

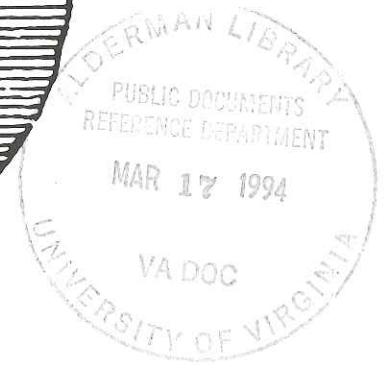
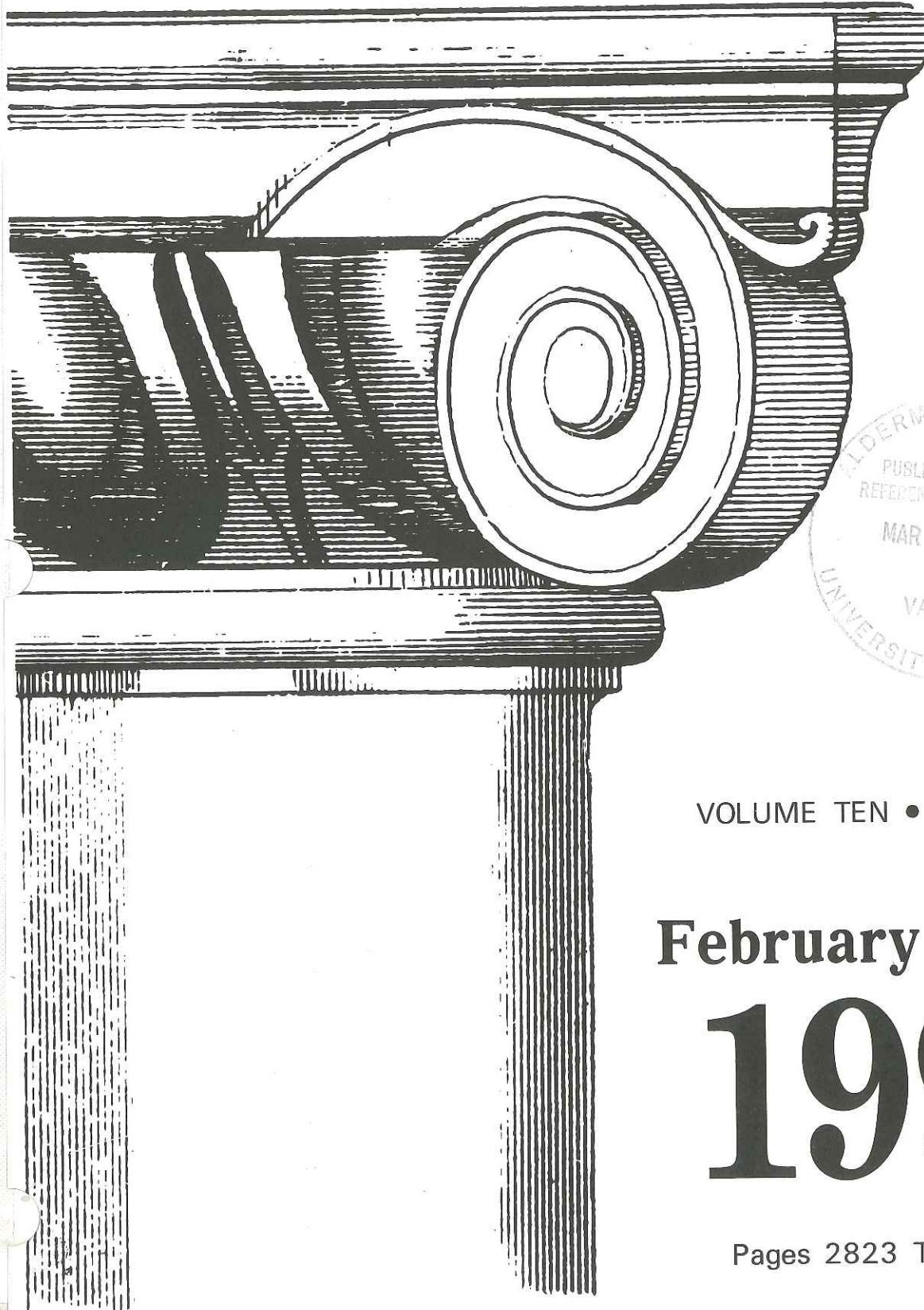
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# THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME TEN • ISSUE ELEVEN

February 21, 1994

# 1994

Pages 2823 Through 3100

## 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 the regulation becomes final.

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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

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# NOTICES OF INTENDED REGULATORY ACTION

## Symbol Key †

† Indicates entries since last publication of the Virginia Register

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Environmental Quality intends to consider promulgating regulations entitled: **VR 304-03-01. Regulation for the Early Retirement of Older Motor Vehicles.** The purpose of the proposed action is to develop procedures for the early, voluntary retirement of older motor vehicles in order to reduce mobile source air pollution in exchange for a voucher worth cash or trade-in value. The regulation will contain eligibility criteria, processing requirements and procedures for establishing mobile source air pollution reduction credits which can be banked or traded.

**Public Meeting:** A public meeting will be held in the Board Room of the Virginia Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia, at 7 p.m. on March 30, 1994, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

**Accessibility to Persons with Disabilities:** The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Doneva Dalton at the Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than March 15, 1994.

**Ad Hoc Advisory Group:** The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by the close of business on April 22, 1994, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants by May 13, 1994. If you are interested in being on the group, you are encouraged to attend the public meeting. The primary function of the group is to develop a recommended regulation for department consideration through the collaborative approach of regulatory negotiation and consensus to the extent permitted by law.

**Public Hearing Plans:** The department will hold at least one public hearing to provide opportunity for public

comment on any regulation drafted pursuant to this notice.

**Need:** The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA standard the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

Air pollution from vehicles contributes as much as half of the total man-made pollution which forms ozone. A disproportionate amount of that pollution comes from older cars which were either not designed to burn fuel efficiently or have deteriorated to the point that they pollute heavily. According to the U.S. Congress Office of Technology Assessment, cars of 1971 or earlier vintage made up only 3.4% of the national fleet in 1990 and were driven only 2.0% of the miles. EPA estimates they created at least 6.0% of the hydrocarbon emissions, 7.5% of the carbon monoxide, and 4.7% of nitrogen oxides. They also have poor fuel economy.

In Virginia's nonattainment areas (currently Northern Virginia, Richmond and Hampton Roads), the percentage of pre-1972 cars ranges between 3.4% and 4.4% of the total vehicle population according to 1991 data from the Department of Motor Vehicles. These vehicles produce 10% to 12% of the total VOC emissions from cars and trucks weighing up to 8,500 pounds. Pre-1981 model years, ranging from 21% to 27% of the vehicle population, produce 45% to 50% of the total VOC emissions. The percentage of older cars in the vehicle population and the pollution from those cars will decrease annually as cars are retired naturally. Estimates are that approximately 20% of the pre-1981 vehicles are retired by their owners each year.

Vehicle retirement programs remove these vehicles from service, and destroy the emission system components and engine, by offering to purchase them from willing owners. The programs reduce pollution by taking these older, higher-polluting vehicles off the road sooner than they would normally have been retired. The benefits in pollution reduction and fuel savings are immediate; there

# Notices of Intended Regulatory Action

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may be safety benefits as well. However, the benefits are short-lived because the vehicle is being removed from service only a few years sooner, on average, than would have occurred normally. There is also the question of what amount of driving is then transferred to another vehicle and how much net pollution reduction results from replacing one vehicle with another.

In order for a motor vehicle retirement program to demonstrate an air pollution reduction benefit, it must be carefully constructed to target high-polluting vehicles which are in regular operation. Removing vehicles from operation which are not operated regularly does little to reduce pollution and is therefore not cost effective. Further, removal of vehicles in geographic areas which do not have significant air pollution problems is also not cost effective.

## Alternatives:

1. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on EPA guidance.
2. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on calculations from actual emissions testing of vehicles retired and replacement vehicles.
3. Take no action to draft a regulation, which would be contrary to the intent of the 1993 Acts of Assembly.

Costs and benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Federal Requirements: The 1990 amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted and for the first time delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classifications of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are classified as marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Virginia must submit an air quality plan for each of these areas which shows how, and when, we will go about

attaining and maintaining these air quality standards. The plans contain multiple control strategies and also must contain contingency measures should the strategies prove insufficient. Realistically, it is also important to prevent areas with relatively clean air from becoming nonattainment areas. Voluntary, proactive programs such as a motor vehicle retirement program could prove beneficial in the short term in reducing pollution generated by motor vehicles.

Some federal guidance exists for designing such programs; however, there is no federal law or regulation on this specific subject. Additional federal guidance exists regarding the generation, banking and trading of actual pollution reductions, called "pollution credits."

Statutory Authority: §§ 46.2-1802, 46.2-1804, and 46.2-1805 of the Code of Virginia.

Written comments may be submitted until the close of business on April 22, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** David J. Kinsey, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4432.

V.A.R. Doc. No. R94-567; Filed February 2, 1994, 10:04 a.m.

## **BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

### **Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-03. Regulations for Preneed Funeral Planning.** The purpose of the proposed action is to amend current regulations for update and to incorporate legislative changes. There will be no public hearing since amendments reflect change in federal law.

Statutory Authority: § 54.1-2820 of the Code of Virginia.

Written comments may be submitted until February 25, 1994.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, Va 23230, telephone (804) 662-9907.

V.A.R. Doc. No. R94-347; Filed November 30, 1993, 2:50 p.m.

## **DEPARTMENT OF MEDICAL ASSISTANCE 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 Medical

# Notices of Intended Regulatory Action

Assistance Services intends to consider amending regulations entitled: **VR 460-03-3.1100, Amount, Duration, and Scope of Services, and VR 460-02-3.1300, Standards Established and Methods Used to Assure High Quality of Care: Physical Therapy and Related Services.** The purpose of the proposed action is to amend existing regulations to establish different requirements and clarify documentation requirements for general physical rehabilitation and intensive rehabilitative services. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until March 23, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

V.A.R. Doc. No. R94-525; Filed January 20, 1994, 3:16 p.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration, and Scope of Services: Prescribed Drugs: Coverage of Certain Over-the-Counter Drugs.** The purpose of the proposed action is to allow coverage of certain over-the-counter (OTC) medications as less expensive alternatives to legend drugs. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until March 23, 1994, to Marianne Rollings, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

V.A.R. Doc. No. R94-536; Filed February 1, 1994, 9:09 a.m.

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of

the proposed action is to (i) consider changes in Part III related to licensure by examination as the result of the implementation of computerized testing; (ii) consider changes in Parts II and V related to educational program approval to clarify compliance with the Administrative Process Act; (iii) give possible consideration to changes in Part II related to faculty supervision of students and recognition of other forms of accreditation as comparable to Board of Nursing approval. A public hearing will be held on any proposed regulations developed as a result of the consideration described in the purpose of this intended regulatory action.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until March 11, 1994.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

V.A.R. Doc. No. R94-472; Filed January 18, 1994, 10 a.m.

## 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 amending regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The purpose of the proposed action is to review the existing standards for appropriateness and to make technical amendments for clarity. One public hearing is planned. The date, time and location will be announced.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until February 23, 1994, to Alfreda Redd, Department of Social Services, Theater Row Building, 730 East Broad Street, Richmond, Virginia 23219-1849.

**Contact:** Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

V.A.R. Doc. No. R94-444; Filed January 5, 1994, 11:25 a.m.

## COMMONWEALTH TRANSPORTATION BOARD

### † Withdrawal of Notices of Intended Regulatory Action

The Commonwealth Transportation Board is withdrawing the Notices of Intended Regulatory Action for the regulation entitled: **Hauling Permit Travel Regulations**



# Notices of Intended Regulatory Action

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(VR 385-01-12) published in 5:3 V.A.R. 382 November 7, 1988, and 8:7 V.A.R. 1039 December 30, 1991.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-12. Hauling Permit Manual.** The purpose of the proposed action is to revise and streamline VDOT's Hauling Permit Manual. The update/revision will include travel regulations, including overweight, overheight, and overwidth restrictions.

Statutory Authority: §§ 33.1-12 and 46.2-1139 of the Code of Virginia.

Written comments may be submitted until March 23, 1994.

**Contact:** J.R. Hess, Hauling Permit Supervisor, Department of Transportation, Maintenance Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-8033.

V.A.R. Doc. No. R94-534; Filed January 31, 1994, 2:09 p.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-16. Land Use Permit Manual.** The purpose of the proposed action is to revise the Land Use Permit Manual in terminology and nomenclature.

Statutory Authority: §§ 33.1-12 (3), 33.1-197 and 33.1-198 of the Code of Virginia.

Written comments may be submitted until March 23, 1994.

**Contact:** Jim Cline, Land Use Permit Supervisor, Department of Transportation, Maintenance Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4271.

V.A.R. Doc. No. R94-535; Filed January 31, 1994, 2:09 p.m.

## STATE WATER CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-21-01. Water Quality Standards.** The purpose of the proposed action is to consider modifying VR 680-21-01 3 C 1 of the Antidegradation Policy to increase the participation of local governments in the nomination and designation process for exceptional waters. The State Water Control Board intends to consider amending the regulation to offer local governments the opportunity to

determine if a proposed exceptional waters nomination is consistent with local comprehensive planning as part of the process.

Basis and statutory authority: Section 62.1-44.15(a) of the Code of Virginia authorizes the board to establish such standards of quality and policies for any state waters consistent with the general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established.

Estimated impact: Impacts resulting from designations of exceptional waters will be primarily upon the local governments in the area where the exceptional waters are located. No new or increased VPDES discharges will be allowed into these exceptional waters.

Alternatives: Alternatives under consideration include whether the board should propose amendments to VR 680-21-01 3 C 1 regarding the role of local governments in the designation procedures for exceptional waters or leave the section unchanged.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of stated alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. In addition, the board's staff will hold public meetings at 7 p.m. on Wednesday, March 23, 1994, in the Board Room, Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, and at 7 p.m. on Thursday, March 24, 1994, in the Roanoke County Board of Supervisors Meeting Room, First Floor, 5204 Bernard Drive, Roanoke, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: The meetings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, March 1, 1994.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendment after it is published in The Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold an evidential proceeding (formal hearing) on the proposal after it is published in The Register of Regulations.

## Notices of Intended Regulatory Action

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Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on April 5, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Jean Gregory, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

VA.R. Doc. No. R94-526; Filed January 26, 1994, 1:04 p.m.

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see information page.

## Symbol Key

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

### DEPARTMENT OF HEALTH (STATE BOARD OF)

#### Title of Regulation: VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.

Statutory Authority: §§ 32.1-12, 32.1-122.5, 32.1-122.5:1, 32.1-122.6, and 32.1-122.6:01 of the Code of Virginia.

Public Hearing Date: March 8, 1994 - 9 a.m.

Written comments may be submitted until April 25, 1994.

(See Calendar of Events section for additional information)

Basis: This action will amend regulations of this title which were promulgated by the State Board of Health as authorized by § 32.1-122.5 et seq. of the Code of Virginia.

Purpose: The proposed amendments will reflect the amendments to the Virginia Medical Scholarship Program enacted by the 1992 General Assembly with regard to the residents of Southwest Virginia.

Other amendments will more clearly reflect the intent of the General Assembly in regard to the Scholarship Program and correct certain ambiguities in the language of the previous regulations.

Substance: The Virginia General Assembly enacted legislation providing eligibility to receive Virginia medical scholarships to residents of Southwest Virginia who are students at the James H. Quillen College of Medicine of East Tennessee State University and who enter into a contract with the State Health Commissioner to practice primary care medicine in underserved communities in Southwest Virginia in return for these scholarships. This amendment defines and implements this legislation.

Amendments that help to clarify the intent of the program are: the addition of definitions of "restitution," "penalty" and "rate of interest"; specification of a criterion for selection of recipients with regard to likelihood to fulfill the contractual obligation; specification of the prerogative of the board with regard to the recipients' selection of a fulfillment site; clarification of the conditions that constitute the categories of default and clarification of the consequences of default by category; and the specification of the rate of credit toward fulfillment of the contracts in terms of months of service in return for monetary rewards.

Certain amendments more clearly reflect the intent of the General Assembly with regard to: the dollar amount and

the numbers of scholarships to be awarded in any given year and the increase of access to primary care on the part of the indigent.

Other amendments clarify the authority of the Commissioner of Health in overseeing fulfillment of contracts at assigned locations.

Issues: The Virginia Medical Scholarship Program has but one purpose – to reduce the barrier to access to primary care services that may occur as a result of lack of sufficient primary care physicians. This shortage of providers may affect the poor and the affluent as well. However, the statute clearly states that the regulations must include, "Standards to assure that these scholarships increase access to primary health care for individuals who are indigent or who are recipients of public assistance."

The present statute, enacted in 1990 and revised in 1992, supersedes an earlier statute that had been deemed to be inadequate to ensure access for indigent people. The present statute provides for a larger incentive than the prior statute. It also provides for stiffer consequences in cases of nonfulfillment of contracts on the part of scholarship recipients.

The process of nomination of scholarship recipients is intended to assure high likelihood that recipients will fulfill their obligations. However, experience has shown that scholarship recipients may not fulfill, or at least attempt to avoid fulfilling their contracts. The language of these regulations is intended to assure that the program meets the goal set forth by the General Assembly.

The present regulations are considered to contain language that could permit more than one interpretation and could lead to recipients seeking to fulfill their practice obligations in practice locations offering more favorable financial rewards, rather than in areas with the greatest need.

The statute provides that scholarship recipients must sign a contract agreeing to practice their primary care specialties in underserved areas in Virginia for one year for each \$10,000 conditional grant (scholarship) awarded.

Section 32.1-122.5 of the Code of Virginia directs the Board of Health to establish criteria to identify medically underserved areas in the Commonwealth. Scholarship recipients may select an area from among those areas or state facilities designated by the board prior to the completion of training.

The important issue of site selection and placement is

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being addressed administratively by the Department of Health through its Offices of Primary Care Development and Rural Health. The department's strategic plan for primary health care provider development will identify communities, both urban and rural, that are now or are at risk of becoming medically underserved. Through the process of community development, communities so identified would receive technical assistance from the department to develop plans for primary care delivery systems. Virginia medical scholarship recipients would be afforded the opportunity, well in advance of completion of their training, to enter into arrangements with communities whose needs are consistent with those of the recipients and whose opportunities coincide with the availability of the recipients.

The Board of Health will soon propose amendments to Rules and Regulations for the Identification of Medically Underserved Areas in Virginia with the active participation of a representative advisory group. These changes will be intended to shift the focus of designation from political subdivisions to rational primary care service areas, and to increase the number of presently designated primary care practice sites that would offer employment opportunities to scholarship recipients.

It is considered that the administrative and regulatory changes referred to in the preceding paragraphs will greatly enhance the scholarship program's capacity to benefit the underserved communities of the Commonwealth and the scholarship recipients.

Impact: Number and Types of Regulated Entities or Persons Affected. All Virginia medical scholarship recipients enrolled following the effective date of this amendment would be affected by this action. The annual number of scholarships is now set by the General Assembly at 40. The distribution of these is 12 each to the University of Virginia, Medical College of Virginia and Medical College of Hampton Roads, and four to East Tennessee State University.

Projected Cost to Regulated Entities or to the Commonwealth for Implementation and Compliance. There would be no cost to regulated entities or to the Virginia Department of Health or any other state agency associated with the implementation of this amendment.

Beneficial Impact Produced by Regulations. The beneficial impact of this amendment would be improved assurance of attainment of the goals of the program, reduced risk of negative outcomes of litigation and improved management control of the program.

Need for the Regulation and Potential Consequences in Absence of Regulation. The converse of the beneficial impact would prevail. In the absence of this amendment, the potential would be greater for the Commonwealth to have invested hundreds of thousands of dollars to improve access to primary health care services for underserved populations only to have scholarship recipients fail to

fulfill their contracts.

Impact Upon Small Businesses or Organizations. No small businesses or organizations would be affected.

## Summary:

*The Virginia General Assembly enacted legislation in 1992 providing eligibility to receive Virginia medical scholarships to residents of Southwest Virginia who are students at the James H. Quillen College of Medicine of East Tennessee State University and who enter into a contract with the State Health Commissioner to practice primary care medicine in underserved communities in Southwest Virginia in return for these scholarships. This amendment defines and implements this legislation.*

*Amendments that help to clarify the intent of the program are: the addition of definitions of "restitution," "penalty" and "rate of interest"; specification of a criterion for selection of recipients with regard to likelihood to fulfill the contractual obligation; specification of the prerogative of the board with regard to the recipients' selection of a fulfillment site; clarification of the conditions that constitute the categories of default and clarification of the consequences of default by category; and the specification of the rate of credit toward fulfillment of the contracts in terms of months of service in return for monetary rewards.*

*Certain amendments more clearly reflect the intent of the General Assembly with regard to: the dollar amount and the numbers of scholarships to be awarded in any given year and the increase of access to primary care on the part of the indigent.*

*Other amendments clarify the authority of the Commissioner of Health in overseeing fulfillment of contracts at assigned locations.*

VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.

## PART I. GENERAL INFORMATION.

### § 1-1. Authority

Title 32-1, Chapter 6, § 32-1-122.6 B of the Code of Virginia requires the State Board of Health, after consultation with the Medical College of Virginia, the University of Virginia School of Medicine, and the Medical College of Hampton Roads, to promulgate regulations to administer the Virginia Medical Scholarship Program.

### § 1-2. 1.1. Purpose.

These regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the

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process for awarding Virginia medical scholarships to medical students; the general terms and conditions applicable to the obligation of each recipient of a medical scholarship to practice medicine in a medically underserved area of Virginia, as identified by the Board of Health by regulation, or to practice medicine in a designated state facility as defined in these regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Medical Scholarship Program. These regulations and the Regulations for Determining Virginia Medically Underserved Areas supersede and replace Definitions of "Practice of Family Medicine" and "Areas of Need" under State Medical Scholarship Program which were adopted by the Board of Health and became effective December 1, 1979.

## § 1-3. 1.2. Administration.

The State Health Commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from these regulations shall be considered on an individual basis by the board in regular session.

## § 1-4. 1.3. Applicability.

These regulations shall apply to all recipients who begin fulfillment of their scholarship obligation on July 1, 1990, or later; provided that approval given by the commissioner prior to the effective date of these regulations shall remain in full force and effect.

## § 1-5. Effective date.

These regulations shall be effective on June 1, 1991.

## PART II. DEFINITIONS.

### § 2.1. Definitions.

Unless the context clearly indicates a contrary interpretation, the words and terms used in these regulations shall have the following meanings:

*"Accredited internship"* means a graduate medical education program of one year duration accredited by the Liaison Committee on Graduate Medical Education.

*"Accredited residency"* means a graduate medical education program in family practice medicine, general internal medicine, pediatric medicine or obstetrics and gynecology accredited by the Liaison Committee on Graduate Medical Education.

*"Approved by the medical school from which the graduate matriculated that nominated him for the scholarship"* means that medical school affirms that the graduate has accepted placement in an accredited residency or internship at a hospital or institution located in Virginia, or affirms that such placement has been

accepted in a program not located in Virginia due to such placement through the match.

*"Board" or "Board of Health"* means the State Board of Health.

*"Commissioner"* means the State Health Commissioner.

*"Designated state facility"* means a facility operated by the Virginia Departments of Corrections, Youth and Family Services, or Mental Health, Mental Retardation and Substance Abuse Services.

*"First year resident"* means a graduate of a participating medical school who has been accepted by an accredited primary care residency program approved by the medical school that nominated him for the scholarship.

*"Interest at the prevailing bank rate for unsecured debt"* means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

*"The match"* means the National Resident Matching Program, a nationwide system by which medical school graduates are placed in graduate medical education programs by mutual agreement.

*"Medically underserved area"* means a geographic area in Virginia designated by the State Board of Health in accordance with the rules and regulations for the identification of medically underserved areas.

