter mild steel rods spaced not more than two inches on center in two directions, interwoven and crimp-locked. Rods shall be anchored securely into a heavy gauge (10 gauge

minimum) tubular steel frame.

2. Floor systems.

a. All floors shall be concrete including supported slabs and slabs on grade. Slab on grade floors shall be four inches minimum thickness.

b. All floor surfaces shall be of a durable, maintenance free, nonabsorptive material. Floor surfaces, if concrete, shall be finished with an approved sealer and hardener.

3. Roof/ceiling systems.

a. General. The roof/ceiling assemblies above areas which are occupied regularly by medium/maximum security inmates shall provide a secure barrier to prevent access to the area above the ceilings and shall provide a roof construction, which will provide a deterrent against the penetration of the construction from both the interior and exterior of the building. The space above the ceiling should be subdivided to prevent movement from one area of the facility to another within this space.

b. The roof/ceiling slab construction, which includes cell areas, dayroom spaces, control stations and locations which medium/maximum security inmates occupy regularly, shall be any approved type of standard weight concrete construction having a minimum concrete strength of 3,000 p.s.i. and with not less than 6" x 6" x 10 gauge embedded temperature reinforcing. System assembly, for security purposes is to be approved by the Department of Corrections.

c. Ceilings consisting of a suspended grid system with removable type panels (acoustical or metal pan type) shall not be permitted in cells and other areas where inmates will have access to the area unsupervised. Such ceilings may be used in dayrooms and other areas where floor to ceiling height is not less than 15 feet and not accessible to inmates. Ceiling hold down clips shall be used in all inmate accessible areas.

d. Ceilings in spaces other than security areas (as indicated in subdivision b above) which are accessible to inmates shall be permitted to be of the suspended type (suspended below the bottom of structural members); however, ceiling surface shall be no less than three coat portland cement plaster installed on approved type metal lath or approved comparable material.

e. All access to the space above the ceiling surface shall be protected by metal access panels equipped with keyed locks.

f. A ceiling shall be provided when roof construction

other than concrete is less than 15 feet above finished floor level of an inmate occupied area or within 15 feet of mezzanine style balcony railing on dayroom/atrium style ceiling. Exposed roof structure may be approved by Department of Corrections when located more than 15 feet above floor level and not accessible to inmates.

g. The following are alternate acceptable roof construction assemblies that may be used in detention facility areas with the exception of cells, control stations, armories, sally ports, medical housing, and dormitories with less than a 15 foot ceiling height above finished floor:

(1) Three inch concrete on 16 gauge steel form or decking on concrete or steel supporting members; and

(2) Three inch concrete with 6" x 6" x 10 gauge wire fabric on a 22-gauge steel form or decking on concrete or steel supporting members.

B. Doors and frames - security and nonsecurity type.

1. Security doors generally used where maximum and medium security is required (i.e., sally ports, control stations, housing units, stairwells, cell doors, security perimeter, and emergency exit doors) may be one of the following:

a. Detention - type security hollow metal doors.

(1) Minimum two inches thick with minimum 14 gauge steel face sheets and internal metal stiffeners. Security hollow metal doors shall meet the static load and rack (twist) test requirements of NAAMM (National Association of Architectural Metal Manufacturers) Standard HMMA 863-88(5).

(2) Associated door frames shall be 12 gauge steel minimum.

b. Bar grille doors.

(1) Shall be 2 1/2" x 3/8" steel bar style and rail perimeter with vertical 7/8 inch round double ribbed bars spaced approximately four inches on center and 2 1/2" x 3/8" horizontal steel bars approximately 16 inches on center, steel to be of open hearth or tool resistant grade according to the use intended.

(2) Associated door frames shall be a minimum of 3/16 inch bent steel plate or equivalent rolled steel shapes. All joints shall be mitered and fully welded. Minimum of three wall anchors on each frame jamb.

c. Steel plate doors.

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(1) Shall be a minimum of 3/16 inch thick plate steel.

(2) Shall have minimum of 3/16 inch bent steel plate or equivalent rolled steel shape door frame. Minimum of three wall anchors on each frame jamb.

d. Woven rod door.

(1) Woven wire doors as specified for woven wire partitions. Refer to § 3.1 A 1 b (6).

(2) Frame shall be either 10 gauge roll steel minimum or 3/16 inches bent steel plate or comparable roll shapes. Minimum of three wall anchors on each frame jamb.

2. Nonsecurity doors shall be durable considering the constant use or abuse they will receive in a detention environment. They shall be steel commercial type 1-3/4 inches thick minimum hollow metal doors with 16 gauge face sheets, frames shall be 14 gauge hollow metal or equal. [Solid core, fire treated wood doors are an acceptable alternative as a nonsecurity door.]

3. Miscellaneous design features.

a. Glazed view panels shall be provided in all doors where required for security purposes.

b. Where doors, frames and hardware are required by the building code to be fire rated construction, such construction shall not reduce or compromise the security requirements.

c. Sally ports and interlocking requirements.

(1) To allow for control of public and inmate access and circulation, sally ports and interlocking doors consisting of at least one pair of security doors shall be utilized for passage control. Sally ports shall be provided at all exterior openings from security areas and at cell/dayroom pods designed for maximum and medium security inmates.

(2) Sally port locking and unlocking shall be remotely controlled from a secure control station.

(3) Exterior security doors used solely to meet emergency evacuation requirements are not required to be sally ported; however, fencing the area to be utilized for evacuation is recommended.

d. Door frames shall be anchored securely to construction in which they are installed in order to withstand the extreme use/abuse to which doors will be subjected. Masonry supporting door frames shall be reinforced and cores filled with grout a minimum of 16 inches each side of opening.

e. Security frames shall be completely filled with fine grout in accordance with A.S.T.M. C 476 or type "M" mortar.

C. Locks and locking systems.

1. General. Locks and locking systems should provide a level of performance consistent with the level of security, control, safety, and durability required and the type of surveillance utilized. The security and durability of the locks and locking systems should be comparable and compatible with that of the doors, frames or gates in which they are installed. All electrically remote operated doors discussed herein shall be equipped with a manual override feature.

2. Locking devices. Where a high degree of security and positive door control is required, sliding door locking devices should be provided and be capable of being operated from a secure control station.

a. Design options.

(1) Maximum security. Fully controllable locking devices, i.e., capable of locking, unlocking, opening and closing from a control station.

(2) Medium security. Manually operated devices in which a door is initially unlocked or released by remote action but which further opening or closing of the door is done manually.

b. Vehicle sally port gates should be capable of being operated and locked from a remote location, with provisions for manual operation and locking when power is off.

3. Key operated locks. Lock operation and size of lock bolt shall be compatible with the frequency of operation, the construction of the door and frame, the level of security required, and the type of surveillance utilized.

a. Mechanical locks are usually mounted on swinging doors and provide for deadlocking or slam-locking with automatic deadlocking.

b. Electro mechanical locks are generally jamb mounted and provide for slam-locking and remote, electric unlocking.

c. Design options.

(1) Maximum security (i.e., high security areas like holding cells, segregation cells, or areas with heavy bar grill or steel plate doors) lever tumbler locks should be used. Bolt is retracted by a paracentric key.

(2) Medium security. Lever tumbler or mogul cylinder locks should be used. Such locks are often

used as electric locks with manual override.

(3) *Minimum security.* Normal commercial grade cylinder locks or security type mortise locks may be used depending on security level or frequency of operation anticipated.

4. Controls shall be provided to operate the locks and locking devices in the required modes.

a. The switches, relays and other devices should make up a control system compatible with the locks and locking devices and should be capable of providing the switching necessary to satisfy all desired operational modes.

b. A control console/panel shall be designed to display all switches to the operator. Normally installed in a secure area (i.e., officers control station) the console should be equipped with a switch for each door, a group switch for each wing of the building (or cell block) and switches for the corridor and sally port gates which control access to those wings. There should also be a power cut-off switch to deactivate the console whenever the officer must leave his station.

c. Status indication shall indicate the closed and locked position of the gate/doors on the control console or panel.

(1) Sliding gates/doors shall have indicated the dead locked position of the gate/door and the locked position of the front or rear locking bar.

(2) Swing gates/doors with jamb mounted electric release locks shall have indicated the closed position of the gate/door, the projected position of the lock bolt and the depressed position of the dead lock roller bolt. Note: green light indicates a closed and locked condition, while a red light indicates all other conditions.

d. In the event of a power failure the locking system shall be fail-secure. A fail secure system is held mechanically locked and only releases with electric or mechanical assistance.

e. Emergency release provisions shall be made for unlocking or gang-release of cell doors and in case of fire, power failure or other emergencies.

(1) Emergency power from a backup generator (internal combustion engine) is normally required for electric release of door systems in case of power failure.

(2) Other forms of emergency release involve some approved form of mechanical linkage, chain or cable system or an assembly of all, connected to door release mechanism for each cell, which when

activated will release all doors at the same time. The release mechanism shall be in a securely locked steel cabinet.

D. Windows.

1. *General.* Performance requirements and criteria for the selection and intended use of windows should include the following considerations: security, natural lighting, ventilation, and weather protection.

2. *Security type windows.* Windows which are to be installed in the building perimeter security (exterior and interior walls and skylight assemblies) shall be security type windows of one or more of the following types:

a. Fixed windows shall have a steel frame to retain the glazing. Security is obtained through the use of security glazing and limitations on the size of openings. Frames fabricated from steel angles or manufactured heavy gauge security hollow metal frames are acceptable.

b. Awning windows with horizontal, tool resisting steel bars spaced maximum of six inches on centers concealed within the head of the frame, each rail of the ventilators and in the frame sill. These bars extend from jamb to jamb and connect into vertical tool resisting bars concealed in the side frames thereby forming a security grille.

c. Protected air vent windows which provide a large fixed glazed area and incorporate a hinged air vent which is protected by an integral slotted interior grille or security screen. The air vent is operated in a continuous opening and closing cycle by rotating a cone or operating handle in either direction. Tool resistant steel bars shall form a security grid.

d. Nonsecurity windows may be required in an exterior security wall to provide a noninstitutional appearance. When such windows are used, however, the window opening shall be protected on the interior side of the opening by a steel bar grillage, security frame and glazing assembly comparable to the security assemblies described herein.

3. Security features.

a. Where bar grille is used at windows and other openings the bar grille shall be similar in design and construction to bar grille partitions (See subdivision A 1 b (5) of § 3.1). Where bar grille is to be accessible to inmates for extended periods of time without constant supervision, bar grille work shall be fabricated from tool resistant steel.

b. All openings (such as windows, louvers, duct and pipe penetrations, and skylights) eight inches by eight inches or larger penetrating the security

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perimeter walls, floors or roof must be protected by tool resistant bar grille similar in construction to bar grille partitions [arranged to produce clear openings not to exceed 5" x 8" as required by subdivision A 1 b (5) of § 3.1]. Duct, pipe and louver penetrations of interior security partitions shall be protected as required for openings in security perimeter walls.

c. Removable glazing stops should be applied wherever possible on the side opposite the inmate occupied area to avoid tampering. Where stops must be placed in an inmate area, they should be secured with an ample number of strong, properly installed, tamper-proof fasteners of design approved by the Department of Corrections. Junctions of horizontal and vertical glazing stops must be welded to prevent removal of portions of stop members.

d. All exterior windows in security areas which are capable of being opened must have additional protection of stainless steel wire contraband/insect screen.

E. Glazing.

1. General. A wide variety of glazing materials and assemblies are available for various applications within detention facilities. The performance characteristics to consider are resistance to ballistic attack, resistance to physical attack, durability, fire-safety, and installation. Glazing and glazing assemblies should provide a level of performance against ballistic and physical attacks which are consistent with the level of security and safety required and the type of surveillance utilized. The level of glazing resistances selected should be consistent with the resistances of the surrounding walls, louvers and other building components.

2. Security design considerations.

a. Key considerations where glazing is used, such as windows and doors in housing units, dayrooms, corridors, control rooms and stations, sally ports, visitation areas, are:

(1) Whether or not penetration of that glazing will compromise security and allow passage of contraband;

(2) Degree of staff supervision or surveillance; and

(3) Anticipated amount of vandalism.

b. As penetration of glazing in control rooms and stations will jeopardize security, glazing in these areas shall be able to withstand physical attacks for an extended time period - minimum of 30 minutes. Where control room windows are adjacent to uncontrolled public space(s) or the exterior of the building, glazing shall be rated for ballistic attack

resistance as required by the nature and location of the facility.

c. In areas such as medium and maximum security housing units, glazing shall have adequate physical attack resistance to prevent penetration for a time sufficient to allow staff to respond to riots, or other emergencies. The assembly should withstand physical attack for a minimum of 30 minutes. If a glazed opening is less than five inches in one direction or the opening is protected by steel bars or rods (bar grillage), vandalism and subsequent maintenance should be important considerations for the selection of glazing and glazing assembly but physical attack glass is not required.

d. Where voice communications through the glazing is required, a system utilizing vandal resistant individual speakers, and microphones intercom or telephone shall be specified.

e. Where glazing is used in areas subject to abrasion and scratching, glass, glass-clad or mar-resistant material should be used.

f. Fire resistance, and flame spread of glazing materials, and the size of openings and area of glazing materials and assemblies must be in accordance with applicable codes and standards.

g. Ballistic and physical attack testing rating of glass shall be based on testing equal to the standards of H.P. White Laboratory, Inc., testing HPW-TP-0100.00[5] or equally comparable and certifiable testing laboratory as approved by the Department of Corrections.

h. Plate glass, float glass and other conventional glass other than wire glass shall not be used in any openings located in the secure perimeter or in any walls, partitions, door or other openings within the area enclosed by the secure perimeter.

§ 3.2. Secure housing units.

A. Secure housing [units] shall be arranged and constructed to ensure the physical separation by normal sight and sound of male, female and juvenile inmates.

B. Secure housing shall be constructed in accordance with § 3.1 of this standard.

C. Secure housing shall be constructed to consist of housing for maximum, medium and minimum custody inmates. Recommended breakdown of these custody levels is [40% 30%] maximum, 30% medium, and [30% 40%] minimum.

1. Maximum security areas shall be designed as groupings of single cells with common dayrooms to afford protection for persons requiring close

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supervision. The number of persons per unit will depend upon the degree of surveillance and security provided, but shall not exceed 12.

2. Medium security areas shall be constructed as single cells plus dayroom and shall accommodate no more than [20 24] persons per unit of cells plus dayroom. [For jails having an occupancy in excess of 300 inmates, the number of occupants may be increased.]

3. Minimum security areas may be of cells, rooms or dormitories. Cells must meet requirements in subsection E below. Dormitories must contain a minimum of 85 square feet excluding toilet/shower area for each inmate for which the area is designed. Minimum security areas shall accommodate no more than [20 24] persons per unit. For facilities having an occupancy in excess of [300 250] inmates, the number of occupants per unit may be increased [but shall not exceed 50 persons per unit] .

D. Interior security walls shall be provided around and between all cell pods, dormitories, special purposes cells and along interior security corridors, booking/classification areas and control rooms or secure control stations.

E. All individual inmate cells or individual rooms shall be constructed to contain no less than 70 square feet of living space and have a ceiling height no less than eight feet. Individual cells or rooms shall be configured to incorporate a dayroom or activity space which contains no less than 35 square feet of space for each cell served, not including sally ports, showers, toilets or circulation for door swings.

F. All cells shall be provided with artificial light, toilet and lavatory fixtures, hot and cold water, a security type mirror, a stationary bed/bunk, storage space for personal items and proper ventilation.

G. Each dayroom shall be equipped with a shower, toilet, lavatory with hot and cold water, drinking fountain, or lavatory equipped with bubbler, tables, and benches. Tables and benches shall be stationary in maximum security areas. Stairs shall have open risers to avoid creating blind spots.

[H. Natural light is required in inmate housing areas. Natural light is recommended in renovation projects which provide new inmate housing.]

[H. I.] Interior multi-purpose space(s) shall be provided which is sufficient in size to allow for educational classes, religious services, [group] counseling services, [canteen,] library, and program services. Total multi-purpose space square footage shall be constructed to provide a minimum of 15 square feet per inmate for which the facility is designed.

[H. J.] Equipment used in housing areas shall be

appropriate to the needs of security levels.

[H. K.] If secure and less secure housing (see Part IV) are provided in the same building, design shall provide traffic patterns to assure the separation of secure and less secure inmate population.

§ 3.3. Reception and release.

A. Intake, holding and processing.

1. The reception and release area shall be located within the security perimeter of the facility but outside the inmate housing area. Reception and release shall be separated from the housing area by an interior security wall.

2. The reception and release area shall be constructed to provide for the following: control station, temporary holding area(s), classification holding area(s), booking area, records area, property storage and clothing storage.

a. Reception and booking shall provide space for strip search and shower, clothing storage and issue, photograph and fingerprint, medical exam, classification, orientation, interview and telephone calls.

b. There shall be a minimum of one temporary holding area(s)/room(s) for each 25 inmates for which the facility is designed.

c. Holding area(s) shall be constructed to contain a minimum of 15 square feet per inmate, however, no single area shall contain less than 35 square feet. [Holding areas/cell fronts shall be sufficiently open, using security glazing or bar grillage or both to permit observation of all areas.] Each area shall contain a stationary bench/bunk and a stainless steel plumbing fixture(s) with sanitary bubbler, hot and cold water and privacy screening. Lighting shall be from a maximum security fixture and of sufficient intensity to permit sight supervision. Heat and ventilation shall be provided in accordance with Building Code requirements.

d. The reception and release area shall be controlled from a secure control station where monitoring equipment will be located to control functions of this area.

e. If a separate classification or cell block is provided, cells shall be not less than 35 square feet in area and be provided with a bunk, lighting, ventilation, and plumbing fixtures, as required by § 3.2 F. Dayrooms are not required for classification cells.

f. Classification should include an interview room with space for an officer and counselor.

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g. Storage of inmate personal property shall be provided. Recommended is four to six inches of hanging space per inmate plus bins or lockers for items which cannot be hung.

B. Related areas.

Areas located adjacent to reception and release area, but outside the security perimeter, are the vehicular sally port, magistrate's office (if provided), waiting room, and personnel sally port. The vehicular sally port and personnel sally port shall be provided with weapons lockers equipped with individually locked compartments.

§ 3.4. Auxiliary areas.

Security is the primary function of the jail. Specific attention must be afforded to design which facilitates physical plant, operational, and staff security.

A. Administration.

1. The jail shall provide sufficient space consistent with the size of the facility for administrative, program and clerical personnel. Adequate space for equipment, records and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate occupied areas.

2. Space shall be provided within the security perimeter for the jailor's office, counselor's office and other offices as the program for the jail requires.

3. The floor area provided for administration space shall comply generally with the "Guidelines for the Utilization of Office Space" published by the Department of General Services.

B. Public areas.

Public areas of the facility shall be located outside the security perimeter. Public access to the building shall be through a main entrance. The public shall not have uncontrolled access to enter the security perimeter. A waiting area with appropriate information signs and provisions for handicapped visitors shall be provided for the public and shall be so situated that it does not interfere with general office routine. The public waiting area shall include sufficient seating, drinking fountains, restrooms and lavatories. Restrooms should be provided with floor drain and hose bib. Provision of public telephones is suggested.

C. Facility visiting area(s).

Visitor accommodations shall be designed to provide flexibility in the degree of physical security and supervision commensurate with security requirements of variously classified inmates. Means shall be provided for audible communication between visitors and inmates, designed to prevent passage of contraband. Provisions shall

be made for handicapped visitors. Noncontact visiting space shall be constructed to provide not less than one space for each 12 inmates for which the facility is designed. [Facilities over 100 beds shall provide a one to 25 ratio for inmates exceeding the 100 level.] Additionally, a secure visiting area shall be provided for contact visits from law-enforcement officers, attorneys, clergy, and probation and parole officers. Lockers in the lobby or other convenient area for storage of handbags or other articles which cannot be taken into the visiting area should be considered.

D. Exterior areas.

All exterior areas shall be adequately lighted and, where required by location or surrounding area, enclosed by a security fence.

E. Gun storage area.

Institutional secure gun storage shall be provided outside the security area of the facility.

F. Special purpose cells.

There shall be one special purpose cell (isolation, medical or segregation) for each 10 secure inmates for which the facility is designed. Special purpose cells are not required to have dayroom or activity space but shall not contain less than 70 square feet of floor space. These cells shall be equipped with a bunk, stainless steel toilet and lavatory fixtures, light, heat and ventilation. Separate showers shall be provided for use by special purpose cell inmates at the rate required by the Building Code. One special purpose cell shall be provided equipped with a water closet, lavatory, shower, and handicapped provisions within the security area of the jail. (Note: These cells will not be counted in the general population bed space of the jail; however, total bed space equals general population plus special purpose cells.)

G. Storage.

Beyond storage mentioned specifically for particular areas, the following shall be provided based upon facility capacity:

1. Secure storage for inmate personal property;
2. Storage for inmate clothing, linens, towels, etc.;
3. Storage for recreation and related equipment (shall be located near indoor and outdoor recreation areas);
4. Secure storage for medical supplies;
5. Storage for extra inmate mattresses and bunks;
6. Secure storage for janitorial supplies in janitor's closets located conveniently to areas serviced; and

7. Secure storage space for storage of security equipment, restraining devices, chemical agents, etc. This space shall be located in an area not accessible to inmates.

§ 3.5. Food service and laundry.

A. Food service.

1. Kitchen. If a kitchen is provided, it shall be equipped to meet the standards of the Department of Health and the following:

a. The kitchen shall be designed in accordance with the housing area capacity and include consideration for projected future expansion. The floor area provided for the kitchen shall be based on the inmate population to be served. The area shall be determined on the basis of 10 square feet per inmate for the first 100 inmates and three square feet per inmate for all inmates in excess of 100. No kitchen shall be less than 150 square feet. If a food pass is provided between the kitchen and housing area, it shall be protected with bar grille and a steel door with a secure detention lock. The kitchen shall be located with consideration to ease of serving the inmate population and where supplies can readily be received without breaching security.

b. A janitor's closet and mop sink for exclusive use in the kitchen shall be located within the kitchen area.

c. Selection of kitchen equipment shall be coordinated with the Department of Corrections. Equipment such as counters, work tables or shelving with wooden surfaces shall not be allowed in the kitchen.

d. The floor in the food service areas shall be of a material which is impermeable, will withstand food spillage and is easily cleaned. The use of quarry tile set in an acid and alkali resistant grout and setting bed is recommended.

e. Storage space of adequate size and type to accommodate perishable, frozen, and bulk dry food storage, shall be provided.

2. Dining.

a. If a dining area is provided, a minimum of 15 square feet shall be provided for each inmate the area is designed to serve.

b. If a dining area is provided, floors shall be of material that is impermeable, will withstand food spillage, cigarette burns, and is easily cleaned.

B. Laundry.

1. Laundry. If a laundry is provided, each jail design shall include sufficient space for a commercial type laundry. Finishes shall be as used in the kitchen area. Electrical, plumbing and ventilation shall be as described under § 3.6.

2. Supply storage. There shall be sufficient storage area for the laundry. If this area contains cleaning articles, it shall be kept locked and inaccessible to inmates, except under supervision of security staff or other institutional employees.

§ 3.6. Mechanical, plumbing and electrical.

A. Mechanical.

1. A mechanical room shall be provided which can be entered from outside [the inmate security area an area normally occupied by inmates] .