*"Participating medical school"* means the Eastern Virginia School of the Medical College of Hampton Roads, or the Medical College of Virginia of the Virginia Commonwealth University, or the School of Medicine of the University of Virginia, or the Quillen School of Medicine of East Tennessee State University.

*"Penalty"* means an amount of money equal to two times the amount of all monetary scholarship awards paid to the scholarship recipient.

*"Practice"* means the practice of medicine by a recipient in one of the designated primary care specialties in a specific geographic area determined to be fulfillment of the recipient's scholarship obligation.

*"Primary care"* means the specialties of family practice medicine, general internal medicine, pediatric medicine, or obstetrics and gynecology.

*"Recipient" or "scholarship recipient"* means an eligible medical student or graduate medical student who enters into a contract with the commissioner and receives one or more scholarship awards via the Virginia Medical Scholarship Program.

*"Restitution"* means the amount of monetary

reimbursement, including repayment of all pertinent scholarship awards plus penalty and applicable interest as set forth in these regulations, that will be owed to the Commonwealth of Virginia by a scholarship recipient who is in default of his contractual obligation as provided for in these regulations.

"Southwest Virginia" means those cities and counties in Virginia that are located in Planning Districts 1, 2, and 3; they include Bland County, City of Bristol, Buchanan County, Carroll County, Dickenson County, City of Galax, Grayson County, Lee County, City of Norton, Russell County, Scott County, Smyth County, Tazewell County, Washington County, Wise County, and Wythe County.

"Virginia medical scholarship" means an award of ~~\$10,000~~ an amount specified by the General Assembly in the Appropriations Act made to a student enrolled in a Virginia participating medical school or to a graduate student of a Virginia participating medical school pursuing the first year of graduate training at a hospital or institution approved by the Virginia participating medical school that the graduate attended as a medical student nominated him for the scholarship and for which the medical student or graduate medical student entered a contractual obligation to repay.

"Virginia medical school" means the Eastern Virginia Medical School of the Medical College of Hampton Roads, or the Medical College of Virginia of the Virginia Commonwealth University, or the School of Medicine of the University of Virginia.

### PART III. SCHOLARSHIP AWARDS.

#### § 3.1. Eligible applicants.

Any currently enrolled student in full-time attendance at a Virginia participating medical school or a graduate of such school who has accepted placement in, but not entered the first year of an accredited internship or accredited residency approved by the medical school from which the graduate matriculated that nominated him for the scholarship, shall be eligible for the Virginia medical scholarship. Preference for the scholarship award shall be given to: residents of the Commonwealth over nonresidents; residents from medically underserved areas of Virginia as determined by the Board of Health in accordance with the provisions of its regulations for that purpose; students whose period of residence in one or more medically underserved areas is deemed by the participating medical school to indicate a high likelihood that the student would fulfill his contractual obligation to practice in a medically underserved area; and students or first year graduates from racial minorities protected minority groups. Additionally, preference shall be given to first-year graduates serving in accepted by approved internships or primary care residencies in Virginia over first-year graduates in approved out-of-state internships or residencies. Virginia medical scholarships are available for

medical students domiciled in Southwest Virginia who are enrolled at the Quillen School of Medicine of East Tennessee State University when such individuals are determined to be committed to practicing in a medically underserved area in Southwest Virginia.

#### § 3.2. Scholarship amount award.

A Virginia medical scholarship award shall be ~~\$10,000~~ for each academic year and shall be awarded to the recipient upon or following the recipient's execution of a contract with the commissioner for scholarship repayment.

#### § 3.3. Distribution of scholarships.

Annually, by May 1 of each calendar year, the commissioner shall inform the deans of the Virginia participating medical schools of the number as provided by the General Assembly by appropriation of medical school scholarships that are available for the schools' medical students during the next academic year. The annual number of medical scholarships available for award at each Virginia participating medical school shall be uniformly distributed among the schools, and shall be equal, and shall be based upon funds appropriated by the Virginia General Assembly, except that the number of Virginia medical scholarships available for medical students from Southwest Virginia attending the Quillen School of Medicine of East Tennessee State University shall be limited to the number established by the Virginia General Assembly by appropriation. The deans of the respective Virginia participating medical schools shall annually nominate qualified students or first-year residents, in accordance with the criteria for preference enumerated in § 3.1 of these regulations, to receive scholarships. The number of nominees submitted to the commissioner at this time will not exceed the number of scholarships that are available for each medical school. The State Health Commissioner shall award scholarships to the nominees of the deans at the Virginia participating medical schools in accordance with the number of scholarships available for each medical school. Any scholarships that have not been awarded following the initial annual distribution among the medical schools shall be available for redistribution to qualified students in any of the medical schools at the discretion of an awards committee consisting of the commissioner, who shall serve as chairman and ex officio member without vote, and the deans of the medical schools or their designees. The awards committee shall convene for this purpose only when the scholarships available to one or more of the medical school exceed the number of qualified nominees by the dean(s). A scholarship Scholarships shall be awarded to qualified students based upon majority vote of the awards committee. Individual scholarship recipients may be nominated for and receive a maximum of five scholarships.

### PART IV. CONTRACTS.

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## § 4.1. ~~Contract provisions~~ *Contractual practice obligation* .

Prior to the award of a scholarship payment of money to a scholarship awardee , the commissioner shall enter into a contract with the recipient. The contract shall:

1. Provide that the recipient will pursue the medical course of the school nominating the recipient for the award until the recipient's graduation or will pursue the recipient's first year of primary care graduate training in an accredited ~~internship~~ or residency program approved by the school nominating the recipient for the award and, upon completing a term not to exceed three\* years as an ~~intern~~ or a resident in an approved program, will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for a period of years equal to the number of annual scholarships received. At any time prior to entering practice, the scholarship recipient shall be allowed to select a future practice location from the listing of medically underserved areas maintained by the board, and the recipient shall be allowed to fulfill the scholarship repayment obligation in the preselected medically underserved area. However, after making an initial selection of a medically underserved area in which to practice, the recipient may not alter the decision until the recipient is fully prepared to enter practice, at which time the recipient must choose from the current list of medically underserved areas maintained by the board or the preselected medically underserved area.

2. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine in a medically underserved area will provide services to persons who are unable to pay for the service and will participate in all government sponsored insurance programs designed to assure access of covered persons to medical care services shall notify the commissioner in writing of his proposed practice location not more than 30 days after completing his approved residency program. After receiving written approval of his practice location from the commissioner, the recipient shall begin his approved practice not more than 90 days after completing his primary care residency program .

3. Provide that the recipient may request approval of a change of practice location. The commissioner in his discretion may approve such a request, but only if the change is to a practice location in a medically underserved area or a state facility designated by the Board of Health.

4. Provide that the recipient shall repay the scholarship obligation by practicing primary care medicine on a full-time basis in a medically underserved area, will maintain office hours convenient for the population of the area to have

access to the recipient's services and will participate in all government sponsored insurance programs designed to assure access of covered persons to medical care services such as Medicare and Medicaid, and will not selectively place limits on the numbers of such patients admitted to the practice, and will charge the usual and customary fees prevailing in the area in which service is provided, except that if the patient is unable to pay the charge, such a patient will be charged a reduced rate or will not be charged at all. This stipulation may be waived at the commissioner's discretion in cases where it places undue financial burden on the part of the primary care medical practice.

5. Provide that the recipient repaying the scholarship obligation by practicing primary care medicine on a full-time basis in a medically underserved area will maintain office hours convenient for the population of the area to have access to the recipient's services.

4. Provide that the recipient will not voluntarily obligate himself for more than the minimum period of military service required of physicians by the laws of the United States;

5. 6. Provide that the recipient shall not voluntarily obligate himself for more than the minimum period of military service required of physicians by the laws of the United States and that upon completion of the minimum period of military service, the recipient will promptly begin and thereafter continuously engage in full-time primary care practice in a medically underserved area of Virginia, or in a designated state facility, for the period of years equal to the number of scholarships received.

7. Provide that the recipient shall receive credit toward fulfillment of his contractual obligation at the rate of 12 months of medical practice for each scholarship award paid to the recipient. The recipient may be absent from the place of approved practice for a total of seven weeks in each 12-month period for personal reasons. Absence for a period in excess of seven weeks without the written permission of the commissioner shall result in proportional reduction of the period of credit toward fulfillment of the contractual obligation.

## § 4.2. Default.

With respect to default, the contract shall:

1. Provide that a recipient who fails to fulfill his obligation to practice primary care medicine as provided for in these regulations shall be deemed to be in default and shall forfeit all monetary scholarship payments made to him, and shall make restitution of those funds to the Commonwealth of Virginia as provided for in subdivisions 2 through 6. of this

section.

6. 2. Provide for termination of the contract by the recipient while the recipient is enrolled in medical school; upon the recipient's notice and immediate repayment to the Commonwealth of the total amount of the scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient that if the recipient defaults while still in medical school or residency, by voluntarily notifying the commissioner in writing that he will not practice primary care in a Virginia medically underserved area as required by his contract, by voluntarily not proceeding to the next year of medical education or residency, or by withdrawing from medical school or residency, he shall make restitution to the Commonwealth of Virginia by repayment of all monetary scholarship awards plus interest on the amount of the restitution .

7. 3. Provide that if the recipient fails who defaults by failing to maintain satisfactory academic progress, the recipient may, upon certification of the commissioner, be relieved of the contract obligation to engage in full-time primary care practice in a medically underserved area, or in a designated state facility, upon repayment or by reason of his dismissal from medical school for any reason, shall make restitution to the Commonwealth of Virginia by repayment of all monetary scholarship awards plus interest on the amount of such restitution to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient .

8. 4. Provide that if the recipient becomes permanently disabled is in default due to death or permanent disability so as not to be able to engage in primary care practice, the recipient may, upon certification of the commissioner, be relieved of the obligation under the contract to engage in full-time primary care practice in an underserved area, or in a designated state facility, upon repayment or his personal representative shall make restitution to the Commonwealth of the total amount of scholarship funds received plus interest on such amount computed at 8.0% per annum from the date of receipt of scholarship funds. For recipients completing part of the practice obligation prior to becoming permanently disabled, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship award multiplied by the number of years practiced. Unusual hardship may be reviewed for variance by the board on a case-by-case basis . Partial fulfillment of the recipient's contractual obligation by the practice of medicine as provided for in this contract prior to death or permanent disability shall reduce the amount of restitution plus interest due by a proportionate amount of money, such

proportion being determined as the ratio of the number of whole months that a recipient has practiced primary care medicine in an approved location to the total number of months of the contractual obligation the recipient has incurred.

5. Provide that individual cases of extraordinary hardship may be considered by the commissioner for forgiveness or partial forgiveness of payment or service.

9. Provide that if the recipient expires prior to entering primary care practice or subsequent to entering practice in a designated medically underserved area or state facility, the scholarship indebtedness shall be forgiven.

10. 6. Provide that any recipient of a scholarship, who fails or refuses defaults by evasion or refusal to fulfill the obligation to practice primary care medicine in a medically underserved area or designated state facility for a period of years equal to the number of annual scholarships received at any time following completion of medical school and residency training , shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest on the tripled obligation amount at the prevailing bank rate of interest for similar amounts of unsecured debt. make restitution by repaying all monetary scholarship awards, plus penalty, plus interest on such restitution to the Commonwealth of Virginia. A recipient will be considered to be in such default on the date:

a. The commissioner is notified in writing by the recipient that he does not intend to fulfill his contractual obligation;

b. The recipient has not accepted a placement and commenced his period of obligated practice as provided for in subdivision 2 of this section; or

c. The recipient absents himself without the consent of the commissioner from the place of medical practice which the commissioner has approved for fulfillment of his contractual obligation.

11. Provide that for a recipient who fulfills part of the contractual obligation by practicing primary care medicine in a medically underserved area, or in a designated state facility, for one or more years, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship multiplied by the number of years practiced in the appropriate area or facility, and the remainder tripled as provided in subdivision 10 of this section. Partial years of practice may be credited beyond the one year minimum practice requirement.

## § 4.2. Repayment.

A. Unless repayment is forgiven as specified in



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subdivision 9 of § 4.1 or by special variance as provided in subdivisions 6, 7 and 8 of § 4.1 all scholarships shall be repaid to the Commonwealth, either by the recipient's practice of primary care medicine in a medically underserved area, or designated state facility, or through cash payments as specified in subdivisions 10 and 11 of § 4.1.

## B. Repayment by practice.

It is the intent of the Virginia Medical Scholarship Program that recipients repay their scholarship obligation by practice. Each recipient electing to repay by practice shall notify the commissioner in writing of his proposed practice location not more than 30 days after completing his approved residency program. After receiving written approval of his practice location from the commissioner, the recipient shall begin his approved practice not more than 90 days after completing his primary care residency program. A recipient will receive one year of credit toward fulfillment of his scholarship obligation for each 12 months of full-time (minimum of 40 hours per week) continuous primary care practice. Absences from the practice in excess of seven weeks per 12-month practice period for maternity leave, illness, vacation, or any other purpose shall not be credited toward repayment and will extend the recipient's total obligation by the number of weeks of excess absence. Any recipient who partially completes a scholarship obligation by practicing for one year or longer in an approved practice will be required to fulfill the remainder of the scholarship obligation by cash repayment in accordance with subsection C of this section. Credit for partial years of service, beyond the one-year minimum practice requirement, will be applied toward fulfillment of the scholarship obligation.

## C. Cash repayment.

Cash repayment by recipients who terminate their contracts prior to the completion of training shall be made in accordance with subdivisions 6 and 7 of § 4.1 and by recipients who become disabled before fulfilling the practice obligation in accordance with subdivision 8 of § 4.1. Cash repayment by recipients who otherwise fail or refuse to fulfill their practice obligation shall be made in accordance with subdivisions 10 and 11 of § 4.1.

## D. Cash repayment amount.

The full amount to be repaid by a recipient who fails or refuses to fulfill the practice obligation shall be determined in the following manner: the annual amount of the scholarship for the year the recipient obtained the scholarship multiplied by three, plus interest (current bank rate of interest on a similar amount of unsecured debt) calculated from the date of receipt of funds by the recipient until the scholarship is fully repaid. Repeat the above calculation for each scholarship that the recipient obtained and add the sums of the calculations to determine the total amount due to be repaid to the Commonwealth.

## E. Cash repayment schedule.

Any scholarship to be repaid in cash payments due to the recipient's failure to enter into an approved practice shall be repaid within two years of the completion of the recipient's graduate training. Any scholarship to be repaid in cash payments due after partial repayment by practice shall be paid within two years of the recipient's departure from his approved practice. Failure of any recipient to complete a schedule of cash repayments within the required two years or to enter the practice of primary care medicine in a medically underserved area, or designated state facility, shall be cause for the commissioner to refer the matter to the Attorney General for disposition. The Attorney General shall take such action as the Attorney General deems proper to ensure reimbursement to the Commonwealth. If court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs and reasonable attorney's fees incurred by the Commonwealth in such collection.

## PART V. REPAYMENT.

### § 5.1. Repayment.

Repayment requirements for scholarship recipients are as follows:

1. Payment of restitution plus interest shall be due on the date that the recipient is deemed by the commissioner to be in default.

2. The commissioner in his discretion may permit extension of the period of payment of restitution plus interest for up to 24 months from the date that the recipient is deemed to be in default.

3. Partial fulfillment of the recipient's contractual obligation by the practice of medicine as provided for in this contract, shall reduce the amount of restitution plus interest due by an amount of money equal to the same percentage of all monetary awards as the number of whole months that the recipient has practiced primary care medicine in an approved location is as a percentage of the total number of months of the contractual obligation the recipient has incurred.

4. Failure of a recipient to make any payment on his debt of restitution plus interest when it is due shall be cause for the commissioner to refer the debt to the Attorney General of the Commonwealth of Virginia for collection. The recipient shall be responsible for any costs of collection as may be provided in Virginia law.

## PART V. VI. RECORDS AND REPORTING.

### § 5.1. 6.1. Reporting requirements.

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Reporting requirements of medical schools and scholarship recipients are as follows:

1. Each Virginia participating medical school shall maintain accurate records of the status of scholarship recipients until the recipients graduate from medical school and during any postgraduate year that a scholarship is awarded. The medical schools shall provide a report listing the status of each recipient annually to the commissioner.

2. Each scholarship recipient shall, during the post-scholarship award period as an intern or resident, report his location and status to the commissioner and to the medical school where he received scholarship award(s) annually, during the month of July. In addition, each scholarship recipient shall, during his period of obligated practice, report his status annually to the commissioner. The report shall include sufficient information as requested by the commissioner to verify compliance with the practice requirements of the scholarship contract. Additionally, any scholarship recipient shall immediately inform the commissioner of any change in his practice location or change in his practice status. For purposes of this provision, notification within 10 days of any such change shall be considered immediate notification. At any time provide information as requested by the commissioner to verify compliance with the practice requirements of the scholarship contract. The recipient shall report any changes of mailing address, change of academic standing, change of intent to fulfill his contractual obligation and any other information which may be relevant to the contract at such time as changes or information may occur. The recipient shall promptly respond with such information as may from time to time be requested by the commissioner.

\* NOTE: A variance (of one additional year) to the maximum three-year residency limitation will be available to medical scholarship recipients who choose to complete an obstetrics/gynecology residency program or a certificate of added qualification in primary care upon their request.

V.A.R. Doc. No. R94-551; Filed February 2, 1994, 9:52 a.m.

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**Title of Regulation:** VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

**Statutory Authority:** §§ 32.1-12, 32.1-122.5, and 32.1-122.6:02 of the Code of Virginia.

**Public Hearing Date:** March 8, 1994 - 9 a.m.

Written comments may be submitted until April 25, 1994.

(See Calendar of Events section for additional information)

**Basis:** Section 32.1-122.6:02 requires the Board of Health to promulgate regulations for administering the Nurse Practitioner/Nurse Midwife Scholarship Program.

**Purpose:** To increase the numbers of nurse practitioners, including nurse midwives, as a viable solution to the lack of available primary care and obstetrical care services in medically underserved areas of the state by establishing a Nurse Practitioner/Nurse Midwife Scholarship Program to be regulated by the Board of Health and administered by the Department of Health.

**Substance:** These regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia nurse practitioner/nurse midwife scholarships to students; the general terms and conditions applicable to the obligation of each nurse practitioner/nurse midwife scholarship recipient to practice full time as a nurse practitioner/nurse midwife in a medically underserved area of Virginia, as identified by the Board of Health by regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

**Issues:** There will be greater access for the public in need of affordable primary health care in medically underserved areas in Virginia. There are no known disadvantages to the public.

**Impact: Number and Types of Regulated Entities or Persons Affected.** Registered nurses seeking to become nurse practitioners or nurse midwives will be affected. The annual number of scholarships set by the General Assembly is five.

**Projected Cost to Regulated Entities and to the Commonwealth for Implementation and Compliance.** The regulations establish the rules for the program and do not impose any cost to recipient nurses. The amount and number of nurse practitioner/nurse midwife scholarships will be set each biennium within the Appropriations Act. While administration of the program will require Virginia Department of Health staff time, new funds designated for this purpose are not anticipated.

**Beneficial Impact:** Scholarships will increase nurse practitioners/nurse midwives available to provide services in provider shortage areas where physicians are attempting to cover large geographic areas. This program can increase access in Virginia to earlier care, reducing complications and poor health outcomes. In addition, nurse practitioners working on health department teams with physicians and public health nurses will increase the department's capability of meeting increased demand for prenatal care services, particularly among high risk minority populations and in rural areas.

**Need and Potential Consequences in Absence of Regulations.** Access to prenatal care is essential in preventing low birth weight, the leading cause of infant

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mortality. Access to primary care services can be the key to preventing more serious, and more costly, medical problems. The challenges of rural practice, cost of malpractice insurance and other issues have caused a shortage of physicians in the 69 medically underserved areas in Virginia. Access to affordable primary health care is needed by a large population in Virginia who are lacking in health insurance and other resources to provide care. Nurse practitioners/nurse midwives are a recognized solution to filling identified needs.

The intent of the General Assembly to implement an incentive program designed to improve access to primary care services would be stymied by the lack of program regulations.

Impact of Proposed Regulations on Small Businesses. If additional nurse practitioners/nurse midwives practice in physician's offices in medically underserved areas, rural physicians can see more patients and generate additional revenue. There will be no negative impact on small businesses.

## Summary:

*The proposed regulation sets forth (i) the criteria for students' eligibility to receive a Virginia nurse practitioner/nurse midwife scholarship, circumstances under which scholarship awards will be made, and the process for awarding Virginia nurse practitioner/nurse midwife scholarships to students; (ii) the general terms and conditions applicable to the obligation of each nurse practitioner/nurse midwife scholarship recipient to practice full time as a nurse practitioner/nurse midwife in a medically underserved area of Virginia, as identified by Board of Health regulations; and (iii) penalties for a recipient's failure to fulfill the practice requirements of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.*

VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

## 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:

"Board" or "Board of Health" means the State Board of Health.

"Certified" means having passed an examination through a national certifying organization.

"Commissioner" means the State Health Commissioner.

"Interest at the prevailing bank rate for similar amounts of unsecured debt" means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

"Medically underserved area" means a geographic area in Virginia designated by the State Board of Health in accordance with the Rules and Regulations for the Identification of Medically Underserved Areas (VR 355-40-500).

"Nurse midwife" means a registered nurse who has met the additional requirements of education and professional certification to practice as a nurse midwife in the Commonwealth.

"Nurse practitioner" means a registered nurse who has met the additional requirements of education and professional certification to practice as a nurse practitioner in the Commonwealth.

"Practice" means to pursue a profession actively.

"Recipient" or "scholarship recipient" means an eligible registered nurse who enters into a contract with the commissioner and receives one or more scholarship awards via the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

## PART II. GENERAL INFORMATION.

### § 2.1. Purpose.

These regulations set forth the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia nurse practitioner/nurse midwife scholarships to students; the general terms and conditions applicable to the obligation of each recipient of a nurse practitioner/nurse midwife scholarship to practice full time as a nurse practitioner/nurse midwife in a medically underserved area of Virginia, as identified by the Board of Health by regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

### § 2.2. Administration.

The Commissioner of Health shall act as fiscal agent for the board in administration of the scholarship program through a Nursing Scholarship Committee. All scholarship awards are made by a Nursing Scholarship Committee, appointed by the State Board of Health. The Nursing Scholarship Committee shall consist of five members or their designees: three faculty members representing nurse practitioner or nurse midwife education programs, one nurse practitioner actively engaged in practice, and one former scholarship recipient (commencing the third year

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of scholarship availability). Committee appointments shall be for two years and members may not serve more than two consecutive terms.

## § 2.3. Variance.

Any requests for variance from these regulations shall be considered on an individual basis by the board in regular session.

## PART III. SCHOLARSHIP AWARDS.

### § 3.1. Eligible applicants.

Any student accepted or enrolled in an accredited nurse practitioner or nurse midwife program shall be eligible for a Virginia Nurse Practitioner/Nurse Midwife Scholarship. In accordance with the authorizing statute and to further the purpose of identifying the recipients most likely to contribute and maintain provision of services in medically underserved areas in employment settings that serve persons unable to pay or supported by assistance programs, preference for the scholarship award shall be given to: residents of the Commonwealth; minority students; students enrolled in family practice, obstetrics and gynecology, pediatric, adult health and geriatric nurse practitioners programs; and residents of medically underserved areas of Virginia as determined by the Board of Health in accordance with the provisions of VR 355-40-500.

### § 3.2. Scholarship amount.

The amount for Virginia nurse practitioner/nurse midwife scholarships available each year shall be as provided by the Virginia General Assembly in that year's Appropriation Act. Scholarships shall be awarded to the recipients upon or following the recipient's execution of a contract with the commissioner for scholarship repayment.

### § 3.3. Distribution of scholarships.

Annually, by March 1 of each calendar year, the Nursing Scholarship Committee shall inform the nurse practitioner/nurse midwife schools of education of the availability of the nurse practitioner/nurse midwife scholarships and provide the schools with application forms for submission by eligible applicants. Until such time as a fully accredited nurse midwife education program is established at any health service center in Virginia, attendance at an accredited program in a nearby state is acceptable for scholarship eligibility. The Nursing Scholarship Committee shall convene annually for the purpose of reviewing applications and awarding scholarships. Scholarship awards shall be based upon majority vote of the Nursing Scholarship Committee.

## PART IV. CONTRACTS.

### § 4.1. Contract provisions.

Prior to the award of a scholarship, the commissioner shall enter into a contract with the recipient. The contract shall:

1. Provide that the recipient will pursue the nurse practitioner/nurse midwife course of the designated school until graduation and will pursue full-time practice as a nurse practitioner or nurse midwife within two years following completion of training and for a period of years equal to the number of annual scholarships awarded. The area of employment must be on the list of Virginia medically underserved areas approved by the State Board of Health and in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services on the date of commencement of contract obligation fulfillment.

2. Provide that the recipient repaying the scholarship obligation will practice in a medically underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services.

3. Provide that the recipient will not voluntarily obligate himself for military service prior to completion of the repayment period.

4. Provide for termination of the contract by the recipient while the recipient is enrolled in nurse practitioner or nurse midwife school, upon the recipient's notice and immediate repayment to the Commonwealth of the total amount of the scholarship funds plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

5. Provide that if the recipient fails to maintain satisfactory academic progress the recipient may, upon certification by the Nursing Scholarship Committee, be relieved of the contract obligation to engage in full-time nurse practitioner/nurse midwife practice in a medically underserved area and in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

6. Provide that if the recipient becomes permanently disabled so as not to be able to engage in nurse

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practitioner or nurse midwife practice, the recipient may, upon certification of the Nursing Scholarship Committee, be relieved of the obligation under the contract to engage in full-time practice in an underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt from the date of receipt of scholarship funds. For recipients completing part of the practice obligation prior to becoming permanently disabled, the total amount of scholarship funds received and owed shall be reduced by the amount of the annual scholarship award multiplied by the number of years practiced. Unusual hardship may be reviewed by the board on a case-by-case basis.

7. Provide that if the recipient expires prior to entering practice or subsequent to entering practice in a designated medically underserved area, the scholarship indebtedness shall be forgiven.

8. Provide that any recipient of a scholarship who fails or refuses to fulfill the obligation to practice in a medically underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services for a period of years equal to the number of annual scholarships received shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest on the tripled obligation amount at the prevailing bank rate of interest for similar amounts of unsecured debt.

9. Provide that for a recipient who fulfills only part of the contractual obligation, the total amount of scholarship funds received and owed shall be reduced by the amount of the annual scholarship, divided into months and multiplied by the number of months practiced in the appropriate area, and the remainder tripled as provided in subdivision 6 of this section.

## PART V. REPAYMENT.

### § 5.1. Repayment of scholarships.

Unless repayment is forgiven as specified in subdivision 7 of § 4.1 or by special variance as provided in subdivision 6 of § 4.1 all scholarships shall be repaid to the Commonwealth, either by the recipient's practice as a nurse practitioner or nurse midwife in a medically underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored

insurance programs designed to assure access of covered persons to medical care services, or through cash payments as specified in subdivisions 8 and 9 of § 4.1.

### § 5.2. Repayment by practice.

It is the intent of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program that recipients repay their scholarship obligation by practice. Each recipient electing to repay by practice shall notify the commissioner in writing of his proposed practice location not more than 30 days following beginning of employment. Written approval of the practice location will be sent the recipient by the commissioner. A recipient will receive one year of credit toward fulfillment of his scholarship application for each 12 months of full-time (minimum of 40 hours per week) continuous practice. Absences from practice in excess of seven weeks per 12-month practice period for maternity leave, illness, vacation, or any other purpose shall not be credited toward repayment and will extend the recipient's total obligation by the number of weeks of excess absence. Any recipient who partially completes a scholarship obligation will be required to fulfill the remainder of the scholarship obligation by cash repayment in accordance with § 5.3. Credit for partial years of service will be applied toward fulfillment of the scholarship obligation.

### § 5.3. Cash repayment.

Cash repayment by recipients who terminate their contracts prior to the completion of training shall be made in accordance with subdivisions 4 and 5 of § 4.1 and by recipients who become disabled before fulfilling the practice obligation in accordance with subdivision 6 of § 4.1. Cash repayments by recipients who otherwise fail or refuse to fulfill their practice obligation shall be made in accordance with subdivisions 8 and 9 of § 4.1.

### § 5.4. Cash repayment amount.

The full amount to be repaid by a recipient who fails or refuses to fulfill the practice obligation shall be determined in the following manner: the annual amount of the scholarship for the year the recipient obtained the scholarship multiplied by three, plus interest (current bank rate of interest on a similar amount of unsecured debt) calculated from the date of receipt of funds by the recipient until the scholarship is fully paid. Repeat the above calculation for each scholarship that the recipient obtained and add the sums of the calculation to determine the total amount due to be repaid to the Commonwealth.

### § 5.5. Cash repayment schedule.

Any scholarship to be repaid in cash payments due to the recipient's failure to enter into an approved practice shall be repaid within two years of the date contract obligation should commence. Any scholarship to be repaid in cash payment due after partial repayment by practice shall be paid within two years of the recipient's departure from his approved practice. Failure of any recipient to

complete a schedule of cash repayments within the required two years or to enter the nurse practitioner/nurse midwife practice in a medically underserved area shall be cause for the Nursing Scholarship Committee to refer the matter to the Attorney General for disposition. The Attorney General shall take such action as the Attorney General deems proper to assure reimbursement to the Commonwealth. If court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs.

## PART VI RECORDS AND REPORTING.

### § 6.1. Reporting requirements.

Reporting requirements of nurse practitioner/nurse midwife schools and scholarship recipients are as follows:

1. Each nurse practitioner/nurse midwife school shall maintain accurate records of the status of scholarship recipients until the recipients graduate and during any postgraduate year that a scholarship is awarded. The schools shall provide a report listing the academic status of each recipient annually to the Nursing Scholarship Committee.
2. Each scholarship recipient shall, during the post scholarship award period, report his location and employment status to the Nursing Scholarship Committee and to the school where he received scholarship award or awards annually during the month of July. In addition, each scholarship recipient shall, during his period of obligated practice, report his status annually to the Nursing Scholarship Committee. The report shall include sufficient information as requested by the Nursing Scholarship Committee to verify compliance with the practice requirements of the scholarship contract. Additionally, each scholarship recipient shall immediately inform the Nursing Scholarship Committee of any change in his practice location or change in his practice status. For purposes of this provision, notification within 10 days of any such change shall be considered immediate notification.
3. The Nursing Scholarship Committee will report annually to the board the following: number of applicants for scholarships, number of scholarships awarded, number of Virginia residents awarded scholarships, number of minorities and students from medically underserved areas awarded scholarships, total funding awarded, the practice sites of former scholarship recipients, and the number of students making monetary repayment of scholarship with reasons for failure to practice identified.

V.A.R. Doc. No. R94-533; Filed January 31, 1994, 12:49 p.m.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

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

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

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

**Public Hearing Date:** N/A - Written comments may be submitted until March 7, 1994.

(See Calendar of Events section for additional information)

**Basis:** Section 36-55.30:3 of the Code of Virginia authorizes the authority to adopt, amend and repeal regulations to carry into effect the powers and purposes of the authority.

**Purpose:** The purpose of the proposed amendments is to make the eligibility of a family under the authority's single family program consistent with federal regulations and customary lending practices.

**Substance:** The amendments to the authority's Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority will delete, in the context of the financing of a single family dwelling unit, the requirement that a "family" be composed of two or more individuals related by blood, marriage or adoption and thereby revise the definition of "family" to state that a family is two or more individuals living together as a single nonprofit housekeeping unit.

**Issues:** The proposed amendment will, by making the authority's lending policies as to family eligibility consistent with those of FHA, VA, FmHA and the private lending industry and with the policies of the Equal Credit Opportunity Act, simplify the administration of the authority's single family programs, and increase the number of persons of low and moderate income who will be eligible for loans under those programs. Because the authority has sufficient funds to provide loans to all expected eligible applicants, the proposed amendment will not adversely affect any persons or families who would not be eligible under the current regulations. The authority is not aware of any disadvantages for the public which would result from the adoption of the proposed amendment, although there may be objections to the proposed amendment on policy grounds.

**Impact:** The authority expects that the proposed amendment will result in the authority's financing of 60 additional single family loans annually for persons who would not otherwise be eligible. The authority does not expect that any costs will be incurred for the implementation of and compliance with the proposed

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amendment. The authority is not aware of any localities that will be particularly affected by the proposed amendment.

## Summary:

*The proposed amendments to the authority's rules and regulations - general provisions for programs of the Virginia Housing Development Authority will revise the definition of "family" to state that, in the context of the financing of a single family dwelling unit, a family is two or more individuals living together as a single nonprofit housekeeping unit. The proposed amendments will delete the requirement that the family be composed of two or more individuals related by blood, marriage or adoption.*

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

## § 1. Definitions.

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

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

*"Adjusted family income"* means the total annual income of a person or all members of a family residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings, less the total of the credits applicable to such person or family, computed in accordance with the following: (i) a credit in an amount equal to \$1,000 for each dependent family member other than such a family member qualifying under (vi) below; (ii) a credit in an amount equal to the lesser of \$1,000 or 10% of such total annual income; (iii) a credit in an amount equal to all income of such person or any such family member of an unusual or temporary nature and not related to such person's or family member's regular employment, to the extent approved by the executive director; (iv) a credit in an amount equal to all earnings of any family member who is a minor under 18 years of age or who is physically or mentally handicapped, as determined on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; (v) a credit in an amount equal to such person or family's medical expenses, not compensated for or covered by insurance, in excess of 3.0% of such total annual income; and (vi) a credit in an amount equal to 1/2 of the total annual income of all family members over 18 years of age who are secondary wage earners in the family, provided, however, that such credit shall not exceed the amount of \$2,500. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may own or occupy a single family dwelling unit or

multi-family residential housing development, the authority may provide in its rules and regulations that the adjusted family income shall be computed, for the purpose of determining eligibility for ownership or occupancy of such single family dwelling unit or the dwelling units in such multi-family residential housing development (or, if so provided in the applicable rules and regulations of the authority, only those dwelling units in such development which are subject to such federal income limitations), in the manner specified by such federal law or rules and regulations (subject to such modifications as may be provided in or authorized by the applicable rules and regulations of the authority) rather than in the manner provided in the preceding sentence.

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

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

*"Authority"* means the Virginia Housing Development Authority.

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

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

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

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

*"Family"* means, in the context of the financing of a single family dwelling unit, two or more individuals ~~related by blood, marriage or adoption~~, living together on the premises as a single nonprofit housekeeping unit. In all contexts other than the financing of a single family dwelling unit, "family" means two or more individuals living together in accordance with law.

*"FHA"* means the Federal Housing Administration and any successor entity.

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

and regulations and subject to the regulatory powers of the authority.

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

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

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

*"Person"* means:

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

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

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

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

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

## § 2. Eligibility for occupancy.

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

B. To be considered eligible for occupancy of a multi-family dwelling unit financed by an authority mortgage loan, a person or family shall not have an adjusted family income greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November 15, 1991, seven times the total annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the board may from time to time establish, by resolution or by rules and regulations, lower income limits for occupancy of such dwelling unit; and provided further that in the case of any dwelling unit for which no amounts are payable by or on behalf of such person or family or the amounts payable by or on behalf of such person or family are deemed by the board not to be rent, the income limits shall be established by the board by resolution or by rules and regulations; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November 15, 1991, such percentage of the area median gross income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree



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to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above.

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

D. With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in subsection C of this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the executive director may direct or permit the housing sponsor to terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit. If any person or family residing in a housing development which is a cooperative is so required to be removed from the housing development, such person or family shall be discharged from any liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy in such cooperative and any additional sums payable to such person or family in accordance with a schedule prescribed or approved by the authority, subject however to the terms of any instrument or agreement relating to such cooperative or the occupancy thereof.

## § 3. Forms.

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

## § 4. Interest rates.

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

## § 5. Federally assisted loans.

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

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

A. The board by resolution may authorize the authority to operate and administer any program to provide loans or other housing assistance for persons and families of low and moderate income and, in furtherance thereof, to enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof, any municipality or any other persons or entities and to take such other action as shall be necessary or appropriate for the purpose of operating and administering, on behalf of or in cooperation with any of the foregoing, any such program.

B. The board by resolution may authorize the acceptance by the authority of gifts, grants, loans, contributions or other aid, including insurance and guarantees, from the federal government, the

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

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

## § 7. Assistance of mortgage lenders.

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

## § 8. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans from mortgage lenders. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase

shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds.

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

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

## § 9. Waiver.

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

## § 10. Amendment.

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

## § 11. Separability.

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

V.A.R. Doc. No. R94-546; Filed February 2, 1994, 11:33 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

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

**Public Hearing Date:** N/A – Written comments may be submitted until March 7, 1994.

(See Calendar of Events section for additional information)

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**Basis:** Section 36-55.30:3 of the Code of Virginia authorizes the authority to adopt, amend and repeal regulations to carry into effect the powers and purposes of the authority.

**Purpose:** The purpose of the proposed amendments is to streamline the loan closing process, to make the authority's requirements more consistent with those of FHA, VA, FmHA and private lenders, and to increase availability of the authority's single family program to persons and families of low and moderate income.

**Substance:** The amendments to the authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income will:

1. Implement changes in maximum sales prices and income limits for loans on which the authority takes a reservation on or after March 16, 1994.
2. Delete the requirement that a "family" be composed of two or more individuals related by blood, marriage or adoption.
3. Implement certain programmatic changes to the regulations governing the single family loan closing process as follows:
  - a. deletion of provisions relating to certain exhibits to the rules and regulations which are to be eliminated;
  - b. permit the delegation by the authority of some or all of the underwriting and/or closing functions to the authority's origination/servicing agents;
  - c. revising the restrictions on business use of the home to permit limited business use consistent with federal tax law;
  - d. allowing the financing of lot sizes greater than two acres and smaller than five acres when determined by the authority to be usual and customary in the area;
  - e. increasing to 50% of sales price the maximum net worth which an applicant can have in order to be eligible for a mortgage loan;
  - f. providing for the consideration of compensating factors when applying the authority's underwriting ratios; and
  - g. amending the authority's property guidelines such that the authority may make loans on property not located on a state maintained road, but on private roads with recorded right-of-way and maintenance agreements acceptable to the authority.
4. Implement the authority's FHA plus loan program to provide additional loan financing in connection with FHA insured loans.

5. Make minor clarifications and typographical corrections.

**Issues:** The proposed amendments will increase maximum sales prices and income limits and modify certain underwriting restrictions (i.e., those relating to business use of the residence, maximum lot size, maximum net worth, compensating factors in underwriting ratios, and location on a state maintained road) to increase eligibility of low and moderate income persons and families for loans under the authority's single family program. Because the authority has sufficient funds to provide loans to all expected eligible applicants, the proposed amendments will not adversely affect any persons or families who would be eligible under the current regulations.

The proposed amendments will also authorize the authority's FHA plus program, under which the authority will provide a second loan in connection with an FHA insured loan, to fund a portion of the downpayment and closing costs not financed by the FHA insured loan. The financing of this second loan will enable more eligible persons and families of low and moderate income to participate in the authority's single family program. While such second loans and the FHA insured loans made in connection therewith may experience greater delinquencies and foreclosures, the authority does not expect to suffer any significant greater loss since the first loan is FHA insured and losses on the second loan are expected to be offset by the increased interest income on the first and second loans.

The proposed amendments will authorize the authority to delegate some of the underwriting and closing functions to the financial institutions which serve as the authority's originating/servicing agents. This authorization will provide greater flexibility in the type of services to be provided by the originating/servicing agents and is expected to result in expediting the loan underwriting process.

The proposed amendments will, by making the authority's lending policies as to family eligibility consistent with those of FHA, VA, FmHA and private lending industry and with the policy of the Equal Credit Opportunity Act, simplify the administration of the authority's single family programs, and increase the number of persons of low and moderate income who will be eligible for loans under those programs. Because of the sufficiency of loan funds of the authority as noted above, the proposed amendments will not adversely affect any persons or families who would be eligible under the current regulations. The authority is not aware of any disadvantages for the public which would result from the adoption of the proposed amendments, although there may be objections to the proposed amendments on policy grounds.

**Impact:** The authority expects that the proposed amendments will result in the authority's financing of 900 additional single family loans annually for persons and families who would not otherwise be eligible. The authority does not expect that any costs will be incurred

for the implementation of and compliance with the proposed amendments. The authority is not aware of any localities that will be particularly affected by the proposed amendments.

## Summary:

*The proposed amendments to the authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income will (i) implement changes in maximum sales prices and income limits for loans on which the authority takes a reservation on or after March 16, 1994; (ii) delete the requirement that a "family" be composed of two or more individuals related by blood, marriage or adoption; (iii) implement certain programmatic changes governing the single family loan closing process, including (a) deletion of provisions relating to certain exhibits which are to be eliminated, (b) permitting delegation by the authority of some or all of the underwriting and/or closing functions to the authority's origination/servicing agents, (c) revising the restrictions on business use of the home to permit limited business use consistent with federal tax law, (d) allowing the financing of lot sizes greater than two acres and smaller than five acres when determined by the authority to be usual and customary in the area, (e) increasing to 50% of sales price the maximum net worth which an applicant can have in order to be eligible for a mortgage loan, (f) providing for the consideration of compensating factors when applying the authority's underwriting ratios, and (g) amending the authority's property guidelines such that the authority may make loans on property not located on a state maintained road, but on private roads with recorded right-of-way and maintenance agreements acceptable to the authority; (iv) implement the authority's FHA plus loan program to provide additional loan financing in connection with FHA insured loans; and (v) make minor clarifications and typographical corrections.*

VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

## PART I. GENERAL.

### § 1.1. General.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to persons and families of low and moderate income for the acquisition (and, where applicable, rehabilitation), ownership and occupancy of single family housing units.

In order to be considered eligible for a mortgage loan hereunder, a "person" or "family" (as defined in the authority's rules and regulations) must have a "gross

family income" (as determined in accordance with the authority's rules and regulations) which does not exceed the applicable income limitation set forth in Part II hereof. Furthermore, the sales price of any single family unit to be financed hereunder must not exceed the applicable sales price limit set forth in Part II hereof. The term "sales price," with respect to a mortgage loan for the combined acquisition and rehabilitation of a single family dwelling unit, shall include the cost of acquisition, plus the cost of rehabilitation and debt service for such period of rehabilitation, not to exceed three months, as the executive director shall determine that such dwelling unit will not be available for occupancy. In addition, each mortgage loan must satisfy all requirements of federal law applicable to loans financed with the proceeds of tax-exempt bonds as set forth in Part II hereof.

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

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any mortgage loan hereunder to waive or modify any provisions of these rules and regulations where deemed appropriate by him for good cause, to the extent not inconsistent with the Act.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the mortgagor under the agreements and documents executed in connection with the mortgage loan.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the originating and administration of mortgage loans under the authority's single family housing program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

### § 1.2. Origination and servicing of mortgage loans.

#### A. Approval/definitions.

The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this § 1.2, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of

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mortgage loans shall, except as noted in subsection H of this § 1.2, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;
2. Have a net worth equal to or in excess of \$250,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;
3. Have a staff with demonstrated ability and experience in mortgage loan origination and processing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); and
4. Such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into an originating and servicing agreement ("originating and servicing agreement") with the authority containing such terms and conditions as the executive director shall require with respect to the originating and servicing of mortgage loans hereunder.

For the purposes of these rules and regulations, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. Similarly, the term "originating agreement" shall hereinafter be deemed to include the term "originating and servicing agreement," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans. The term "servicing agreement" shall continue to mean only the agreement between the

authority and a servicing agent.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

## B. Allocation of funds.

The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;
2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;
3. The cost and difficulty of administration of the allocation of funds;
4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and
5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;

2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and

3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

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

#### C. Originating guide and servicing guide.

These rules and regulations constitute a portion of the originating guide of the authority. The processing guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of, these rules and regulations. The executive director is authorized to prepare and from time to time revise a processing guide and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the processing guide and the servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide (including the processing guide) and the servicing guide.

#### D. Making and purchase of new mortgage loans.

The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall

be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and these rules and regulations.

If the applicant and the application for a mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit, subject to the approval of ratification thereof by the board. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

#### E. Purchase of existing mortgage loans.

The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate and subject to the approval or ratification by the board. Upon

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satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the Servicing Guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

## F. Delegated underwriting and closing .

The executive director may, in his discretion, delegate to one or more originating agents *all or some of* the responsibility for *underwriting*, issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The issuance of such commitments shall be subject to ratification thereof by the board of the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority ~~after closing of each mortgage loan~~ *at such time as the authority may require* . If the executive director determines that a mortgage loan does not comply with *any requirement under* the originating guide, the applicable originating agreement, the Act or these rules and regulations *for which the originating agent was delegated responsibility* , he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

## G. Field originators.

The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;
2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;
3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and
4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall

enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under these rules and regulations as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of these rules and regulations requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

## H. Servicing by the authority.

The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

## PART II. PROGRAM REQUIREMENTS.

### § 2.1. Eligible persons and families.

#### A. Person.

A one-person household is eligible.

#### B. Family.

A single family loan can be made to more than one person only if all such persons to whom the loan is made are related by blood, marriage or adoption and are living together in the dwelling as a single nonprofit housekeeping unit.

#### C. Citizenship.

Each applicant for an authority mortgage loan must either be a United States citizen or be a lawful permanent (not conditional) resident alien as determined by the U.S. Department of Immigration and Naturalization Service.

### § 2.2. Compliance with certain requirements of the

Internal Revenue Code of 1986, as amended (hereinafter "the tax code").

The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for financing with the proceeds of tax-exempt bonds. In order to comply with these federal requirements and restrictions, the authority has established certain procedures which must be performed by the originating agent in order to determine such eligibility. The eligibility requirements for the borrower and the dwelling are described below as well as the procedures to be performed. The originating agent will certify to the performance of perform these procedures and evaluation of evaluate a borrower's eligibility by completing and signing the "Originating Agent's Checklist for Certain Requirements of the Tax Code" (Exhibit A(1)) prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth in other parts of this originating guide.

## § 2.2.1. Eligible borrowers.

### A. General.

In order to be considered an eligible borrower for an authority mortgage loan, an applicant must, among other things, meet all of the following federal criteria:

The applicant:

1. May not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents. (See § 2.2.1 B Three-year requirement);
2. Must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days (90 days in the case of a rehabilitation loan as defined in § 2.17) after the date of the closing of the mortgage loan. (See § 2.2.1 C Principal residence requirement);
3. Must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing. (See § 2.2.1 D New mortgage requirement);
4. Must have contracted to purchase an eligible dwelling. (See § 2.2.2 Eligible dwellings);
5. Must execute an affidavit of borrower (Exhibit E) at the time of loan application;
6. Must not receive income in an amount in excess of the applicable federal income limit imposed by the tax code (See § 2.5 Income requirements);
7. Must agree not to sell, lease or otherwise transfer

an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met. (See § 2.10 Loan assumptions); and

8. Must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.

### B. Three-year requirement.

An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a "present ownership interest" (as hereinafter defined) in his principal residence. Each borrower must certify on the affidavit of borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see § 2.3 Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. Definition of present ownership interest. "Present ownership interest" includes:

- a. A fee simple interest,
- b. A joint tenancy, a tenancy in common, or a tenancy by the entirety,
- c. The interest of a tenant shareholder in a cooperative,
- d. A life estate,
- e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time, and
- f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

- a. A remainder interest,
- b. An ordinary lease with or without an option to purchase,
- c. A mere expectancy to inherit an interest in a principal residence,
- d. The interest that a purchaser of a residence



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acquires on the execution of an accepted offer to purchase real estate, and

e. An interest in other than a principal residence during the previous three years.