2. An emergency power source sufficient to sustain, as a minimum, life safety operations shall be provided.

3. All facilities shall be designed to provide adequate ventilation and exhaust as required by the Building Code and the "Minimum Standards for Local Jails and Lockups." Where natural ventilation is not feasible, the facility must be climate controlled.

B. Plumbing.

When hot water is available, it will be controlled by a temperature limiting device to preclude temperatures in excess of 110° fahrenheit.

1. Shower stalls in secure housing shall be of secure construction, and include soap dish and drain. Shower heads shall be positioned to confine water flow to shower stall.

2. The showers in secure housing shall be controlled by a time limiting push button. Water temperature shall be controlled by a temperature limiting device inaccessible to inmates.

3. Shower and toilet areas shall be provided with a wall coating which will withstand humidity, will not chip or scale, and the walls and floors shall be waterproofed.

4. All exposed plumbing shall be kept flush with and be securely fastened to the walls and ceilings. No exposed plumbing pipes shall be accessible to the inmates in or from the dayroom or cell area.

5. Sufficient floor (water) drains shall be provided throughout the jail so as to enable water to be squeegeed off of floors in areas where water spillage may be a concern (i.e., showers, group toilet areas, dayrooms).

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6. Plumbing fixtures in maximum security housing areas shall be stainless steel toilet/lavatory units.

7. Push button activators shall be used on the inmates side of the plumbing chase to operate the flush valve and lavatory faucets.

8. All housing areas shall be provided with janitorial closets, water drains, fire protection and adequate storage.

9. Separate restroom facilities shall be located throughout the building(s) for the use of security and administrative staff. Also, facilities shall be provided in or convenient to secure control rooms or stations.

10. If walk in type plumbing chases are provided, they shall be provided with a light(s) to facilitate maintenance.

11. Plastic piping shall not be used in the secure areas of the jail above the ground floor slab.

12. Hot and cold water shall be available in all lavatories and showers.

[13. It is recommended that sanitary drainage lines have a minimum inside dimension of six inches.]

C. Electrical.

1. Wiring shall be run concealed to the greatest extent possible. Where wiring must be exposed and accessible it shall be housed in threaded rigid metal conduit and securely fastened to the walls or ceiling.

2. Wiring shall be in accordance with the Building Code.

[3. Light fixtures shall be of good quality and of a design to meet security level consistent with the intended use of the space.

4. The intensity of lighting shall be in accordance with "Minimum Standards for Local Jails and Lockups."]

§ 3.7. Miscellaneous.

A. Elevators.

1. Facilities with more than two floors shall be provided with an elevator(s) designed to comply with the Building Code. (Strongly recommend an elevator be provided if facility is more than one story in height.)

2. Elevators shall be of sufficient size to transport food carts. At least one elevator per facility shall be of sufficient size to transport stretchers.

3. Elevators shall be key operated or controlled from

a control room via speaker/intercom communication.

B. Corridors.

Corridors used for the movement of inmates, stretchers, food carts, etc., shall be constructed to provide a minimum of five feet in width and eight feet in height. Corridors not used for the above functions shall be not less than that required by the Building Code.

C. Handicapped.

Facilities shall be constructed to provide cells, rooms or dormitories to accommodate handicapped inmates at a minimum rate of one handicapped room for each 50 or fewer inmates design capacity. Reasonable accessibility to program, activity, and recreation shall be provided to handicapped inmates. Provisions for handicapped employees and visitors shall be in accordance with the Building Code.

D. Recreation.

Indoor and outdoor recreation space shall be provided.

1. Indoor recreation may be composed of classroom(s), vocational area(s), and multipurpose room(s), or any of the above. A minimum [total] space of 600 square feet shall be provided.

2. Outdoor recreation space shall be constructed to provide no less than 1,500 square feet. Minimum overhead clearance shall be 15 feet.

3. It is recommended that recreation space be increased in size in relation to size of facility and more than one recreation area be provided for larger jail facilities.

E. Fencing.

Security fencing or security wall shall be provided for recreation yards and all other areas which are required by these standards to be fenced. Fence shall be single fence, minimum of 12 feet in height, nine gauge, two inches mesh, zinc coated, steel wire interwoven fence fabric, with minimum of three strands of barbed wire attached to support arms at top of the line posts angled to the inmate side. Fence components including but not limited to the top and bottom rails, line posts, terminal posts, tension bars, attachments, concrete footings for the fence, walk gates and truck gates, shall be in accordance with manufacturers' recommendations.

F. Intercom and CCTV (Closed Circuit Television).

1. As a minimum the jail shall be equipped with a communication system monitored by a control center.

2. As a supplement to direct supervision, an intercom and CCTV shall be installed to observe, at a minimum,

blind spots in main corridors, building entrances, and sally ports.

G. Telephone.

Telephone service shall be provided in all general population housing areas within the jail.

H. Emergency containment.

Alternate means for security containment shall be readily available in case of disaster, mass arrests or emergency evacuation. These facilities may be the exercise yard, an enclosed entrance sally port or any other approved area which will afford adequate security. When planned for this purpose, these areas shall permit access to toilets and drinking water.

I. Commissary.

It is recommended that space appropriate to the capacity of the jail be provided for an inmate commissary.

J. Jail equipment.

All jail security equipment, fixtures, hardware, etc., shall be approved by the Department of Corrections.

K. Tamper resistant screws.

Tamper resistant screws shall be used at all locations where screw heads are exposed.

L. Wood products.

Wood or wood products shall not be used in the construction of the security area as part of the building structure.

M. Separation.

When constructed to house a combination of males, females or juveniles, each area shall be separated from the other in a manner which prohibits normal communication by sight or sound.

N. Food passes.

1. Food passes shall be installed in dayroom [/dormitory] walls or in dayroom [/dormitory] sally port doors and in all maximum [and medium] security cell doors. Food passes shall be located and installed in a manner which does not conflict with corridor rating requirements of the Building Code. Note: Holding and classification cells are considered maximum security.

2. The size of [an unsecured a] food pass shall be [4-1/2 to a maximum of] five inches high and [wide enough for the tray width required a minimum of 13 inches wide] .

[~~3. Food passes shall be required in dayrooms, special purpose areas, and maximum security cell doors.~~]

O. Key passes/paper passes.

A security type key pass/paper pass shall be provided in the wall of all control stations adjacent to inmate occupied areas.

PART IV.

CONSTRUCTION AND DESIGN REQUIREMENTS FOR LESS-SECURE FACILITIES.

§ 4.1. Less-secure construction.

Buildings or parts of buildings constructed for use as less-secure facilities shall not be used for the detention of secure custody level inmates without upgrade of construction to that required by § 3.1 of these standards. The requirements for less-secure facilities as described within §§ 4.1 through 4.2 reflect a noncombustible construction classification and a minimally secured institutional restrained building classification. Such structure houses work/study release, weekenders, or other inmates of less security consideration. Building components proposed shall address the strength, safety and durability characteristics for the custody level of the facility. Such components shall be approved by the Department of Corrections.

A. Walls, floors, ceilings.

1. Exterior walls shall be of masonry, concrete, stone or other durable fire resistant material.
2. Roof and floor construction shall be noncombustible.
3. Windows which are capable of being opened shall be provided with contraband screen and insect screen.
4. All interior finishes shall be durable, have a smooth finish and a flame spread rating of 25 or less, ASTM E-84.

B. Windows, doors.

1. Doors, windows and frames shall be heavy duty commercial or detention type.
2. Locks shall be at least heavy duty commercial and shall be remote release where required by the Building Code.

C. Lighting.

1. Light fixtures shall be of good quality secured with tamper resistant screws.
2. Intensity of lighting shall be in accordance with "Minimum Standards for Local Jails and Lockups."

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3. Natural light is required in inmate housing areas.

§ 4.2. Less-secure design.

A. Housing units.

Less-secure housing shall be constructed in accordance with § 4.1 of this standard and shall be designed as follows:

1. Less secure housing shall be constructed as a separate building from the secure housing section of the jail or separated from the secure portion of a facility by a security wall.

2. Less secure housing shall consist of individual rooms or dormitories with not more than 25 inmates per dormitory or group of rooms.

3. All less secure housing shall provide a minimum of 50 square feet of living space per inmate in room or dormitory plus activity space(s) providing 35 square feet per inmate.

4. Each group of inmate rooms or dormitories shall be provided with artificial light, toilet fixtures, hot and cold water, mirror, bed/bunk and storage space for personal items. The number of plumbing fixtures in dormitories shall be in accordance with the Building Code.

5. Dormitories and activity spaces shall be equipped with tables and benches/chairs.

6. Showers (number in accordance with the Building Code) shall be provided in dormitories and for rooms. For individual rooms, showers and toilet facilities shall be located in a common area adjacent or convenient to rooms served. Common area toilets shall not accommodate more than 25 inmates.

7. Equipment used in less secure housing shall be heavy duty and appropriate to the needs of the security level.

8. Provisions shall be made for food service and laundry in less secure housing.

9. An area separate from the inmate living area shall be provided for the visiting public, clergy or lawyers and for use by counselors or other administrative staff.

B. Mechanical, plumbing and electrical.

1. Mechanical.

a. If constructed as a separate building, facilities shall be provided with a mechanical room which can be entered from outside the inmate area.

b. An emergency power source shall be provided sufficient to sustain, as a minimum, life safety operations.

c. All facilities shall be designed to provide adequate ventilation as required by the Building Code. Where natural ventilation is not feasible, the facility must be climate controlled.

2. Plumbing

a. Shower and toilet areas shall be provided with a wall coating which will withstand humidity, and will not chip or scale. Walls and floors shall be waterproofed.

b. All exposed plumbing shall, to the greatest extent possible, be kept flush with the walls and ceilings.

c. Sufficient floor (water) drains shall be located throughout the facility to inhibit water from standing on the floors.

d. A water fountain shall be provided in accordance with the Building Code.

e. All housing areas shall be provided with janitorial closets, water drains, and fire protection and storage.

f. Separate restroom facilities shall be located throughout the building(s) for use by security and administrative personnel.

g. If plumbing chases are the walk-in type, it is recommended that they be provided with a light to facilitate maintenance.

h. Plastic piping shall not be used inside the jail facility above ground floor slab.

3. Electrical

a. Wiring shall be run concealed to the greatest extent possible. Where wiring must be exposed and accessible, it shall be housed in IMC.

b. Wiring shall be in accordance with the Building Code.

C. Miscellaneous.

1. Elevators.

a. Separate buildings constructed as less secure housing with more than two floors shall be provided with an elevator(s) designed to comply with the Building Code. Recommend elevator be provided if building is more than one floor.

b. Elevators shall be of sufficient size to transport

food carts. At least one elevator per facility shall be of sufficient size to transport stretchers.

2. **Corridors.** Corridors used for the movement of inmates, stretchers, food carts, etc., shall be constructed to provide a minimum of five feet in width and eight feet in height. Dimensions for corridors not used for the above functions shall be no less than as required by the Building Code.

3. **Handicapped.** Facilities shall be constructed to provide rooms or dormitories to accommodate handicapped inmates at a minimum rate of one handicapped room for each 50 or fewer inmates. Counseling and program space shall be handicapped accessible. Provisions for handicapped employees and visitors shall be in accordance with the Building Code.

4. **Intercom and CCTV.**

a. As a minimum, the facility shall be equipped with a system capable of communicating with the control center.

b. As a supplement to direct supervision, an intercom and CCTV shall be installed to observe, at a minimum, blind spots in main corridors, building entrances, and sally ports.

5. **Telephone.** Telephone service shall be accessible within the facility.

6. **Commissary.** Provisions shall be made for commissary services.

7. **Fencing.** Fencing as specified in § 3.7 E shall be provided around the area in which the less secure building is erected. Where only weekenders, work/study release, and inmates of similar minor security consideration are housed, a fence is optional.

[PART V.

CONSTRUCTION AND DESIGN REQUIREMENTS FOR NONSECURE FACILITIES.

§ 5.1. Nonsecure construction.

A. Localities experiencing overcrowding beyond 125% of the Department of Corrections' established operational capacity may request special approval from the Board of Corrections to provide facilities under § 5.1, Nonsecure construction.

B. The requirements for nonsecure facilities described within this section reflect a combustible construction classification and a nonrestrained occupancy classification which has a more limited lifespan than the noncombustible/restrained type structure. These structures shall house the nonsecure classification of occupants as described in § 4.1. The building requirements for this type of structure shall conform to those in §§ 4.1 through 4.2

with the following Building Code notation:

1. All construction shall be in accordance with Uniform Statewide Building Code requirements for combustible construction.

2. Combustible facilities shall be physically separated from adjacent structures for fire safety purposes (usually 30 feet minimum).

3. Combustible facilities shall provide sufficient area of refuge (usually 15 square feet per person at a safe distance from the building (usually 50 feet).

4. Combustible facilities shall provide a security fence around the structure which shall encompass the area of refuge. The fence shall be a single fence with a minimum of 12 feet in height, nine gauge, two inch mesh, zinc coated, steel wire interwoven fence fabric. It shall have a minimum of three strands of barbed wire attached to support arms at the top of the line posts, angled to the inmate side. Fence components including but not limited to the top and bottom rails, line posts, terminal posts, tension bars, attachments, concrete footings for the fence, walk gates and truck gates, shall be in accordance with manufacturers' recommendations.

5. Building exterior doors shall have nonrestrictive exiting hardware, i.e., no key shall be required to exit out of the facility.

6. Mechanical equipment may be located on or within structure but shall be inaccessible to and secure from occupants.

7. Building components proposed shall exhibit the strength, safety and durability characteristics suitable and appropriate for the custody level of the facility. Such components shall be approved by the Department of Corrections.]

PART [~~V.~~ VI.]

CONSTRUCTION AND DESIGN REQUIREMENTS FOR LOCKUPS.

[~~§ 5.1.~~ § 6.1.] Lockups construction.

A lockup is a facility, the primary use of which is to detain persons for short periods of time as determined by the Board of Corrections.

A. Lockups shall meet the construction and life safety requirements of the Building Code and shall be of fireproof construction.

B. Lockups shall be composed of individual cells or an area for group holding. Cells shall be constructed to provide at least 35 square feet per person and have a ceiling elevation of eight feet. Group holding areas shall provide at least 15 square feet per person, but in no case

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shall have less than 35 square feet of area.

C. Where necessary for separation of males and females, cells shall provide separation which reduces sight and sound contact to a minimum.

D. Cell walls and the secure perimeter of the lock up area shall be constructed to meet standards specified in § 3.1 A 1 b.

E. Cell fronts and doors shall be equal to that required for maximum security housing in Part III of these standards.

F. All surfaces shall be smooth and painted with epoxy or oil base enamel or be of other approved durable finishes. Surface flame spread rating shall be Class I, 25 or less, ASTM E-84.

G. Each cell or area for group holding must be provided with a stainless steel combination toilet and lavatory with integral drinking fountain.

H. Each cell or area for group holding shall have one stationary steel or concrete wall bunk or bench.

I. Light, heat, and ventilation shall meet the requirements of that for secure construction in these standards.

J. Sufficient floor drains shall be provided throughout the lockup to prevent water from standing on the floors.

K. As a minimum, lockups shall be monitored by sound (intercom) or be directly supervised by staff on a continuous basis. Additional supervision by use of CCTV is preferable.

L. Security equipment and hardware shall be approved by the Department of Corrections. Tamper resistant screws shall be used in all locations where screw heads are exposed.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-02. Board for Hearing Aid Specialists Regulations.

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

Effective Date: December 4, 1989

Summary:

This regulation describes the rights and responsibilities of applicants, licensees, and the board during and following the licensing process. The following issues are addressed in the regulation:

Definitions, the license and licensing process, license

renewal, schedule of fees, educational and experience requirements, examinations and standards of practice.

Several changes for clarity were made to the regulations in consideration of comments received.

VR 375-01-02. Board for Hearing Aid Specialists Regulations.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Audiologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license under this chapter.

"Otolaryngologist" means a licensed physician specializing in ear, nose and throat diseases.

"Otologist" means a licensed physician specializing in diseases of the ear.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

PART II. ENTRY REQUIREMENTS.

§ 2.1. Entry requirements.

The applicant must meet the following entry requirements:

1. The applicant must be at least 18 years of age.
2. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public.
3. The applicant shall have successfully completed high school or a high school equivalency course.

4. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of *nolo contendere* shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as *prima facie* evidence of such conviction.

5. The applicant shall have training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

- a. Basic physics of sound;
- b. Basic maintenance and repair of hearing aids;
- c. The anatomy and physiology of the ear;
- d. Introduction to psychological aspects of hearing loss;
- e. The function of hearing aids and amplification;
- f. Visible disorders of the ear requiring medical referrals;
- g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;
- h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
- i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.
- j. Masking when indicated;
- k. Recording and evaluating audiograms and speech audiology to determine the proper selection and adaptation of hearing aids;
- l. Taking earmold impressions;
- m. Proper earmold selection;
- n. Adequate instruction in proper hearing aid orientation;
- o. Necessity of proper procedures in after-fitting checkup; and
- p. Availability of social service resources and other special resources for the hearing impaired.

6. The applicant shall provide one of the following as verification of completion of the above training and

experience:

- a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
- b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

§ 2.2. Examination.

A. The applicant shall pass an examination administered by the board with a minimum score of 75 on each section of the examination.

B. Any applicant failing to achieve a passing score on all sections in two successive attempts to take the examination must reapply.

C. If the temporary permit holder fails to achieve a passing score on any section of the examination in two successive attempts to take the examination, the temporary permit shall expire upon receipt of the examination failure letter resulting from the second attempt.

D. The examination fee shall be \$40. The reexamination fee shall be \$25 for each of the three sections taken.

E. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist.

§ 2.3. Temporary permit.

A. A temporary permit shall be issued for a period of 12 months and will be extended once for not longer than 6 months.

B. The application for a temporary permit shall include an affidavit signed by the licensed sponsor certifying that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work until he is adequately trained for such independent activity.

C. The licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.

D. The application fee for a temporary permit shall be \$60.

§ 2.4. License by endorsement.

Applicants holding a current license/certificate as a hearing aid specialist in another state or territory of the

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United States, based on requirements equivalent to and not conflicting with the provisions of these regulations, may be granted a license without further examination. The fee for endorsement shall be \$60.

PART III. RENEWAL.

§ 3.1. License renewal required.

A. Licenses issued under these regulations shall expire on December 31 of each even-numbered year. The Department of Commerce shall mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensee applying for renewal shall return the renewal notice and a fee of \$110 to the Department of Commerce prior to the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee.

C. If the licensee fails to renew the license within 30 days after the expiration date, an additional fee of \$110 shall be required.

D. If the licensee fails to renew within six months of the expiration date on the license, the licensee must apply to have the license reinstated by submitting a reinstatement form and a renewal fee of \$110 plus an additional \$110 fee.

E. Upon receipt of the application for reinstatement and the fee, the board may grant reinstatement of the license if the board is satisfied that the applicant continues to meet the requirements for the license. The board may require requalification, reexamination, or both, before granting the reinstatement.

F. The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline an extant licensee. Upon such denial, the applicant may request that a hearing be held.

G. All fees are nonrefundable.

PART IV. STANDARDS OF PRACTICE.

§ 4.1. Business records and practice.

The following regulations shall apply with reference to the licensee's official records and public access.

[1. A.] The licensee shall keep on record with the board the location of the licensee's records, which shall be accessible to the board, with or without notice, during reasonable business hours. The licensee shall notify the board in writing of any change of address within 30 days

of such change.

[2. B.] The licensee shall be accessible to the public for expedient, reliable and dependable services, repairs, and accessories.

§ 4.2. The licensee shall deliver to each purchaser at the time of a sale, repair or service:

1. A receipt signed by the licensee and showing licensee's business address, license number and business telephone number, and

a. The make and model of the hearing aid to be furnished, repaired or serviced and, in addition, serial numbers on models to be repaired and serviced; and

b. The full terms of the sale clearly stated.

2. If an aid which is not new is sold or rented, the purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.

§ 4.3. When first contact is established with any purchaser or prospective purchaser, the licensee shall:

1. Provide a DISCLOSURE FORM prescribed by the board containing information that the person will need to obtain service/maintenance when the order is taken outside the specialist's office. The DISCLOSURE FORM shall include:

a. Address and telephone number where the specialist can be reached.

b. Days and hours contact can be made;

c. Whether service/maintenance will be provided in the office or in the person's home;

d. If the specialist has an office, address of the office as listed with the board; and

e. If the specialist has no office in Virginia, a clear statement that there is no office in Virginia;

2. Advise that person that hearing aid specialists are not licensed to practice medicine; and

3. Advise that person that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.

a. A statement that this initial advice was given to the purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.

b. Exemption: Specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 2 and 3 of § 4.3.

§ 4.4. The following terminology shall be used on all purchase agreements:

1. The undersigned seller agrees to sell and the undersigned purchaser agrees to purchase hearing aid(s) and accessories, according to terms set forth below:

a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and

b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.

2. Exemption: Specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions a and b § 4.4.

§ 4.5. Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall:

1. Ascertain whether such child has been examined by an otolaryngologist for recommendation within six months prior to fitting; and

2. No child shall be fitted without such recommendation.

§ 4.6. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid. Should the client decline the recommendation:

1. A statement of such declination shall be obtained from the client over his signature.

2. Fully informed adult patients (18 years of age or older) may waive the medical evaluation because of personal or religious beliefs.

3. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

§ 4.7. The information provided in subdivisions 1 and 2 of § 4.6 must be made a part of the client's record kept by the hearing aid specialist.

§ 4.8. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000 Hertz. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.

2. Bone Conduction Tests are to be made on every client—A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.

3. Speech testings shall be made before and after fittings, and the type of test(s), method of presentation, and results noted.

4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the patient to a physician unless the patient can show that his present condition is under treatment or has been treated:

a. Visible congenital or traumatic deformity of the ear.

b. History of active drainage from the ear within the previous 90 days.

c. History of sudden or rapidly progressive hearing loss within the previous 90 days.

d. Acute or chronic dizziness.

e. Unilateral hearing loss of sudden or recent onset within the previous 90 days.

f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, [~~or~~ and] 2000 Hertz.

g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.

h. Tinnitus as a primary symptom.

i. Pain or discomfort in the ear.

5. All tests shall have been conducted no more than six months prior to the fitting.

§ 4.9. Calibration statement required.

[~~±~~ A.] Audiometers used in testing the [~~hard of~~ hearing hearing impaired] must be in calibration.

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[2. B.] Calibration must be done once a year or more often, if needed.

[3. C.] A certified copy of an electronic audiometer calibration made within the past 12 months must be submitted to the board annually no later than November 1.

§ 4.10. Grounds for discipline.

The board may fine any licensee or suspend or revoke any license issued under the provisions of Chapter 15 of Title 54.1 of the Code of Virginia and the regulations of the board at any time after a hearing conducted pursuant to the provisions of the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia when the licensee has been found in violation of:

1. Improper conduct, including but not limited to:

a. Obtaining or renewing a license by false or fraudulent representation;

b. Obtaining any fee or making any sale by fraud or misrepresentation;

c. Employing to fit and sell hearing aids any person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;

d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;

e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;

f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;

g. Directly or indirectly giving, or offering to give, favors or anything of value to any person who in their professional capacity uses their position to influence third parties to purchase products offered for sale by a hearing aid specialist; or

h. Failing to provide expedient, reliable and dependable services when requested by a client or client's guardian.

2. Failure to include on the sales contract a statement regarding home solicitation, as required by federal and state law.