2. Persons covered. This requirement applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. Prior tax returns. To verify that the eligible borrower meets the three-year requirement, the originating agent must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived.

The originating agent shall examine the tax returns particularly for any evidence that the eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. Review by originating agent. The originating agent must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) regarding the applicant's prior residency by reviewing any information including the credit report and the tax returns furnished by the eligible borrower for consistency, and ~~certify to the authority make a determination~~ that on the basis of its review ; ~~it is of the opinion that~~ each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

## C. Principal residence requirement.

1. General. An eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of the eligible borrower within 60 days (90 days in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the

authority. An eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan on the affidavit of borrower (to be updated by the verification and update of information form) and as part of the attachment to the deed of trust.

2. Definition of principal residence. A principal residence does not include any residence which can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner which would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where ~~any portion~~ more than 15% of the total living area is to be used primarily in a trade or business.

3. Land not to be used to produce income. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to the eligible borrower. The eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

4. Lot size. Only such land as is reasonably necessary to maintain the basic liveability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, or (iii) local city and county zoning ordinances which require more acreage will be taken into consideration , or (iv) if the lot size is determined by the authority, based upon objective information provided by the borrower, to be usual and customary in the area for comparably priced homes .

5. Review by originating agent. The affidavit of borrower (Exhibit E) must be reviewed by the originating agent for consistency with the eligible borrower's federal income tax returns and the credit report in order to support an opinion that the eligible

borrower is not engaged in any employment activity or trade or business which has been conducted in his principal residence, and the originating agent must, based on such review, make a determination that the borrower has not used any previous residence or any portion thereof primarily in any trade or business. Also, the originating agent shall review the appraiser report (Exhibit H) of an authority approved appraiser and the required photographs to determine based on the location and the structural design and other characteristics of the dwelling that the residence is suitable for use as a permanent residence and not for use primarily in a trade or business or for recreational purposes. Based on such review, the originating agent shall certify to the authority its findings and certain opinions in the checklist for certain requirements of the tax code (Exhibit A(1)) at the time the loan application is submitted to the authority for approval.

6. Post-closing procedures. The originating agent shall establish procedures to (i) review correspondence, checks and other documents received from the borrower during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of the borrower are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating agent may establish different procedures to verify compliance with this requirement.

#### D. New mortgage requirement.

Mortgage loans may be made only to persons who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which the eligible borrower is liable or which was incurred on behalf of the eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.

1. Definition of mortgage. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner-financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.

2. Temporary financing. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage

loan until it has determined that such construction has been satisfactorily completed.

3. Review by originating agent. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) the eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Upon Based upon such review, the originating agent shall certify to the authority that the agent is of the opinion make a determination that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of the borrower and that the borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.

#### E. Multiple loans.

Any eligible borrower may not have more than one outstanding authority first mortgage loan.

#### § 2.2.2. Eligible dwellings.

##### A. In general.

In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;
2. Be a one-family detached residence, a townhouse or one unit of an authority approved condominium; and
3. Satisfy the acquisition cost requirements set forth below.

##### B. Acquisition cost requirements.

1. General rule. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in § 2.3. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.

2. Acquisition cost requirements for assumptions. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see § 2.10 below).

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3. Definition of acquisition cost. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.

a. Acquisition cost includes:

(1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of the eligible borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items of personal property.)

(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost. (See Acquisition Cost Worksheet, Exhibit G, Item 4 and Appraiser Report, Exhibit H).

(3) The cost of land on which the eligible dwelling is located and which has been owned by the eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.

b. Acquisition cost does not include:

(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by the eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.

(2) The imputed value of services performed by the eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.

4. Acquisition cost worksheet (~~Exhibit G~~) and Appraiser Report (~~Exhibit H~~) computation. The originating agent is required to obtain from each eligible borrower a completed acquisition cost worksheet ~~affidavit of borrower~~ which shall specify in detail the basis for the purchase price of the eligible dwelling; ~~calculated include a calculation of the acquisition cost of the eligible dwelling in accordance with this subsection B. The originating agent shall assist the eligible borrower in the correct completion of the worksheet calculation of such acquisition cost. The originating agent must also obtain from the appraiser a completed appraiser's report which may also be relied upon in completing the acquisition cost worksheet. The acquisition cost worksheet of the eligible borrower shall constitute part of the affidavit of borrower required to be submitted with the loan submission. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling on the worksheet.~~

5. Review by originating agent. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in § 2.4. If the acquisition cost exceeds such limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases - see § 2.10 below). Also, as part of its review, the originating agent must review the ~~acquisition cost worksheet affidavit of borrower~~ submitted by each mortgage loan applicant; ~~and the appraiser report, and must certify to the authority that it is of the opinion make a determination that the acquisition cost of the eligible dwelling has been calculated in accordance with this subsection B. In addition, the originating agent must compare the information contained in the acquisition cost worksheet affidavit of borrower with the information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.~~

6. Independent appraisal. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.

## § 2.2.3. Targeted areas.

A. In general.

In accordance with the tax code, the authority will make a portion of the proceeds of an issue of its bonds available for financing eligible dwellings located in targeted areas for at least one year following the issuance of a series of bonds. The authority will exercise due diligence in making mortgage loans in targeted areas by

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advising originating agents and certain localities of the availability of such funds in targeted areas and by advising potential eligible borrowers of the availability of such funds through advertising and/or news releases. The amount, if any, allocated to an originating agent exclusively for targeted areas will be specified in a forward commitment agreement between the originating agent and the authority.

## B. Eligibility.

Mortgage loans for eligible dwellings located in targeted areas must comply in all respects with the requirements in this § 2.2 and elsewhere in this guide for all mortgage loans, except for the three-year requirement described in § 2.2.1 B. Notwithstanding this exception, the applicant must still submit certain federal income tax records. However, they will be used to verify income and to verify that previously owned residences have not been *primarily* used in a trade or business (and not to verify nonhomeownership), and only those records for the most recent year preceding execution of the mortgage documents (rather than the three most recent years) are required. See that section for the specific type of records to be submitted.

### 1. Definition of targeted areas.

a. A targeted area is an area which is a qualified census tract, as described in b below, or an area of chronic economic distress, as described in c below.

b. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the state-wide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury.

c. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury informed by the authority as to the location of areas so designated.

### § 2.3. Sales price limits.

A. The authority's maximum allowable sales price for loans which are closed on or after December 1, 1991, for which reservations are taken by the authority before March 16, 1994, shall be as follows:

Area	New Construction	Existing and Substantial Rehab.
1. Washington DC-MD-VA MSA <sup>1</sup> "inner areas"	\$131,790	\$131,790
2. "outer areas"	\$124,875	\$124,875
3. Norfolk-Va. Beach- Newport News MSA <sup>2</sup>	\$ 81,500	\$ 81,500
4. Richmond-		

Petersburg MSA <sup>3</sup>	\$ 79,500	\$ 79,500
5. Charlottesville MSA <sup>4</sup>	\$ 95,450	\$ 79,530
6. Clarke County	\$ 90,250	\$ 79,530
7. Culpeper County	\$ 84,050	\$ 79,530
8. Fauquier County	\$101,670	\$ 79,530
9. Frederick County and Winchester City	\$ 92,150	\$ 79,530
10. Isle of Wight County	\$ 81,500	\$ 79,530
11. King George County	\$ 89,300	\$ 79,530
12. Madison County	\$ 76,000	\$ 76,000
13. Orange County	\$ 77,900	\$ 77,900
14. Spotsylvania County and Fredericksburg City	\$102,700	\$ 79,530
15. Warren County	\$ 83,600	\$ 79,530
16. Balance of State <sup>5</sup>	\$ 75,500	\$ 75,500

<sup>1</sup> Washington DC-Maryland-Virginia MSA. Virginia Portion: "Inner Areas" - Alexandria City, Arlington County, Fairfax City, Fairfax County, Falls Church City; "Outer Areas" - Loudoun County, Manassas City, Manassas Park City, Prince William County, Stafford County.

<sup>2</sup> Norfolk-Virginia Beach-Newport News MSA. Chesapeake City, Gloucester County, Hampton City, James City County, Newport News City, Norfolk City, Poquoson City, Portsmouth City, Suffolk City, Virginia Beach City, Williamsburg City, York County.

<sup>3</sup> Richmond-Petersburg MSA. Charles City County, Chesterfield County, Colonial Heights City, Dinwiddie County, Goochland County, Hanover County, Henrico County, Hopewell City, New Kent County, Petersburg City, Powhatan County, Prince George County, Richmond City.

<sup>4</sup> Charlottesville MSA. Albemarle County, Charlottesville City, Fluvanna County, Greene County.

<sup>5</sup> Balance of State. All areas not listed above.

The executive director may from time to time waive the foregoing maximum allowable sales prices with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the sales price of the residences to be financed by any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

*The authority's maximum allowable sales price for loans for which reservations are taken by the authority on or after March 16, 1994, shall be 95% of the applicable maximum purchase prices (except that the maximum allowable sales price for targeted area residences shall be the same as are established for nontargeted residences) permitted or approved by the U.S. Department of the Treasury pursuant to the federal tax code. The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the dollar amounts of the foregoing maximum allowable sales prices for each area of the state. Any changes in the*

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dollar amounts of such maximum allowable sales prices shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

## B. Effect of solar grant.

The applicable maximum allowable sales price for new construction shall be increased by the amount of any grant to be received by a mortgagor under the authority's Solar Home Grant Program in connection with the acquisition of a residence.

## § 2.4. Net worth.

To be eligible for authority financing, an applicant cannot have a net worth exceeding ~~\$20,000 plus an additional \$1,000 of net worth for every \$5,000 of income over \$20,000~~ 50% of the sales price of the eligible dwelling. (The value of life insurance policies, retirement plans, furniture and household goods shall not be included in determining net worth.) In addition, the portion of the applicant's liquid assets which are used to make the down payment and to pay closing costs, up to a maximum of 25% of the sale price, will not be included in the net worth calculation.

Any income producing assets needed as a source of income in order to meet the minimum income requirements for an authority loan will not be included in the applicant's net worth for the purpose of determining whether this net worth limitation has been violated.

## § 2.5. Income requirements.

### A. Maximum gross family income.

As provided in § 2.2.1 A 6 the gross family income of an applicant for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this subsection A apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of § 2.2.1 A 6 are automatically met if an applicant's gross family income does not exceed the applicable limits set forth in this subsection.

For the purposes hereof, the term "gross family income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security

benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

1. For reservations made before March 16, 1994. For reservations made on or after March 1, 1989 before March 16, 1994, the maximum gross family incomes for eligible borrowers shall be determined or set forth as follows:

### (1) MAXIMUM GROSS FAMILY INCOME

~~Applicable~~ The maximum gross family incomes set forth in this paragraph shall be applicable only to loans for which reservations are taken by the authority on or after March 1, 1989 before March 16, 1994, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross family income for each borrower shall be a percentage (based on family size) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended) ~~(the "Median Family Income")~~, with respect to the residence of such borrower, which percentages shall be as follows:

Family Size	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
1 person	70%
2 persons	85%
3 or more persons	100%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross family income limits expressed in dollar amounts for each area of the state, as established by the executive director, and each family size. Any ~~adjustments to~~ changes in the dollar amounts of such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such ~~adjustments~~ changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

The executive director may from time to time waive the foregoing income limits with respect to such mortgage loans as he may designate if he determines that such waiver will enable the authority to assist the state in achieving its economic and housing goals and policies, provided that, in the event of any such waiver, the income of the borrowers to receive any mortgage loans so designated shall not exceed the applicable limits imposed by the U.S. Department of

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the Treasury pursuant to the federal tax code or such lesser limits as the executive director may establish. Any such waiver shall not apply upon the assumption of such mortgage loans.

2. For reservations made on or after March 16, 1994. For reservations made on or after March 16, 1994, the maximum gross family incomes shall be determined or set forth as follows:

The maximum gross family incomes set forth in this subdivision 2 shall be applicable only to loans for which reservations are taken by the authority on or after March 16, 1994, except loans to be guaranteed by the Farmers Home Administration ("FmHA").

The maximum gross family income for each borrower shall be a percentage (based on family size) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended) (the "median family income") as follows:

Family Size	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	85%
3 or more persons	100%

The executive director may from time to time establish maximum gross family incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate on which the interest rate has been reduced due to financial support by the authority:

Family Size	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	65%
3 or more persons	80%

The executive director may from time to time establish maximum gross family incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate if he determines that such maximum gross family incomes will enable the authority to assist the state in achieving its economic and housing goals and policies:

Family Size	Percentage of applicable median family income (regardless of whether residence is new construction, existing or substantially rehabilitated)
2 or fewer persons	65%
3 or more persons	80%

Family Size	substantially rehabilitated)
2 or fewer persons	95%
3 or more persons	110%

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross family income limits under this subdivision 2 expressed in dollar amounts for each area of the state, as established by the executive director, and each family size. Any changes to the dollar amounts of such income limits shall be effective as of such date as the executive director shall determine, and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

3. For loans guaranteed by FmHA.

## (2) FmHA MAXIMUM FAMILY INCOME

Applicable only to loans to be guaranteed by FmHA.

The With respect to a loan to be guaranteed by FmHA, the maximum family income for each borrower shall be the lesser of the maximum gross family income as determined in accordance with § 2.5 A (1) A 1 or 2 or FmHA income limits in effect at the time of the application.

B. Minimum income (not applicable to applicants for loans to be insured or guaranteed by the Federal Housing Administration, the Veterans Administration or FmHA (hereinafter referred to as "FHA, VA or FmHA loans")).

An applicant satisfies the authority's minimum income requirement for financing if the monthly principal and interest (at the rate determined by the authority), tax, insurance ("PITI") and other additional monthly fees such as condominium assessments (60% of the monthly condominium assessment shall be added to the PITI figure), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly debt payments with more than six months duration (and payments on debts lasting less than six months, if making such payments will adversely affect the applicant's ability to make mortgage loan payments during the months following loan closing) do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements. If either of the percentages set forth above are exceeded, compensating factors may be used by the authority, in its sole discretion, to approve the mortgage loan.

§ 2.6. Calculation of maximum loan amount.

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Single family detached residence and townhouse (fee simple ownership) Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may otherwise be approved by the authority.

Condominiums - Maximum of 95% (or, in the case of an FHA, VA or FmHA loan, such other percentage as may be permitted by FHA, VA or FmHA) of the lesser of the sales price or appraised value, except as may be otherwise approved by the authority.

For the purpose of the above calculations, the value of personal property to be conveyed with the residence shall be deducted from the sales price. (See Exhibit R for examples of personal property.) The value of personal property included in the appraisal shall not be deducted from the appraised value. (See Appraiser Report, Exhibit H)

In the case of an FHA, VA or FmHA loan, the FHA, VA or FmHA insurance fees or guarantee fees charged in connection with such loan (and, if an FHA loan, the FHA permitted closing costs as well) may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or FmHA requirements; provided, however, that in no event shall this revised maximum loan amount which includes such fees and closing costs be permitted to exceed the authority's maximum allowable sales price limits set forth herein.

## § 2.7. Mortgage insurance requirements.

Unless the loan is an FHA, VA or FmHA loan, the borrower is required to purchase at time of loan closing full private mortgage insurance (25% to 100% coverage, as the authority shall determine) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance. If the authority requires FHA, VA or FmHA insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or FmHA Guarantee has been obtained. In the event that the authority purchases an FHA or, VA or FmHA loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or FmHA loans), full private mortgage insurance as described above is required unless waived by the authority.

## § 2.8. Underwriting.

### A. Conventional loans.

The following requirements must be met in order to satisfy the authority's underwriting requirements. However, additional or more stringent requirements may be imposed by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required.

### 1. Employment and income.

a. Length of employment. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Self-employed applicants. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See § 2.2.1 C Principal residence requirement.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. Income derived from sources other than primary employment.

(1) Alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant for a loan.

(2) Social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant for a loan.

(3) Part-time employment. Part-time employment must be continuous for a minimum of six months. Employment with different employers is acceptable so long as it has been uninterrupted for a minimum

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of six months. Part-time employment as used in this section means employment in addition to full-time employment.

Part-time employment as the primary employment will also be required to be continuous for six months.

(4) Overtime, commission and bonus. Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

## 2. Credit.

a. Credit experience. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references and history are considered to be important requirements in order to obtain an authority loan.

b. Bankruptcies. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years. If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy. The authority has complete discretion to decline a loan when a bankruptcy is involved.

c. Judgments and collections. An applicant is required to submit a written explanation for all judgments and collections. In most cases, judgments and collections must be paid before an applicant will be considered for an authority loan.

3. Appraisals. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

## B. FHA loans only.

1. In general. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Mortgage insurance premium. Applicant's mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in

full in advance but instead is payable in annual installments.

3. Closing fees. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. Appraisals. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

## C. VA loans only.

1. In general. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, most of the authority's basic eligibility requirements (including those described in §§ 2.1 through 2.5 hereof) remain in effect due to treasury restrictions or authority policy.

2. VA funding fee. ~~1.0%~~ The funding fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

3. Appraisals. VA certificates of reasonable value (CRV's) are acceptable.

## D. FmHA loans only.

1. In general. The authority will normally accept FmHA underwriting requirements and property standards for FmHA loans. However, most of the authority's basic eligibility requirements including those described in §§ 2.1 through 2.5 hereof remain in effect due to treasury restrictions or authority policy.

2. Guarantee fee. ~~1.0%~~ The FmHA guarantee fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

## E. FHA and VA buydown program.

With respect to FHA and VA loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see § 2.14 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain FHA requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on FHA guidelines then in effect (see also subsection B or C above, as applicable).



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## F. Interest rate buydown program.

Unlike the program described in subsection E above which permits a direct buydown of the borrower's monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

## § 2.9. Funds necessary to close.

### A. Cash (Not applicable to FHA, VA or FmHA loans).

Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit the applicant to borrow funds for this purpose, except where (i) the loan amount is less than or equal to 80% of the lesser of the sales price or the appraised value, or (ii) the loan amount exceeds 80% of the lesser of the sales price or the appraised value and the applicant borrows a portion of the funds under a loan program approved by the authority or from their employer, with the approval of the private mortgage insurer, and the applicant pays in cash from their own funds an amount equal to at least 3.0% of the lesser of the sales price or the appraised value. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

### B. Gift letters.

A gift letter is required when an applicant proposes to obtain funds as a gift from a third party. The gift letter must confirm that there is no obligation on the part of the borrower to repay the funds at any time. The party making the gift must submit proof that the funds are available. This proof should be in the form of a verification of deposit.

### C. Housing expenses.

Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed carefully to determine if there is a substantial increase. If there is a substantial increase, the applicant must demonstrate his ability to pay the additional expenses.

## § 2.10. Loan assumptions.

### A. Requirements for assumptions.

VHDA currently permits assumptions of all of its single family mortgage loans provided that certain requirements are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross family income for those assuming a loan shall be 100% of the applicable Median Family Income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the

maximum gross family income shall be 115% of the applicable Median Family Income (140% for a residence in a targeted area) and if assumed by a household of less than three persons, the maximum gross family income shall be 100% of the applicable Median Family Income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross family income for those assuming loans shall be as set forth in § 2.5 A of these regulations the highest percentage, as then in effect under § 2.5 A 2, of applicable median family income for the size of the family assuming the loan, unless otherwise provided in the deed of trust. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:

#### 1. Assumptions of conventional loans.

a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:

- (1) Maximum gross family income requirement in this § 2.10 A
- (2) § 2.2.1 C (Principal residence requirement)
- (3) § 2.8 (Authority underwriting requirements)
- (4) § 2.2.1 B (Three-year requirement)
- (5) § 2.2.2 B (Acquisition cost requirements)
- (6) § 2.7 (Mortgage insurance requirements).

b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:

- (1) Maximum gross family income requirement in this § 2.10 A
- (2) § 2.2.1 C (Principal residence requirements)
- (3) § 2.8 (Authority underwriting requirements)
- (4) § 2.7 (Mortgage insurance requirements).

#### 2. Assumptions of FHA, VA or FmHA loans.

a. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions must be met:

- (1) Maximum gross family income requirement in this § 2.10 A
- (2) § 2.2.1 C (Principal residence requirement)

(3) § 2.2.1 B (Three-year requirement)

(4) § 2.2.2 B (Acquisition cost requirements).

In addition, all applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

b. For assumptions of FHA, VA or FmHA loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or FmHA underwriting requirements, if any, must be met.

#### B. Review by the authority/additional requirements.

Upon receipt from an originating agent or servicing agent of an application package for an assumption, the authority will determine whether or not the applicable requirements referenced above for assumption of the loan have been met and will advise the originating agent or servicing agent of such determination in writing. The authority will further advise the originating agent or servicing agent of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty including, if applicable, pool insurance, submission of an escrow transfer letter and execution of a Recapture Requirement Notice (VHDA Doc. R-1).

#### § 2.11. Leasing, loan term, and owner occupancy.

##### A. Leasing.

The owner may not lease the property without first contacting the authority.

##### B. Loan term.

Loan terms may not exceed 30 years.

##### C. Owner occupancy.

No loan will be made unless the residence is to be occupied by the owner as the owner's principal residence.

#### § 2.12. Reservations/fees.

##### A. Making a reservation.

The authority currently reserves funds for each mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked-in interest rates are also nontransferable. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline. Locked-in interest

rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances.

##### B. More than one reservation.

An applicant, including an applicant for a loan to be guaranteed by VA, may request a second reservation if the first has expired *or has been cancelled*. If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation.

##### C. The reservation fee.

The originating agent or field originator shall collect and remit to the authority a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. A second reservation fee must be collected for a second reservation. No substitutions of applicants or properties are permitted.

##### D. Other fees.

1. Origination fee. In connection with the origination and closing of the loan, the originating agent shall collect an amount equal to 1.0% of the loan amount (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only). If the loan does not close and the failure to close is not due to the fault of the applicant, then the origination fee shall be waived.

2. Discount point. The originating agent shall collect from the seller at the time of closing an amount equal to 1.0% of the loan amount.

#### § 2.13. Commitment. (Exhibit J)

##### A. In general.

Upon approval of the applicant, the authority will send a mortgage loan commitment to the borrower in care of the originating agent. (For FmHA loans, upon approval of the applicant, the authority will submit the credit package to FmHA and upon receipt of the FmHA conditional commitment, will send the mortgage loan commitment.) Also enclosed in the commitment package will be other documents necessary for closing. The originating agent shall ask the borrower to indicate his acceptance of the mortgage loan commitment by signing and returning it to the originating agent within 15 days after the date of the commitment.

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant and approved by the

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authority. If an additional commitment is issued to an applicant, the interest rate may be higher than the rate offered in the original commitment. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

## B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

## § 2.14. Buy-down points.

Special note regarding checks for buy-down points (this applies to both the monthly payment buydown program described in § 2.8 D above and the interest rate buydown program described in § 2.8 E). A certified or cashier's check made payable to the authority is to be provided at loan closing for buy-down points, if any. Under the tax code, the original proceeds of a bond issue may not exceed the amount necessary for the "governmental purpose" thereof by more than 5.0%. If buy-down points are paid out of mortgage loan proceeds (which are financed by bonds), then this federal regulation is violated because bond proceeds have in effect been used to pay debt service rather than for the proper "governmental purpose" of making mortgage loans. Therefore, it is required that buy-down fees be paid from the seller's own funds and not be deducted from loan proceeds. Because of this requirement, buy-down funds may not appear as a deduction from the seller's proceeds on the HUD-1 Settlement Statement.

## § 2.15. Property guidelines.

### A. In general.

For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination shall in turn be based solely upon a real estate appraisal's determination of the value and condition of the property.

In addition, manufactured housing (mobile homes), both new construction and certain existing, may be financed only if the loan is insured 100% by FHA (see subsection C).

### B. Conventional loans.

1. Existing housing and new construction. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state maintained road ; *provided, however, that the*

*authority may, on a case-by-case basis, approve financing of property located on a private road acceptable to the authority if the right to use such private road is granted to the owner of the residence pursuant to a recorded right-of-way agreement providing for the use of such private road and a recorded maintenance agreement provides for the maintenance of such private road on terms and conditions acceptable to the authority ( any other easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements which will adversely affect the marketability of the property, such as high-tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and sewer hookups may have their own well and septic system; provided that joint ownership of a well and septic system will be considered on a case-by-case basis to determine whether such ownership is acceptable to the authority.*

2. Additional requirements for new construction. New construction financed by a conventional loan must also meet Uniform Statewide Building Code and local code.

### C. FHA, VA or FmHA loans.

1. Existing housing and new construction. Both new construction and existing housing financed by an FHA, VA or FmHA loan must meet all applicable requirements imposed by FHA, VA or FmHA.

2. Additional requirements for new construction. If such homes being financed by FHA loans are new manufactured housing they must meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter masonry curtain wall conforming to standards of the Uniform Statewide Building Code, be permanently affixed to the site owned by the borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.

## § 2.16. Substantially rehabilitated.

For the purpose of qualifying as substantially rehabilitated housing under the authority's maximum sales price limitations, the housing unit must meet the following definitions:

1. Substantially rehabilitated means improved to a condition which meets the authority's underwriting/property standard requirements from a condition requiring more than routine or minor repairs or improvements to meet such requirements. The term

includes repairs or improvements varying in degree from gutting and extensive reconstruction to cosmetic improvements which are coupled with the cure of a substantial accumulation of deferred maintenance, but does not mean cosmetic improvements alone.

2. For these purposes a substantially rehabilitated housing unit means a dwelling unit which has been substantially rehabilitated and which is being offered for sale and occupancy for the first time since such rehabilitation. The value of the rehabilitation must equal at least 25% of the total value of the rehabilitated housing unit.

3. The authority's staff will inspect each house submitted as substantially rehabilitated to ensure compliance with our underwriting-property standards. An appraisal is to be submitted after the authority's inspection and is to list the improvements and estimate their value.

4. The authority will only approve rehabilitation loans to eligible borrowers who will be the first resident of the residence after the completion of the rehabilitation. As a result of the tax code, the proceeds of the mortgage loan cannot be used to refinance an existing mortgage, as explained in § 2.2 1 D (New mortgage requirement). The authority will approve loans to cover the purchase of a residence, including the rehabilitation:

a. Where the eligible borrower is acquiring a residence from a builder or other seller who has performed a substantial rehabilitation of the residence; and

b. Where the eligible borrower is acquiring an unrehabilitated residence from the seller and the eligible borrower contracts with others to perform a substantial rehabilitation or performs the rehabilitation work himself prior to occupancy.

## § 2.17. Condominium requirements.

### A. Conventional loans.

The originating agent must provide evidence that the condominium is approved by any two of the following: FNMA, FHLMC or VA. The originating agent must submit evidence at the time the borrower's application is submitted to the authority for approval.

### B. FHA, VA or FmHA loans.

The authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan or by FmHA, in the case of an FmHA loan.

## § 2.18. FHA plus program.

### A. In general.

*Notwithstanding anything to the contrary herein, the authority may make loans secured by second deed of trust liens ("second loans") to provide downpayment and closing cost assistance to eligible borrowers who are obtaining FHA loans secured by first deed of trust liens. Second loans shall not be available to a borrower if the FHA loan is being made under the FHA buydown program or is subject to a step adjustment in the interest rate thereon or is subject to a reduced interest rate due to the financial support of the authority.*

### B. Mortgage insurance requirements.

*The second loans shall not be insured by mortgage insurance; accordingly, the requirements of § 2.7 regarding mortgage insurance shall not be applicable to the second loan.*

### C. Maximum loan amount.

*The requirements of § 2.6 regarding calculation of maximum loan amount shall not be applicable to the second loan. In order to be eligible for a second loan, the borrower must obtain an FHA loan for the maximum loan amount permitted by FHA. The second loan shall be for the lesser of:*

*1. The lesser of sales price or appraised value plus FHA allowable closing fees (i.e., fees which FHA permits to be included in the FHA acquisition cost and to be financed) minus the FHA maximum base loan amount, seller paid closing costs and 1.0% of the sales price, or*

*2. 3.0% of the lesser of the sales price or appraised value plus \$1,100.*

*In no event shall the combined FHA loan and the second loan amount exceed the authority's maximum allowable sales price.*

### D. Underwriting.

*With respect to underwriting, no additional requirements or criteria other than those applicable to the FHA loan shall be imposed on the second loan.*

### E. Assumptions.

*The second mortgage loan shall be assumable on the same terms and conditions as the FHA loan.*

### F. Fees.

*No origination fee or discount point shall be collected on the second loan.*

### G. Commitment.

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*Upon approval of the applicant, the authority will issue a mortgage loan commitment pursuant to § 2.13. The mortgage loan commitment will include the terms and conditions of the FHA loan and the second loan and an addendum setting forth additional terms and conditions applicable to the second loan. Also enclosed in the commitment package will be other documents necessary to close the second loan.*

NOTE: Documents and forms referred to herein as Exhibits have not been adopted by the authority as a part of the rules and regulations for single family mortgage loans to persons and families of low and moderate income but are attached thereto for reference and informational purposes. Accordingly, such documents and forms have not been included in the foregoing rules and regulations for single family mortgage loans to persons and families of low and moderate income. Copies of such documents and forms are available upon request at the offices of the authority.

V.A.R. Doc. No. R94-545; Filed February 2, 1994, 11:35 a.m.

## DEPARTMENT OF LABOR AND INDUSTRY

**Title of Regulation: VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (REPEALING).**

**Title of Regulation: VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.**

**Statutory Authority: §§ 40.1-6(3) and 40.1-114 of the Code of Virginia.**

**Public Hearing Date: April 4, 1994 - 7 p.m.**

Written comments may be submitted through April 22, 1994.

(See Calendar of Events section for additional information)

**Basis:** The statutory authority for this regulation is contained in § 40.1-6(3) of the Code of Virginia, which grants the commissioner the authority to "make such rules and regulations as may be necessary for the enforcement of Title 40.1," and § 40.1-114 of the Code of Virginia, which authorizes the commissioner to issue rules and regulations to carry out the purposes of the Child Labor Law (§ 40.1-78 et seq. of the Code of Virginia).

**Purpose:** The purpose of the proposed regulation is to protect the health, safety and welfare of minors employed in agricultural occupations. This is to be accomplished by prohibiting minors under 16 years of age from being employed in certain clearly identified hazardous occupations.

**Substance:** The key provisions of the regulation are as follows. Hazardous occupations prohibited to minors under

16 years of age include operation of tractors over 20 PTO horsepower, operation of certain tractors and other power-driven machines commonly used on farms, working in enclosed areas occupied by certain animals, working from ladders at a height of over 20 feet, the operation of or riding on certain vehicles, working inside certain enclosed areas containing toxic atmospheres, handling or applying toxic materials, handling or using blasting agents, and the handling of anhydrous ammonia.

Exemptions are provided for minors working on family farms, minors engaged in student-learner programs, minors engaged in federal extension service and 4-H training programs, and minors engaged in certain vocational agricultural training programs.

This regulation clarifies the exclusion of agricultural employers from the Virginia Rules and Regulations Declaring Hazardous Occupations, VR 425-01-77, which are applicable to general industry.

**Issues:** The primary advantage of the regulation to the Department of Labor and Industry is that it will greatly enhance its ability to protect the workplace safety of minors under age 16 employed on farms. The primary disadvantages of the regulation are to farm employers, who will have to learn about and ensure that they are in compliance with the regulations, and to minors under age 16 who will be prohibited from working in certain hazardous occupations, or may be required to successfully complete a training program to engage in certain hazardous occupations.

**Estimated Impact:** It is estimated that approximately 3,000 minors will benefit by the regulation because their safety will be protected, but they will also be adversely impacted because their employability on farms will be reduced. It is estimated that approximately 2,000 farm employers will be affected because they will have to learn about and ensure compliance with regulations, and because they may not be able to obtain low-wage minor labor, but may have to hire adult labor instead. It is estimated that the dollar impact on the 2,000 employers will be approximately \$10,000. It is estimated that wages lost to minors because of their unemployability due to these regulations will be approximately \$8,000. The regulations will mostly impact those areas of the state which are heavily involved in agriculture, such as vegetable growing areas of the Eastern Shore; fruit growing areas in the Shenandoah Valley; tobacco and vegetable growers in Southside Virginia; and vegetable and fruit growers in Southwestern Virginia.

### **Summary:**

*This regulation prohibits the employment of minors under 16 years of age in specified hazardous occupations on farms, in gardens and in orchards. The prohibited occupations include operating a tractor of over 20 PTO horsepower; operating or assisting to operate other heavy equipment such as pickers, combines, mowers, harvesters, bailers, grinders,*

augers, and tillers; operating or assisting to operate earthmoving equipment, fork-lifts, potato combines, and chain saws; working in enclosed areas occupied by dangerous animals; working from ladders; driving certain vehicles; working inside enclosed areas containing dangerous atmospheres; handling poisonous chemicals; handling blasting agents; and handling anhydrous ammonia.

The regulation exempts children below the age of 16 employed by their parents on their own farms; student learners; and students in Federal Extension Service and 4-H Tractor and Machine Operation Training Programs; and students in Vocational Agricultural Training Programs. Agricultural employers are required to maintain basic records on minor employees.

The proposed regulation is drafted to be substantively identical to parallel federal child labor regulations, insofar as practicable. It is not identical for the following reasons.

In certain cases regarding hazardous occupations, the Code of Virginia is more stringent than the parallel federal regulation. In these matters the department has no discretion and must comply with Virginia statutory law.

The federal child labor regulations have not been revised for many years. Certain training programs required by federal regulations no longer exist. This proposed regulation would permit the use of equivalent currently available training programs.

Since this proposed regulation will replace the Regulation Governing the Employment of Minors on Farms, In Gardens and In Orchards (VR 425-01-81, effective July 1, 1992), the current regulation is being repealed. The agency filed an emergency regulation on June 30, 1993, which is effective through June 29, 1994.

VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.

## § 1. Definitions.

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

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in § 15(g) of the Federal Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer

or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Commissioner" means the Virginia Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"Employ" includes to suffer or permit to work. The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms "employer" and "employ" are broader than the common law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists. However, these are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words "suffer or permit to work" include those who suffer by a failure to hinder and those who employ by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an underaged minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer's work. If the employer acquiesces in the practice or fails to exercise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him.

## § 2. Hazardous occupations.

This section identifies the occupations on farms, in gardens, and in orchards which are particularly hazardous for minors under 16 years of age. No employer shall employ, suffer, or permit a minor under 16 years of age to work in any of the following occupations, deemed to be particularly hazardous, except as provided in § 3 of this regulation:

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
  - a. Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

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b. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

c. Power post-hole digger, power post driver, or nonwalking type rotary tiller.

3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

a. Earthmoving equipment;

b. Fork lift;

c. Potato combine; or

d. Chain saw.

4. Working on a farm in a yard, pen, or stall occupied by:

a. A bull, boar, or stud horse maintained for breeding purposes; or

b. A sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

5. Working from a ladder at a height of over 20 feet for purposes such as pruning trees, picking fruit, etc.

6. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

7. Working inside:

a. A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

b. An upright silo within two weeks after silage has been added or when a top unloading device is in operating position;

c. A manure pit; or

d. A horizontal silo while operating a tractor for packing purposes.

8. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;

9. Handling or using a blasting agent including, but

not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

10. Transporting, transferring, or applying anhydrous ammonia.

## § 3. Exemptions to hazardous occupations.

A. This section provides exemptions to the restrictions on hazardous occupations on farms, in gardens and in orchards set forth in § 2 of this regulation.

B. Section 2 shall not apply to the employment of a child below the age of 16 by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

C. Minors 14 and 15 years of age are exempted from the occupations listed in subdivisions 1 through 5 of § 2 when each of the following requirements are met:

1. A student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority, or in a substantially similar program conducted by a private school;

2. Such student-learner is employed under a written agreement which provides that:

a. The work of the student-learner is incidental to his training;

b. Such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

c. Safety instruction shall be given by the school and correlated by the employer with on-the-job training; and

d. A schedule of organized and progressive work processes to be performed on the job have been prepared;

3. Such written agreement contains the name of the student-learner, and is signed by the employer and by a person authorized to represent the educational authority or school; and

4. Copies of each such agreement are kept on file by both the educational authority or school and by the employer.

D. Section 2 shall not apply to the employment of a child under 16 years of age in those occupations in which he has successfully completed one or more training programs described in subdivisions D 1, D 2, and D 3 of this section provided he has been instructed by his employer on safe and proper operation of the specific equipment he is to use; is continuously and closely

supervised by the employer where feasible; or, where not feasible, in work such as cultivating, his safety is checked by the employer at least at midmorning, noon, and midafternoon.

1. *4-H Tractor Operation Program.* The child is qualified to be employed in an occupation described in subdivision 1 of § 2 provided:

- a. He is a 4-H member;
- b. He is 14 years of age or older;
- c. He is familiar with the normal working hazards in agriculture;
- d. He has completed a tractor training program approved by 4-H and conducted by, or in accordance with the requirements of, the cooperative extension service of a land grant university;
- e. He has passed a written examination on tractor safety and has demonstrated his ability to operate a tractor safely with a two-wheeled trailed implement on a course similar to one of the 4-H Tractor Operator's Contest Courses; and
- f. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable by the department, signed by the leader who conducted the training program and by an extension agent of the cooperative extension service of a land grant university to the effect that the child has completed all the requirements specified in subdivisions D 1 a, D 1 b, D 1 c, D 1 d, and D 1 e of this section.

2. *4-H Machine Operation Program.* The child is qualified to be employed in an occupation described in subdivision 2 of § 2 providing:

- a. He satisfies all the requirements specified in subdivisions D 2 b, D 2 c, and D 2 d of this section;
- b. He has completed an additional 10-hour training program on farm machinery safety, including 4-H Fourth-Year Manual, Unit 1, Safe Use of Farm Machinery, or a similar training program approved by the commissioner;
- c. He has passed a written and practical examination on safe machinery operation; and
- d. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the leader who conducted the training program and by an

extension agent of the cooperative extension service of a land grant university, to the effect that the child has completed all of the requirements specified in subdivisions D 2 a, D 2 b, and D 2 c of this section.

3. *Tractor and Machine Operation Program.* The child is qualified to be employed in an occupation described in subdivisions 1 and 2 of § 2 providing:

- a. He is 14 years of age, or older;
- b. He has completed a four-hour orientation course familiarizing him with the normal working hazards in agriculture;
- c. He has completed a 20-hour training program on safe operation of tractors and farm machinery, which covers all material specified in subdivisions D 1 d and D 2 b of this section;
- d. He has passed a written examination on tractor and farm machinery safety, and has demonstrated his ability to operate a tractor with a two-wheeled trailed implement on a course similar to a 4-H Tractor Operator's Contest Course, and to operate farm machinery safely; and
- e. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the volunteer leader who conducted the training program and by an extension agent of the cooperative extension service of a land grant university, to the effect that all of the requirements of subdivisions D 3 a, D 3 b, D 3 c, and D 3 d of this section have been met.

E. Section 2 of this regulation shall not apply to the employment of a vocational agriculture student under 16 years of age in those occupations in which he has successfully completed one or more training programs described in subdivision E 1 or E 2 of this section and who has been instructed by his employer in the safe and proper operation of the specific equipment he is to use, who is continuously and closely supervised by his employer where feasible or, where not feasible, in work such as cultivating, whose safety is checked by the employer at least at midmorning, noon, and midafternoon, and who also satisfies whichever of the following program requirements are pertinent:

1. *Tractor Operation Program.* The student is qualified to be employed in an occupation described in subdivision 1 of § 2 provided:

- a. He is 14 years of age or older;
- b. He is familiar with the normal working hazards in agriculture;



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c. He has completed (i) the tractor operation training program required by United States Department of Labor child labor regulations applicable to vocational agriculture students, or (ii) a similar training program approved by the commissioner. Information regarding the availability of these training programs may be obtained from the Virginia Department of Labor and Industry;

d. He has passed both a written test and a practical test on tractor safety including a demonstration of his ability to operate safely a tractor with a two-wheeled trailed implement on a test course similar to that provided in the training programs described above; and

e. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the vocational agriculture teacher who conducted the program to the effect that the student has completed all the requirements specified in subdivisions E 1 a, E 1 b, E 1 c, and E 1 d of this section.

2. Machinery Operation Program. The student is qualified to be employed in an occupation described in subdivision 2 of § 2 provided he has completed the Tractor Operation Program described in subdivision E 1 of this section, and:

a. He has completed (i) the machinery operation training program required by United States Department of Labor child labor regulations applicable to vocational agriculture students, or (ii) a similar training program approved by the commissioner. Information regarding the availability of these training programs may be obtained from the Virginia Department of Labor and Industry;

b. He has passed both a written test and a practical test on safe machinery operation similar to that provided in the training programs described above; and

c. His employer has on file with the child's records kept pursuant to § 4 of this regulation (name, address, and date of birth) a copy of a certificate acceptable to the department, signed by the vocational agriculture teacher who conducted the program to the effect that student has completed all the requirements specified in subdivisions E 2 a and E 2 b of this section.

F. The commissioner will appoint an Advisory Committee on Farm Safety Training Materials. The committee shall be composed of qualified persons knowledgeable about such matters. Upon advice of the committee, the commissioner will approve and publish a list of approved training materials as necessary to permit

compliance with this section.

## § 4. Record keeping requirements.

Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 16 years of age on days when school is in session or on any day if the minor is employed in a hazardous occupation shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

1. Name in full,
2. Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses.
3. Date of birth.

## § 5. Nonapplicability of general industry regulations to agriculture.

The Virginia Rules and Regulations Declaring Hazardous Occupations, VR 425-01-77, shall not apply to any occupation on farms, in gardens and in orchards.

VA.R. Doc. Nos. R94-548 and R94-547; Filed February 2, 1994, 11:11 a.m.

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## Safety and Health Codes Board

**Title of Regulation:** VR 425-02-11. VOSH Administrative Regulations Manual (REPEALING).

**Statutory Authority:** §§ 40.1-6 and 40.1-22 of the Code of Virginia.

**Public Hearing Date:** February 24, 1994 - 2 p.m.

Written comments may be submitted through April 22, 1994.

(See Calendar of Events section for additional information)

**Basis:** Section 40.1-22 of the Code of Virginia authorizes the promulgation of the Administrative Regulation and authorizes the Safety and Health Codes Board to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees and to effect compliance with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596).

**Purpose:** This regulation provides an operational framework of rules and procedures for the administration of the VOSH program which is responsible for assuring, so far as possible, every working person a safe and healthful workplace.

**Substance:** The revision of this regulation provides

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employers, employees, the public, VOSH employees, and other parties interested in the administrative rules governing the VOSH program with a simplified document in a more concise format to aid in the understanding of the general administrative provisions and specific related procedures of the program. The proposed new regulation is completely reorganized in a more logical arrangement for improved readability. With the promulgation of the revised regulation, the repeal of this regulation is necessary.

**Issues:** This regulation is being completely revised for the first time. The reorganization and resulting changes to the regulation are advantageous as they provide improved clarity of the provisions, simplification and rearrangement of the format of the regulation which will benefit all users. Other advantages include the clarification of the 48-hour accident reporting requirements of employers and clarification of other responsibilities of the agency, employers and employees. No negative impacts on the regulated community are anticipated.

**Estimated Impact:** Persons affected include approximately 138,607 private and government employers. Also affected are approximately 2,554,418 employees of these employers who will benefit from revision of the Administrative Regulation. No fiscal impact is anticipated with respect to employers and employees, nor is any fiscal impact for the department anticipated by the repeal of this regulation. There are no localities which will be particularly affected by this regulation.

## Summary:

*The VOSH Administrative Regulations Manual provides an operational framework of rules and procedures for the administration of the Virginia Occupational Safety and Health Program. Some amendments have been made to the regulation since its initial adoption in 1986. A complete revision of the regulation which will simplify and clarify the language of the administrative manual is being proposed as a new regulation. This regulation will no longer be necessary and is being repealed.*

V.A.R. Doc. No. R94-550; Filed February 2, 1994, 11:07 a.m.

## **DEPARTMENT OF LABOR AND INDUSTRY; SAFETY AND HEALTH CODES BOARD; APPRENTICESHIP COUNCIL**

**Title of Regulation:** VR 425-01-68. Public Participation Guidelines (REPEALING).

**Statutory Authority:** §§ 9-6.14:7.1, 40.1-6, 40.1-22 and 40.1-117 of the Code of Virginia.

Public Hearing Date: February 24, 1994 - 2 p.m.  
Written comments may be submitted through April 22, 1994.

(See Calendar of Events section  
for additional information)

**Basis:** The statutory authority for promulgating this regulation is contained in §§ 40.1-6, 40.1-22, and 40.1-117 of the Code of Virginia. Also, Section 9-6.14:7.1 of the Administrative Process Act requires the department, the board and the council to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising or repealing regulations.

**Purpose:** The purpose of this regulation is to ensure that the public and all parties interested in regulations adopted by the department, the board or the council have a full and fair opportunity to participate as regulations are considered and adopted. Repeal of this regulation will allow new guidelines to be promulgated which address the changes to the Administrative Process Act made during the 1993 General Assembly session.

**Substance:** The regulation sets out specific methods for the identification and notification of persons or groups interested in regulations and solicitation of comment from such persons or groups. It defines the manner in which the public is involved in the formulation of regulations of the department or the board or the council. It also describes how open meetings may be used to receive views and comments and answer questions from the public.

**Issues:** The provisions of this regulation provide substantial and substantive opportunities for comment by the public on regulations under consideration by the commissioner of the department, the Safety and Health Codes Board or the Apprenticeship Council. A disadvantage to having one regulation for all three entities is any changes to the regulation involves coordination among three entities.

Repeal of this regulation will allow each entity to adopt new guidelines which will incorporate the changes to the APA made by the 1993 General Assembly. These new regulations will allow each entity to carry out its statutory responsibility to develop regulations.

**Estimated Impact:** Persons affected include approximately 151,792 private and government employers and the 2,606,639 employees of these employers. There are no costs to the regulated community associated with the repeal of this regulation. There is no fiscal impact for the department, the board and the council to repeal this regulation.

## Summary:

*Public participation guidelines were adopted by the Department of Labor and Industry, the Safety and Health Codes Board, and the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the additional provisions required by legislation enacted by the 1993*

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*General Assembly were adopted by the department, board and council prior to July 1993 and are in effect until June 29, 1994. New guidelines for the department, the Safety and Health Codes Board and the Apprenticeship Council are being promulgated. Therefore, when the new guidelines are adopted, this regulation will no longer be necessary and is being repealed.*

VA.R. Doc. No. R94-549; Filed February 2, 1994, 11:09 a.m.

## DEPARTMENT OF MOTOR VEHICLES

**Title of Regulation:** VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.

**Statutory Authority:** §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

**Public Hearing Date:** April 22, 1994 - 9 a.m.

Written comments may be submitted through April 22, 1994.

(See Calendar of Events section for additional information)

**Basis:** Section 9-6.14:7.1 of the Code of Virginia states that public participation guidelines shall be developed, adopted and utilized by each agency pursuant to the Administrative Process Act (APA), Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

**Purpose:** The purpose of this regulation is to establish guidelines for soliciting input from interested parties and the general public in the development and promulgation of the agency's regulations.

**Substance:** The amendments to Part III and §§ 4.2, 4.3, 4.4, 4.6 and 4.7 update the guidelines as required by the 1993 changes to the APA. The other amendments are nonsubstantive editorial, technical and stylistic changes to improve readability and to allow for better understanding of the regulation.