3. Incompetence or negligence in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence by a temporary permit holder under the licensee's sponsorship.

5. Violation of any other requirement or prohibition of Part IV of these rules.

6. Violating or cooperating with others in violating any provisions of Chapter 15 of Title 54.1 of the Code of Virginia or any regulation of the board.

7. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Any pleas of nolo contendere shall be considered a conviction for the purpose of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

All previous rules of the Board for Hearing Specialists are repealed.

COMMONWEALTH OF VIRGINIA
BOARD FOR HEARING AID SPECIALISTS

THE FOLLOWING FEES MUST ACCOMPANY THIS APPLICATION:

<input type="checkbox"/> Application fee-\$60	<input type="checkbox"/> Application fee-\$60	<input type="checkbox"/> Application fee-\$60
<input type="checkbox"/> Reciprocity-\$60	<input type="checkbox"/> Temporary Permit-\$60	<input type="checkbox"/> Examination fee-\$40

DEPARTMENT OF COMMERCE
P. O. Box 11066
Richmond, Virginia 23230-1066
804-367-8534 1-800-552-3016

MAKE ONE CHECK OR MONEY ORDER
PAYABLE TO THE "TREASURER OF VIRGINIA".

ALL FEES ARE NON-REFUNDABLE

APPLICATION FOR HEARING AID SPECIALIST

1. NAME IN FULL _____
2. DATE OF BIRTH _____ 3. SOCIAL SECURITY NUMBER _____
4. RESIDENCE ADDRESS _____
5. PHONE () _____
6. BUSINESS ADDRESS _____
7. PHONE () _____

8. PROFESSIONAL EXPERIENCE

DATES		NAME OF EMPLOYER AND ADDRESS	POSITION	DUTIES	NAME OF SUPV. OR DEPT. HEAD
FROM	TO				

9. What is your primary purpose in applying for this license and where will you practice upon being licensed?
- _____
- _____

10. Do you hold a current license/registration in another state? _____
If so, what state? _____ Has your license in
another state been revoked, suspended, or expired? _____ If yes,
provide an explanation on a separate sheet.

11. AFFIDAVIT (To be executed by every applicant)

STATE OF _____

COUNTY OR CITY OF _____

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

SIGNATURE OF APPLICANT

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

SIGNATURE OF NOTARY PUBLIC

12. STATEMENT OF LICENSED SPONSOR - A signed statement from the licensed
sponsor indicating that the licensed sponsor assumes full responsibility
for the competent and proper conduct of the temporary permit holder.
(\$ 54-524.110(b))

I hereby certify that I am a licensed, practicing Hearing Aid Specialist
and on this date _____, 19____,
I am sponsored by _____, _____
Should
he or she, at any time, leave my employ or supervision, I will within
forty-eight (48) hours notify the Secretary of the Virginia Board for
Hearing Aid Specialists in writing and by returning the temporary permit
to the Board by certified mail.

SIGNATURE OF LICENSED SPONSOR

LICENSE NUMBER

Revised 1/89

Final Regulations

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 615-08-1. Virginia Energy Assistance Program.

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

Effective Date: November 22, 1989

Summary:

Section 201 of the Immigration Reform and Control Act of 1986 (Public Law 99-603) adds a new section 245A to the Immigration and Nationality Act (INA). Section 245A provides for the granting of lawful temporary resident status (and, eventually, lawful permanent resident status) to certain aliens who have resided illegally in the United States since before January 1, 1982. Section 245A(h) provides that, for five years from the date of adjustment of status to temporary resident, these aliens—with certain exceptions—will be excluded from eligibility for need-based federal programs of financial assistance identified by the Attorney General.

Section 303 of the Immigration Reform and Control Act adds a new section 210A to the INA. Section 210A provides for the granting of lawful temporary resident status to additional aliens to meet a shortage of agricultural workers, beginning in fiscal year 1990. The INA provides in effect that these Replenishment Agricultural Workers or "RAWs" granted lawful temporary resident status under section 210A will be subject to most of the same ineligibility rules as aliens granted status under section 245A. (Aliens who receive legal status under the new section 210 of the INA—Special Agricultural Workers or "SAWs"—are not disqualified from federal programs of financial assistance, other than Aid to Families with Dependent Children.)

The INA names several programs for which these "245A" and "210A" aliens are temporarily ineligible. On August 24, 1987, the Justice Department's Immigration and Naturalization Service (INS) published a proposed rule naming additional programs ineligible. The proposed rule named LIHEAP as one of the additional programs. Because this was a proposed rule rather than a final rule, these aliens were not yet excluded from LIHEAP under the

provisions of sections 245A and 210A. LIHEAP grantees were notified of the proposed rule in IM-87-18 dated September 2, 1987.

On July 12, 1989, INS published in the Federal Register (54 FR 29434-29438) a final rule implementing the ineligibility provisions of sections 245A and 210A of the Immigration and Nationality Act, as amended. The final rule named LIHEAP as one of the need-based federal programs of financial assistance from which the "245A" and "210A" aliens are temporarily disqualified.

An Action Transmittal was received on August 17, 1989, from the U.S. Department of Health and Human Services Family Support Administration, Office of Community Services, and mandates an implementation compliance date of October 1, 1989. The purpose of this regulation is to bring Virginia's LIHEAP funded Energy Assistance Program into compliance with federal law and regulations.

Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained or October 1, 1989, whichever is later. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind, or disabled individual.

The regulation set forth herein assures compliance with federal regulations and laws.

VR 615-08-1. Virginia Energy Assistance Program.

PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used herein, shall have the following meaning unless the context indicates otherwise:

"Department" means the Department of Social Services.

"Disabled person" means a person receiving Social Security disability, Railroad Retirement Disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

"Elderly person" means anyone who is 60 years of age or older.

"Household" means an individual or group of individuals who occupies a housing unit and functions as an economic unit by: purchasing residential energy in common (share heat); or, making undesignated payments for energy in the form of rent (heat is included in the rent).

"Poverty guidelines" means the Poverty Income

Guidelines as established and published annually by the Department of Health and Human Services.

"Primary heating system" means the system that is currently used to heat the majority of the house.

"Resources" means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of \$900, or any other similar resource which can be liquidated in not more than 60 days.

"Energy-related, weather-related, or supply shortage emergency" means a household has: no heat or an imminent utility cut-off; inoperable or unsafe heating equipment; major air infiltration of housing unit; or a need for air conditioning because of medical reasons.

PART II. FUEL ASSISTANCE.

§ 2.1. The purpose of the Fuel Assistance component is to provide heating assistance to eligible households to offset the costs of home energy that are excessive in relation to household income.

A. Eligibility criteria.

1. **Income limits.** Maximum income limits shall be at or below 150% of the Poverty Guidelines. In order to be eligible for Fuel Assistance, a household's income must be at or below the maximum income limits.

2. **Resource limits.** The resource limit for a household containing an elderly or disabled person shall be \$3,000. The resource limit for all other households shall be \$2,000. In order to be eligible for Fuel Assistance, a household's resources must be at or below the amount specified.

3. **Alien status.** Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual.

B. Resource transfer.

Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for Fuel Assistance.

Compensation that is adequate means goods, services or money that approximates the value of the resources.

This policy does not apply if any of the following occur:

1. The transfer was not done in an effort to become eligible for Fuel Assistance;

2. The resource was less than the allowable resource limit;

3. The disposition or transfer was done without the person's full understanding.

§ 2.2. Benefits.

Benefit levels shall be established based on income in relation to household size, fuel type, and geographic area, with the highest benefit given to households with the least income and the highest energy need.

Geographic areas are the six climate zones for Virginia recognized by the National Oceanic and Atmospheric Administration and the United States Department of Commerce. The six climate zones are: Northern, Tidewater, Central Mountain, Southwestern Mountain, Eastern Piedmont, and Western Piedmont.

Each year, the Division of Energy within the Department of Mines, Minerals and Energy will supply data on the average costs of various fuels.

Each year the benefit amounts for each geographic area shall be determined by the following method:

A. A projection will be made of the number of households who will apply for Fuel Assistance. The projection will be based on the number of households who applied the previous year increased by the additional number of people who applied the year before.

B. An average grant per household will be determined based on the estimated amount of funds that will be available for benefits.

$$\frac{\$ \text{ available}}{\text{no. of households}} = \text{average grant}$$

C. The benefits for each geographic area will be determined by using the average grant as a base figure and obtaining the highest and lowest benefits by using a ratio for each area based on degree days and the cost of various fuel types.

PART III. CRISIS ASSISTANCE.

§ 3.1. The purpose of the Crisis Assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the Fuel Assistance component or other local resources.

A. Eligibility criteria.

In order to be eligible for Crisis Assistance, a household

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shall meet the following criteria:

1. All of the Fuel Assistance criteria as set forth in Part II, § 2.1;
2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;
3. Other resources cannot meet the emergency (including Fuel Assistance);
4. Did not receive Crisis Assistance during the current federal fiscal year: October 15 - March 15.

B. Benefits.

An eligible household can receive no more than \$200 for Crisis Assistance during any federal fiscal year, unless the assistance is for the major repair or replacement of heating equipment, in which case the maximum amount of assistance shall be \$700.

The following forms of assistance shall be provided:

1. Repairs or replacement of inoperable or unsafe heating equipment.
2. Payment of electricity when it is needed to operate the primary heating equipment. Payment will be limited to \$200 maximum. Assistance may be provided once every five years.
3. A one-time-only payment per fuel type of a heat-related utility security deposit.
4. Providing space heaters.
5. Providing emergency shelter.

PART IV. COOLING ASSISTANCE.

§ 4.1. Cooling Assistance program is an optional component of the Energy Assistance Program that is designed to provide help to persons medically in need of cooling assistance due to the heat.

Local agencies who choose this option will be given a separate allocation that will be based on a percentage of their crisis allocation and will provide the assistance no earlier than June 15 through no later than August 31.

A. Eligibility criteria.

In order to be eligible for cooling assistance, a household must meet all of the fuel assistance eligibility criteria and must be in critical medical need of cooling.


B. Benefits.

The assistance is limited to: no more than \$200 for

repairing or renting a fan or air conditioner, purchasing a fan, or paying an electric bill or security deposit; or no more than \$400 for purchasing an air conditioner.

PART V. ADMINISTRATIVE COSTS.

§ 5.1. Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of 7.0% of the program grant allocation.


COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

POST OFFICE BOX 2 AG
HICKMAN, VIRGINIA 21084
(524) 736-3591

October 6, 1989

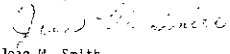
Larry D. Jackson, Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23229

Re: VR 615.08-12. Virginia Energy Assistance Program, Part II
Fuel Assistance

Dear Mr. Jackson:

This will acknowledge receipt of the above-referenced regulations from the Department of Social Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:sll

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: Emergency Regulation for Spousal Impoverishment.

VR 460-02-2.6100. Eligibility Conditions and Requirements.
VR 460-04-8.6. Spousal Impoverishment.

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

Effective Dates: October 1, 1989 through September 30, 1990

Summary:

1. REQUEST: The Governor's approval is requested to adopt the emergency regulation entitled "Spousal Impoverishment" regarding the treatment of income and resources of an institutionalized individual who has a spouse or dependent relative in the community. This action establishes new methods for determining income and resource eligibility and computing post-eligibility income.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Spousal Impoverishment. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski
Date: September 13, 1989

CONCURRENCES:

Secretary of Health and Human Resources:

Concur:
/s/ Eva S. Teig
Date: September 18, 1989

4. GOVERNOR'S ACTION:

Approve:
/s/ Gerald L. Baliles
Governor
Date: September 21, 1989

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: September 26, 1989

6. BACKGROUND: The Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360), enacted July 1, 1988, included a provision [§ 303(a)] which redesignated § 1924 of the Social Security Act as § 1925 and replaced it with a new § 1924. The new § 1924 sets forth special rules for determining eligibility of persons who are likely to be institutionalized for a continuous period in a medical institution or a nursing home, or who are likely to receive home and

community-based waiver services for a continuous period. The provisions of § 1924 are effective on October 1, 1989, regardless of whether the Secretary of Health and Human Services has issued implementing regulations.

The provisions of § 1924 define new methods for determining income and resource eligibility and set forth a new method of computing post-eligibility income for institutionalized individuals who have spouses and dependent relatives at home. These new requirements allow a community spouse (or other dependent relative) of a nursing home patient a minimum income allowance for basic living expenses and protect for the community spouse a specified amount of the resources which the institutionalized spouse owns individually or jointly with the community spouse. In this way, the community spouse is not completely impoverished in order for the institutionalized spouse to become eligible for Medicaid.

The Secretary of Health and Human Services has not issued regulations interpreting the statutory language of § 1924. The Act contains a number of vague phrases such as "as soon as practicable" or "the state shall promptly" which must be defined for purposes of implementation. In the absence of either federal regulations or official interpretive guidelines, the Commonwealth must issue regulations in compliance with the Administrative Process Act of the Code of Virginia. The Department is concurrently requesting the Governor's approval of the attached State Plan Amendment 89-21 necessary for federal approval.

This emergency regulation is based upon draft interpretive guidelines obtained from Region III of the Health Care Financing Administration (HCFA). These draft guidelines became available in July, and HCFA will not predict the issuance date of the final guidelines. Therefore, the Department must request authorization from the Governor to adopt an emergency regulation effective October 1, 1989.

The emergency regulation is based upon the statutory language where that is clear, and upon the draft interpretive guidelines obtained from HCFA where interpretation is required. The levels of income and resource standards are the minimum required by federal law.

One area of state option is included in this emergency regulation. The federal statute allows states optionally to apply these income and resource rules to individuals in home and community based care waiver programs. These individuals receive services intended to prevent their entering nursing homes. The Department has determined that is important to evaluate eligibility for these individuals in the same way as if they were institutionalized. This similar treatment ensures that individuals are not forced to

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enter nursing homes to become eligible for Medicaid if services in the home would cost Medicaid less than nursing home care. Failure to implement spousal allowance rules for both groups simultaneously could result in unnecessary and more expensive nursing home placements for individuals who otherwise would remain at home under the waiver program.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

Without an emergency regulation, an amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the October 1, 1989, effective date established by MCCA § 1924. Simultaneously, the Department is requesting the Governor's approval of the State Plan Amendment which is necessary for federal approval. Obtaining federal approval is required to protect the federal financial participation in the Department's budget.

8. FISCAL/BUDGETARY IMPACT: The Spousal Impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 have been budgeted for in the process associated with the entire Catastrophic Coverage Bill as previously submitted to the Department of Planning and Budget. Listed below is a reiteration of those costs related to Spousal Impoverishment that have been previously submitted.

Cost: Income Retained by Spouse

	Total	GF	NFG
FY90	\$ 8,496,680	4,224,549	4,272,131

Cost: Resources Retained by Spouse

	Total	GF	NFG
FY90	\$ 7,800,426	3,878,372	3,922,054

Total

	Total	GF	NGF
FY90	\$16,297,106	8,102,921	8,194,185

These funds were appropriated to the Department by

the 1989 General Assembly.

9. RECOMMENDATION: Approval of this emergency regulation to become effective on October 1, 1989. 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 of Medical Assistance Services would lack the authority to implement the Spousal Impoverishment policy.

10. Approval Sought for VR 460-02-2.6100 and VR 460-04-8.6.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

VR 460-02-2.6100. Eligibility Conditions and Requirements.

Citations(s)	Condition or Requirement
	3. For families and children, each family member
	AFDC level \$
Monthly Medically	needy levels \$ See Below
	Other as follows \$
	4. Amounts for incurred medical expenses not subject to payment by a third party
Except as provided in § 1924 of the Act, the policies reflected in C, items 1-5 apply. See Supplement 13 for additional policies relative to § 1924.	a. Health insurance premiums, deductibles and co-insurance charges
	b. Necessary medical or remedial care not covered under the Medicaid plan (Reasonable limits on amounts are described in Supplement 3 to ATTACHMENT 2.6-A.) (No limits on amounts are applied)
	5. An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified he or she is likely to return home within that period.
	X Yes. Amount for maintenance of home \$..... See B.2.
	No.
1902(1) of the Act, P.L. 99-643 (§ 3(b))	6. SSI benefits paid under § 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, SNF, or ICF.
	For § 1924 policies see 5a.
435.711	C. Financial Eligibility - Categorically and Medically Needy and Qualified Medicare Beneficiaries
435.721	
435.831	

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1. Income disregards - Categorically and Medically Needy and Qualified Medicare Beneficiaries
- B.2. Group I - \$216.67; Group II - \$250.00; Group III - \$325.00
- B.3. For appropriate family size (see Supplement 1 to Attachment 2.6A, Page 2)

7. Maintenance Standard for community spouse and other dependent family members under § 1924 of the Act.

a. Community Spouses

- X 1. Standard based on formula contained in § 1924(d) is used.
2. Maximum standard contained in § 1924(d)3.
3. A fixed standard which is greater than the minimum standard described in § 1924(d) plus actual shelter costs not to exceed maximum standard contained in § 1924(d)(3)(c).

The standard used is

b. Other family members who are dependent.

- X 1. Standard based on the formula contained in § 1924(d)(1)(c) is used.
2. A fixed standard greater than the amount which would be used if the formula described in § 1924(d)(1)(c) were used

The standard used is

X c. The standards described above are used for individuals receiving home and community based services in lieu of services provided in medical or remedial institutions.

d. Definition of dependency.

The definition of dependency below is used to define dependent children, parents and siblings for purposes of deducting allowances under § 1924.

The definition used is:

Dependent Children - A couples' children age 21 and older who live with a community spouse and who may be claimed as dependents by either member of a couple for tax purposes under the Internal Revenue Services Code. This also includes minor children under age 21 who live

with a community spouse.

Dependent Parents - Parents of either member of a couple who reside with the community spouse and who may be claimed as dependents by either spouse for tax purposes under the Internal Revenue Services Code.

Dependent Siblings - A brother or sister of either member of a couple (including and half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and who may be claimed by either member of the married couple for tax purposes under the Internal Revenue Services Code.

§ 1924 Provisions

a. Income and Resource eligibility policies used to determine eligibility for institutionalized spouses who have spouses living in the community are consistent with § 1924.

b. In the determination of resource eligibility the state resource standard is \$12,000.

c. The definition of undue hardship or purposes of determining if institutionalized spouses receive Medicaid in spite of having excess countable resources is described below:

Denial of Medicaid eligibility would result in the institutionalized spouse being removed from the institution and unable to purchase life-sustaining medical care.

VR 460-04-8.6. Spousal Impoverishment.

Part 1. General.

Article 1. Definitions.

§ 1.1. Definitions. The following words and terms when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Acceptable medical evidence" means either (1) certification by a nursing home pre-admission screening committee; or (2) certification by the individual's attending physician.

"Applicable percent" means that percentage as defined in § 1924 (d)(3)(B) of the Social Security Act.

"As soon as practicable" (transfer of resources) means within 90 days from the date an institutional spouse

Emergency Regulation

agrees to transfer resources to the community spouse, unless the Department determines that a longer period is necessary.

"At the beginning" of a continuous period of institutionalization means the first calendar month of the most recent continuous period of institutionalization or receipt of waiver services.

"Community spouse" means a married person who is not an inpatient at a medical institution or nursing facility and who is married to an institutionalized spouse.

"Community spouse maintenance needs allowance" is an amount by which the applicable percent of 1/12 of the FPL for a family of 2 in effect on July 1 of each year, plus an excess shelter allowance exceeds the amount of monthly income otherwise available to the community spouse. The community spouse maintenance allowance cannot exceed \$1500 except pursuant to a court order or an amount designated by a DMAS hearing officer.

"Community spouse resource allowance" means the difference between a couple's countable resources and the greatest of (a) the spousal share, not to exceed \$60,000; or (b) the spousal resource standard, \$12,000; or (c) an amount transferred to the community spouse by the institutionalized spouse pursuant to a court order; or (d) an amount designated by a Department hearing officer.

"Continuous period of institutionalization" means thirty (30) consecutive days of institutional care in a medical institution or nursing facility, or thirty (30) consecutive days of receipt of waiver services, or thirty (30) consecutive days of a combination of institutional and waiver services. Continuity is broken only by thirty (30) or more days absence from institutionalization or waiver services.

"Countable resources" means all non-exempt resources, except for a couple's home, contiguous property, household goods, and one automobile. (These items are exempt for purposes of determining the combined and separate resources of institutionalized and Community Spouses only.)

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent parents" means a parent of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent sibling" means a brother or sister of either member of a couple (including half brothers and half sisters and siblings gained through adoption) who resides with the community spouse and who may be claimed by either member of the couple for tax purposes under the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the actual monthly expense of maintaining the community spouse's residence that exceeds 30% of the community spouse maintenance needs allowance, but limited to the total of: rent or mortgage (including interest and principal), taxes and insurance, any maintenance charge for a condominium or cooperative, and utilities (if not included in the rent or maintenance charge) except that utility expenses will not be included to the extent that they exceed the standard deduction under the Food Stamp program that would be appropriate to the number of persons living in the community spouse's household.

"Federal Poverty Level or FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"Initial determination" means

A. eligibility determinations made in conjunction with Medicaid applications filed during an individual's most recent continuous period of institutionalization; or

B. the first redetermination of eligibility for a Medicaid eligible institutionalized spouse after being admitted to an institution or receiving waiver services.

"Initial redetermination" means those redeterminations of eligibility for a Medicaid eligible spouse which are regularly scheduled, or which are made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means a married person who is an inpatient at a medical institution or nursing facility or who is receiving waiver services and who is likely to remain in such facility or under such care, and whose spouse is not an inpatient at a medical institution or nursing facility.

"Likely to remain" in an institution means a reasonable expectation based on acceptable medical evidence that an individual will be an institutionalized spouse for thirty (30) consecutive days, even if his institutionalization or waiver services actually terminate in less than thirty (30)

consecutive days.

"Maintenance needs standard" means an income standard to which a community spouse's or other family member's income is compared in order to determine the Community spouse's and other family members' maintenance allowance.

"Medical institution or nursing facility" means hospitals, skilled nursing facilities, intermediate care facilities (including ICF/MR) consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009 and which are authorized under Virginia law to provide medical care.

"Minor" means a child under age 21, of either spouse, who lives with the community spouse.

"Other family members" means children who are minors or dependent, and dependent parents and siblings (of either member of a couple) who reside with the community spouse.

"Other family members maintenance needs allowance" means an amount for each family member, equal to 1/3 of the applicable percent of 1/2 of the FPL for a family of two in effect on July 1 of each year, reduced by the amount of the monthly income of that family member.

"Otherwise available income and/or resources" means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days unless the delay is due to non-receipt of documentation or verification, if required, from the applicant or from a third party.

"Resource assessment" means an appraisal completed by request, of a couple's combined countable resources at the beginning of each continuous period of institutionalization beginning on or after September 30, 1989.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources (\$12,000 in 1989 and as increased each year beginning in 1990 by the same percentage increase as in the Consumer Price Index), necessary for the community spouse to maintain himself in the community.

"Spousal share" means 1/2 of the couple's countable resources at the beginning of the most recent continuous period of institutionalization, or at the beginning of a continuous period of receipt of waiver services, as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means denial of Medicaid eligibility would result in the institutionalized spouse being removed from the institution and unable to purchase life sustaining medical care.

"Waiver services" means Medicaid reimbursed home or community-based services covered under a 1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

Part 2. Resource Assessments and Eligibility. Article 1. General.

§ 2.1. *Applicability.* Resource assessment and resource eligibility rules contained in Part 2 of these regulations shall apply to:

A. persons whose first continuous period of institutionalization began on or after September 30, 1989; and

B. institutionalized persons who leave the institution (or cease receiving waiver services) for at least thirty (30) consecutive days and who are readmitted to the institution for a continuous period (or begin receiving waiver services for a continuous period on or after September 30, 1989) are subject to the rules described herein.

Article 2. Assessments of Couple's Resources.

§ 2.2. *Resource assessment initiated.* A resource assessment shall be initiated:

A. Upon payment of a fee (the amount of which is determined by the Department of Social Services) by either member of a couple, or a representative acting on behalf of either spouse, if the institutionalized spouse has not applied for Medicaid; or

B. Upon application for Medicaid by an institutionalized spouse who has a community spouse.

§ 2.3. *Notification of documentation required.* When a resource assessment is initiated, the Department of Social Services shall notify the applicant of all relevant documentation required to be submitted for the assessment.

§ 2.4. *Failure to provide documentation.* If an applicant fails to provide requested documentation within 45 days of receipt of notification sent pursuant to § 2.3, the Department shall notify him that the assessment cannot be completed.

§ 2.5. *Notification of assessment and appeal rights.* The Department shall provide each member of a couple with copies of the completed resource assessment and the

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documentation used to produce it. The Department shall notify the couple of the procedure by which to appeal the resource assessment.

§ 2.6. Appeal of resource assessment.

A. *Non-Medicaid application.* If the resource assessment was conducted pursuant to a non-Medicaid application, it may be appealed pursuant to the existing Client Appeals regulations (42 CFR 431 Subpart E).

B. *Medicaid application.* A resource assessment which was conducted pursuant to a Medicaid application submitted by the institutionalized spouse may be appealed pursuant to existing Client Appeals regulations (42 CFR 431 Subpart E).

Article 3. Resource Eligibility Determinations For Institutionalized Spouses.

§ 2.7. *Applicability.* This article shall be used to determine an institutionalized spouse's initial and continuing eligibility for his current continuous period of institutionalization.

§ 2.8. *Initial eligibility determinations.* Except as provided in §§ 2.10 and 2.11 of these regulations, an institutionalized spouse is eligible for Medicaid if the difference between the couple's combined countable resources and its community spouse resource allowance (as defined in § 1.1) is equal to or less than the appropriate Medicaid resource limit for one person.

§ 2.9. *Initial determinations of ineligibility.* If the difference between a couple's current combined countable resources and its community spouse resource allowance is greater than the appropriate Medicaid resource limit for one person, the institutionalized spouse shall be ineligible for Medicaid until the couple's combined countable resources are reduced to the greatest of:

A. the State's spousal resource standard (\$12,000) plus the appropriate Medicaid resource limit for one person; or

B. the spousal share (not to exceed \$60,000) plus the appropriate Medicaid resource limit for one person; or

C. a court ordered spousal share plus the appropriate Medicaid resource limit for one person; or

D. a spousal allowance determined necessary by a Department hearing officer plus the appropriate Medicaid resource limit for one person.

§ 2.10. *Revisions to the community spouse resource allowance.* For the purposes of this Article, a community spouse resource allowance may be revised if:

A. a Department hearing officer determines on appeal that the income generated from the community spouse resource allowance as originally calculated as described in

§ 2.9 of this article is inadequate to raise the community spouse's income to the minimum amount to be deducted as a maintenance allowance in the post-eligibility determination made pursuant to Part 3 of these regulations; or

B. a Department hearing officer determines on appeal that the original calculation was incorrect; or

C. when the Department determines that the original information with which the spousal share was calculated was incorrect.

§ 2.11. *Additional resource exclusions.* If an institutionalized spouse has resources exceeding the appropriate Medicaid resource limit for one person, the following are deducted from his resources for the purpose of establishing eligibility, as appropriate:

A. the amount of resources which the institutionalized spouse has transferred to the community spouse or to other dependents pursuant to a court support order; and

B. support rights of institutionalized spouses assigned to the Commonwealth.

C. any support rights which cannot be assigned due to the institutionalized spouse's legal incompetency and upon which the Commonwealth would have a legal right to recover against the community spouse.

D. any amount necessary to make the individual eligible if the Department determines that the denial of Medicaid would create undue hardship as defined in § 1.1 of these regulations.

§ 2.12. *Redetermination of eligibility of institutionalized spouses.* Beginning with the first calendar month following the date of the initial determination of eligibility unless §§ 2.18 or 2.19 of these regulations applies, the institutional spouse's continuing eligibility shall be determined based solely on resources held in his name. The community spouse's resources shall not be deemed available to the institutional spouse in the month following the month of the initial month of ongoing eligibility.

§ 2.13. *Post-eligibility resource transfers.* After an initial determination of eligibility, an institutionalized spouse may transfer to his community spouse any of the community spouse resource allowance which is not already titled to the community spouse. Any amount of the community spouse resource allowance which is not transferred pursuant to this section and which is not actually available to meet the community spouse's needs, shall be deemed available to the institutional spouse for the purpose of determining continuing eligibility.

§ 2.14. *Protected periods of eligibility.* Subject to § 2.15, for 90 days after an initial determination of eligibility, an institutionalized spouse's eligibility shall be protected (i.e., the resources in the community spouse resource allowance

shall not be attributed to the institutionalized spouse) to allow him time to legally transfer resources pursuant to § 2.13 if the institutionalized spouse expressly indicates his intention to effect such a transfer. Absent such an expression of intent, the protected period will not extend beyond the end of the month in which eligibility is being determined. The Department may extend the protected period if it finds an extension is necessary.

§ 2.15. Exception to protected period of eligibility. If, at the time of an initial determination of eligibility a community spouse has title to resources equal to or exceeding his community spouse resource allowance, no protected period of eligibility shall exist. In this circumstance, an institutionalized spouse may transfer resources in any amount to the community spouse, pursuant to § 1917 of the Social Security Act, but there shall be no protected period of eligibility for doing so.

§ 2.16. Additional resources acquired during protected period of eligibility. If a couple obtains additional resources during a protected period of eligibility, the additional resources shall be exempt during the protected period if:

A. the new resources combined with other resources the institutionalized spouse intends to retain do not exceed the appropriate Medicaid resource limit for one person and/or

B. the institutionalized spouse intends to transfer the new resources during the protected period of eligibility to the community spouse, and the community spouse's resources are less than the community spouse resource allowance.

§ 2.17. Resources transferred pursuant to § 1917 of the Act. Provided transfers are made within one month of the initial determination of eligibility, Resources held by an institutionalized spouse shall not be counted in determining continuing eligibility when § 1917 transfers are made to parties for which there is no penalty for failure to receive equitable value, or transfer for which equitable value is received.

§ 2.18. Resource eligibility determinations in retroactive periods.

A. First application for medicaid. In each of the three (3) months preceding an institutionalized spouse's first application for Medicaid in the current continuous period of institutionalization for which resource eligibility is to be determined, the community spouse resource allowance shall be deducted from the couple's combined countable resources.

B. Later applications for Medicaid. In later applications for the same period of institutionalization, including retroactive months, the community spouse resource allowance shall not be deducted for the couple's combined countable resources except in the first month in the

retroactive period for which eligibility is being determined.

§ 2.19. Eligibility for community spouses and other family members.

Resources are considered under the eligibility rules which would apply to the community spouse and other family members, regardless of the rules governing the institutionalized spouse.

Part 3. Post-Eligibility Process. Article 1. General.

§ 3.2. Applicability. The Post-eligibility process contained in Part 3 of these regulations shall apply to persons living in a nursing facility and to persons receiving services under home and community-based waivers. This process determines how much such persons contribute to the cost of their institutional care and/or waiver services.

Article 2. Income.

§ 3.3. Determining Ownership of Income. A couple's ownership of income shall be determined as follows, without regard to state laws governing community property or division of marital property:

A. Income from non-trust property. Unless a Department hearing officer determines that the institutionalized spouse has proven to the contrary by a preponderance of the evidence:

1. income paid to one spouse belongs to that spouse;
2. each spouse owns one half of all income paid to both spouses jointly;
3. each spouse owns one-half of any income which has no instrument establishing ownership;
4. income paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

B. Income from trust property. Ownership of trust property shall be determined pursuant to the State Plan, except as follows:

1. each member of a couple owns the income from trust property in accordance with the trust's specific terms.
2. if a trust instrument is not specific as to the ownership interest in income, ownership shall be determined as follows:
 - a. income paid to one spouse belongs to that

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spouse;

b. one-half income paid to both spouses shall be considered available to each spouse;

c. Income from a trust paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income from a trust is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

C. Income owned jointly with other family members. Total separately, income owned by each spouse and each family member. Income computed for this purpose includes income which has been deducted in determining eligibility, or which would be deducted in determining eligibility for the community spouse and other family members if they applied for Medicaid.

Article 3. Patient Pay.

§ 3.4. Applicability. After all appropriate deductions pursuant to §§ 3.5, 3.6, and 3.7 have been made from an institutionalized spouse's gross monthly income pursuant to this article, the balance shall constitute the amount the institutionalized spouse shall pay for institutional or waiver services.

§ 3.5. Mandatory deductions from institutionalized spouse's income. The following amounts shall be deducted from the institutionalized spouse's gross monthly income:

A. a personal needs allowance of \$30.00; and

B. the community spouse maintenance allowance as calculated pursuant to § 3.6; and

C. the family maintenance allowance, if any, as calculated pursuant to § 3.7; and

D. incurred medical and remedial care expenses recognized under State law, not covered under the State Plan and not subject to third party payment.

§ 3.6. Community spouse maintenance allowance.

A. The community spouse maintenance allowance shall be the greatest of the following amounts:

1. the total of the community spouse maintenance needs standard and the excess shelter allowance; or

2. an amount set in a spousal support court order; or

3. an amount determined necessary by a Department hearing officer because of exceptional circumstances resulting in extreme financial duress.

B. Deductions are not made from the income of the institutionalized spouse income when the allowances are not actually made available to the community spouse.

§ 3.7. Family members maintenance needs allowance.

A. An amount equal to 1/3 of the minimum monthly standard for the community spouse (without regard to excess shelter allowances), minus each family member's income, shall be deducted for the maintenance of each family member.

B. This allowance is to be deducted regardless of whether the institutionalized spouse actually makes the allowance available to the family member.

Part 4. Appeals. Article 1. General.

§ 4.1. Applicability. The appeals process contained in Part 4 of these regulations shall apply to appeals of initial determinations and redeterminations of resources and income amounts and allowances made in connection with applications for Medicaid benefits by spouses institutionalized for a continuous period on or after September 30, 1989, or receiving waived services for a continuous period on or after September 30, 1989, pursuant to existing Client Appeals regulations.

Article 2. Notification.

§ 4.2. Notices. Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:

A. The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and

B. Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.

§ 4.3. Regulatory authority. Hearings and appeals held for the purpose of § 4.1 are consistent with regulations at 42 CFR § 431 Subpart E.

§ 4.4. Hearing officer authority. Through the appeals process applicable as described in § 4.1 of these regulations, hearing officers shall prescribe appropriate increases in spousal maintenance allowances in the event they determine that exceptional circumstances exist which cause financial duress to the community spouse.

* * * * *

Title of Regulation: Emergency Regulation for Disproportionate Share Adjustments to Hospitals. VR 460-02-4.191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.

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

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Effective Dates: September 29, 1989 through September 28, 1990.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled *Disproportionate Share Adjustments (DSA) to Hospitals*. This DSA policy will enable the Department of Medical Assistance Services (DMAS) to make these payment adjustments to qualifying hospitals.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action concerning *Disproportionate Share Adjustments*. DMAS intends to complete the Article 2 process as contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: September 18, 1989

3. CONCURRENCES:

Secretary of Health and Human Resources:
Concur:

/s/ Eva S. Teig
Date: September 18, 1989

4. GOVERNOR'S ACTION:

Approve:
/s/ Gerald L. Baliles
Governor
Date: September 25, 1989

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: September 29, 1989

DISCUSSION

6. BACKGROUND: This action amends the methods and standards for establishing payment rates for *Inpatient Hospital Care (Attachment 4.19 A)* by adding minimum uniform criteria in the definition of *disproportionate share hospitals* and the payment adjustments to such hospitals.

DMAS originally adopted and filed with the Registrar of Regulations, on September 29, 1988, an emergency regulation for *Disproportionate Share Adjustments*. The effective period for that emergency regulation ends September 28, 1989. The emergency regulation language was also immediately filed for federal approval with the Health Care Financing Administration (HCFA). Federal approval was necessary to protect DMAS' federal financial participation.

The Administrative Process Act § 9-6.14:7.1.B states: "In formulating any regulation, including but not limited to those in public assistance programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate." HCFA did not submit its final written views concerning the original DSA regulation until April 25, 1989.

Subsequently, DMAS submitted its proposed regulations for the APA comment period. The proposed rules were published in the July 3, 1989, Virginia Register for comments through September 1, 1989. The final regulations will be effective November 9, 1989. Therefore, this emergency regulation is needed to cover the period between September 29, 1989 and November 9, 1989.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to conform to the requirements of Article 2 of the APA.

During the formulation of the proposed regulations, DMAS received significant comments and views, between October, 1988, and April, 1989, from the HCFA. Without an emergency regulation, this amendment to the State Plan cannot become effective until the final rules' publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, a short-term emergency regulation is needed to afford the operating authority the Department requires until the final APA regulations become effective. This emergency regulation immediately promulgates the language of the final regulation without waiting for the 30 day review period for the final regulations.

8. FISCAL/BUDGETARY IMPACT: Under Virginia's revised prospective payment system, 45 hospitals qualify and receive disproportionate share adjustments. No new costs are associated with this action. The regulation's funding needs were addressed in the October 1, 1988, budget submission.

9. RECOMMENDATIONS: Recommend approval of this request to take an emergency adoption action to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force until superseded by final

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regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to administer its policy for disproportionate share adjustments to hospitals.

10. Approval Sought for VR 460-02-4.191.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan 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:

(7) *Disproportionate 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, 1988,¹ 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 rate in excess of 8% for hospitals receiving Medicaid payments in the Commonwealth, 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 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 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, 1988,² 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.

¹This effective date tracks an emergency regulation adopted September 29, 1988, by the Director of the Department of Medical Assistance Services, pursuant to the Code of Virginia § 9-6.14.9, and filed with the Registrar of Regulations. HCFA has not approved the inclusion of this disproportionate share adjustment policy's effective date in the State Plan for Medical Assistance.

²Refer to explanation at first footnote.

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Title of Regulation: Emergency Regulation for Inpatient Outlier Adjustments.
VR 460-02-4.191. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.

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

Effective Dates: September 29, 1989 through September 28, 1990.

Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled *Inpatient Outlier Adjustments*. This policy conforms the State Plan for Medical Assistance to the requirements of § 1923 (a) of the Social Security Act regarding additional payments to disproportionate share hospital services for exceptionally high costs or

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long lengths of stay for infants.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Inpatient Outlier Adjustments. The Department intends to comply with applicable Administrative Process Act Article 2 requirements.

3. CONCURRENCES:

Secretary of Health and Human Resources:

Concur:

/s/ Eva S. Teig

Date: September 25, 1989

4. GOVERNOR'S ACTION:

Approve:

/s/ Gerald L. Baliles

Governor

Date: September 28, 1989

5. FILED WITH:

/s/ Ann. M. Brown

Deputy Registrar of Regulations:

Date: September 29, 1989

6. BACKGROUND: The Medicare Catastrophic Coverage Act (MCCA) of 1988 (§ 302(b)(2), P.L. 100-360) requires that State plans which reimburse inpatient hospital services on a prospective basis be amended to permit an outlier adjustment in payment amounts to disproportionate share hospitals. To qualify for this additional payment, these hospitals must be providing to infants under age one, on or after July 1, 1989, medically necessary inpatient services which involve exceptionally high costs or exceptionally long lengths of stay.

The Department of Medical Assistance Services (DMAS) currently provides, in section I.F of Supplement 1 to Attachment 3.1 A & B of the State Plan for Medical Assistance (State Plan), for unlimited medically necessary days for children under age 21. Therefore, no amendment is needed for services involving exceptionally long lengths of stay.

Attachment 4.19A of the State Plan will be amended to authorize payments of outlier adjustments for exceptionally high costs, that is, additional payments to compensate for extraordinary costs which exceed a certain threshold. The threshold for each hospital will be set at two and one-half standard deviations above the mean operating cost per day in that hospital for patients under one year old. A separate mean will be calculated for those hospitals which qualify for the extensive neonatal care provision of Attachment 4.19A V.(6). In addition to its prospective rate, a hospital will then be paid—as an outlier adjustment—all of its per diem operating costs which exceeded its threshold(s).

Each eligible hospital will be responsible for providing to DMAS information from which its mean Medicaid operating cost per day could be computed.

7. AUTHORITY TO ACT: Section 302(b)(2) of the MCCA requires a State Plan amendment to conform to these new federal requirements.

The Code of Virginia, § 32.1-324, authorizes the Director of DMAS to administer and amend the State Plan in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA), § 9-6.14:9, for DMAS' adoption of emergency regulations subject to the Governor's approval. The Code requires DMAS to initiate the public notice and comment process of Article 2 of the APA after this emergency adoption action and filing with the Registrar of Regulations.

The Code of Federal Regulations, at 42 CFR 447.205, requires a state to give public notice of any significant proposed change in its methods and standards for setting payment rates for services. DMAS has determined that this amendment is not significant.

8. FISCAL/BUDGETARY IMPACT: In FY 89, 42 hospitals qualified for and received disproportionate share adjustments. That year, 32 of those hospitals submitted claims for children under age one, and received actual payments of \$30.2 million.

To arrive at the FY 91 estimate, DMAS increased this amount by a factor to account for allowable costs in excess of the ceiling and inflated it by the DRI Virginia-specific inflation factor. Based on the statistical properties of the outlier rule, DMAS estimated that 0.714% (or \$251,000) would be expended per year. The applicable formula is:

Actual Payments x Excess of Ceiling Factor x DRI 90 x 0.714%.

As applied: \$30,174,648 x 1.11 x 1.05 x .00714 = \$251,103.

Because of the nature of the reimbursement system, the majority of the \$251,000 cost, which will be incurred in FY 90, will be paid in FY 91. Likewise, the majority of the \$264,000 cost, which was determined by inflating the \$251,000 cost by the inflation factor, will be incurred in FY 91 and will be paid in FY 92. In the first year (FY 90) the Department estimates that the adjustment is unlikely to exceed \$50,000. The funds appropriated to the Department are adequate to provide for this adjustment.

The estimated impact, expressed in thousands, follows:

FY	GF	NGF	Total
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90	\$ 25	\$ 25	\$ 50
91	125.5	125.5	251
92	132	132	264

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective subject to approval by the Health Care Financing Administration. From its effective date, this regulation is to remain in force for one full year of until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, DMAS would lack the authority to implement the requirements of § 302(b)(2) of the MCCA. Failure to conform the State Plan to this federal legislative mandate could endanger DMAS' federal financial participation for the required outlier adjustments.

10. Approval Sought for VR 460-02-4.191:

The Governor's approval is sought for an emergency modification of the State plan 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:

(8) DMAS shall pay to disproportionate share hospitals (as defined in V(7) above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989 involving exceptionally high costs for individuals under one year of age. The adjustment shall be calculated as follows:

(a) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals under one year of age. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(b) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals under one year of age. Any hospital which qualifies for the extensive neonatal care provision (as governed by V(6), above) shall

calculate a separate mean for the cost of providing extensive neonatal care to individuals under one year of age.

(c) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (b) above.

(d) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

Pursuant to section 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stays for individuals under one year of age.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-45-1. Child Protective Services Central Registry Information.

Statutory Authority: § 63.1-25 and Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63 of the Code of Virginia.

Effective Dates: September 28, 1989 through September 27, 1990.

Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled "Child Protective Services Central Registry Information".

2. **PURPOSE OF REQUEST:** The purpose of this request to take emergency action is to insure consistent name entry into the Central Registry while alternatives are more fully explored. This is a result of concerns raised following a pilot of existing regulations. The pilot indicated that the regulations were being applied inconsistently and that not as many names of abusers/neglectors were being entered into the system as were entered under the former regulations. This was perceived as a potential problem for employers who utilize the Central Registry to screen potential applicants for employment in child caring positions.

3. **PERSONS AFFECTED BY THIS REGULATION:** All persons who are subjects in reported child abuse and neglect complaints will be impacted by this regulation. Some persons will benefit from the regulation as it will mean their names will not be maintained in the Central Registry for as long a period of time as current regulations require. Other persons will have name information maintained for a longer period of time.

Emergency Regulation

BACKGROUND: The existing regulations were implemented in July 1988. The portion of the regulations dealing with name entry and retention in the Central Registry have caused Department Staff and the State Board some concern as the regulations appear to be being applied inconsistently and fewer names are being entered into the system than under the former regulations. The State Board of Social Services determined that additional analysis of the regulation as it relates to name entry and retention was needed and has readopted the regulations that were previously in effect. The regulations will remain in effect while the needed additional analysis is completed by the Department. The analysis and revised regulations will be completed within one year.

5. **AUTHORITY TO ACT:** This child protective services regulation has been developed pursuant to the enactment of legislation by the 1989 General Assembly. That legislation, Senate Bill 567, which in part amended § 63.1-248.6, stipulates that the Board of Social Services promulgate regulations to implement the legislation.

6. **FISCAL IMPACT:** None.

7. **FUTURE DEPARTMENT ACTION:** The Department of Social Services has developed this emergency regulation with the assistance of Colonel Frederick Moss who represented the Military Affairs Committee, the Attorney General's Office and representatives of the local departments of social services.

Immediately after this emergency regulation is approved and published in the Virginia Register, the Department of Social Services will initiate the procedure for the development of the regulation using the regular (non-emergency) procedure. Public comment will be solicited through a sixty day public comment period.

Copies of the proposed regulation will be sent to persons/organizations who are identified as interested persons.

Certification: /s/ Larry D. Jackson
Commissioner

Concurrence: /s/ Eva S. Teig
Secretary of Health and Human Resources

Preface:

It is necessary for the proposed procedures to be published as emergency regulations due to the immediate need to amend current regulations governing Central Registry information. The regulations are intended to insure consistent name entry into the Central Registry while alternatives are more fully explored.

VR 615-45-1. Policy Regarding Child Protective Services Central Registry Information.

PART I. DEFINITIONS.

§ 1.1. The following words and terms when used in conjunction with this regulation shall have the following meaning, unless the context clearly indicates otherwise:

"Central registry" means the name index of individuals involved in child abuse and neglect reports maintained by the Virginia Department of Social Services.

"Child protective services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse/neglect which must be investigated by the local department of social services.

"Founded" means that a review of the facts shows clear and convincing evidence that child abuse or neglect has occurred.

"Identifying information" means name, race, sex, and date of birth of the subject.

"Investigating agency" means the local department of social services responsible for conducting investigations of child abuse/neglect complaints as per § 63.1-248.6 of the Code of Virginia.

"Reason to suspect" means that a review of the facts shows no clear and convincing evidence that child abuse and neglect has occurred.

"Unfounded" means that a review of the facts shows no reason to believe that abuse or neglect occurred.

PART II. POLICY.

§ 2.1. Determination of risk.

The investigating agency determines risk by completing a thorough assessment of factual information available to the investigating agency as it pertains to the complaint situation. The assessment includes information about the abuse/neglect incident, the caretaker, the child, the family and any other special circumstances to determine what level of risk the situation poses to the child or to other children.