**Issues:** The department feels that it should be open to active input from interested parties and the general public in the development and promulgation of its regulations. It is of great benefit to both the public and the department to encourage participation because the interaction allows for a better determination of the needs of those most affected by the regulation in light of the needs of the department. The department also recognizes its responsibility to utilize the regulatory forum as a means to balance its needs and those of government in general with those of interested or affected parties and the public at large.

**Estimated impact:** The regulation directly impacts the regulatory activity of the department, thereby indirectly impacting any person or group affected by its regulations.

A given regulatory impact of the department, at most, would affect the citizens of the Commonwealth. There are no estimated costs associated with this regulation per se.

### Summary:

*This regulation establishes guidelines for soliciting input from interested parties and the general public in the development and promulgation of the agency's regulations. It describes how the department will identify, notify and involve those persons whom it feels are interested or affected by a given regulation. It also outlines the steps the department will take to develop and promulgate its regulations, in accordance with the requirements of the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.

### *PART I. GENERAL PURPOSE.*

§ 1: 1.1. General purpose.

In developing any regulation it proposes, the Department of Motor Vehicles ("department") is committed to soliciting input and comment from interested citizens, professional associations, and industry representatives. Such input and participation will be actively solicited by the department pursuant to the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

Any person who is interested in participating in the regulation development process should notify the department in writing. Such notification of interest should be sent to the Commissioner, Department of Motor Vehicles, P.O. Box 27412, Richmond, Virginia 23269-0001.

### *PART II. IDENTIFICATION OF INTERESTED PARTIES.*

§ 2: 2.1. Identification of interested parties.

Prior to the development of any regulation, the department will identify persons whom it feels would be interested or affected by the proposal. The methods for identifying interested parties will include, but not be limited to, the following:

1. Obtain annually from the Secretary of the Commonwealth a list of all persons, groups, associations and others who have registered as lobbyists for the annual General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

2. Utilize Identify industry and professional

associations from the statewide listing of business, professional, civic and charitable associations and societies in Virginia published by the State Chamber of Commerce to identify additional industry and professional associations which might be interested in the regulation .

3. Utilize internal administration mailing lists of persons, organizations, groups, and agencies that have expressed an interest in advising and assisting in the development of regulations or . Also utilize lists of those who have previously raised questions or expressed an interest in the subject matter under consideration pursuant to § 1.1.1, or through requests for formal rulings or administrative appeals. At the discretion of each administration, these lists may be maintained on a program specific basis or be of a general interest group. From time to time the These lists will be updated on a regular basis to include any new interested parties.

## § 3. Notification of interested parties.

### PART III. NOTIFICATION OF INTERESTED PARTIES.

#### A. § 3.1. Generally.

The department will prepare a Notice of Intended Regulatory Action (Form RR01) ("notice") prior to the development of any regulation. The notice will identify the subject matter and purpose for the development of the new regulation(s) ; . The notice will state that the department plans to hold a public hearing on the proposed regulation after the proposed regulation is published. It also will state the statutory authority under which they are promulgated, and will specify a time deadline for receipt of responses from persons interested in participating in the development process. The name, address and telephone number of an agency contact will also be included in the notice.

#### B. § 3.2. Dissemination of notice.

The methods for disseminating the notice to the public will include, but not be limited to, the following:

1. Send notice to individuals or groups identified in § 2.2.1 as interested or potentially affected parties.
2. Publish the notice in The Virginia Register of Regulations.
3. Request that industry, professional associations, and other groups to whom the notice is sent publish such notice in newsletters or journals or use any other means available to them to disseminate the notice to their memberships.
4. Invite participation from the general public through the publication of a Notice of Intent in the Richmond

Times Dispatch a newspaper of general circulation published in the state capital and, if necessary, in other general circulation newspapers.

5. The notification process delineated in this section does not apply to emergency regulations, which are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

## § 4. Regulation development.

### PART IV. REGULATION DEVELOPMENT.

#### A. § 4.1. Response to notice.

After interested parties have responded to the notice, the department will analyze the level of interest. If sufficient interest exists, the department may schedule informal meetings prior to the development of any regulation to determine the specific areas of interest or concern and to gather factual information relative to on the subject matter of the regulation. Form RR06, Notice of Meeting, will be used for this purpose. Alternatively, the department may elect to request that persons who have responded to the notice submit written comments, concerns and suggestions relative to about or on the proposed regulation.

#### B. § 4.2. Establishment of advisory committee panel .

When necessary, appropriate, the department will utilize a core, an ad hoc advisory committee panel comprised of appropriate department representatives, persons who have previously participated in public proceedings relative to on similar subject matters subjects , or selected individuals who responded to a Notice of Intended Regulatory Action, newsletter or special mailing. The department will consider the use of an advisory panel to be appropriate whenever individuals request, in writing, to be involved directly in the development and promulgation of regulations or whenever the department determines that the subject matter of the regulations can be better addressed by persons from outside the department who are willing and able to participate directly in the promulgation process. The committee panel will discuss the issues and make recommendations which will be considered in drafting regulations. Once the regulations have been developed, the committee panel will review them and continue to participate during the promulgation process as directed by the Administrative Process Act.

#### C. § 4.3. Preparation of working draft proposed regulation .

Subsequent to the initial public input on the development of any regulation, At its discretion, the department will develop a working draft of draft the proposed regulation prior to or during any opportunities it provides to the public to submit input . In certain instances where the technical nature of the subject matter merits, the

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department may request that industry or professional groups develop a working draft. A copy of this draft will be furnished to all persons who responded to the notice indicating an interest in the regulation and to those persons participating in the initial comment phase of the development process. Persons to whom a copy of the working draft is furnished will be invited to submit written comments on the draft. If the response warrants, additional informal meetings may be held to discuss the working draft.

~~D.~~ § 4.4. Submission of proposed regulation submission package.

Upon the conclusion of the development process, *all proposed regulations will be subject to the most recent review procedures published by the Governor. After this review*, the department will prepare a proposed regulation submission package for submission to the office of the Registrar of Regulations. The package will include:

1. Notice of Comment Period (Form RR02) (3 copies);
2. Proposed Regulation Transmittal Sheet (Form RR03) (3 copies);
3. A statement of basis, purpose, substance, issues and impact (2 copies);
4. A summary of the regulation (2 copies);
5. Double-spaced text of the proposed regulation (2 copies); and
6. Reporting forms used in administering the regulation, if any (2 copies).

Once the Registrar receives all the required documents and appropriate number of copies, the proposed regulation ~~and~~, *summary and notice of opportunity for oral and written submittals on the proposed regulation* will be published in the "Proposed Regulation" section of The Virginia Register.

At the same time that the regulations are filed with the Registrar's office, the department will file Form RR09, Regulation Review Summary, and a copy of the proposed regulations to the Department of Planning and Budget and to the Governor's office.

The notice of comment period will appear in each issue of The Virginia Register until the public hearing date or 60-day written comments deadline has elapsed, whichever occurs last. The summary, provided with the Notice of Comment Period form, will be printed in a newspaper of general circulation published in the state capital and, in addition, similarly published in newspapers in localities particularly affected by the proposed regulations.

~~E.~~ § 4.5. Review of proposed regulation after publication.

*The following types of review will occur after the publication of the proposed regulations:*

1. Agency review. The department will compare the published copy of the regulation with the agency copy. Corrections will be filed with the Registrar.
2. ~~Legislative and gubernatorial~~ *Gubernatorial* review. During the 60-day notice of comment period, 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 the~~. *These* comments will be published in The Virginia Register. The department will respond to the Governor's comments pursuant to § 9-6.14:9.1 of the Code of Virginia.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The department will respond to the objection pursuant to § 9-6.14:9.2 of the Code of Virginia.

~~F.~~ § 4.6. Final regulations submission package.

When the notice of comment period has elapsed, the department may take action on the proposed regulations, and will again submit for publication the text of the regulation as adopted, explaining any substantial changes in the final regulation, along with an up-to-date basis, purpose, substance, issues and impact statement. A 30-day final adoption period will begin upon publication in The Virginia Register. The package will contain:

1. Final Regulation Transmittal Sheet (Form RR04) (3 copies);
2. Statement of final agency action (2 copies);
3. Explanation of substantial changes;
4. Summary of public comments and agency's responses (2 copies);
5. Summary of regulation;
6. Statement of basis, purpose, substance, issues and impact (2 copies);
7. Double-spaced text of final regulation (2 copies); and
8. Reporting forms used in administering the final regulation, if any.

At the same time that the regulations are filed with the Registrar's office, the Department of Planning and Budget and the Governor's office will receive copies of the final regulations. *Copies of the department's draft summary description of public comment will be sent by the*

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department to all public commenters on the proposed regulation at least five days before the final adoption of the regulation.

## § 4.7. Petitions relating to regulatory actions.

The agency regulatory coordinator will establish a committee within the department to review, consider and respond to (i) all petitions received by the department requesting that it develop a new regulation or amend an existing one; or (ii) those petitions received by the department, within 30 days from the publication of the final regulation, that request the opportunity for oral and written submittals relating to those changes with substantial impact that have occurred from the time it is published as a proposed regulation to its publication as a final regulation. Responses to those petitions requesting new or amended regulations will be made within 180 days from the day the petition is received by the department.

When petitions requesting the opportunity for oral or written submittals are received from at least 25 persons within 30 days from the publication of the final regulation, the department will suspend the regulatory process in question for 30 days to solicit public comment, unless the department determines in the committee meetings that the changes are minor and inconsequential in their impact.

### PART V. EFFECTIVE DATE.

#### § 5. 5.1. Effective date.

The final regulation will become effective 30 days after it is published in The Virginia Register, or a later date, if specified. If there are gubernatorial or legislative objections, the procedures specified in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, will be followed.

### PART VI. REGULATION AVAILABILITY.

#### § 6. 6.1. Availability of final regulation.

The department will make available to the public copies of the adopted regulations, together with the summary of the public comments and the department's responses. The Governor's comments and the department's responses also will also be available to the public. Copies of the final regulations will be sent to all interested parties who have specifically requested them.

### PART VII. FORMS.

#### § 7. 7.1. Forms.

The forms described herein Registrar of Regulations develops the forms referenced in these guidelines and may

change from time to time them. Copies of appropriate forms in current use will be attached to these guidelines and will be updated when necessary. Copies of forms in current use may be obtained from the Registrar's office or from the department by request.

VA.R. Doc. No. R94-541; Filed February 2, 1994, 10:43 a.m.

## BOARD OF OPTOMETRY

Title of Regulation: VR 510-01-2. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia.

Public Hearing Date: March 16, 1994 - 8:30 a.m.  
Written comments may be submitted through April 22, 1994.

(See Calendar of Events section for additional information.)

Basis: Sections 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia establish the general powers and duties of the Board of Optometry which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

#### Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

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Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the

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Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

## Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

## Summary:

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Optometry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.*

VR 510-01-2. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Optometry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

### § 1.2. Definitions.

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

*"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

*"Board" means the Board of Optometry.*

*"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.*

## PART II. MAILING LIST.

### § 2.1. Composition of the mailing list.

*A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.*

*B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.*

*C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.*

*D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.*

### § 2.2. Documents to be sent to persons or entities on the mailing list.

*Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:*

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.
3. A copy of any final regulation adopted by the board.



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4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.
3. A description of the regulatory problem or need to be addressed.
4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

### § 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

### § 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in

writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

### § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

### § 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

### § 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an

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interest in working with the agency.

## § 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. No. R94-524; Filed January 19, 1994, 12:16 p.m.

## BOARD OF SOCIAL WORK

**Title of Regulation:** VR 620-01-3. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1, 54.1-2400 and 54.1-3700 et seq. of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through April 22, 1994.

(See Calendar of Events section for additional information.)

**Basis:** Section 54.1-3700 et seq. establishes the general powers and duties of the Board of Social Work which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

**Purpose:** The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

### **Substance:**

Part I sets forth the purpose of guidelines for public

participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

**Issues:** The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the

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provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

- a. The process and content required for petitions for rulemaking.
- b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.
- c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption will be available prior to any meeting at which the exempted regulation is to be considered.
- d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a

hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

- a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.
- b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.
- c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

## Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has

conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

## Summary:

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Social Work. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.*

VR 620-01-3. Public Participation Guidelines.

### PART I. GENERAL PROVISIONS.

#### § 1.1. Purpose.

*The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Social Work. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

#### § 1.2. Definitions.

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

*"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

*"Board" means the Board of Social Work.*

*"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.*

### PART II. MAILING LIST.

#### § 2.1. Composition of the mailing list.

*A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.*

*B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.*

*C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of*

*specific regulatory issues, proposals, or actions.*

*D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.*

§ 2.2. Documents to be sent to persons or entities on the mailing list.

*Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:*

- 1. A Notice of Intended Regulatory Action.*
- 2. A Notice of Comment Period.*
- 3. A copy of any final regulation adopted by the board.*
- 4. A notice soliciting comment on a final regulation when the regulatory process has been extended.*

### PART III. PUBLIC PARTICIPATION PROCEDURES.

#### § 3.1. Petition for rulemaking.

*A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.*

*B. A petition shall include but need not be limited to the following:*

- 1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.*
- 2. The number and title of the regulation to be addressed.*
- 3. A description of the regulatory problem or need to be addressed.*
- 4. A recommended addition, deletion, or amendment to the regulation.*

*C. The board shall receive, consider and respond to a petition within 180 days.*

*D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.*

#### § 3.2. Notice of Intended Regulatory Action.

*A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief*

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statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

## § 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

## § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

## § 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

## § 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in

conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

### § 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-542; Filed February 2, 1994, 11:37 a.m.

# FINAL REGULATIONS

For information concerning Final Regulations, see information page.

## Symbol Key

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

## ALCOHOLIC BEVERAGE CONTROL BOARD

**Title of Regulation:** 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.

**Statutory Authority:** §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

**Effective Date:** March 23, 1994.

### Summary:

*The amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1; (ii) provide that informal conferences be conducted as required by the Administrative Process Act; (iii) expand the agency's public participation guidelines in regulation development to establish criteria for determining when the board considers ad hoc panels and consultations with interested groups and individuals appropriate and when the board intends to make use of such panels or consultations; (iv) provide the deputy department director for regulation or his designee with broad powers, not only to represent the Division of Enforcement and Regulation during administrative hearings, but to petition the board for modifications of hearing officers' decisions and request rulings on other motions. This authority does not extend to complaints under the Franchise Acts.*

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

**Agency Contact:** Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616.

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 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~~: *Chief Hearing Officer, Administrative Hearings Section.*

### § 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~~, *Division of Enforcement and Regulation*, 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.

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## § 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~~ *Chief Hearing Officer, Administrative Hearings Section*, 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~~ *interested* ] 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~~ *chief hearing officer*, 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; and
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.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with §§ 4-7(+) 4.1-103 10 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. *At any hearing held by a hearing officer, any person hindering the orderly conduct or decorum of a the hearing shall be subject to penalty provided by law guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia .*

#### § 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; and
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;
3. Persons who would be aggrieved by a decision of the board; and
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.

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

#### § 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~~ *Chief Hearing Officer, Administrative Hearings Section*, and shall state with reasonable certainty the ground therefor. Argument upon such motions or requests will not be heard without special



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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~~ *chief hearing officer*, 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 to appear on

behalf 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 not 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 chief hearing officer, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

## § 1.21. Witnesses.

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

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

C. A person attending subpoenaed as a witness, under a summons issued at the instance to appear on behalf 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.

## § 1.22. Informal conferences.

### A. Waiver.

An informal conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the agency will automatically waive the informal conference when the applicant or licensee does so. When the applicant or licensee is offered an informal conference and fails to respond within 10 calendar days after the date of such offer, the informal conference will be deemed to be waived.

### B. Procedures.

The informal conference will be conducted for the reasons set forth in § 9-6.14:11 of the Code of Virginia; provided, however, inasmuch as the Code of Virginia continues to require that license suspension or revocation be preceded by a formal hearing (see § 4.1-227 of the Code of Virginia), the informal conference may not be used for purposes of agreement fixing a period of suspension or license revocation, although an offer of settlement shall be received for board consideration. The

informal conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections, the evidence in support thereof and to hear any matters relevant thereto presented by the interested parties and to explore whether (i) administrative proceedings or objections should be terminated or (ii) the case should proceed to formal hearing and stipulations can be reached. The conference will be open to the public, but participation will be limited to the interested parties, their attorneys-at-law or other qualified representatives, and designated board representatives. The conference will be held, when practical, at the county or city in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the informal conference. The informal proceeding will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. At the conclusion of the informal conference, the designated board representative will complete a disposition form to be included in the case file or will announce the results at the beginning of the formal hearing to be included in the record.

## § 1.23. Agency representation.

The deputy department director for regulation or his designee may (i) represent the Division of Enforcement and Regulation before the board or any hearing officer; (ii) petition the board for modification of the hearing officer's decision; or (iii) request a ruling on other motions as may be necessary. [ This authority does not extend to complaints under the Franchise Acts. ]

## 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 individual, partnership, association or corporation

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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 of 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 of 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 § 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 except to the extent such provisions are inconsistent herewith.

## PART III. WINE AND BEER FRANCHISE ACTS.

### § 3.1. Complaints.

Complaints shall be referred in writing to the secretary of the board. The secretary's office, in consultation with the Deputy for Regulation deputy department director for regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters 2.1 (§ 4-118.3 et seq.) or 2.3 (§ 4-118.42 et seq.) Chapter 4 (§ 4.1-400 et seq.) or 5 (§ 4.1-500 et seq.) of Title 4, 4.1 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 (§ 4-118.3 et seq.) and 2.3 (§ 4-118.42 et seq.) of Title 4

Wine and Beer Franchise Acts, Chapters 4 (§ 4.1-400 et seq.) and 5 (§ 4.1-500 et seq.) of Title 4.1 of the Code of Virginia, including arbitration proceedings when necessary pursuant to §§ 4-118.10 and 4-118.50 4.1-409 and 4.1-508 of the Code of Virginia.

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:

"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 §§ 4-118.43 4.1-401 and 4-118.4 4.1-500, 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 §§ 4-118.43 4.1-401 and 4-118.4 4.1-500 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 subdivision 3 of this subsection or subdivision 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

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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, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection 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 subdivision, 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 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, 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; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection 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 section, any notice or document required or permitted to be served under this section 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 section 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 section 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 this part 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 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 this section. 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 section.

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

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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 section 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 this section .

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 this section and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this section 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 section 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 section 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 section whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country depositions under this section 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 section 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 section for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this section 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 does not preclude taking a deposition by any other procedure authorized in this section.

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 section. 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 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 subdivision C 3 of this section. 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 subdivision 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 subdivision J 4 d of this section 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



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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 subdivision G 2 f of this section.

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 this section, 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~~ Wine and Beer 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 subdivision 2 f of subsection G or subdivision 1 of subsection H of this section 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 of the Code of Virginia, or upon questions agreed on

by the guardian or attorney before the taking.

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

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

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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 this section 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 this section 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 this section.

6. Submission, etc. The provisions of subdivision G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of this section 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, 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 O 1 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 C 2, 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 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 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 C 2 of this section.

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, 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 O 1 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

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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, 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 C 2 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 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 shall be served, and no subpoena provided for in subdivision 3 of this subsection 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, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of this subsection 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, 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 C 2 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 subdivision O 3, 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.

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) 4.1-225 1 c 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

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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; and

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.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control, except as provided in subsection G of this section.

### B. Initiation of rulemaking (Step 1).

The board shall publish notice of the commencement or initiation of any rulemaking process. Rulemaking procedures may be initiated at any time by the board but shall be initiated at least once each calendar year. At the commencement of any rulemaking process, the board may invite proposals for regulations or regulation changes from any interested person or may limit the process to selected proposals. All initial proposals to be considered shall be in the form of a written petition for the adoption, amendment or repeal of any regulation. Petitions shall be filed with the board within any time limitation as may be specified by the board. A petition may be submitted at any time, by any person, but it shall be at the board's discretion to initiate rulemaking procedures as a result of such petition or petitions. ~~Any petition not considered may be deferred until the next rulemaking process. All petitions shall be considered and responded to within 180 days.~~ Each petition shall contain the following information, if available:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. General description of proposal, with recommendations for 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



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affected?;

8. Draft language; and

9. Supporting documents.

## C. Notices - in general.

1. Mailing list. The secretary to the board in conjunction with the deputy *department* director 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 the filing of petitions, 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 and of general circulation in the City of Richmond, and in such other newspapers in ~~Virginia~~ *the Commonwealth* as the board may determine, 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. Notice to listed persons. Each person on the general mailing list shall be sent, by U.S. mail, a copy of all notices pertaining to rulemaking for the board as are published in the Virginia Register. In lieu of such copy, the board may notify those on the mailing list of the publication of the notice and, if lengthy, offer to forward a copy upon payment of reasonable costs for copying and mailing.

D. Initial requirement for public comment; participation in regulation development; ad hoc panels; public meetings (Step 2).

1. Notice of Intended ~~Regulation~~ *Regulatory Action*. The board shall solicit comments, data, views and argument from the public as to each regulation proposal and shall encourage participation of interested persons in the development of regulations and draft language. As to each petition or proposal, the board shall publish a Notice of Intended Regulatory Action. The notice shall specify the date, time and place of any public meeting to consider the proposals, either with or without an ad hoc advisory panel, *or with or without consultation with groups and individuals who have expressed an interest in participating in the development of specific rules and regulations* and shall contain the following information:

- 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. Name of individual, group or entity proposing regulation;

f. Request for comments, data, views or argument from interested parties, either orally or in writing, to the board or its specially designated subordinate ;

g. Notification of date, time and place of any scheduled public meeting on the proposal; and

h. Name, address and telephone number of staff person to be contacted for further information.

2. The board shall disseminate the Notice of Intended ~~Regulation~~ *Regulatory Action* to the public via:

a. Publication in The Virginia Register of Regulations;

b. Distribution by mail to persons on the general mailing list pursuant to subsection C; and

c. Press release to media throughout the Commonwealth if a public meeting is scheduled.

3. The board may form an ad hoc advisory panel *or consult with groups and individuals who have expressed an interest in participating in the development of specific rules and regulations* to consider regulation proposals to make recommendations, assist in development of draft language, and provide such advice as the board may request. The board may ~~direct request~~ *request* the panel *or interested groups and individuals* to participate in a ~~public~~ *public* meeting to ~~develop or~~ *develop or* consider regulation proposals.

*The board's use of ad hoc advisory panels or consultation with interested groups and individuals shall be based on, but not limited to, the following criteria: The proposed regulation's:*

- a. *Complexity;*
- b. *Controversy;*
- c. *Degree of substantive change;*
- d. *Impact on the board, its licensees, and the public; or*
- e. *Enactment required by state or federal mandate.*

4. The board may conduct a regulation development public meeting to receive views and comments and answer questions of the public.

E. Notice of public hearing and publication of proposals pursuant to § 9-6.14:7.1 C of the Virginia Administrative Process Act (Step 3).

1. The board shall consider the comments, recommendations, reports and other input from the public, industry and other interested persons received during the initial steps of public participation in the regulation development process, including comments, views, data and argument received during any public meeting, before publishing a final proposed draft regulation and initiating the proceedings required by the Administrative Process Act.

2. The board shall comply with the notice, publication and other requirements of § 9-6.14:7.1, and final proposed drafts to adopt, amend or repeal regulations, together with any other required statements, shall be published in the Virginia Register, in a newspaper published and of general circulation in the City of Richmond, and in such other newspapers in ~~Virginia~~ *the Commonwealth* as the board may determine. In addition, the board shall comply with the provisions of subdivision C 2 ~~above~~. Such notice shall solicit comments, views, data and argument from the public and shall specify the date, time and place of any scheduled public hearing to consider adoption of such regulation proposals.

F. Public hearing (Step 4).

The board shall conduct a public hearing to consider adoption of all proposed regulations. At such hearing, the board may receive and consider such additional written and verbal comment as it deems appropriate prior to any final vote.