§ 2.2. Levels of risk.

The three levels of risk are:

Emergency Regulation

A. High risk.

The worker's assessment of risk-related factors indicates a likelihood that the child is in jeopardy of abuse/neglect, and that intervention is necessary in order to protect the child or other children.

B. Moderate risk.

The worker's assessment of risk-related factors indicates that the child or other children are in possible jeopardy, but that a positive change in the situation is likely to occur with minimal intervention.

C. No reasonably assessable risk.

The worker's assessment of risk-related factors indicates that the situation can and will be changed, that no additional intervention is necessary and that the child or other children are at no reasonably assessable risk or abuse/neglect.

§ 2.3. Maintenance of identifying information.

Identifying information in reports of child abuse and neglect shall be maintained in the central registry as follows:

1. Seven years for a complaint determined by the investigating agency to be founded or reason to suspect and high risk, except sexual complaints.

2. Thirty years for a sexual abuse complaint determined to be founded or reason to suspect and high risk.

A. Ten years past the child's eighteenth birthday for all complaints determined by the investigating agency to be founded.

3. Ten years for a sexual abuse complaint determined to be founded or reason to suspect and moderate risk. (All sexual abuse complaints that are founded or reason to suspect and are not high risk shall be entered as moderate risk.)

B. One year from the date of complaint unless another complaint is received for all complaints determined by the investigating agency to be reason to suspect.

*/s/ Larry D. Jackson
Commissioner
Date: August 23, 1989*

*/s/ Gerald L. Baliles
Governor
Date: September 26, 1989*

*/s/ Joan W. Smith
Registrar of Regulations
Date: September 28, 1989*

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

Governor's Comment:

The promulgation of this regulation will establish procedures in accordance with the Administrative Process Act for obtaining comments from interested and affected parties regarding regulations from the Chesapeake Bay Local Assistance Board. Pending public comment, I recommend approval of this regulation.

/s/ Gerald L. Baliles
Date: October 3, 1989

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: VR 470-03-02. Regulations to Ensure the Rights of Residents in Department of Mental Health, Mental Retardation and Substance Abuse Services facilities.

Governor's Comment:

I concur with the form and content of this proposal. My final assessment will be contingent upon a review of the public's comments.

/s/ Gerald L. Baliles
Date: September 28, 1989

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-01. Reporting Requirements for Contagious and Infectious Diseases of Livestock in Virginia.** The purpose of the proposed action is to expand disease-reporting requirements to include diseases of poultry and to require this reporting not just by veterinarians but also by diagnostic laboratories and any other reporting entity by the State Veterinarian.

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until November 24, 1989, to W.D. Miller, D.V.M., Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Department of Agriculture and Consumer Services, Division of Animal Health, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-2483

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-07. Control and Eradication of Pullorum Disease and Fowl Typhoid in Poultry Flocks and Hatcheries and Products Thereof in Virginia.** The purpose of the proposed action is to establish testing requirements for Salmonella enteritidis in commercial laying flocks and breeder flocks of poultry.

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until November 24, 1989, to W.D. Miller, D.V.M., Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Department of Agriculture and Consumer Services, Division of Animal Health, Washington

Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled: **VR 115-02-17. Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases.** The purpose of the proposed regulation is to establish rules and regulations for the early detection of infectious and contagious diseases of poultry.

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until November 24, 1989, to W.D. Miller, D.V.M., Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Department of Agriculture and Consumer Services, Division of Animal Health, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider promulgating regulations entitled: **VR 115-02-18. Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry.** The purpose of the proposed regulation is to establish requirements for the disposal of entire flocks of dead poultry.

Statutory Authority: § 3.1-726 of the Code of Virginia.

Written comments may be submitted until November 24, 1989, to W.D. Miller, D.V.M., Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

Contact: Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483

ALCOHOLIC BEVERAGE CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: VR 125-01-1 through VR 125-01-7. Regulations of the Virginia Alcoholic Beverage Control Board. The purpose of the proposed action is to receive information from industry, the general public and licensees of the board concerning adopting, amending or repealing the board's regulations.

Notice to the Public

A. Pursuant to the Virginia Alcoholic Beverage Control Board's "Public Participation Guidelines For Adoption Or Amendment of Regulations" (VR 125-01-1, Part V of the Regulations of the Virginia Alcoholic Beverage Control Board), the Board will conduct a public meeting on January 17, 1990, at 10 a.m. in its Hearing Room, First Floor, A.B.C. Board, Main Offices, 2901 Hermitage Road, City of Richmond, Virginia, to receive comments and suggestions concerning the adoption, amendment or repeal of Board regulations. Any group or individual may file with the Board a written petition for the adoption, amendment or repeal of any regulation. Any such 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 and/or savings to regulate 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. All petitions or requests for regulatory change should be submitted to the Board no later than November 17, 1989.

B. The Board will also be appointing an Ad Hoc Advisory Panel consisting of persons on its General Mailing List who will be affected by or interested in the adoption, amendment or repeal of Board regulations. This panel will

study requests for regulatory changes, make recommendations, and suggest actual draft language for a regulation, if it concludes a regulation is necessary. Anyone interested in serving on such panel should notify the undersigned by November 17, 1989, requesting that their name be placed on the General Mailing List.

C. Applicable laws or regulation (authority to adopt regulations): Sections 4-11, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103 and 9-6.14:1 et seq., Virginia Code; VR 125-01-1, Part V, Board Regulations.

D. Entities affected: (1) all licensees (manufacturers, wholesalers, importers, retailers) and (2) the general public.

A public meeting will be held on January 17, 1990, at 10 a.m., in the First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia, to receive comments from the public.

Statutory Authority: §§ 4-7(l), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14 and 4-103(b) of the Code of Virginia.

Written comments may be submitted until 10 a.m., January 17, 1990.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **Supervision Fee Rules, Regulations and Procedures**. The purpose of the proposed action is to provide procedural instruction for the collection and accounting of supervision fees required of adult offenders.

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

Written comments may be submitted until October 31, 1989.

Contact: Walter M. Pulliam, Jr., Manager, Probation and Parole Support Services, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3063 or SCATS 674-3063

DEPARTMENT OF HEALTH (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health

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intends to consider amending regulations entitled: **Governing the Newborn Screening and Treatment Program**. The purpose of the proposed action is to (i) revise the regulations to include diseases of newborn infants as specified in § 32.1-65 of the Code of Virginia and (ii) clarify the critical time periods for submitting newborn screening tests in order to more accurately test for diseases that are mandated.

Statutory Authority: § 32.1-12 and Article 7 of Chapter 2 of Title 32.1 of the Code of Virginia.

Written comments may be submitted until January 6, 1990.

Contact: J. Henry Hershey, M.D., M.P.H., Genetics Program Director, Department of Health, Division of Maternal and Child Health, James Madison Bldg., 109 Governor St., 6th Floor, Richmond, VA 23219, telephone (804) 786-7367 or SCATS 786-7367

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health intends to consider amending regulations entitled: **Rules and Regulations Governing the Licensing of Commercial Blood Banks and Minimum Standards and Qualification for Noncommercial and Commercial Blood Banks**. The purpose of the proposed action is to update the 1980 regulations to reflect change in federal regulations, American Association of Blood Bank guidelines and current blood banking technology.

Statutory Authority: §§ 32.1-2, 32.1-12, 32.1-42 and 32.1-140 of the Code of Virginia.

Written comments may be submitted until January 8, 1990.

Contact: Dr. Martin A. Cader, Director, Division of Communicable Disease Control, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 786-6261 or SCATS 786-6261

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health intends to consider promulgating regulations entitled: **VR 355-34-01. Private Well Regulations**. The proposed regulations will provide construction and location standards for all private wells drilled, whether intended as a potable water supply source or for other purposes. Water quality standards are established for potable water supplies.

A notice of intended regulatory action was originally published on November 24, 1986.

Statutory Authority: § 32.1-176.4 of the Code of Virginia.

Written comments may be submitted until December 1, 1989.

Contact: Donald J. Alexander, Director, Bureau of Sewage and Water Services, Department of Health, Room 500, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-1750 or SCATS 786-1750

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health intends to consider amending regulations entitled: **VR 355-34-02. Sewage Handling and Disposal Regulations**. The purpose of this action is to repeal portions of Article 11 of these regulations that duplicate the construction, location, and quality requirements of the Private Well Regulations.

Statutory Authority: § 32.1-176.4 of the Code of Virginia.

Written comments may be submitted until December 1, 1989.

Contact: Donald J. Alexander, Director, Bureau of Sewage and Water Services, Department of Health, Room 500, Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-1750 or SCATS 786-1750

COUNCIL ON HUMAN RIGHTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Council on Human Rights intends to consider promulgating regulations entitled: **VR 402-01-03. Regulations to Safeguard Virginian's Human Rights from Unlawful Discrimination**. The purpose of these regulations is to supplement the Virginia Human Rights Act (§ 2.1-714 et seq.) which safeguards all individuals within the Commonwealth from unlawful discrimination.

Statutory Authority: 2.1-720.6 of the Code of Virginia.

Written comments may be submitted until November 8, 1989, to Sandra D. Norman, P.O. Box 717, Richmond, Virginia 23206.

Contact: Lawrence J. Dark, Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2292, toll-free 1-800-633-5510 or SCATS 225-2292

LIBRARY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Library Board intends to consider amending regulations entitled: **The Virginia State Library Board Regulations**. The purpose of the intended regulatory action is to conduct an informational proceeding thereby soliciting public comment

on the certification regulations as to effectiveness, efficiency, clarity and cost of compliance in accordance with the Virginia State Library Board's authority under § 42.1-15.1 of the Code of Virginia.

NOTE: CHANGE OF MEETING LOCATION

A public hearing will be held November 13, 1989, at 2 p.m. in the State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

Statutory Authority: § 42.1-15.1 of the Code of Virginia.

Written comments may be submitted until November 3, 1989, to Ella Gaines Yates, State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, Virginia 23219.

Contact: Dr. Vance Helms, Human Resources Officer, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-8956

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Chiropractic, Clinical Psychology, Podiatry, Acupuncture, and Other Healing Arts.** The purpose of the proposed action is (i) to amend Part IV to establish requirements for maintaining patient records treated with acupuncture to increase number of hours for approved training; (ii) to delete supervised clinical training and (iii) to increase number of hours for approved training in acupuncture.

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

Written comments may be submitted until October 25, 1989.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to amend Part I, definitions for relicensure trainee and unlicensed graduate trainee; § 2.4 technical amendments to 6 (b) and 12; § 4.1 endorsement (B); § 7.2 professional hours of practice; § 8.1 Traineeship required in (A) and (B)(1)(2); § 8.2 additional traineeship required for examination; and § 8.4 traineeship for unlicensed graduates.

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

Written comments may be submitted until November 20, 1989.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

PESTICIDE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given that the Pesticide Control Board intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to establish public participation guidelines governing the Pesticide Control Board.

Statutory Authority: §§ 3.1-249.28 and 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until November 9, 1989.

Contact: C. Kermit Spruill, Jr., Division Director, Department of Agriculture and Consumer Services, Division of Product and Industry Regulation, P.O. Box 1163, Room 403, 1100 Bank St., Richmond, VA 23209, telephone (804) 786-3523

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider promulgating regulations entitled: **Regulations Establishing Civil Penalties.** The purpose of the proposed action is to establish civil penalties authorized by the Pesticide Control Act.

Statutory Authority: §§ 3.1-249.28, 3.1-249.30 and 3.1-249.70 of the Code of Virginia.

Written comments may be submitted until November 9, 1989.

Contact: C. Kermit Spruill, Jr., Division Director, Department of Agriculture and Consumer Services, Division of Product and Industry Regulation, P.O. Box 1163, Room 403, 1100 Bank St., Richmond, VA 23209, telephone (804) 786-3523

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider promulgating regulations entitled: **Regulations Governing Commercial Applicators, Technicians, Product Registration and Business Licenses Pursuant to the Virginia Pesticide Control Act.** The

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purpose of the proposed action is to establish regulations governing commercial applicators, technicians, product registration, and business licenses and the fees related thereto.

Statutory Authority: §§ 3.1-249.28 and 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until November 9, 1989.

Contact: C. Kermit Spruill, Jr., Division Director, Department of Agriculture and Consumer Services, Division of Product and Industry Regulation, P.O. Box 1163, Room 403, 1100 Bank Street, Richmond, VA 23209, telephone (804) 786-3523

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 State Board of Social Services intends to consider promulgating regulations entitled: **Degree Requirement for Social Work/Social Work Supervision Classification Series**. The purpose of the proposed regulation is to initiate the requirement of possession of a degree from an accredited college/university for applicants for position vacancies in the Social Work/Social Work Supervision classification series.

Statutory Authority: § 63.1-26 of the Code of Virginia.

Written comments may be submitted until November 30, 1989, to Eddie L. Perry, Human Resources Director Senior, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenber, Agency Regulatory Liaison, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217 or SCATS 662-9217

DEPARTMENT OF TAXATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-6-4006. Income Tax Withholding: Lottery Winnings**. The purpose of the proposed regulation is to set forth the application of income tax withholding requirements on lottery winnings of the State Lottery Department.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until October 23, 1989.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010 or SCATS 367-8010

COMMISSION ON VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commission on Virginia Alcohol Safety Action Program intends to consider amending regulations entitled: **VR 647-01-2. VASAP Policy and Procedure Regulations**. The purpose of the proposed action is to consider changes to the Policy and Procedure Manual as it pertains to Certification of VASAP Programs by adding additional requirements and clarification and to consider changes recommended by the Department of Planning and Budget dated August 28, 1989.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until November 8, 1989.

Contact: Donald R. Henck, Ph.D., Executive Director, 1001 E. Broad St., Old City Hall Bldg., Box 29, Richmond, VA 23219, telephone (804) 786-5896 or SCATS 786-5896

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commission on Virginia Alcohol Safety Action Program intends to consider amending regulations entitled: **Certification Review Manual**. The purpose of the proposed action is to consider changes to the Certification Review Manual as it pertains to Certification of VASAP Programs by adding additional requirements and clarification and to consider changes recommended by the Department of Planning and Budget dated August 28, 1989.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until November 8, 1989.

Contact: Donald R. Henck, Ph.D., Executive Director, 1001 E. Broad St., Old City Hall Bldg., Box 29, Richmond, VA 23219, telephone (804) 786-5896 or SCATS 786-5896

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commission on

Virginia Alcohol Safety Action Program intends to consider amending regulations entitled: **Case Management Manual**. The purpose of the proposed action is to consider changes to the Case Management Manual as it pertains to Certification of VASAP Programs by adding additional requirements and clarification and to consider changes recommended by the Department of Planning and Budget dated August 28, 1989.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until November 8, 1989.

Contact: Donald R. Henck, Ph.D., Executive Director, 1001 E. Broad St., Old City Hall Bldg., Box 29, Richmond, VA 23219, telephone (804) 786-5896 or SCATS 786-5896

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-20-1. Financial Assurance Regulations of Solid Waste Facilities**. The purpose of the proposed regulation is to establish financial assurance requirements for privately-owned waste management facilities, providing for the closure and post-closure care of the facilities.

The Department of Waste Management is considering amendment of these regulations and solicits the comments and recommendations of the public concerning all aspects of the regulations. The considerations and reasons for amendment of the regulations include, but are not limited to, the following: (i) to update the regulations to include recent developments and policies; (ii) to coordinate the requirements of these regulations, other regulations of the department, other Virginia regulations and Code of Virginia; (iii) to consider modification of the requirements relating to several issues, among which are: a) adequacy of the financial assurance required, b) the title of the regulations, and c) the content and form of the financial instruments required; (iv) to clarify the application and implementation of the regulations; and (v) to improve readability, eliminate inconsistencies and correct typographical and other errors.

Statutory Authority: § 10.1-1410 of the Code of Virginia.

Written comments may be submitted until December 1, 1989.

Contact: Robert G. Wickline, PE, Director of Research and Development - DTS, Department of Waste Management, James Monroe Bldg., 101 N. 14th St., 11th Floor,

Richmond, VA 23219, telephone (804) 225-2321 or SCATS 225-2321

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-20-10. Solid Waste Management Regulations**. The purpose of the proposed regulation is to establish construction and operational requirements for solid waste management facilities including the closure and permitting of the facilities.

The Department of Waste Management is considering amendment of these regulations and solicits the comments and recommendations of the public concerning all aspects of the regulations. The considerations and reasons for amendment of the regulations include, but are not limited to, the following: (i) to update the regulations to include recent developments and policies, such as the appropriate requirements of the United States Environmental Protection Agency Guidelines for Solid Waste Management; (ii) to coordinate the requirements of these regulations, other regulations of the department, other Virginia regulations and Code of Virginia; (iii) to consider modification of the requirements relating to several issues, among which are: a) open burning of solid waste, b) issuance of a variance, c) issuance of a facility permit, d) landfill liner construction and installation, e) municipal solid waste incinerator ash disposal, and f) application of the requirements to recycled solid waste; (iv) to develop "reserved" sections of the regulations; and (v) to improve clarity, eliminate inconsistencies and correct typographical and other errors.

Statutory Authority: Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Written comments may be submitted until December 1, 1989.

Contact: Robert G. Wickline, PE, Director of Research and Development - DTS, Department of Waste Management, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2321 or SCATS 225-2321

GENERAL NOTICES

BOARD FOR CONTRACTORS

In Re:

BOARD FOR CONTRACTORS

v.

File Number 87-01380

General Notices/Errata

MARTY GRUBB
t/a Marty Grubb, Contractor

FINAL ORDER NO. 90-002-87-01380

WHEREAS, on or about August 2, 1988 and again on August 11, 1988, the Board offered to resolve by consent order the matters set forth in File Number 87-01380, wherein it is alleged that Grubb violated Sections 3.7.3, 3.7.5, and 3.7.12 of the Board's regulations, and offered in the alternative a formal hearing on the complaint.

WHEREAS, the August 11, 1988 offer was sent by certified mail to Grubb's address of record and was received and signed for by Marty Grubb on August 22, 1988 and no response was received.

WHEREAS, further investigation by Department of Commerce staff revealed that as of June 6, 1989, Grubb can no longer be found at his address of record and that no forwarding address is available, a forwarding order having expired in April of 1989.

WHEREAS, Grubb has not provided the Board with his current address as required by Section 3.1.12 of the Board's regulations.

WHEREAS, the Board has examined its records of investigation in this matter and finds that Grubb has violated Section 3.7.3, 3.7.5, and 3.7.12 of its Regulations.

THEREFORE, the Board ORDERS that the Class B contractor license issued to Marty Grubb, t/a Marty Grubb, Contractor, is hereby revoked. Grubb shall immediately return his Class B contractor license to the Board, shall cease and desist from any activities requiring licensure with the Board, and shall remove all evidence that he is a licensed contractor from public view.

The effective date of this Order shall be the date it is entered by the Board.

SO ORDERED:

Entered this 18 day of September, 1989.

BOARD FOR CONTRACTORS

/s/ John Rocca, Chairman

/s/ David R. Hatchcock, Secretary

COPY TESTE:

/s/ Kelly Ragsdale, Assistant Director

VIRGINIA HEALTH PLANNING BOARD

Notice

The Virginia Health Planning Board is establishing a mailing list of parties interested in participating in the development of its regulations. Those regulations generally pertain to the board's responsibility to supervise and provide leadership for the statewide health planning system, through which it makes recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General Assembly concerning health policy, legislation, and resource allocation. In particular, the board is required to promulgate regulations for the designation of health planning regions, the designation of regional health planning agencies, the composition and method of appointment of members of regional health planning boards, and the administration of state funding for regional planning.

Parties interested in receiving a notice whenever the board decides that such regulations need to be created or modified should send a written request to be placed on the Virginia Health Planning Board regulatory notice mailing list, along with their name and mailing address, to: Virginia Health Planning Board, c/o VDH Division of Health Planning, 1010 Madison Building, 109 Governor Street, Richmond, VA 23219. Further information may be obtained from the Division of Health Planning by calling (804) 786-4891.

NOTICE TO SUBSCRIBERS OF THE VIRGINIA REGISTER OF REGULATIONS

Due to the printer's error, it was necessary to reprint the September 25, 1989 issue of the Virginia Register of Regulations. Please destroy the first copy of this issue and replaced it with the second copy. We assumed that the printer would have an explanation with the second copy. We were wrong!

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.

Page 4122, § 6.6 B 8 should read:

Proposed actions to notify persons directly affected by the release or the planned corrective action, or both.

Page 4124, § 7.2, fourth paragraph should read:

In the case of [state state-owned] facilities the Department of General Services shall function as the building official [in accordance with § 36-98.1 of the Code of Virginia] .

ERRATA

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Title of Regulation: VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Telecommunications Equipment.

Publication: 5:24 VA.R. 3687-3693 August 28, 1989

Correction to the Final Regulation:

Page 3691, § 3.2 C should read:

[~~2~~ C. Application for] replacement [~~request equipment shall not be approved when:~~]

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-13-02. Underground Storage Tank Regulations; Technical Standards and Corrective Action Requirements.

Publication: 5:26 VA.R. 4103-4128 September 25, 1989

Correction to the Final Regulation:

Page 4110, § 2.2, fourth paragraph should read:

In the case of [state state-owned] facilities the Department of General Services shall function as the building official [in accordance with § 36-98.1 of the Code of Virginia] .

Page 4112, § 3.4, fourth paragraph should read:

In the case of [state state-owned] facilities the Department of General Services shall function as the building official [in accordance with § 36-98.1 of the Code of Virginia] .

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

DEPARTMENT FOR THE AGING

November 2, 1989 - 9 a.m. - Open Meeting

November 3, 1989 - 9 a.m. - Open Meeting

Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The third statewide conference on Long-Term Care "Setting the Direction for Quality Care." Wide ranging and timely workshops for health and human service professionals, policy makers, providers, consumers and elected officials. The opening session will feature an update on the work of the Legislative Joint Subcommittee Studying Health Care for All Virginians. The subcommittee study under SJR 214 has resulted from the Legislature's growing concern about the rising cost of health care, the burden of uncompensated hospital care, long-term care and indigent health care.

Over 20 concurrent workshops have been planned covering a wide range of topics.

Contact: Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-4464

Long-Term Care Ombudsman Program Advisory Council

† November 30, 1989 - 9:30 a.m. - Open Meeting
Department for the Aging, 700 East Franklin Street, 10th Floor, Conference Room, Richmond, Virginia. ☒

A semi-annual meeting to include election of new officers and a report of recent program activities.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271/TDD ☎, toll-free 1-800-552-3402 or SCATS 225-2271

BOARD FOR ARCHITECTS, LAND SURVEYORS, PROFESSIONAL ENGINEERS AND LANDSCAPE ARCHITECTS

Board for Architects

† November 8, 1989 - 9:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from September 12, 1989, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Board for Land Surveyors

† November 30, 1989 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes of August 11, 1989, meeting; (ii) review applications; (iii) review and discuss correspondence; and (iv) review enforcement files.

Board for Professional Engineers

† November 16, 1989 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes of September 13, 1989, meeting; (ii) review applications; (iii) review general correspondence; and (iv) review enforcement files.

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 AUCTIONEERS BOARD

† October 31, 1989 - 9 a.m. - Open Meeting

Calendar of Events

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct (i) review of complaints; (ii) review of certification applications; (iii) signing of certificates; (iv) discussion of revenue and expenditures; (v) election of officers; and (vi) other board business.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, toll-free 1-800-552-3016 or SCATS 367-8534

VIRGINIA BOATING ADVISORY BOARD

† November 2, 1989 - 10 a.m. - Open Meeting
Pier 4, 6th and Water Streets, S.W., Washington, D.C.

A joint meeting with Maryland Boat Advisory Committee to review issues, legislation and regulations affecting the recreational boating public in Virginia and Maryland.

NOTE: This is a reschedule of the meeting previously announced for October 19, 1989. The October 19 meeting was cancelled.

Contact: Wayland W. Rennie, Chairman, 8411 Patterson Ave., Richmond, VA 23229, telephone (804) 740-7206

BOARD FOR BRANCH PILOTS

† December 13, 1989 - 10 a.m. - Open Meeting
Virginia Port Authority, World Trade Center, Suite 600, Norfolk, Virginia. ☒

A quarterly business meeting to conduct routine business.

Contact: Florence R. Brassier, Deputy Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8500 or toll-free 1-800-552-3016

STATE BUILDING CODE TECHNICAL REVIEW BOARD

October 27, 1989 - 10 a.m. - Open Meeting
Fourth Street Office Building, 205 North Fourth Street, 2nd Floor Conference Room, Richmond, Virginia. ☒
(Interpreter for deaf provided if requested)

A meeting to (i) consider requests for interpretation of the Virginia Uniform Statewide Building Code; (ii) consider appeals from the rulings of local appeals boards regarding application of the Virginia Uniform Statewide Building Code; and (iii) approve minutes of previous meeting.

Contact: Jack A. Proctor, 205 N. 4th St., Richmond, VA 23219, telephone (804) 786-4752

CHARLES CITY COUNTY EMERGENCY PLANNING COMMITTEE

November 30, 1989 - 7 p.m. - Open Meeting
Charles City Neighborhood Facility Building, Board of Supervisors Conference Room, Charles City, Virginia. ☒
(Interpreter for deaf provided if requested)

A meeting to conduct a review of the local plan.

Contact: Fred A. Darden, County Administrator, P.O. Box 128, Charles City, VA 23030, telephone (804) 829-9201

LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

November 2, 1989 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of the 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 9, 1989 - 9 a.m. - Open Meeting
December 14, 1989 - 9 a.m. - Open Meeting
Koger Executive Center, West End, Blair Building, Conference Rooms A and B, 8007 Discovery Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to discuss issues, concerns, and programs that impact licensed child care centers. A public comment period is scheduled at 9 a.m.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

CONSORTIUM ON CHILD MENTAL HEALTH

November 1, 1989 - 9 a.m. - Open Meeting
December 6, 1989 - 9 a.m. - Open Meeting
Eighth Street Office Building, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. ☒

A regular business meeting open to the public, followed by an executive session for purposes of

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confidentiality; and to review applications for funding of services to individuals.

Contact: Wenda Singer, Chair, Virginia Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-2208 or SCATS 786-2208

DEPARTMENT FOR CHILDREN

State-Level Runaway Youth Services Network

October 26, 1989 - 10:30 a.m. - Open Meeting
Department of Corrections, 6900 Atmore Drive, Room 3056, Richmond, Virginia. ☐

A regular business meeting open to the public.

Contact: Martha Frickert, Human Resources Developer, Department for Children, 805 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-5994 or SCATS 786-5994

COORDINATING COMMITTEE FOR INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

November 9, 1989 - 8:30 a.m. - Open Meeting
December 8, 1989 - 8:30 a.m. - Open Meeting
Interdepartmental Licensure and Certification, Office of the Coordinator, Tyler Building, 1603 Santa Rosa Drive, Suite 210, Richmond, Virginia. ☐

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee.

Contact: John Allen, Coordinator, Interdepartmental Licensure and Certification, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124 or SCATS 662-7124

BOARD OF COMMERCE

† **November 9, 1989 - 11 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☐

A meeting to (i) receive reports from the Director, Department of Commerce, and Chairman, Board of Commerce; (ii) review legislation to be proposed to the General Assembly pursuant to the federal requirement that states begin regulation of real estate appraisers; and (iii) discuss such other matters that may come before the board.

Contact: Alvin D. Whitley, Staff Assistant to Board, Department of Commerce, 3600 W. Broad St., 5th Floor,

Office of the Director, Richmond, VA 23230, telephone (804) 367-8564, toll-free 1-800-552-3016 or SCATS 367-8519

BOARD FOR COMMERCIAL DRIVER EDUCATION SCHOOLS

† **October 25, 1989 - 10 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to conduct regulatory review and routine board business.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, toll-free 1-800-552-3016 or SCATS 367-8534

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

† **November 11, 1989 - 1 p.m. - Open Meeting**
Radford University, 180 Porterfield, Radford, Virginia

A general meeting.

Contact: Dr. John Holsinger, Chairman, ODU, Department of Biological Science, Norfolk, VA 23529, telephone (804) 683-3595

BOARD OF CORRECTIONS

November 15, 1989 - 10 am. - 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 of Corrections.

Contact: Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

October 25, 1989 - 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 Corrections intends to adopt regulations entitled: **VR 230-40-005. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.** The proposed regulations establish operating standards for Virginia Delinquency Prevention and Youth Development Act grant programs pertaining to program administration,

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services personnel and fiscal management, staff training, and monitoring and evaluation.

Statutory Authority: §§ 53.1-5 and 53.1-253 of the Code of Virginia.

Written comments may be submitted until October 25, 1989.

Contact: Glenn D. Radcliffe, Chief of Operations for Community Programs, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3392 or SCATS 674-3392

November 10, 1989 – 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 Corrections intends to repeal regulations entitled: **VR 230-01-002. Rules and Regulations for the Purchase of Services for Clients.** The regulation discusses the requirements for purchasing services for clients when such services are not available within the Department of Corrections.

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

Written comments may be submitted until November 10, 1989.

Contact: Ben Hawkins, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262 or SCATS 674-3262

November 14, 1989 - 1 p.m. – Public Hearing
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Corrections intends to adopt regulations entitled: **VR 230-01-003. Regulations Governing the Certification Process.** These regulations establish the procedures utilized to conduct compliance audits.

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

Written comments may be submitted until October 16, 1989.

Contact: John T. Britton, Certification Unit Manager, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237 or SCATS 674-3237

STATE EDUCATION ASSISTANCE AUTHORITY

Board of Directors

November 21, 1989 - 10 a.m. – Open Meeting
State Education Assistance Authority, 6 North 6th Street, Suite 300, Richmond, Virginia

A general business meeting.

Contact: Lyn Hammond, Secretary to the Board, State Education Assistance Authority, 6 N. 6th St., Suite 300, Richmond, VA 23219, telephone (804) 786-2035, toll-free 1-800-792-5626 or SCATS 786-2035

BOARD OF EDUCATION

October 24, 1989 - 9 a.m. – Open Meeting

October 25, 1989 - 9 a.m. – Open Meeting
Longwood College, Farmville, Virginia

November 14, 1989 - 8 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

The Board of Education and the Board of Vocational Education will hold regularly scheduled meetings. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Margaret Roberts, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540

VIRGINIA EMPLOYMENT COMMISSION

† **January 3, 1990 - 10 a.m.** – Public Hearing
Virginia Employment Commission, 703 East Main Street, Administrative Office Courtroom, Richmond, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Virginia Employment Commission intends to amend regulations entitled: **VR 300-01-3. Virginia Employment Commission Regulations and General Rules - Benefits.** The regulations are being amended to provide guidance for the processing of claims for unemployment compensation in the areas of total and part-total unemployment, partial unemployment, interstate claims, combined wage claims, and miscellaneous benefit provisions.

STATEMENT

There is no change to the first four parts of this regulation as they pertain to total and part-total unemployment, partial unemployment, interstate claims, and combined wage claims. The fifth part pertaining to miscellaneous benefit provisions is the only one affected

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by the proposed amendments, and all of those deal with the second subpart involving commission approval of training pursuant to the provisions of § 60.2-613 of the Code of Virginia. If their training is approved, claimants for unemployment insurance would not be required to conduct a job search in order to receive benefits.

The first amendment deletes reference to Section 303 of the Job Training and Partnership Act. This is basically a conformity measure since the Act itself has been amended to remove any special criteria for approving training which might pre-empt state law. This would result in such training being approved under the same criteria applicable to all other training except that under the Trade Act of 1974 which retains its own criteria.

The second amendment involves the type of training which can be approved. The previous limitation to vocational or technical courses of study has been relaxed by the addition of three other potentially approvable courses, all of which are designed to assist workers who would otherwise be at a disadvantage in the job market, acquire the basic skills necessary to compete for available work. Employability assistance/job market orientation programs are aimed at workers who may have become unemployed after such a long period of work as to be unfamiliar with a changed job market or who may need assistance in learning how to seek work effectively over again. G.E.D. classes for those without high school diplomas would allow unemployed individuals to acquire the basic education which is fast becoming a requirement for most types of career advancement. English language classes for citizens and aliens legally entitled to work in this country who cannot effectively communicate in English would permit them to be far better able to conduct an effective job search and ultimately find employment.

The third amendment involves removing the weekly hourly attendance requirement for training approval from paragraph two and making it a separate paragraph six so as to have each paragraph express only one criterion. The hourly requirement itself was dropped from 30 to 12 in order to provide more flexibility. Many of the courses contemplated for approval are taught at community colleges where 12 hours per week are considered a full class load, and it is at those institutions that training can frequently be obtained at the least cost to an unemployed individual.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until December 26, 1989.

Contact: Joseph L. Hayes, Manager Administration/Appeals, 703 E. Main St., Room 302, Richmond, VA 23211, telephone (804) 786-7554

BOARD OF FORESTRY

† November 15, 1989 - 8:30 a.m. - Open Meeting
Best Western Kings Quarters, I-95, Exit 40 on Route 30,
Doswell, Virginia. ☒

A general business meeting.

Contact: Barbara A. Worrell, Administrative Staff Assistant,
P.O. Box 3758, Charlottesville, VA 22903, telephone (804)
977-6555, SCATS 487-1230 or (804) 977-6555/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† October 29, 1989 - 7 p.m. - Open Meeting
Omni Hotel, 235 West Main Street, Charlottesville, Virginia

A legislative committee meeting.

October 30, 1989 - 9 a.m. - Open Meeting
Omni Hotel, 235 West Main Street, Charlottesville, Virginia

A general board meeting to include certifying candidates for the November examination session. Proposed regulations and proposed emergency regulations for preneed may be discussed, and formal administrative hearings will be conducted.

October 31, 1989 - 9 a.m. - Open Meeting
Omni Hotel, 235 West Main Street, Charlottesville, Virginia

Informal fact-finding conferences.

Contact: Meredyth P. Partridge, Executive Director, 1601
Rolling Hills Dr., Richmond, VA 23229-5005, telephone
(804) 662-9907

BOARD OF GAME AND INLAND FISHERIES

October 26, 1989 - 10 a.m. - Open Meeting
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided if requested)

The following committees of the board will meet to discuss administrative and related matters which will be reported to the full board at its meeting on Friday, October 27, 1989.

Planning Committee - 10 a.m.
Finance - 10:30 a.m.
Wildlife and Boat - 11 a.m.
Law and Education - 11:30 a.m.

October 27, 1989 - 9:30 a.m. - Public Hearing
Department of Game and Inland Fisheries, 4010 West
Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided if requested)

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The board will act on fish regulation proposals for the 1989-90 season, proposal for appointment of new consignment agents for sale of hunting and fishing licenses, and a throughway channel in waters of Virginia Beach.

Sportsman Award Presentation

General administrative matters will be considered.

Memorandum of agreement with Wild Turkey Federation.

Committee reports will be given.

The board will act on VR 325-02-1, § 2 Hunting with crossbows, poison arrows or explosive-head arrows prohibited.

The board will act on a proposal VR 325-01 regarding definitions of endangered species.

Recognition of Frank Sutton, former board member.

Contact: Nancy B. Dowdy, Agency Regulatory Coordinator/Board Secretary, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000 or toll-free 1-800-237-5712

DEPARTMENT OF GAME AND INLAND FISHERIES

† November 15, 1989 - 7 p.m. - Open Meeting
Courtland High School, Spotsylvania County, Virginia. ☐

A meeting to receive public comment on the initial draft report of the use of airboats in the Commonwealth as requested by SJR 166 of the 1989 session of the General Assembly.

Contact: Charles A. Sledd, Chief, Education Division, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-6481, toll-free 1-800-252-7717/TDD ☎ or SCATS 367-6481

BOARD FOR GEOLOGY

† November 3, 1989 - 1 p.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to (i) approve minutes from September 15, 1989, meeting; (ii) review applications; and (iii) review correspondence.

Contact: Peggy J. Wood, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, toll-free 1-800-552-3016 or SCATS 367-8595

GLOUCESTER COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

October 25, 1989 - 6:30 p.m. - Open Meeting
Old Courthouse, Court Green, Main Street, Gloucester, Virginia. ☐

A meeting to critique the recent HAZ-MAT Tabletop exercise and address committee assignments and goals for 1990.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

BOARD OF HEALTH

December 13, 1989 - 9 a.m. - Open Meeting
Department of Health, James Madison Building, 109 Governor Street, Richmond, Virginia. ☐

A working session will be held.

December 14, 1989 - 9 a.m. - Open Meeting
Department of Health, James Madison Building, 109 Governor Street, Richmond, Virginia. ☐

A regular business meeting will be held.

Contact: Sarah H. Jenkins, Secretary to the Board, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3561

DEPARTMENT OF HEALTH (STATE BOARD OF)

November 12, 1989 - 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 Health intends to amend regulations entitled: **VR 355-28-01.05. Board of Health Regulations Governing Vital Records.** The regulations will specify which items are to be included on official records of birth, death, fetal death, induced abortion, marriage, and divorce.

Statutory Authority: §§ 32.1-250 and 32.1-252 of the Code of Virginia.

Written comments may be submitted until November 12, 1989.

Contact: Russell E. Booker, Jr., State Registrar, Division of Vital Records, Department of Health, P.O. Box 1000, Richmond, VA 23208-1000, telephone (804) 786-6221 or SCATS 786-6221

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Calendar of Events

November 11, 1989 – Written comments may be submitted until this date.

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-32-01.01. Regulations Governing Emergency Medical Services.** The purpose of the proposed amendments is to (i) update and clarify minimum standards for provision of emergency medical services and (ii) revise and update Procedures and Guidelines for Basic Life Support Training Programs.

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

Written comments may be submitted until November 11, 1989.

Contact: Susan D. McHenry, Director, Department of Health, Division of Emergency Medical Services, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500 or toll-free 1-800-523-6019

* * * * *

November 11, 1989 – 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 Health intends to amend regulations entitled: **VR 355-32-02. Regulations Governing Financial Assistance for Emergency Medical Services.** The purpose of the proposed amendments is to update and clarify mechanisms for administration of the Virginia Rescue Squad Assistance Fund.

Statutory Authority: §§ 32.1-12 and 32.1-115 through 32.1-116 of the Code of Virginia.

Written comments may be submitted until November 11, 1989.

Contact: Susan D. McHenry, Director, Department of Health, Division of Emergency Medical Services, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500, toll-free 1-800-523-6019 or SCATS 371-3500

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November 16, 1989 - 10 a.m. – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☐

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-28-01.02. Regulations for Disease Reporting and Control.** The regulations are being amended to comply with current disease control policies and statutory requirements.

Statutory Authority: §§ 32.1-12 and 32.1-35 through 32.1-38 of the Code of Virginia.

Written comments may be submitted until November 24, 1989.

Contact: Diane Woolard, M.P.H., Senior Epidemiologist, Department of Health, 109 Governor St., Room 701, Richmond, VA 23219, telephone (804) 786-6261

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November 6, 1989 - 7 p.m. – Public Hearing
County of Henrico, Parham and Hungary Springs Roads, Board Room, Administration Building, Richmond, Virginia

November 13, 1989 - 7 p.m. – Public Hearing
Harrisonburg Electric Commission, 89 West Bruce Street, 2nd Floor Conference Room, Harrisonburg, Virginia

November 14, 1989 - 7 p.m. – Public Hearing
Peninsula Health Center, 416 J. Clyde Morris Boulevard, Auditorium, Newport News, Virginia

November 15, 1989 - 7 p.m. – Public Hearing
Prince William County, Old Board Chambers, 9250 Lee Avenue, Corner of Lee and Grant Avenue, Manassas, Virginia

November 21, 1989 - 7 p.m. – Public Hearing
Norfolk Health Department, Auditorium, 401 Colley Avenue, Norfolk, Virginia

November 28, 1989 - 7 p.m. – Public Hearing
Washington County Public Library, Oak Hill and East Valley Streets, Abingdon, Virginia

November 28, 1989 - 7 p.m. – Public Hearing
Roanoke County Administrative Office, Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to adopt regulations entitled: **VR 355-34-01. Private Well Regulations.** These proposed regulations establish location, construction and water quality standards for private wells.

Statutory Authority: § 32.1-176 of the Code of Virginia.

Written comments may be submitted until December 1, 1989.

Contact: Donald J. Alexander, Director, Bureau of Sewage and Water Services, Department of Health, James Madison Bldg., 109 Governor St., Room 500, Richmond, VA 23219, telephone (804) 786-1750

DEPARTMENT OF HEALTH PROFESSIONS

786-3143, SCATS 786-3143 or (804) 786-4726/TDD ☎

Task Force on the Practice of Nurse Practitioners

† **November 2, 1989 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive,
Conference Room 2, Richmond, Virginia. ☒

A meeting to hear invited presentations and to consider research in progress.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918

HEALTH SERVICES COST REVIEW COUNCIL

October 24, 1989 - 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, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎ or SCATS 786-6371

STATE COUNCIL OF HIGHER EDUCATION

† **November 1, 1989 - 9:30 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor Conference Room, Richmond, Virginia. ☒

A monthly council meeting. Agenda available upon request.

Contact: Dr. Barry M. Dorsey, Associate Director, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or SCATS 225-2632

HISTORIC RESOURCES BOARD AND STATE REVIEW BOARD OF THE DEPARTMENT OF HISTORIC RESOURCES

October 30, 1989 - 10 a.m. – Open Meeting
State Capitol, Capitol Square, Senate Room 4, Richmond, Virginia. ☒

A joint meeting to consider (i) the work program of the Department of Historic Resources and (ii) the listing of the Brandy Station Battlefield Historic District, Culpeper County, on the Virginia Landmarks Register.

Contact: Margaret Peters, Information Officer, 221 Governor St., Richmond, VA 23219, telephone (804)

DEPARTMENT OF HISTORIC RESOURCES

Board of Trustees of the Preservation Foundation

October 31, 1989 - 5 p.m. – Open Meeting
November 1, 1989 - - Open Meeting
Donaldson Brown Center, Virginia Polytechnic Institute and State University, Conference Room D, Blacksburg, Virginia. ☒

A two-day meeting beginning at 5 p.m. on Tuesday, October 31 and continuing on November 1 to plan for the operations of the Preservation Foundation.

Contact: Margaret Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143, SCATS 786-3143 or (804) 786-4276/TDD ☎

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

November 16, 1989 - 9 a.m. – Open Meeting
Fourth Street Office Building, 205 North Fourth Street, 7th Floor Conference Room, Richmond, Virginia. ☒

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the board.

Contact: Jack A. Proctor, CPCA, Deputy Director, Division of Building Regulatory Services, Department of Housing and Community Development, 205 N. Fourth St., Richmond, VA 23219-1747, telephone (804) 786-4752 or (804) 786-5405/TDD ☎

COUNCIL ON INDIANS

November 15, 1989 - 2 p.m. – Open Meeting
Old City Hall, 1001 East Broad Street, AT&T Communications Conference Room, 1st Floor, Richmond, Virginia

A regular meeting of the Council on Indians to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Information Director, Virginia Council on Indians, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or SCATS 662-9285

Calendar of Events

DEPARTMENT OF LABOR AND INDUSTRY

November 15, 1989 - 10 a.m. - Public Hearing
General Assembly Building, 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 Labor and Industry intends to adopt regulations entitled: **VR 425-01-64. Standard for Boiler and Pressure Vessel Operator Certification.** The proposed regulation provides a uniform standard to be used by the governing bodies of counties, cities, and towns which have adopted ordinances requiring the certification of boiler and pressure vessel operators.

Statutory Authority: § 15.1-11.6 of the Code of Virginia.

Written comments may be submitted until October 30, 1989 to John J. Crisanti, Policy Analyst, Department of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241.

Contact: John J. Crisanti, Policy Analyst, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2385 or SCATS 786-2385

Safety and Health Codes Board

† **November 15, 1989 - following 10 a.m. public hearing - Open Meeting**
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

The board will meet to consider (i) amendment to Air Contaminants Standards, Permissible Exposure Limits, Grant of Petition for Reconsideration and Administrative Stay; (ii) Standard Concerning Control of Hazardous Sources (Lockout/Tagout); (iii) Request for Variance from Boiler and Pressure Vessel Safety Act - Miniature Hobby Boilers; (iv) Standard for Boiler and Pressure Vessel Operator Certification; (v) Amendment Concerning Revision of Construction Industry Tests and Inspection Records; and (vi) Trenching Standard.

Contact: Jay W. Withrow, Director, Office of Federal Liaison and Technical Support, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-9873

LIBRARY BOARD

† **October 30, 1989 - 1:30 p.m. - Open Meeting**
Virginia State Library and Archives, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ☐

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332 or SCATS 786-2332

COMMISSION ON LOCAL GOVERNMENT

November 2, 1989 - 7 p.m. - Public Hearing
Site to be determined, Dayton, Virginia

A public hearing regarding the Town of Dayton - Rockingham County Agreement defining annexation rights.

Contact: Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Bldg., 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6508

VIRGINIA LONG-TERM CARE COUNCIL

November 2, 1989 - 9:30 a.m. - Open Meeting
November 3, 1989 - 9 a.m. - Open Meeting
Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia

Statewide conference on long-term care issues of interest to professionals in the field, providers of services and consumers.

Contact: Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ , toll-free 1-800-552-4464 or SCATS 225-2271

STATE LOTTERY BOARD

October 25, 1989 - 10 a.m. - Open Meeting
State Lottery Department, 2201 West Broad Street, Conference 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

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November 21, 1989 - 10 a.m. - Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Lottery Board intends to amend regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the

proposed action is to amend certain portions of the Administration Regulations which deal with ineligible players, Operations Special Reserve Fund, procedures for small purchases and vendor background checks.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 21, 1989.

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

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November 21, 1989 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Lottery Board intends to amend regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed action is to amend certain portions of the Instant Game Regulations in order to conform to the State Lottery Law and to refine sections which deal with general operational parameters.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 21, 1989.

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

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November 21, 1989 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Lottery Board intends to adopt regulations entitled: **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed regulation is to set out general parameters for the on-line game. This includes setting standards and requirements for licensing of on-line lottery retailers, ticket validation, setting the framework for the operations of on-line lottery games and the payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 21, 1989.

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 7, 1989 - 9:30 a.m. – Open Meeting**
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia ☐

The Virginia Marine Resources Commission will meet on the first Tuesday of each month. 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 five days.

Contact: Sandra S. Schmidt, Secretary to the Commission, 2600 Washington Ave., Room 303, Newport News, VA 23607-0756, telephone (804) 247-2208

GOVERNOR'S ADVISORY BOARD ON MEDICARE AND MEDICAID

October 31, 1989 - 2 p.m. – Open Meeting
Hyatt Hotel, I-64 and West Broad Street, Richmond, Virginia. ☐

An open meeting to discuss 1990 proposed legislation and proposed budget addenda items.