G. Notwithstanding the foregoing provisions, the board may elect to dispense with any required public participation or other required procedure to the extent authorized by the Virginia Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

VA.R. Doc. No. R94-557; Filed February 2, 1994, 10:29 a.m.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Waiver of Informal Conference

IN THE MATTER OF:

DISCIPLINARY \_\_\_\_\_ APPLICATION \_\_\_\_\_  
\_\_\_\_\_  
(Number)

The licensee/applicant knowingly and voluntarily waives its right to an informal conference. When the formal hearing is scheduled, all parties will be provided with notice of the date, time and place of hearing.

Seen and Agreed to : \_\_\_\_\_ Date \_\_\_\_\_  
Licensee/Applicant  
\_\_\_\_\_  
(Print Name)

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
(Representative of Agency)  
\_\_\_\_\_  
(Print Name)

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Informal Conference Disposition

IN THE MATTER OF:

APPLICATION FOR:

An informal conference was conducted by \_\_\_\_\_,  
(Person)  
\_\_\_\_\_ on \_\_\_\_\_ in \_\_\_\_\_,  
(Title) (Date) (Locality)  
to consider the objections stated in the Application  
Investigation Report dated \_\_\_\_\_.

This conference resulted in the following disposition:

- Case should be scheduled for formal hearing.
- Withdrawal of the objection(s) and issuance of the license effective \_\_\_\_\_. State any conditions or restrictions here:

Withdrawal of the application

Seen and Agreed to: \_\_\_\_\_ Date \_\_\_\_\_  
Objectors

\_\_\_\_\_  
Applicant Date

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
Person Presiding

RECEIVED  
9/FEB-7 11:11:01

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD  
RICHMOND  
February 4, 1994

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF APPLICANT NAME-  
TRADE NAME-  
ADDRESS-  
CITY, ST-

APPLICATION FOR TYPE OF LICENSE-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following objection(s):

- 1. objection-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the objection(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether the license should be granted as is required by Section 4.1-224 of the Code of Virginia. The informal conference and formal hearing will be held on date, time and location.-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

BY \_\_\_\_\_  
Chief Hearing Officer  
Michael J. Oglesby

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD  
RICHMOND  
February 4, 1994

NOTICE OF INFORMAL CONFERENCE/HEARING BEFORE HEARING OFFICER

IN THE MATTER OF NAME-  
TRADE NAME-  
ADDRESS-  
CITY, ST-

LICENSE NO. NUMBER-

The Board, based upon an investigative report received from the Division of Enforcement and Regulations, alleges the following charge(s):

- 1. charge-

Unless waived, an informal conference will be conducted immediately prior to the formal hearing. The conference will be held to discuss the charge(s) and to reach any possible stipulations. The investigative report, procedural regulations, and a written explanation of those regulations are enclosed. In the absence of a demand for amplification or some objection, the Board anticipates these documents may serve to fulfill the Board's obligation under Section 9-6.14:11(iii) and (v) of the Administrative Process Act.

The Board, through a Hearing Officer, will conduct the formal proceeding to determine whether any disciplinary action should be taken against your license as is required by Section 4.1-227 of the Code of Virginia. The informal conference and formal hearing will be held on date, time and location.-

You will be afforded an opportunity to present evidence in your behalf and you may be represented by an attorney, if you so desire.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

BY \_\_\_\_\_  
Chief Hearing Officer  
Michael J. Oglesby

# Final Regulations

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Title of Regulation: VR 125-01-2. Advertising.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A, 4.1-113, 4.1-320 and 4.1-329 of the Code of Virginia.

Effective Date: March 23, 1994.

Summary:

The amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 2 to permit any inflatable plastic items not in excess of \$5.00 in wholesale value to be displayed inside licensed retail establishments; (iii) amend § 2 to permit spirits back-bar pedestals to be displayed inside licensed retail establishments; (iv) amend § 2 to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours"; and (v) amend § 3 to eliminate the square footage limitations of distant, off-site directional signs of farm wineries and wineries holding retail off-premises winery licenses, and to permit the advertising of trade names and the terms "farm winery" and "winery" on such signs.

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

Agency Contact: Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

VR 125-01-2. Advertising.

§ 1. Advertising; generally; cooperative advertising; federal laws; ~~beverages and~~ cider; 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 regulation of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical, publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee 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, except as may be authorized by regulation of the board pursuant to § ~~4-70-1~~ 4.1-216 of the Code of Virginia. 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. Beverages and cider Cider .

Advertising of ~~beverages and~~ cider, as defined in §§ ~~4-00~~ and 4-27, respectively, § 4.1-213 of the Code of Virginia, shall conform with the requirements for advertising beer.

D. Exceptions.

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

E. General restrictions.

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

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent 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. Constitutes or contains a contest or sweepstakes where a purchase is required for participation; or
8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages ~~or beverages~~, except for refund coupons and combination packaging for wine. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

F. The board shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a

reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages or beverages and (ii) the advertising prominently states that the product is nonalcoholic.

## § 2. Advertising; interior; retail licensees.

### A. Definition.

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; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with the provisions of VR 125-01-2 § 1 F.

B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:

1. Retail licensees may use any nonpermanent advertising material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard, canvas or plastic stock; however, canvas advertising materials shall be restricted to fabric banners containing only two-dimensional display surfaces and plastic advertising materials shall be restricted to (i) thin sheets or strips containing only two-dimensional display surfaces or (ii) any inflatable plastic items not in excess of \$5.00 in wholesale value. Such advertising materials may be obtained by such retailers from any source, including manufacturers, bottlers and wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials; provided, however, that nonpermanent advertising material referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a distilled spirits solicitor's permit;

2. Retail on-premises and on-and-off-premises licensees may use any mechanical or illuminated devices which are designed or manufactured to serve as permanent point-of-sale advertising. Such advertising devices may be obtained and displayed by retailers provided that any such devices do not make reference to brands of alcoholic beverages offered for sale in such retail establishment or to brands or the name of any manufacturer whose alcoholic beverage products are offered for sale in such retail establishment and, provided further, that such advertising materials are not supplied, installed, maintained or otherwise serviced by any manufacturers, bottlers or wholesalers of alcoholic beverages, and that no such advertising relating to distilled spirits shall be authorized in an establishment not licensed to sell mixed beverages;

3. Notwithstanding subdivision B 2 above, retail licensees may display any permanent point-of-sale advertising pertaining to nonalcoholic beer or nonalcoholic wine. Any such brand of nonalcoholic beer or nonalcoholic wine may be offered for sale in the retail establishment. Such permanent point-of-sale advertising may not be supplied, installed, maintained or otherwise serviced by any manufacturer, bottler or wholesaler of alcoholic beverages;

4. 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. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper, cardboard, canvas or plastic stock supplied by any manufacturer, bottler or wholesaler of alcoholic beverages in accordance with the provisions of this section provided, however, that nonpermanent advertising materials referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers or their employees unless they hold a distilled spirits solicitors permit;

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

c. Materials displayed in connection with the sale of over-the-counter novelty and specialty items in accordance with § 6 of this regulation;

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semiprofessional 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 this regulation;

e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers or wholesalers may supply to retailers napkins, placemats, and coasters and back-bar pedestals which contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine as permitted under VR 125-01-2 § 1 F, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo and address of the sponsoring manufacturer, bottler or wholesaler, provided such recognition is subordinate to the

# Final Regulations

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message, occupies no more than 10% of the space, and contains no reference to or pictures of the sponsor's brand or brands;

f. Draft beer and wine knobs, *spirits back-bar pedestals*, bottle or can openers, beer, wine and ~~distilled~~ spirits clip-ons and table tents, subject to the provisions of § 6 of VR 125-01-3;

g. Beer and wine "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area; and point-of-sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in ~~Virginia~~ *the Commonwealth* may not put entry blanks on the package; and

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

## C. 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.

D. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may mark or affix retail prices on these materials.

E. Every retail licensee who, pursuant to subdivisions B 2 or B 3 ~~above~~ , obtains any permanent point-of-sale advertising shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two [

~~three two~~ ] years and shall be available for inspection and copying by any member of the board or its *special agents at any time during business during reasonable hours.*

## § 3. Advertising; exterior; signs; vehicles; uniforms.

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

### 1. Manufacturers and wholesalers, including wineries and farm wineries:

a. 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;

b. 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;

c. If the establishment is a winery also holding a ~~winery retail~~ off-premises *winery* license or is a farm winery, additional directional signs ~~limited in dimension to 64 square feet~~ with advertising limited to *trade names*, brand names, ~~the terms "farm winery" or "winery,"~~ and tour information, may be erected in accordance with state and local rules, regulations and ordinances; and

d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

### 2. Retailers, including mixed beverage licensees, other than carriers and clubs:

a. 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; and

b. 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. Notwithstanding the above, the terms "Bar," "Bar Room," "Saloon," and "Speakeasy" may be used in combination with other words that connote a restaurant as part of the retail licensee's trade name; and

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

§ 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 unless they are used in combination with other words that connote a restaurant and they are part of the licensee's trade name: "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import; and

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. Advertising placed by a manufacturer, bottler or wholesaler in trade publications or associations of retail licensees or college publications shall not constitute cooperative advertising;

3. Advertisements of beer, wine and mixed beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on-premises," "beer," "wine," "mixed beverages," "cocktails," or any combination of these words; and

4. Advertisements of beer, wine and mixed beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3 above; notwithstanding the above mentioned provisions, all advertisements of beer, wine and mixed beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.

5. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication which is distributed or intended to be distributed primarily to persons over 18 and under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message, occupies no more than 10% of the advertising space, and contains no reference to or pictures of the sponsor's brand or brands, mixed drinks, or exterior signs. Any public service advertisement involving alcoholic beverages or beverages shall contain a statement specifying the legal drinking age in the Commonwealth.

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

A. Except as provided in subsection B, alcoholic beverage advertising of products greater than 14% alcohol by manufacturers, 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



# Final Regulations

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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:

## 1. Required statements.

a. Name. Name and address (street address optional) of the responsible advertiser.

b. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of ~~distilled~~ spirits or wine, such as "whiskey" or "chardonnay" is referred to, statements as to contents may be omitted.

c. Type size. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

2. Prohibited statement. Any reference to a ~~distilled~~ spirits price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

3. Further limitation. ~~Distilled spirits~~ *Spirits* may not be advertised in college student publications as defined in § 4 B 3 of this regulation nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.

B. Electronic advertising of alcoholic beverages containing more than 14% alcohol but less than 22% alcohol shall be permitted as long as it emphasizes that such alcoholic beverages are traditionally served with meals or immediately before or following a meal.

## § 6. Advertising; novelties and specialties.

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 \$5.00 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give items not in excess of \$5.00 in wholesale value, limited to one item per retailer, and one item per employee, per visit, which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees.

3. Items in excess of \$5.00 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, professional, semi-professional or amateur athletic and sporting events subject to the limitations of § 10 of VR 125-01-2, and for events of a charitable or cultural nature;

4. 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;

5. Wearing apparel shall be in adult sizes;

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their 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~~ *the Commonwealth* may not put order blanks on the package. Wholesalers may not be involved in the redemption process.

§ 7. Advertising; fairs and trade shows; alcoholic beverage 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 alcoholic beverages ~~and beverages~~ in closed containers with 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 alcoholic beverages ~~and beverages~~; and

3. Distribution of novelty and specialty items bearing alcoholic beverage ~~and beverage~~ advertising not in excess of \$5.00 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. Beer refund coupons may be part of, or attached to, the package only if the brewery put them on at the point of manufacture; however, beer and wine wholesalers may provide coupon pads to retailers for use by retailers on their 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 beer licensees in Virginia the Commonwealth may not put them on the package. Wholesale wine licensees may attach refund coupons to the package and wholesale wine licensees may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent which may be a continuing consent for each retailer or his representative.

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, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

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

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. Any sponsorship on a college, high school or younger age level is 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 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. Advertising materials as defined in VR 125-01-3 § 6 F G , table tents as defined in VR 125-01-3 § 6 G H and canisters are permitted;

8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

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

VA.R. Doc. No. R94-558; Filed February 2, 1994, 10:26 a.m.

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Title of Regulation: VR 125-01-3. Tied House.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A and B 3 of the Code of Virginia.

# Final Regulations

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Effective Date: March 23, 1994.

Summary:

The amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 3 to require that payments to the board be made in "cash" for application fees, excise taxes on wine coolers, solicitors' fees, temporary permit fees and the mark-up or profit on cider; (iii) amend § 6 to allow distillers to furnish to retail licensees, without regard to the value thereof, back-bar pedestals bearing spirits advertising to be used on the retail premises; and (iv) amend § 6 to prohibit manufacturers, bottlers and wholesalers from providing customized advertising materials for particular retail licensees or which are not otherwise generally available to all retailers.

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

Agency Contact: Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

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 wine~~ and ~~wine beer~~ ;
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 wine~~ and ~~wine beer~~ between storerooms, between displays, and between storerooms and displays; and
5. Create or build original displays using wine or beer products only.

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; or
- 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; or

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. Products that a manufacturer discontinues nationally may be returned and money refunded;
- d. Resalable draft beer ~~or beverages~~ may be returned and money refunded;
- e. 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;
- f. 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; or
- g. ~~Beer Wine~~ or ~~wine beer~~ may be exchanged on an identical quantity, brand and package basis for quality control purposes. Any such exchange shall be documented by the word "exchange" on the proper invoice.

§ 2. 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 *licensed* 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.

§ 3. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Generally.

Sales of wine ; or 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, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash" defined.

"Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in ~~Virginia~~ the Commonwealth (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.

C. Checks, money orders and electronic fund transfers.

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

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages or beverages ; and
2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer 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. Electronic fund transfers.

If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the

wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine ; or beer or beverages to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank.

2. The wholesaler must generate an invoice covering the sale of wine ; or beer or beverages and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery.

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Records and reports by sellers.

Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine ; or beer or beverages , as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine ; or beer or beverages when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board.

Payments to the board for the following items shall be for cash, as defined in subsection B of this section :

1. State license taxes and application 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 and excise taxes on beer and wine

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coolers ;

4. ~~Beer and beverage excise taxes pursuant to Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia Solicitors permit fees and temporary permit fees ;~~

5. Registration and certification fees , ~~and the markup or profit on cider~~, collected pursuant to these regulations;

6. ~~Monetary penalties Civil penalties or charges~~ and costs imposed on licensees and permittees by the board; and

7. Forms provided to licensees and permittees at cost by the board.

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

A. Minimum deposit.

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

Bottles having a capacity of not more than 12 oz. ....	\$0.2
Bottles having a capacity of more than 12 oz. but not more than 32 oz. ....	\$0.4
Cardboard, fibre or composition cases other than for 1 1/8-or 2 1/4-gallon kegs .....	\$0.2
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.

§ 5. Solicitation of licensees by wine ; ~~and beer and beverage~~ solicitor salesmen or representatives.

A. Generally.

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

B. Permit required.

A permit is required to solicit or promote wine ; or beer ~~or beverages~~ to wholesale or retail licensees of the ~~board~~ , including mixed beverage licensees, by a wine ; or beer ~~or beverage~~ solicitor salesman or representative of any ~~out-of-state~~ wholesaler engaged in the sale of wine ; or 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)~~ 4.1-230 E of the Code of Virginia; and
3. Be 18 years old or older to solicit or promote the sale of wine ; or beer ~~or beverages~~ , and may not be employed at the same time by a nonresident person

*an out-of-state wholesaler engaged in the sale of wine ; or beer or beverages at wholesale and by a licensee of the board to solicit the sale of or sell wine ; or beer or beverages , and shall not be in violation of the provisions of § 3 2 .*

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

D. Solicitation and promotion under this regulation may include educational programs regarding wine ; or beer or beverages for mixed beverage licensees, but shall not include the promotion of, or educational programs related to, ~~distilled~~ spirits or the use thereof in mixed drinks unless a ~~distilled~~ spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this regulation, the soliciting or promoting of wine ; or 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.

§ 6. Inducements to retailers; tapping equipment; bottle or can openers; *spirits back-bar pedestals*; banquet licensees; paper, cardboard or plastic advertising materials; 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; and

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; and

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; or

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 \$5.00. Openers in excess of \$5.00 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

#### E. *Spirits back-bar pedestals*.

*Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail*

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premises and upon which advertising matter regarding spirits may appear.

## E. F. 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. G. Paper, cardboard, canvas and plastic advertising.

Manufacturers, bottlers or wholesalers of alcoholic beverages may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with VR 125-01-2 § 2. *Manufacturers, bottlers and wholesalers may not provide advertising materials to any retail licensee that have been customized for that retail licensee or which are not otherwise generally available to all retail licensees.*

## G. H. Clip-ons and table tents.

Any manufacturer, bottler or wholesaler of wine, beer or ~~distilled~~ spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents containing the listing of not more than four wines or four beers. There is no limitation on the number of ~~distilled~~ spirits brands which may be listed on clip-ons and table tents.

## H. I. 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. J. 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. K. Sanctions and penalties.

Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1 A 4.1-216 A of the Code of Virginia, wholesaler or retailer who violates, *attempts to violate*, 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 4.1-328 of the Code of Virginia.

§ 7. Routine business entertainment; definition; permitted activities; conditions.

## A. Generally.

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

## 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, or 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 subdivision C 5 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; and

8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

V.A.R. Doc. No. R94-559; Filed February 2, 1994, 10:30 a.m.

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**Title of Regulation: VR 125-01-4. Requirements for Product Approval.**

**Statutory Authority:** §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

**Effective Date:** March 23, 1994.

**Summary:**

*The amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; and (ii) amend § 2 to change from mandatory to discretionary the board's authority to withhold approval of any wine label.*

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

**Agency Contact:** Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

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

§ 1. ~~Distilled spirits~~ *Spirits* ; labels, definitions and standards of identity.

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

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.

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

A. Qualifying procedures.

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

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

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

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

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

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

B. Disqualifying factors as to contents.

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

- 1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;
- 2. If the alcoholic content exceeds 21% by volume;
- 3. Which is a wine cocktail containing any ingredient other than wine.

C. Disqualifying factors as to labels.

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

- 1. Which ~~contains~~ *the name of a cocktail generally understood to contain* implies or indicates that the product contains spirits;
- 2. Where the name of a state is used as a designation



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of the type of wine, but the contents do not conform to the wine standards of that state;

3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;

4. Which contain the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;

5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;

6. Which contains subject matter designed to induce minors to consume alcoholic beverages drink, or is suggestive of the intoxicating effect of wine;

7. Which contains any reference to a game of chance;

8. Which contains any design or statement which is likely to mislead the consumer.

## D. Samples.

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

## E. Exceptions.

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

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

### A. Sizes generally.

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

### B. On-premises consumption.

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

package container with closure.

### C. Off-premises consumption.

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

### D. Cooler-dispensers.

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

### E. Novel or unusual containers.

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

### F. Carafes or decanters.

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

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

### A. Generally.

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

### B. Off- and on-premises limitations.

No beer or beverages shall be sold by licensees for off-premises consumption in any container upon which the original closure has been broken, except for a growler or reusable container that is federally approved to hold a malt beverage, has a resealable closure and is properly labeled. Growlers may only be used by brewpubs. Further, licensees shall not allow beer or beverages dispensed for on-premises consumption to be removed from authorized areas upon the premises.

### C. Novel or unusual containers.

Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may

consider, but is not limited to, the factors set forth in § 3 of this regulation.

#### D. Opening devices.

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

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

#### A. Qualifying procedures.

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

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

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

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

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

#### B. Samples.

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

#### C. Exceptions.

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

#### D. Disqualifying factors as to labels.

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

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

V.A.R. Doc. No. R94-560; Filed February 2, 1994, 10:27 a.m.

\* \* \* \* \*

Title of Regulation: VR 125-01-5. Retail Operations.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Effective Date: March 23, 1994.

#### Summary:

The amendments (i) update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages"; (ii) amend § 7 to clarify that special agents shall be given free access during reasonable hours to every place in

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*the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting such place; (iii) amend § 7 to provide that special agents and other law-enforcement officers in the performance of their official duties shall be allowed free access during reasonable hours to any retail licensed establishment for observing activities on those licensed premises; (iv) amend § 7 to make it unlawful for any person who by use of threats, force or intimidation impedes or obstructs any special agent or other law-enforcement officer in the performance of his official duties from entering or remaining upon any licensed establishment and to clarify that such violations shall constitute Class 1 misdemeanors; (v) amend § 7 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises; (vi) amend § 11 to require wine and beer or beer only restaurants to sell meals or other foods, as the case may be, at substantially all hours that wine and beer are offered for sale; and (vii) amend § 11 to require a hotel to have four or more bedrooms.*

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

Agency Contact: Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

VR 125-01-5. Retail Operations.

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

A. Prohibited sales.

Except as may be otherwise permitted under §§ 4-48 ~~or 4-50 subdivisions 1 through 5 of § 4.1-200~~ of the Code of Virginia, no licensee shall sell any alcoholic beverage ~~or beverage~~ to a person whom he shall know, or have reason at the time to believe, is:

1. Under the age of 21 years;
2. Intoxicated; or
3. An interdicted person.

B. Prohibited consumption.

No licensee shall allow the consumption of any alcoholic beverage ~~or beverage~~ upon his licensed premises by any person to whom such alcoholic beverage ~~or beverage~~ may

not lawfully be sold under this section.

§ 2. Determination of legal age of purchaser.

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

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and
2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

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

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

§ 3. Restricted hours; exceptions.

A. Generally.

The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer ; beverages or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:
  - a. For on-premises sale and consumption: 2 a.m. to 6 a.m.
  - b. For off-premises sale: 12 a.m. to 6 a.m.
2. In all other localities: 12 a.m. to 6 a.m. for on-premises sales and consumption and off-premises sales, except that on New Year's Eve the licensees shall have an additional hour in which to exercise the

on-premises privileges of their licenses.

## B. Exceptions:

1. Club licensees: No restrictions at any time;
2. Individual licensees whose hours have been more stringently restricted by the board shall comply with such requirements; and
3. Licensees in the City of Danville are prohibited from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m.

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

### A. Generally.

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

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

### B. Disapproval of designated manager.

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

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the *Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia*.

### C. Restrictions upon employment.

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

§ 5. Restrictions upon employment of minors.

No person licensed to sell alcoholic beverages or beverages at retail shall permit any employee under the

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

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

### A. Generally.

No mixed beverage restaurant or carrier licensee shall:

1. Preparation to order. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.

2. Limitation on sale serving . Serve as one drink the entire contents of any spirits containers having a greater capacity than a "miniature" of two fluid ounces or 50 milliliters, nor allow any patron to possess more than two drinks of mixed beverages at any one time. "Miniatures" may be sold by carriers and by retail establishments licensed as hotels, or restaurants upon the premises of a hotel, to sell mixed beverages. However, such licensees, other than carriers, may sell miniatures only for consumption in bedrooms and in private rooms during a scheduled private function. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C and D.

3. Types of ingredients. Sell any mixed beverage to which alcohol has been added.

### B. Mixed beverage restaurant licensees.

No mixed beverage restaurant licensee shall:

1. Stamps and identification. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license which does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.

2. Source of ingredients. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine distributor

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licensee .

3. Empty container. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Miniatures. Sell any spirits in a container having a capacity of two fluid ounces or less, or 50 milliliters. *Limitation on possession. Allow any patron to possess more than two drinks of mixed beverages at any one time.*

## C. Sales of spirits in closed containers.

If a restaurant for which a mixed beverage restaurant license has been issued under § 4-98.2 4.1-210 of the Code of Virginia is located on the premises of ~~and~~ in a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits ~~packages packaged~~ in original closed containers purchased from the board, as well as other alcoholic beverages ~~and beverages~~, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages ~~and beverages~~, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

## D. Employment of minors.

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

purpose of:

1. Seating customers or busing tables when customers generally are purchasing meals;

2. Providing entertainment or services as a member or staff member of an otherwise adult or family group which is an independent contractor with the licensee for that purpose; or

3. Providing entertainment when accompanied by or under the supervision of a parent or guardian.

## D. Miniatures.

*Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.*

§ 7. Restrictions on construction, arrangement and lighting of ~~rooms and seating of licensees' licensed premises;~~ inspections; obstruction; "reasonable hours."