Contact: Jacqueline Fritz, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958

BOARD OF MEDICINE

† **November 16, 1989 - 8:15 a.m. – Open Meeting**
† **November 17, 1989 - 8:15 a.m. – Open Meeting**
† **November 18, 1989 - 8:15 a.m. – Open Meeting**
† **November 19, 1989 - 8:15 a.m. – Open Meeting**
Holiday Inn, Downtown-Williamsburg and Holidome, 814 Capitol Landing Road, Williamsburg, Virginia. ☐

The board will meet on November 16, 1989, to conduct general board business and discuss any other items which may come before the board. The board will also meet on November 17-19, 1989, to review reports, interview licensees and make decisions on discipline matters.

Contact: Eugenia K. Dorson, Board Administrator, Board of

Calendar of Events

Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

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November 10, 1989 – 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 Medicine intends to amend regulations entitled: **VR 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.** The purpose of the proposed action is to amend regulations to clarify the requirements for licensure by endorsement for the practice of medicine and osteopathy.

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

Written comments may be submitted until November 10, 1989.

Contact: Hilary H. Connor, M.D., Executive Director, or Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

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November 24, 1989 – 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 Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The proposed amendments to the regulations establish provisions for specific institutions, upon approval to utilize more than three physical therapist assistants under the supervision of a single physical therapist, and establish a new fee for reinstatement of an expired license.

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

Written comments may be submitted until November 24, 1989.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

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November 3, 1989 - 9 a.m. – Public Hearing
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 2, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine

intends to amend regulations entitled: **VR 465-05-01. Regulations Governing the Practice of Physicians' Assistants.** The proposed amendments are to more clearly define a physician's supervisory responsibilities when delegating to the assistant and establish environment required for specific procedures.

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

Written comments may be submitted until November 24, 1989.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

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† December 8, 1989 - 9 a.m. – Public Hearing
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 1, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to adopt regulations entitled: **VR 465-07-01. Certification of Optometrists.** The proposed regulations establish requirements for postgraduate training in therapeutic and pharmaceutical agents, clinical training, and examinations necessary to certify licensed optometrists to administer therapeutic pharmaceutical agents in the treatment of diseases of the eye.

STATEMENT

Basis: Section 54.1-2400 and §§ 54.1-2957.1 through 54.1-2957.3 of the Code of Virginia.

Statement of purpose: The proposed regulations establish requirements for postgraduate studies in didactic and clinical training and for examinations for the certification of licensed optometrists to treat certain diseases and abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents to assure delivery of appropriate medical eye care to the citizens of the Commonwealth.

Estimated entities and impacts:

A. **Regulated entities:** There are 1,100 optometrists licensed to practice optometry in the Commonwealth of Virginia. It is not possible, in advance, to determine the number of these potentially eligible professionals who may elect to seek certification.

B. **Projected costs to regulated entities:** The impact on applicants for certification to treat certain diseases and conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents that may increase the regulatory burden are assessed as follows:

1. Section 1.1. - Definitions. The proposed definitions provide clear and concise statements defining approved schools, the board, certification, a certified optometrist, the examination, postgraduate clinical training, and protocol. The proposed definitions will not impact the applicants as the defined terms express the essentials for an optometrist to be certified by the Board of Medicine.

2. Section 2.1. Establishes the requirement for an application to be filed with the board for certification by examination. The proposed regulation could potentially affect 1,100 currently licensed optometrists and 110 new applicants each year thereafter in the amount of \$375 per applicant. This amount includes a \$300 application fee and other incidental costs associated with the credentialing process (see B.4 below).

3. Section 2.1 A 1 and 2. Establishes that each application must be complete when filed and be accompanied with a fee. This will impact or delay 15 applicants each year for failure to comply with instructions.

4. Section 2.1 C. Establishes those documents required to complete an application to be eligible to sit for the certification examination to treat the human eye for certain diseases and administer certain therapeutic pharmaceutical agents. The proposed regulation could potentially impact 1,100 applicants the first year and 110 new applicants each year thereafter in the amount of \$75 for each applicant, to verify evidence of completion of postgraduate training, cardiopulmonary resuscitation, and licensure in other states.

5. Section 3.1 A. Establishes the contents of the certification examination, which examination shall be taken as a unit. All applicants must successfully complete the examination now under development by the board. The cost of the initial examination is included in the application fee. For individuals who do not successfully complete the initial examination, a fee of \$300 will be assessed for second and third attempts. Approximately 10 optometrists may be affected annually.

6. Section 3.1 B. Establishes the number of attempts an applicant is eligible to sit for the certification examination before additional postgraduate training is required. The proposed regulation may impact an estimated five applicants that will require additional training at a cost of \$1,050 per candidate.

7. Section 4.1. Establishes the scope of practice for an optometrist certified to administer therapeutic agents in the treatment of the human eye. The proposed regulation will not impose additional training; however, approximately five candidates for certification may require additional training in therapeutic pharmaceutical agents to be successful in passing the

examination.

8. Section 4.2. Establishes the topical therapeutic pharmaceutical agents that may be administered or prescribed by a certified optometrist. The proposed regulation, when violated by certified optometrists, may result in five or more practitioners receiving statutory sanctions or restrictions placed on their certification to treat and administer therapeutic pharmaceutical agents in the care of the human eye.

9. Section 4.3. Establishes those diseases a certified optometrist may treat. The proposed regulation, when violated, may result in seven or more practitioners appearing before the board which may result in statutory sanctions or restrictions placed on their certification to administer and treat the eye with therapeutic pharmaceutical agents.

10. Section 4.4 A. Requires a certified optometrist to establish a protocol for referring a patient who fails to improve significantly. The proposed regulation may impact 10 or more practitioners for failure to appropriately refer a patient which may result in disciplinary actions by the board.

11. Section 4.4 B. Requires a certified optometrist to establish a written protocol to ensure the safety of patients in the management of emergencies and referral of patients for treatment. The proposed regulation may result in disciplinary actions affecting five or more practitioners who failed to develop the prescribed protocols for emergencies or treatment resulting in harm to 11 patients.

12. Section 5.1. Establishes the requirement for biennial renewal of certification for each certified optometrist in each odd numbered year. The proposed amendment may affect 50 or more practitioners who fail to renew their certification. Failure to renew certification will result in the loss of privileges to treat certain diseases of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

13. Section 5.2. Establishes the requirements to be met by optometrists who allow their certification to expire. The proposed amendment may affect 40 or more practitioners, in the payment of a \$150 fee, to reinstate their expired certification to resume the treatment of the human eye with certain therapeutic pharmaceutical agents.

14. Section 6.1 A and B. Establishes the requirement for postgraduate training programs approved by the board to be eligible to apply for the certification examination to administer and treat the human eye and its adnexa with certain therapeutic pharmaceutical agents. The proposed regulations could potentially affect 1,100 optometrists who are currently licensed to practice optometry and may be eligible to sit for the certification examination upon providing evidence of

Calendar of Events

meeting the requirements established by the board, and 110 new applicants who may be eligible each year thereafter. The cost of training is estimated at \$1,050 (tuition) and other costs associated with training. The postgraduate training required in this section may be made available through arrangements with the director of the postgraduate training program.

15. Section 6.1 D. Requires a certified optometrist to have training in and be certified in cardiopulmonary resuscitation. The proposed regulation may result in disciplinary actions of three or more practitioners who have failed to utilize cardiopulmonary resuscitation in the management of critically ill patients who have experienced cardiac arrest or complications. The cost for cardiopulmonary resuscitation training is estimated to be \$20 for each course.

16. Section 7.1. Establishes the fees required for examinations, biennial renewal of certification, reinstatement of a lapsed certificate, a letter of good standing or verification, and a reinstatement fee for a certificate which has been revoked.

Fees established by the board are listed as follows:

- a. Applications for Certification - \$300
- b. Biennial Renewal of Certification - \$125
- c. Reinstatement of Expired Certificate - \$150
- d. Letter of Good Standing/Verification - \$10
- e. Reinstatement of Revoked Certificate - \$750

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

Written comments may be submitted until December 22, 1989.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925

Advisory Board of Occupational Therapy

October 26, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia ☐

A meeting for orientation on the Department of Health Professions and the Board of Medicine to select a chairperson, begin the development of regulations, and forms for certification of occupational therapists.

Credentials Committee

† **December 9, 1989 - 8:15 a.m. - Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,

Surry Building, Board Room 1, 2nd Floor, Richmond, Virginia. ☐

A meeting to (i) conduct general business, (ii) conduct interviews, (iii) review medical credentials of applicants applying for licensure in Virginia, and (iv) discuss any other items which may come before this committee.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

Informal Conference Committee

October 26, 1989 - 9 a.m. - Open Meeting
Best Western Johnny Appleseed, Route 12, Box 30, Fredericksburg, Virginia. ☐

October 27, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 1, 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 A 6 of the Code of Virginia.

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-7006

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

October 25, 1989 - 9:30 a.m. - Open Meeting
Northern Virginia Mental Health Institute, Falls Church, Virginia ☐

A regular monthly meeting. The agenda will be published on October 18, 1989, and may be obtained by calling Jane Helfrich.

Tuesday, October 24, 1989 - Committee meeting 6 p.m., informal session 8:30 p.m.

Wednesday, October 25, 1989 - Legislative breakfast 7:30, regular session 9:30 a.m.

Contact: Jane Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921 or SCATS 786-3921

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

October 23, 1989 - 7 p.m. - Public Hearing

Calendar of Events

Tidewater Community College, Chesapeake Campus, Auditorium, Chesapeake, Virginia

October 25, 1989 - 7 p.m. - Public Hearing
Wytheville Community College, 1000 East Main Street, Bland Hall Auditorium, Wytheville, Virginia

October 26, 1989 - 7 p.m. - Public Hearing
J. Sargeant Reynolds Community College, Downtown Campus, Auditorium, 7th and Jackson Streets, Richmond, Virginia

October 30, 1989 - 7 p.m. - Public Hearing
McCoart Building, 1 County Complex Court, Board Chambers, Prince William, Virginia

NOTE: CHANGE OF MEETING DATE

November 1, 1989 - 7 p.m. - Public Hearing
Western State Hospital, Staff Development Building, Auditorium, Staunton, Virginia

The department is seeking input and comments on its Draft Plan of the Mental Retardation Support System. This plan is the product of a year-long effort focused on identification of the philosophy and direction of services to mentally retarded persons in the community and it specifies how services need to be provided between now and the end of the century.

Contact: Stanley Butkus, Ph.D., Director, Mental Retardation Services, P.O. Box 1797, Richmond, VA, telephone (804) 786-1746 or SCATS 786-1746

Virginia Interagency Coordinating Council

† **December 6, 1989 - 9 a.m. - Open Meeting**
Williamsburg Hilton, 50 Kingsmill Road, Williamsburg, Virginia. (Interpreter for deaf provided if requested)

A meeting of the council according to P.L. 99-457, Part H early intervention program for disabled infants and toddlers and their families is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services, as lead agency, to develop and implement a statewide interagency early intervention program.

Contact: Michael FehI, Ed.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710

Mental Health Advisory Council

October 27, 1989 - 10 a.m. - Open Meeting
James Madison Building, 109 Governor Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to provide input on mental health issues to the State Mental Health, Mental Retardation and Substance Abuse Services Board.

Contact: Leslie Tremaine, Director of Mental Health, James Madison Bldg., 12th Floor, Richmond, VA, telephone (804) 786-2991 or SCATS 786-2991

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mined Land Reclamation

† **November 9, 1989 - 2 p.m. - Public Hearing**
Division's AML Conference Room, 622 Powell Avenue, Big Stone Gap, Virginia. ☒

A public hearing to give interested persons an opportunity to be heard in regard to the FY1990 Virginia Abandoned Mine Land Construction and Administrative Grant applications to be submitted to the Federal Office of Surface Mining.

Contact: Roger L. Williams, Abandoned Mine Land Manager, P.O. Drawer U, 622 Powell Ave., Big Stone Gap, VA 24219, telephone (703) 523-2925

Division of Mineral Mining

† **November 8, 1989 - 7 p.m. - Public Hearing**
Louisa County Courthouse, Louisa, Virginia. ☒

A public hearing to obtain comments on a proposed granite quarry in Louisa County to be operated by the Luck Stone Corporation. The proposed mine is to be located 4.5 miles north of Mineral, Virginia, off Route 613.

Contact: William O. Roller, Director, P.O. Box 4499, Lynchburg, VA 24502, telephone (804) 239-0602

DEPARTMENT OF MOTOR VEHICLES

December 4, 1989 - 9:30 a.m. - Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Cafeteria, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-60-8901. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.** These regulations relate to (i) the violations of regulated advertising practices which could be considered unfair, deceptive or misleading acts or practices; (ii) the terms, conditions and disclaimers in all forms of advertising media; and (iii) the steps involved in the enforcement process (to include administrative and civil penalties, along with the judicial review process).

Statutory Authority: §§ 46.1-26, 46.1-520 and 46.1-550.5:41 of the Code of Virginia.

Written comments may be submitted until November 24,

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1989.

Contact: William A. Malanima, Manager, Dealer and Records Division, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0455 or SCATS 367-0455

VIRGINIA MUSEUM OF FINE ARTS

Education in the Arts Committee

† October 26, 1989 - 2:30 p.m. - Open Meeting
Virginia Museum of Fine Arts, Boulevard and Grove Avenue, Conference Room, Richmond, Virginia

A meeting to review and discuss policies of the committee.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, Richmond, VA 23221-2466, telephone (804) 367-0553

BOARD OF NURSING

† November 27, 1989 - 9 a.m. - Open Meeting
† November 28, 1989 - 9 a.m. - Open Meeting
† November 29, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A regular meeting to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement, and other matters under the jurisdiction of the board. At 1:30 p.m. on November 27, 1989, the board will consider proposed regulations to establish a registry for clinical nurse specialists and may review comments received on existing regulations as part of the required review.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or SCATS 662-9909

Regulation Committee

† November 9, 1989 - 10 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to (i) review written comments and a transcript of a public hearing regarding proposed regulations to establish a registry for clinical nurse specialists; (ii) develop responses to comments; and (iii) make recommendations on proposed regulations to be considered by the Board of Nursing at its meeting on November 27, 1989, at 1:30 p.m.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or SCATS 662-9909

Special Conference Committee

October 27, 1989 - 8:30 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A special conference committee comprised of three members of the Board of Nursing 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 1-800-533-1560 or SCATS 662-9909

BOARD OF NURSING HOME ADMINISTRATORS

October 24, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

A meeting to draft proposed regulations for nursing home administrators.

December 6, 1989 - 8 a.m. - Open Meeting
December 7, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

National and state examinations will be given to applicants for licensure for nursing home administrators.

Board committee meetings.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9111

BOARD FOR OPTICIANS

November 1, 1989 - 10 a.m. - Open Meeting
Municipal Building, 118 West Davis Street, Council Chambers, Culpeper, Virginia

A meeting to conduct a formal hearing:

Board for Opticians v. William D. Papierniak.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23229, telephone (804) 367-8524

Calendar of Events

PENINSULA ASAP POLICY BOARD

November 28, 1989 - 12:15 p.m. - Open Meeting
760 J. Clyde Morris Boulevard, Newport News, Virginia

A meeting to (i) review program statistical report; (ii) discuss countermeasure activities; and (iii) discuss concerns and issues of Peninsula ASAP.

Contact: T. L. Fitzgerald, Director, 760 J. Morris Blvd., Newport News, VA 23601, telephone (804) 595-3301

PESTICIDE CONTROL BOARD

† November 15, 1989 - 1 p.m. - Open Meeting
† November 15, 1989 - 7:30 p.m. - Open Meeting
† November 16, 1989 - 9 a.m. - Open Meeting
Holiday Inn Koger Center South, 1021 Koger Center Boulevard, New Room, Richmond, Virginia. ☒

A meeting to discuss priorities and receive reports from staff. Interested persons should first call the contact person to confirm meeting times and places.

November 15, 1989 - 1 p.m. - Committee meetings
7:30 p.m. - Training/Planning

November 16, 1989 - 9 a.m. - Open meeting

Contact: #EB C. Kermit Sprull, Jr., Director, Department of Agriculture and Consumer Services, Division of Product and Industry Regulation, P.O. Box 1163, Room 403, Richmond, VA 23209, telephone (804) 786-3523 or SCATS 786-3523

BOARD OF PHARMACY

November 29, 1989 - 9:30 a.m. - Public Hearing
Holiday Inn-West End, 6532 West Broad Street, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to adopt regulations entitled: VR 530-01-02. **Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The proposed regulation provides licensing and regulatory standards for practitioners of the healing arts to sell controlled substances.

Statutory Authority: §§ 54.1-2400(6), 54.1-2914 and 54.1-3302 of the Code of Virginia.

Written comments may be submitted until November 29, 1989.

Contact: Jack B. Carson, Executive Director, Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9911

BOARD OF PSYCHOLOGY

November 2, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The board will hear testimony in a formal hearing regarding a candidate for licensure.

Contact: Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9913

REAL ESTATE BOARD

† December 7, 1989 - 10 a.m. - Open Meeting
† December 8, 1989 - 10 a.m. - Open Meeting
Council Chambers, Municipal Building, 215 Church Avenue, 4th Floor, Roanoke, Virginia

The board will meet to conduct a formal hearing:

File Numbers 86-00183, 87-01417, 88-01102
The Real Estate Board v. Floyd Earl Frith

and

File Numbers 86-00183, 87-01417
The Real Estate Board v. Kenneth Gusler, Jr.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8552

BOARD OF REHABILITATIVE SERVICES

† October 26, 1989 - 9:30 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to receive reports from the Department of Rehabilitative Services, consider regulatory matters and conduct the regular business of the board.

Finance Committee

† October 25, 1989 - 2 p.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to review monthly financial reports and budgetary projections.

Legislation and Evaluation Committee

† October 25, 1989 - 4 p.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

Calendar of Events

A meeting to review federal and state legislation and develop criteria for evaluation of department programs.

Program Committee

† **October 25, 1989 - 3 p.m.** - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to review vocational rehabilitation regulation proposals and explore options for developing amendments to current VR regulations.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019/TDD ☎, SCATS 367-0319 or (804) 367-0280/TDD ☎

DEPARTMENT FOR RIGHTS OF THE DISABLED (BOARD FOR)

November 13, 1989 - 10 a.m. - Public Hearing
November 13, 1989 - 4 p.m. - Public Hearing
James Monroe Building, 101 North 14th Street, Conference Room B, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Rights of the Disabled intends to adopt regulations entitled: **VR 602-01-2. Nondiscrimination Under State Grants and Programs.** These regulations prohibit discrimination on the basis of disability by programs or activities receiving state funds.

Statutory Authority: §§ 51.5-33 and 51.5-40 of the Code of Virginia.

Written comments may be submitted until November 13, 1989.

Contact: Bryan K. Lacy, Systems Advocacy Attorney, Department for Rights of the Disabled, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042 or toll-free 1-800-552-3962

SMALL BUSINESS FINANCING AUTHORITY

† **October 26, 1989 - 10 a.m.** - Open Meeting
Small Business Financing Authority, 1021 East Cary Street, 14th Floor, Board Room, Richmond, Virginia

The authority will conduct its regular business meeting and will conduct a public hearing to consider Industrial Development Bond Applications received by the authority and for which public notice has appeared in the appropriate newspapers of general circulations.

Contact: Cathleen M. Surface, Small Business Financing

Authority, 1021 E. Cary St., Richmond, VA 23219, telephone (804) 371-8254

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **December 23, 1989** - 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 Social Services intends to amend regulations entitled: **VR 615-01-26. Aid to Dependent Children (ADC) Programs - Deprivation Due to the Incapacity of a Parent.** The purpose of the proposed action is to amend Aid to Dependent Children (ADC) Program policy to require the limited employment opportunities of handicapped individuals to be considered in the determination of eligibility for ADC based on a parent's incapacity. The regulation is being amended in order to comport with federal regulations at 45 CFR § 233.90(a).

STATEMENT

Subject: Eligibility for assistance in the Aid to Dependent Children (ADC) program is based on a child being deprived of parental maintenance, care, and guidance due to the death, continued absence, or incapacity of at least one parent. The proposed regulation will ensure that ADC program policy relative to the determination of deprivation on the basis of a parent's incapacity is in compliance with federal regulations.

Substance: This regulation will mandate that local eligibility workers consider the limited employment opportunities of a handicapped parent when making a determination as to whether a child is deprived of parental maintenance, care, and guidance on the basis of a parent's incapacity.

Issues: The two issues to be addressed in this regulation are: (i) what constitutes a handicapped individual; and (ii) what factors must be considered when determining limited employment opportunities.

Basis: § 63.1-25 of the Code of Virginia.

Purpose: The purpose of this regulation is to ensure that Virginia's ADC program policy is in compliance with federal regulations at 45 CFR § 233.90(a)(iv).

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

Written comments may be submitted until December 23, 1989, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Legislative Analyst,

Department of Social Services, 8007 Discovery Dr.,
Richmond, VA 23229-8699, telephone (804) 662-9217 or
SCATS 662-9217

BOARD OF SOCIAL WORK

November 1, 1989 - 9 a.m. - Open Meeting
November 2, 1989 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive,
Richmond, Virginia. ☐

A meeting to (i) conduct general board business; (ii) review applications for licensure and supervision of trainees; (iii) review of regulations; and (iv) respond to correspondence.

Contact: Stephanie Sivert, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9914

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

November 9, 1989 - 9:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☐

A meeting to (i) approve minutes of July 13, 1989; (ii) discuss examination; and (iii) review correspondence.

Contact: Peggy J. Wood, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8595, toll-free 1-800-552-3016 or SCATS 367-8595

DEPARTMENT OF TAXATION

October 27, 1989 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 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: **VR 630-3-400.1. Corporation Income Tax: Telecommunications Companies.**

Statutory Authority: § 58.1-203 of the Code of Virginia

Written comments may be submitted until October 27, 1989.

Contact: Janie E. Bowen, Director, Tax Policy, Department of Taxation, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010 or SCATS 367-8010

December 11, 1989 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 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: **Virginia Tire Tax Regulations (VR 630-27-640. Definitions; VR 630-27-641. Imposition of the Tax; VR 360-27-642. Collection of the Tax, Exemptions, Deductions; VR 630-27-643. Disposition of Revenue; VR 630-27-644. Provision of Chapter 6 of Title 58.1 to apply Mutatis Matundis).** The regulations set forth the application of the Virginia Tire Tax to the retail sales of new tires.

Statutory Authority: § 58.1-203 of the Code of Virginia

Written comments may be submitted until December 11, 1989.

Contact: Janie E. Bowen, Director, Tax Policy, Department of Taxation, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010 or SCATS 367-8010

TRANSPORTATION SAFETY BOARD

† October 30, 1989 - 9:30 a.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Room 702, Richmond, Virginia. ☐

A meeting to discuss the distribution of the USDOT Highway Safety Funds.

Contact: John T. Hanna, Deputy Commissioner for Transportation Safety, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-6620, SCATS 367-6620 or 367-1752/TDD ☐

TREASURY BOARD

November 15, 1989 - 9 a.m. - Open Meeting
December 20, 1989 - 9 a.m. - Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, 3rd Floor, Richmond, Virginia. ☐

A monthly meeting.

Contact: Betty A. Ball, Department of Treasury, 101 N. 14th St., James Monroe Bldg., 3rd Floor, Richmond, VA 23219, telephone (804) 225-2142

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

† November 28, 1989 - 1 p.m. - Open Meeting
† November 29, 1989 - 9 a.m. - Open Meeting
Sheraton Fredericksburg, 2801 Plank Road, Fredericksburg, Virginia. ☐

The second of four quarterly business meetings for

Calendar of Events

1989-90.

Contact: Donald R. Henck, Ph.D., Executive Director, Old City Hall Bldg., 1001 E. Broad St., Suite 245, Box 28, Richmond, VA 23219, telephone (804) 786-5896/TDD ☎ or SCATS 786-5896

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children (IACC)

† **October 24, 1989 - 1:30 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

November 1, 1989 - 1 p.m. - Open Meeting
November 2, 1989 - 8:30 a.m. - Open Meeting
Sheldon's, Route 360, Keysville, Virginia
John H. Daniel Campus, Southside Virginia Community College, Keysville, Virginia

November 1, 1989
1 p.m. - Committee meetings (State Plan and Private Sector Involvement, Evaluation and Access) (Sheldon's, Keysville)

4 p.m. - Executive committee meeting (Sheldon's, Keysville)

7:15 p.m. - Public meeting (Southside Virginia Community College, John H. Daniel Campus, Keysville)

November 2, 1989
8:30 a.m. - Business session: Reports will be received from council committees, Virginia Department of Education, Governor's Job Training Coordinating Council, Virginia Community College System, and Department of Correctional Education (Sheldon's, Keysville)

Contact: George S. Orr, Jr., Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218

VIRGINIA VOLUNTARY FORMULARY BOARD

October 27, 1989 - 10 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☒

The board will hold a public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add drugs and drug products to the Formulary that became effective on November 15, 1988, and a supplement to the Formulary that became effective on September 25, 1989. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on October 27, 1989, will be made a part of the hearing record and considered by the board.

November 30, 1989 - 10:30 a.m. - Open Meeting
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ☒

A meeting to review (i) public hearing comments; (ii) correspondence; and (iii) other information submitted by pharmaceutical manufacturers for products being considered for inclusion in or deletion from the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 786-4326 or SCATS 786-3596

DEPARTMENT OF WASTE MANAGEMENT

November 20, 1989 - 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 Waste Management Board intends to amend regulations entitled: **VR 672-10-1. Virginia Hazardous Waste Management Regulations.** Amendment 10 updates the Virginia Hazardous Waste Management Regulations to retain the equivalency of the Virginia and federal programs.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted until November 20, 1989.

Contact: W. Gulevich, Director, Division of Technical Services, Department of Waste Management, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2975 or SCATS 225-2975

STATE WATER CONTROL BOARD

† October 30, 1989 - 9 a.m. - Public Hearing
General Assembly Building, Capitol Square, Senate Room
B, Richmond, Virginia. ☐

A formal hearing on the termination of National Pollutant Discharge Elimination System Permit No. VA0002208, issued to Avtex Fibers Front Royal, Inc., P.O. Box 1169, Kendrick Lane, Front Royal, Virginia 22630. Avtex operates a rayon fiber production plant in Front Royal, Virginia. Industrial wastewater from the plant is carried to an industrial wastewater treatment and conveyance system, where it and other wastewater and stormwater runoff discharge to the South Fork of the Shenandoah River, Potomac River Basin, Shenandoah Subbasin, Section 2. Class IV, special standards: pH 6.5-9.5.

† December 11, 1989 - 9 a.m. - Open Meeting
† December 12, 1989 - 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

October 31, 1989 - 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 State Water Control Board intends to amend regulations entitled: VR 680-14-03. Toxics Management Regulation. The proposed amendments would allow permittees an opportunity to conduct instream evaluations of the impact of the effluent on the receiving waters prior to entering into toxicity reduction evaluations and remove references to water quality criteria.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until October 31, 1989.

Contact: Doneva Dalton, Hearing Reporter, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0384 or SCATS 367-0384

† December 14, 1989 - 7 p.m. - Public Hearing
James City County Board of Supervisors Room, 101 C
Mounts Bay Road, Building C, Williamsburg, Virginia

† December 18, 1989 - 7 p.m. - Public Hearing
Warrenton Junior High School Auditorium, 244 Waterloo
Street, Warrenton, Virginia

† January 4, 1990 - 7 p.m. - Public Hearing
Roanoke County Administration Center Community Room,
3738 Brambleton Avenue, S.W., Roanoke, 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 adopt regulations entitled: VR 680-13-03. Petroleum Underground Storage Tank Financial Requirements. The proposed regulation requires that owners, operators, and vendors demonstrate sufficient financial responsibility to ensure that corrective action and third party liability responsibilities associated with petroleum UST releases are met.

STATEMENT

Subject: The subject of this proposed regulation is the requirement that owners, operators and vendors of petroleum underground storage tanks (USTs) maintain specific amounts of financial responsibility for the purpose of conducting corrective actions and satisfy third party claims associated with releases from petroleum USTs. The Virginia Underground Petroleum Storage Tank Fund (VUPSTF) is to be used to provide assurance for owners and operators above their financial responsibility requirements to \$1 million to assist them in complying with federal assurance requirements.

Substance: This proposed regulation would ensure that funds would be available for cleanups and third party claims associated with releases from petroleum USTs. There are approximately 60,000 reported federally regulated USTs located at some 22,000 facilities, an unknown number of additional USTs unreported, and some 10,000 state regulated tanks. Of this total there are 897 USTs which are chemical tanks and 7,000 state and federally owned tanks not requiring demonstration of financial responsibility at this time. This regulation would require the owners, operators and vendors of the remaining 72,000 petroleum USTs to maintain the necessary financial responsibility.

Issues: Some of the main issues are:

- 1. The federal UST financial regulation became effective on January 24, 1989, and applies nationwide. A key question is whether the Commonwealth should have an UST regulatory program that will be as stringent, less stringent, or more stringent than the federal regulation. Less stringent state requirements will preclude delegation of the federal program to Virginia, thus creating two UST financial responsibility programs in the state. Current state law appears to be as stringent as the federal by requiring financial responsibility at levels equal to the federal when the state fund is used to demonstrate assurance.

Calendar of Events

2. The cost of insurance, the most common for of demonstration of financial responsibility, has been extremely high or not available in recent years due to increasing cleanup costs and discovery of releases. Some 15,000 of the 60,000 federal USTs are over 25 years old and many insurance companies will not insure tanks over 15 years old due to the likelihood of a release. When insurance is available it requires proof that the UST(s) is not leaking and costs a minimum of \$2,500 per year for the federally required \$1 million policy. According to EPA estimates, petroleum marketers have a minimum cost of approximately \$4,500 per year for a 3-5 UST location. The proposed regulation allows self-insurance for owners and operators with tangible net worth equal to their annual aggregate requirement. Thus those with 1-8 USTs could self-insure with only \$200,000 tangible net worth.

3. The cost of this proposed regulation to Virginia petroleum UST owners will be less than that required by the federal regulation. The actual cost for the proposed state program is difficult to estimate since owners, operators, and vendors have a number of options for meeting financial responsibility. The owners, operators, and vendors may choose to self-insure which would eliminate most costs. If the insurance mechanism is used, it is difficult to say at this time if insurance companies will substantially reduce premiums based on the state regulation (\$50,000/\$150,000). In fact discussions with insurers have indicated they may refuse to carry a lower rate policy since their risk in many cases may still be substantial. To complicate matters further, costs associated with upgrading tanks ahead of the deadlines for the technical requirements in order to qualify for insurance add to the cost of financial responsibility, but if a release occurs at such sites, corrective action costs will be reduced.

Basis: The basis for this proposed regulation is §§ 62.1-44.34:10 through 62.1-44.34:12 of the Code of Virginia. Further statutory authority for the adoption of regulations can be found in § 62.1-44.15(10) of the Water Control Law.

Purpose: This proposed regulation is designed to require that owners, operators, and vendors demonstrate sufficient financial responsibility to ensure that, in most cases, corrective action and third party liability responsibilities associated with petroleum UST releases are met and aid in the protection of state waters by meeting said responsibilities.

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

Written comments may be submitted until 4 p.m., January 12, 1990.

Contact: Fred Cunningham, Office of Water Resources, Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0411 or SCATS

367-0411

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† November 2, 1989 - 3 p.m. - Open Meeting
† November 3, 1989 - 8 a.m. - Open Meeting
Campus Center, Jamestown Road, Williamsburg, Virginia

A regularly scheduled meeting to receive reports from several committees of the board and to act on those resolutions that are presented by the administration 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: William N. Walker, Director, University Relations, College of William and Mary, James Blair Hall, Room 308, Williamsburg, VA 23185, telephone (804) 253-4226 or SCATS 253-4226

COUNCIL ON THE STATUS OF WOMEN

November 13, 1989 - 8 p.m. - Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

Meetings of the standing committees of the council.

November 14, 1989 - 9 a.m. - Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

A regular meeting of the council to conduct general business and to receive reports from the council standing committees.

Contact: Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

LEGISLATIVE

ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS)

October 24, 1989 - 11 a.m. - Open Meeting
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. ☐

November 17, 1989 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

A work session of the joint subcommittee. HJR 431

December 14, 1989 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,
Richmond, Virginia. ☒

A public hearing to allow the committee to hear the
public's views on the AIDS problem. HJR 431

January 11, 1990 - 2 p.m. - Open Meeting
Site to be determined

A tentative date for a working session.

Contact: Brenda Edwards, Research Associate, Division of
Legislative Services, P.O. Box 3-AG, Richmond, VA 23208,
telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING THE COMMONWEALTH'S SYSTEM OF APPELLATE REVIEW OF CIVIL CASES

November 13, 1989 - 10 a.m. - Working Session
General Assembly Building, Sixth Floor Conference Room,
Capitol Square, Richmond, Virginia ☒

A working session relating to HJR 329.

Contact: Oscar Brinson, Staff Attorney or Mary K. Geisen,
Research Associate, Division of Legislative Services, P.O.
Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

VIRGINIA CODE COMMISSION

† November 3, 1989 - 9:30 a.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor
Conference Room, Richmond, Virginia. ☒

The commission will continue with its revision of Title
51 (Pensions and Retirements) of the Code of Virginia
and receive a report on the status of The Virginia
Register of Regulations.

Contact: Joan W. Smith, Registrar of Regulations, Virginia
Code Commission, P.O. Box 3-AG, Richmond, VA 23208,
telephone (804) 786-3591

RETENTION SCHEDULE FOR COURT RECORDS

† November 15, 1989 - 10 a.m. - Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond,
Virginia. ☒

A working session. HJR 388

Contact: Oscar R. Brinson, Staff Attorney, Division of
Legislative Services, P.O. Box 3-AG, Richmond, VA 23208,
telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING DNA TEST DATA EXCHANGE

† November 14, 1989 - 10 a.m. - Open Meeting
State Capitol, Capitol Square, Senate Room 4, Richmond,
Virginia. ☒

A working session. SJR 127

Contact: Mary Devine, 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) 786-3838

JOINT SUBCOMMITTEE STUDYING TRAINING AND CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL

November 13, 1989 - 9 a.m. - Open Meeting
General Assembly Building, Senate Room B, Capitol
Square, Richmond, Virginia ☒

A regular meeting. SJR 209, 1989 (continued).

Contact: Amy Wachter, Committee Clerk, Senate of
Virginia, P.O. Box 396, Richmond, VA 23203, telephone
(804) 786-3838, or Norma Szakal, Staff Attorney, Division
of Legislative Services, P.O. Box 3-AG, Richmond, VA
23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING THE REGULATION OF ENGINEERS, ARCHITECTS, AND LAND SURVEYORS AND THE EXEMPTION FROM LICENSURE OF EMPLOYEES OF THE COMMONWEALTH AND ITS LOCALITIES

November 21, 1989 - 10 a.m. - Open Meeting
State Capitol, House Room 4, Capitol Square, Richmond,
Virginia ☒

Regular meetings. HJR 408

Contact: Angela P. Bowser, Staff Attorney, 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 20, 1989 - 10 a.m. - Public Hearing
General Assembly Building, House Room D, Capitol
Square, Richmond, Virginia ☒

A public hearing to receive comments relating to
legislation proposed by the subcommittee and other
matters pertaining to the Freedom of Information Act.

Calendar of Events

Contact: Angela Bowser, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

† **November 14, 1989 - 10 a.m. - Open Meeting**
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ☐

A full committee meeting. SJR 214

Uninsured Subcommittee

† **October 30, 1989 - 10 a.m. - Open Meeting**
General Assembly Building, Capitol Square, 10th Floor Conference Room, Richmond, Virginia. ☐

An open meeting. SJR 214

Contact: John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639 or Richard Hickman, Senate Finance Office, 10th Floor, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-4400

JOINT SUBCOMMITTEE STUDYING THE LONG-TERM CARE INSURANCE MODEL REGULATION AND THE FEASIBILITY OF DESIGNATING FAMILY RESOURCES FOR LONG-TERM CARE OF DISABLED PERSONS

† **October 24, 1989 - 10 a.m. - Public Hearing**
Howard Administration Building, 3801 West Braddock Road, Auditorium, 1st Floor, Alexandria, Virginia

A public hearing. HJR 332

Contact: Mary P. Devine, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING AVAILABILITY AND AFFORDABILITY OF MOTOR VEHICLE INSURANCE

† **October 31, 1989 - 9:30 a.m. - Open Meeting**
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. ☐

An open meeting. SJR 223

Contact: Arlen K. Bolstad, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639

CREATION, MEMBERSHIP AND STANDARDS OF CONDUCT OF A NONPARTISAN FAIR CAMPAIGN PRACTICES COMMISSION

December 4, 1989 - 2 p.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☐

A joint subcommittee meeting. HJR 416

Contact: Mary Spain, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

October 25, 1989 - Time to be announced - Open Meeting
October 26, 1989 - Time to be announced - Open Meeting
NOTE: CHANGE OF MEETING LOCATION
Windmill Point Marine Resort, Windmill Point, Virginia

Two-day meeting of the commission. Originally scheduled for October 26 in Richmond. Format will be several meetings during the two-day period to be held in round table setting. Issues to be addressed will be items such as infrastructure, population growth, waste management, and natural resources.

November 30, 1989 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, Sixth Floor Conference Room, Richmond, Virginia. ☐

Meetings to address matters relevant to the mission of the commission.

Contact: Jeffrey A. Finch, House of Delegates, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-2227

EXEMPTING OF RETIREMENT BENEFITS

October 30, 1989 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. ☐

A working session to study the exempting of retirement benefits from the claims of creditors. HJR 284

Contact: Jessica Bolecek, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

JOINT SUBCOMMITTEE STUDYING SITE SELECTION FOR COMMUNITY RESIDENCES FOR MENTALLY DISABLED

† **October 30, 1989 - 10 a.m. - Open Meeting**

General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia ☒

An open meeting. SJR 220

Contact: Jack Austin, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869

COMMISSION TO STUDY ALTERNATIVE METHODS OF FINANCING CERTAIN FACILITIES AT STATE-SUPPORTED COLLEGES AND UNIVERSITIES

October 24, 1989 - 2:30 p.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

The second meeting of the commission will be a working session, including review of issues and development of alternatives. HJR 373

November 20, 1989 - 2 p.m. - Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

The third commission meeting will involve final discussions and a review.

December 14, 1989 - 2 p.m. - Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☒

The fourth meeting of the commission will be held in order to finalize its report.

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

STRUCTURE AND MANAGEMENT OPTIONS FOR THE VIRGINIA INDUSTRIES FOR THE BLIND PROGRAM

† **November 14, 1989 - 10 a.m. - Public Hearing**
General Assembly Building, Capitol Square, Appropriations Committee West Conference Room, 9th Floor, Richmond, Virginia. ☒

A work session. HJR 418

Contact: Gayle Nowell, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

CHRONOLOGICAL LIST

OPEN MEETINGS

October 24

Acquired Immunodeficiency Syndrome (AIDS) Education, Board of Health Services Cost Review Council Nursing Home Administrators, Board of State-Supported Colleges and Universities, Commission to Study Alternative Methods of Financing Certain
† Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

October 25

† Commercial Driver Education Schools, Board for Education, Board of Gloucester County Local Emergency Planning Committee Lottery Board, State Mental Health, Mental Retardation and Substance Abuse Services Board, State Population Growth and Development, Commission on
† Rehabilitative Services, Board of
- Finance Committee
- Legislation and Evaluation Committee
- Program Committee

October 26

Children, Department for
- State-Level Runaway Youth Services Network DNA Test Data Exchange, Joint Subcommittee Studying Game and Inland Fisheries, Board of Medicine, Board of
- Advisory Board of Occupational Therapy
- Informal Conference Committee
† Museum of Fine Arts, Virginia
- Education in the Arts Committee
Population Growth and Development, Commission on
† Rehabilitative Services, Board of
† Small Business Financing Authority

October 27

Building Code Technical Review Board, State Medicine, Board of
- Informal Conference Committee
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Mental Health Advisory Council
Nursing, Board of
- Special Conference Committee

October 29

Funeral Directors and Embalmers, Board of

October 30

Historic Resources Board and State Review Board of

Calendar of Events

the Department of Historic Resources
Retirement Benefits, Exempting of
Funeral Directors and Embalmers, Board of
† Site Selection for Community Residences for
Mentally Disabled, Joint Subcommittee Studying
† Transportation Safety Board
† Health Care for All Virginians, Joint Subcommittee
Studying
- Uninsured Subcommittee

October 31

† Auctioneers Board, Virginia
Funeral Directors and Embalmers, Board of
Historic Resources, Department of
- Board of Trustees of the Preservation Foundation
Medicare and Medicaid, Governor's Advisory Board on
† Motor Vehicle Insurance, Joint Subcommittee
Studying Availability and Affordability of

November 1

Child Mental Health, Consortium on
† Higher Education, State Council of
Historic Resources, Department of
- Board of Trustees of the Preservation Foundation
Opticians, Board for
Social Work, Board of
Vocational Education, Virginia Council on

November 2

Aging, Department for the
† Boating Advisory Board, Virginia
Chesterfield County, Local Emergency Planning
Committee of
† Health Professions, Department of
- Task Force on the Practice of Nurse Practitioners
Long-Term Care Council, Virginia
Psychology, Board of
Social Work, Board of
Vocational Education, Virginia Council on
† William and Mary, The College of
- Board of Visitors

November 3

Aging, Department for the
† Code Commission, Virginia
† Geology, Board for
Long-Term Care Council, Virginia
† William and Mary, The College of
- Board of Visitors

November 7

† Marine Resources Commission

November 8

† Architects, Land Surveyors, Professional Engineers
and Landscape Architects, Board for
- Board for Architects

November 9

Child Day-Care Council
Children, Coordinating Committee for

Interdepartmental Licensure and Certification of
Residential Facilities for
† Commerce, Board of
† Nursing, Board of
- Regulations Committee
Professional Soil Scientists, Board for

November 11

† Conservation and Recreation, Department of
- Virginia Cave Board

November 13

Appellate Review of Civil Cases, Joint Subcommittee
Studying Commonwealth's System of
Emergency Medical Services Personnel, Joint
Subcommittee Studying Training and Certification of
Women, Council on the Status of

November 14

DNA Test Data Exchange, Joint Subcommittee
Studying
Education, Board of
† Health Care for All Virginians, Joint Subcommittee
Studying
† Structure and Management Options for the Virginia
Industries for the Blind Program
Women, Council on the Status of

November 15

Corrections, Board of
† Court Records, Retention Schedule for
† Forestry, Board of
† Game and Inland Fisheries, Department of
Indians, Council on
† Labor and Industry, Department of
- Safety and Health Codes Board
† Pesticide Control Board
Treasury Board

November 16

† Architects, Land Surveyors, Professional Engineers
and Landscape Architects, Board for
- Board for Engineers
Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee
† Medicine, Board of
† Pesticide Control Board

November 17

Acquired Immunodeficiency Syndrome (AIDS)
† Medicine, Board of

November 18

† Medicine, Board of

November 19

† Medicine, Board of

November 20

State-Supported Colleges and Universities, Commission
to Study Alternative Methods of Financing Certain

Calendar of Events

- Facilities at
- November 21**
Education Assistance Authority, State
- Board of Directors
Engineers, Architects, and Land Surveyors and the
Exemption from Licensure of Employees of the
Commonwealth and Its Localities, Joint Subcommittee
Studying the Regulations of
- November 27**
† Nursing, Board of
- November 28**
† Nursing, Board of
Peninsula ASAP Policy Board
† Virginia Alcohol Safety Action Program, Commission
on the
- November 29**
† Nursing, Board of
† Virginia Alcohol Safety Action Program, Commission
on the
- November 30**
† Aging, Department for the
- Long-Term Care Ombudsman Program Advisory
Council
† Architects, Land Surveyors, Professional Engineers
and Landscape Architects, Board for
- Board for Land Surveyors
Charles City County Emergency Planning Committee
Funeral Directors and Embalmers, Board of
Population Growth and Development, Commission on
Voluntary Formulary Board, Virginia
- December 4**
Nonpartisan Fair Campaign Practices Commission,
Creation, Membership and Standards of Conduct of a
- December 6**
Child Mental Health, Consortium on
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Interagency Coordinating Council, Virginia
Nursing Home Administrators, Board of
- December 7**
Emergency Planning Committee of Chesterfield County,
Local
Nursing Home Administrators, Board of
† Real Estate Board
- December 8**
Children, Coordinating Committee for
Interdepartmental Licensure and Certification of
Residential Facilities for
† Real Estate Board
- December 9**
† Medicine, Board of
- Credentials Committee
- December 11**
† Water Control Board, State
- December 12**
† Water Control Board, State
- December 13**
† Branch Pilots, Board for
Health, Board of
- December 14**
Child Day-Care Council
Health, Board of
State-Supported Colleges and Universities, Commission
to Study Alternative Methods of Financing Certain
Facilities at
- December 20**
Treasury Board
- January 11, 1990**
Acquired Immunodeficiency Syndrome (AIDS)

PUBLIC HEARINGS

- October 23**
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- October 24**
† Long-Term Care Insurance Model Regulation and the
Feasibility of Designating Family Resources for
Long-Term Care of Disabled Persons, Joint
Subcommittee Studying the
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- October 26**
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- October 27**
Game and Inland Fisheries, Board of
Taxation, Department of
Voluntary Formulary Board, Virginia
- October 30**
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
† Water Control Board, State
- November 1**
Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- November 2**

Calendar of Events

- Local Government, Commission on
- November 3**
Medicine, Board of
- November 6**
Health, Department of
- November 8**
† Mines, Minerals and Energy, Department of
- Division of Mineral Mining
- November 9**
† Mines, Minerals and Energy, Department of
- Division of Mined Land Reclamation
- November 13**
Health, Department of
Rights of the Disabled, Department for
- November 14**
Corrections, Department of
Health, Department of
- November 15**
Health, Department of
Labor and Industry, Department of
- November 16**
Health, Department of
- November 20**
Freedom of Information Act, Joint Subcommittee
Studying the
- November 21**
Health, Department of
Lottery Department, State
- November 28**
Health, Department of
- November 29**
Health, Department of
Pharmacy, Board of
- December 4**
Motor Vehicles, Department of
- December 8**
† Medicine, Board of
- December 11**
Taxation, Department of
- December 14**
Acquired Immunodeficiency Syndrome (AIDS)
† Water Control Board, State
- December 18**
† Water Control Board, State
- January 3, 1990**
† Employment Commission, Virginia
- January 4**
† Water Control Board, State