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

B. *The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting such place.*

C. *In addition to special agents, other law-enforcement officers in the performance of their official duties shall be allowed free access to any retail licensed establishment for the purpose of observation of activities on those licensed premises during reasonable hours.*

D. *Any person who by use of threats, force or intimidation impedes or obstructs any special agent or other law-enforcement officer in the performance of his official duties from entering or remaining upon any licensed establishment shall be guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.*

E. *For the purposes of this regulation, the term "reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.*

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

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage or beverage ; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

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

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

A. Generally.

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

B. Procedures under permits.

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

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

C. Exception.

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

§ 10. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.

A. Wine and beer.

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

1. "Delicatessen." An establishment which sells a

variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

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

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

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

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

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

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

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

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

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

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

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

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

5. "Specialty shop." "Gourmet shop." An establishment provided with adequate shelving and storage facilities which sell products such as ~~cheese~~ cheeses and gourmet foods:

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

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

B. Beer.

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

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less than those shown:

1. "Delicatessen." An establishment as defined in subsection A:

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

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

2. "Drugstore." An establishment as defined in subsection A:

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

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

3. "Grocery store." An establishment as defined in subsection A:

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

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

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

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

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

## C. Exceptions.

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

## D. Further conditions.

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

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

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

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

## E. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

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

### A. Generally.

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

1. "Designated room." "Designated area." A room or area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.

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

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

a. The assortment of foods commonly offered for sale;

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

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

4. "Habitual sales." In determining what constitutes

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"habitual sales" of specific foods, the board may consider the following factors, among others:

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

**B. Wine and beer.**

Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining rooms areas and other designated rooms areas on the premises are not less than those shown:

1. "Boat : " (on premises only). A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission , habitually serving food on the boat :

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

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

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

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

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

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

**C. Beer.**

Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the

total monthly food sales for consumption in dining rooms areas and other designated areas on the premises are not less than those shown:

1. "Boat : " (on-premises only). A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving food See subdivision B 1 :

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

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

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

3. "Hotel." See subdivision B 3;

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

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

**D. Mixed beverage licenses.**

The following shall apply to mixed beverage licenses where appropriate:

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

2. "Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.

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

4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining room area" or as a "designated room area" in the discretion of the board. A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which



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are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

## 5. "Tables and counters."

a. A "table" shall include any article of furniture, fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters.

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

## E. Exceptions.

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

## F. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

## § 12. Fortified wines; definitions and qualifications.

(Repealed.)

### A. Definition.

"Fortified wine" is defined as wine having an alcoholic content of more than 14% by volume but not more than 21%.

### B. Qualifications.

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

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

### A. Applications.

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

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

### B. Qualifications.

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

1. The club's ~~objectives~~ purposes and its compliance with the ~~objectives~~ purposes;
2. The club's qualification for tax exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

### C. Nonmember use.

The club shall limit nonmember use of club premises according to the provisions of this section and shall notify the board each time the club premises are used in accordance with this subdivision 1 below. The notice shall be received by the board at least two business days in

advance of any such event.

1. A licensed club may allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises;

2. A member of a licensed club may sponsor private functions on club premises for an organization or group of which he is a member, such attendees being guests of the sponsoring member; or

3. Notwithstanding subdivisions C 1 and C 2 above, a licensed club may allow its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses.

Additionally, there shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

#### D. Special events licenses.

A licensed club may not obtain a banquet special events license or a mixed beverage special events license for use on its premises. However, a club may obtain a banquet special events license or a mixed beverage special events license not more than 12 times per calendar year upon the unlicensed portion of its premises.

#### E. Reciprocal arrangements.

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

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

#### F. Changes.

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

#### G. Financial statements.

Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by VR 125-01-7 § 9 E D.

#### § 14. Lewd or disorderly conduct.

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

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

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

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

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

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

No person holding a license granted by the board which authorizes the licensee to sell wine or beer at retail for consumption off the premises of such licensee shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such

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merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

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

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

## A. Definitions.

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

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

## B. Prohibited practices.

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

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

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

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

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

5. Selling pitchers of mixed beverages;

6. Giving away drinks;

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

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

## C. Exceptions.

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

§ 17. Caterer's license.

## A. Qualifications.

Pursuant to § ~~4-98.2(e)~~ 4.1-210 A 2 of the Code of Virginia, the board may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § ~~4-2~~ 4.1-100 of the Code of Virginia or as provided in § ~~4-98.2(e)~~ 4.1-210 A 3 of the Code of Virginia, and

2. With an established place of business with catering gross sales average of at least \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

## B. Privileges.

The license authorizes the following:

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

2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer or ~~3-2~~ beverages from licensed wholesalers;

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

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

## C. Restrictions and conditions.

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

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

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

and address of the sponsoring person or group of each event catered;

3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;

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

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

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

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

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

9. The caterer's license shall be considered a retail license for purposes of § 4-79.1 4.1-216 of the Code of Virginia.

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

#### A. Qualifications.

Pursuant to § 4-25(~~pt~~) 4.1-206.3 of the Code of Virginia, the board may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

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

#### B. Privileges.

The license authorizes the following:

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

#### C. Restrictions and conditions.

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

1. Alcoholic beverages cannot be sold or purchased by the licensee;

2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;

3. The private affair referred to in ~~subdivision B 1~~ subsection B shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;

4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of ~~two~~ [ ~~three~~ two ] years;

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

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

§ 19. Bed and breakfast licenses.

#### A. Qualifications.

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Pursuant to § ~~4-25(A)(22)~~ 4.1-206.4 of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:

1. No more than 15 bedrooms available for rent;
2. Offering to the public, for compensation, transitory lodging or sleeping accommodations; and
3. Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

## B. Conditions.

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

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a Virginia A.B.C. government store, wine or beer wholesaler or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums or surcharges shall be exacted for the service of alcoholic beverages;
4. Alcoholic beverages may be served in dining rooms and areas, private guest rooms and other designated rooms areas, including bedrooms, outside terraces or patios;
5. The bed and breakfast establishment upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival, any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;
6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and
7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

§ 20. Specialty stores and gift shops *Gift shops*; wine and beer off-premises and wine off-premises licenses;

conditions; records; inspections.

## A. Qualifications.

Pursuant to the provisions of §§ 4-25 A 13 and 4-25 A 22 § 4.1-209.7 of the Code of Virginia, the board may grant (i) retail wine and beer off-premises licenses to persons operating a registered historical site or museum specialty store or (ii) retail wine off-premises licenses to persons operating gift shops. Such gift shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum.

## B. Restrictions and conditions.

1. A historical site or museum specialty store shall be defined as (i) any bona fide retail store selling, predominately, gifts, books, souvenirs and specialty items relating to history, in general, or to the site or any exhibits; (ii) located on the premises or grounds of a government registered national, state or local historic building or site and which is open to the public on a regular basis; or (iii) which is located within the premises of a museum which is open to the public on a regular basis and (iv) provided in either case that such store is located within a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

2. 1. A gift shop shall be defined as any bona fide retail store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, *souvenirs*, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

3. 2. The board may *shall* consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered as a specialty store or gift shop within the meaning of this section.

4. 3. Specialty store and gift shop retail *Gift shop* licenses, pursuant to this regulation, shall be granted only to persons who have places of business which have been in operation for no less than 12 months next preceding the filing of the application.

5. 4. Specialty store and gift shop retail *Gift shop* licenses shall authorize the licensees to sell at retail alcoholic beverages in accordance with their license privileges wine and beer, which have been purchased from and received at the establishment from farm winery or wholesale licensees of the board, to sell such alcoholic beverages only in closed packages for

consumption off the premises , to sell such alcoholic beverages *unchilled* only within the interior premises of the *store gift shop in closed containers for off-premises consumption* , and to deliver or ship the same to purchasers thereof in accordance with Title 4 4.1 of the Code of Virginia and regulations of the board. ~~No chilled alcoholic beverages may be sold under the privileges of the specialty store or gift shop retail license.~~

6. 5. In granting licenses under the provisions of this regulation, the board may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation or as may be deemed reasonable by the board to ensure that the distribution of alcoholic beverages is orderly, lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

7. 6. Every person licensed to sell alcoholic beverages under the provisions of this regulation shall comply with VR 125-01-7 § 9.

§ 21. 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~~ .

§ 22. 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 shall 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

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~~ .

VA.R. Doc. No. R94-563; Filed February 2, 1994, 10:27 a.m.

\* \* \* \* \*

Title of Regulations: VR 125-01-6. Manufacturers and Wholesalers Operations.

Statutory Authority: §§ 4.1-103 12 and 17, and 4.1-111 A of the Code of Virginia.

Effective Date: March 23, 1994.

Summary:

*The amendments update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages," and amend § 5 to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours." Sections 1 and 8 were amended when the board did not increase from two years to three years the retention period for records required of wine and beer solicitor salesmen and spirits solicitors reflecting all expenses incurred by them in connection with the solicitation of the sale of their employers' product. Section 5 was amended when the board did not increase from two years to three years the retention period for records required of persons holding a distiller's, fruit distiller's, winery or farm winery license.*

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

Agency Contact: Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

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

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

A. Records.

A solicitor salesman employed by any ~~nonresident~~

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~~person~~ *out-of-state wholesaler* to solicit the sale of or sell wine or beer at ~~wholesale~~ shall keep complete and accurate records for a period of ~~two~~ [ ~~three two~~ ] years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a certified copy of such records.

## B. Restrictions upon employment.

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

## C. Suspension or revocation of permit.

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

Before suspending or revoking such permit, the board shall accord the solicitor salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the ~~Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia~~.

§ 2. Wines; purchase orders generally; wholesale wine ~~distributors licensees~~.

### A. Purchase orders generally.

Purchases of wine ~~from the board, between licensees of the board and between the board, licensees and or persons outside the Commonwealth shall be executed only for orders on order forms prescribed by the board and provided at cost if supplied by the board department~~.

### B. Wholesale wine ~~distributors licensees~~.

Wholesale wine ~~distributors licensees~~ shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine ~~distributor licensee~~ at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the ~~distributor licensee~~ reflecting accurately the date received and any changes.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the

Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

4. Peddling. Wine shall not be peddled to retail licensees.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine ~~distributors licensees~~ shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to ~~§ 4-22.1~~ §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine ~~distributor licensee~~ shall on forms prescribed by the board on a quarterly basis indicate ~~to the board~~ the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

§ 3. Procedures for retail off-premises winery licenses; purchase orders; segregation, identification and storage.

### A. Purchase orders.

Wine offered for sale by a retail off-premises winery licensee shall be procured on order forms prescribed by the board and provided at cost if supplied by the board. The order shall be accompanied by the correct amount of state wine tax levied by ~~§ 4-22.1~~ § 4.1-234 of the Code of Virginia, due the Commonwealth in cash, as defined in these regulations.

### B. Segregation, identification and storage.

Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the board. The licensee shall place his license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified as herein required may be offered for sale at retail.

§ 4. Indemnifying bond required of wholesale wine ~~distributors licensees~~.

No wholesale wine distributor's license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth of Virginia in the penalty of \$1,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the faithful compliance with requirements of the Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia and the regulations of the board.

A wholesale wine distributor licensee may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

§ 5. Records required of distillers, fruit distillers, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's license, a fruit distiller's license, a winery license, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two [ ~~three~~ two ] years, which records shall be available at all times during business reasonable hours for inspection by any member of the board or its special agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the board or licensees of the board;

d. Withdrawals of alcoholic beverages for shipment outside of Virginia the Commonwealth showing:

(1) Name and address of consignee;

(2) Date of shipment; and

(3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; and

(4) Amount of consideration paid.

f. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller or fruit distiller manufacturing distilled spirits for another person shall:

a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;

b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and

c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

3. Farm wineries. A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.

§ 6. Wine or beer importer licenses; conditions for exercise of license privileges.

A. In addition to complying with the requirements of subdivisions 7 and 10 of § 4-25 A §§ 4.1-207 3 and 4.1-208 4 of the Code of Virginia, pertaining to beer and wine wine and beer importer licenses, holders of beer and wine wine and beer importer licenses must comply with the provisions of § 4-25 D § 4.1-218 in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4-25 D § 4.1-218. Any document executed by, or on behalf of, brand owners for the purpose of designating beer or wine wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.

B. When filing the list required by § 4-25 D § 4.1-218 of



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the Code of Virginia of all wholesale licensees authorized by a ~~beer or wine~~ *wine or beer* importer to distribute brands of ~~beer or wine~~ *wine or beer* in the Commonwealth, ~~beer and wine~~ *wine and beer* importer licensees shall comply with the provisions of the ~~Beer and Wine Franchise Acts~~ *Wine and Beer Franchise Acts* pertaining to ~~designation of sales territories~~ *designations of primary areas of responsibility* in the case of wholesale ~~beer wine~~ licensees and ~~designations of primary areas of responsibility~~ *designation of sales territories* in the case of wholesale ~~wine beer~~ licensees.

C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of ~~beer or wine~~ *wine or beer*, the importer makes arrangements to sell and deliver or ship additional brands of ~~beer or wine~~ *wine or beer* into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of ~~§ 4-25~~ *§ 4.1-218* of the Code of Virginia and the provisions of this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of ~~beer or wine~~ *wine or beer* into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brand(s) of ~~beer or wine~~ *wine or beer*.

D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to the July 1, 1991, effective date of the amendments to §§ 4-25, 4-118.4 and 4-118.43 of the Code of Virginia, between the licensed importer and its supplier or brand owner.

§ 7. Beer and beverage excise taxes *Excise taxes; beer and wine coolers*.

A. Indemnifying bond required of ~~beer~~ manufacturers, bottlers or wholesalers of *beer and wine coolers*.

1. No license shall be issued to a manufacturer, bottler or wholesaler of ~~beer or beverages~~ as defined in ~~§ 4-127 of the Code of Virginia~~ *or wine coolers* unless there shall be on file with the board, on a form approved or authorized by the board, an indemnifying bond running to the Commonwealth of Virginia in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the payment of the tax imposed by ~~Chapter 4 (§ 4-127 et seq.) of Title 4~~ *§ 4.1-236* of the Code of Virginia and in accordance with the provisions thereof and *§ 4.1-239*.

2. A manufacturer, bottler or wholesaler of ~~beer or beverages~~ *wine coolers* may request in writing a waiver of the surety and the bond by the board. The

board may withdraw such waiver at any time for failure to comply with the provisions of §§ 4-128, 4-129 and ~~4-131~~ *§§ 4.1-236 and 4.1-239* of the Code of Virginia.

B. Shipment of ~~beer and beverages~~ *wine coolers* to installations of the armed forces.

1. Installations of the United States Armed Forces shall include, but not be limited to, all United States, Army, Navy, Air Force, Marine, Coast Guard, Department of Defense and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of ~~beer and beverages~~ *wine coolers* from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and ~~beverages~~ *wine coolers* must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and ~~beverages~~ *wine coolers* so delivered shall be exempt from the beer and beverage excise tax as provided by ~~Chapter 4 of Title 4 of the Code of Virginia~~ *on beer and wine coolers* only if the sale thereof meets the exemption requirements of ~~§ 4-130~~ *4.1-236*.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday or legal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any report required by ~~Chapter 4 of Title 4~~ *§ 4.1-239* of the Code of Virginia may be filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest.

Unless otherwise specifically provided, interest on omitted taxes and refunds under ~~Chapter 4 of Title 4~~ *the excise tax provisions of Title 4.1* of the Code of Virginia shall be computed in the same manner specified in ~~§ 58.1-15 of the Code of Virginia~~ *as amended*.

§ 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits.

## A. Generally.

This regulation applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale distilled spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this regulation shall be prohibited.

## B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit by the board. To obtain a permit, a person shall:

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-98.16 D § 4.1-230 E of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of distilled spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be an individual at least 21 years of age.

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

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of distilled spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of distilled spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands

specified on the most current authorization on file with the board.

## C. Records.

A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two [ ~~three~~ two ] years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

## D. Permitted activities.

Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of \$5.00 in wholesale value (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages containers of distilled spirits and furnish one, unopened, 50 milliliter sample container of each brand being promoted by the permittee and not sold by the licensee; such packages containers and sample containers shall be purchased at a Virginia ABC government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the package or container or sample container label; further, the distilled spirits package container shall remain the property of the permittee and may not be left with the licensee and any 50 milliliter sample containers left with the licensee shall not be sold by the licensee;

3. Promote their authorized brands of distilled spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or distilled spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from packages containers of distilled spirits purchased from Virginia ABC government stores when the distilled spirits donated are intended for consumption during the gathering;

b. To displays of distilled spirits in closed containers

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bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this regulation;

c. To distribution of informational brochures, pamphlets and the like, relating to distilled spirits;

d. To distribution of novelty and specialty items bearing distilled spirits advertising not in excess of \$5.00 in wholesale value; and

e. To film or video presentations of distilled spirits which are essentially educational;

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in § 2 of VR 125-01-2.

## E. Prohibited activities.

A permittee shall not:

1. Sell distilled spirits to any licensee of the board, solicit or receive orders for distilled spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of distilled spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell distilled spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver distilled spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine, beer or beverages by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

8. Solicit or promote any brand or brands of distilled spirits without having on file with the board a letter

from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of distilled spirits other than as authorized by law.

## F. Refusal, suspension or revocation of permits.

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

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act Title 4.1 of the Code of Virginia and regulations of the board.

§ 9. Sunday deliveries by wholesalers prohibited; exceptions.

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

V.A.R. Doc. No. R94-562; Filed February 2, 1994, 10:27 a.m.

\* \* \* \* \*

## Title of Regulation: VR 125-01-7. Other Provisions.

Statutory Authority: §§ 4.1-103 12 and 17, 4.1-111 A and B 4, and 4.1-204 of the Code of Virginia.

Effective Date: March 23, 1994.

## Summary:

### *The amendments:*

1. Update sections to conform to Code of Virginia references and other technical changes as they relate to Title 4.1, including the deletion of all references to the term "beverages."

2. Amend §§ 4, 6, 9 and 12 to clarify that "special agents" shall have access to such records during "reasonable hours" as distinguished from "business hours."

3. Amend § 9 to clarify that special agents shall be given free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold for the purpose of examining and inspecting all

records, invoices and accounts.

4. Amend § 9 to define "reasonable hours" to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

5. Amend § 9 to require all licensed manufacturers, bottlers or wholesalers of alcoholic beverages to keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by them, and to require that such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries, or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Additionally, § 9 is amended to require every manufacturer and wholesaler at the time of delivering alcoholic beverages to any person to prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery, and the name of the purchaser to whom the delivery is made. Further amendments to § 9 require every retail licensee to keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise; and require records of alcoholic beverages to be kept separate and apart from other records and to include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased. Additionally, each retail licensee is required to keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandise sold and the prices charged therefor.

6. Amend § 14 to clarify that wine coolers, as defined in § 4.1-100 of the Code of Virginia, shall be treated as wine, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth, and to provide that any person licensed to manufacture, bottle or sell wine need not pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler.

7. Add § 19 to allow the board to waive the banquet license tax for duly organized not-for-profit corporations or associations holding a nonprofit event.

8. Add § 20 to allow the board to issue yearly permits authorizing permittees to purchase grain alcohol for industrial, commercial or medical use.

Summary of Public Comment and Agency Response: A

summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Robert N. Swinson, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 367-0616. There may be a charge for copies.

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 Commonwealth of alcoholic beverages or beverages lawfully purchased within this 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 A 1. 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 container, the three-gallon limitation shall be construed to be 12 liters, and not more than four liters shall be in packages containers smaller than 750 milliliters.

The transportation within, into or through this Commonwealth of alcoholic beverages or beverages lawfully purchased outside of this 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 container).
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.

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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~~ *Title 4.1 of the Code of Virginia*.

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, or 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; and

7. Persons transporting lawfully acquired alcoholic beverages ~~or beverages~~ in a passenger vehicle, other than those alcoholic beverages ~~or beverages~~ referred to in subdivisions 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 container~~ ) limitation.

This regulation shall not be construed to alter the one-gallon (four liters if any part is in a metric-sized ~~package container~~ ) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § ~~4-84(d)~~ *4.1-310 E* of the Code of Virginia.

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 milliliters if in a metric-sized ~~package container~~ ) nor more than one gallon (three liters if in a metric-sized ~~package container~~ ).

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 \$.08 per liter or fractional part thereof.

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## 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 an establishment where food is prepared on the premises. 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.

~~Distilled spirits~~ *Spirits* shall be purchased from ~~ABC retail government~~ stores. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail on- or off-premises licenses. A permittee possessing a retail on- or off-premises license must purchase its wine and beer from a ~~wholesaler~~ *wholesale licensees*. However, a permittee who only has an on- or on- and off-premises beer license may purchase its wine from a retail licensee.

### C. Records.

Permittees shall keep complete and accurate records of their purchases of alcoholic beverages ~~and beverages~~ at the permittee's place of business for ~~two~~ [ ~~three~~ two ]

years. The records shall be available for inspection and copying by any member of the board or its *special* agents at any time during ~~business~~ *reasonable* hours.

### D. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose. They shall be stored at the permittee's place of business, separate and apart from all other commodities.

§ 5. Procedures for druggists and wholesale druggists; purchase orders; records. (*Repealed.*)

### 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 4.1-200 of the Code of Virginia; or

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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 at the permittee's place of business for a period of ~~two~~ [ ~~three~~ two ] years; and

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~~ § 4.1-222 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~~ 4.1-225 of the Code of Virginia.

## F. Access to storage and records.

The board and its *special* agents shall have free access during ~~business~~ *reasonable* 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. Permits for persons having alcoholic beverages distilled.

## A. Permits.

Any person who contracts with or engages a licensed distiller or fruit distiller to manufacture distilled spirits from grain fruit, fruit products or other substances grown or lawfully produced by such person shall obtain a board permit before withdrawing the distilled spirits from the distillery's premises. The permit 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; and

3. The name of the company employed to transport the shipment.

## B. Limitations on permits.

Permits shall be issued only for (i) ~~distilled~~ spirits shipments to the board, (ii) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of ~~distilled~~ spirits samples to the person growing or producing the substance distilled. Samples shall be packaged in containers of 375 or 750 milliliters 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. (Repealed.)~~

~~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.

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All licensees of the board shall keep complete and accurate and separate records at the licensee's place of business for a period of two [ ~~three~~ two ] years. The records shall be available for inspection and copying by any member of the board or its special agents at any time during business reasonable hours. Licensees of the board may use microfilm, microfiche, disks or other available technologies for the storage of their records, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or its special agents.

The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting all records, invoices and accounts therein.

"Reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

## B. Retail licensees.

Retail licensees shall keep complete and accurate records, including invoices, of the purchases and sales of alcoholic beverages, and beverages, food and other merchandise. The records of alcoholic beverages and beverages shall be kept separate from other records.

## B. Licensed manufacturers, bottlers and wholesalers.

All licensed manufacturers, bottlers or wholesalers of alcoholic beverages shall keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by him. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped by him; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery and the name of the purchaser to whom the delivery is made.

## C. Retail licensees.

Every retail licensee shall keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices

charged therefor and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged therefor.

## E. D. Mixed beverage restaurant licensees.

In addition to the requirements of subsections A and B above C, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its special agents a complete and accurate inventory of all alcoholic beverages and beverages currently held in inventory on the premises by the licensee; and
2. Once a year, each licensee shall submit on prescribed forms to the board 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;

b. An accounting of the annual purchases of food, nonalcoholic beverages; and 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 subdivision E D 2 b.

## D. E. "Sale" and "sell."

The terms "sale" and "sell" shall include exchange, barter and or traffic, and or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages; and other alcoholic beverages and beverages, and of meals or food.

E. F. 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 § 4.1-210 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional



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events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If in conducting its review pursuant to § ~~4-98.7~~ 4.1-114 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 ; or 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 ; *and other* 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. G. 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; wine *and beer* tastings; 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 container~~ not then sold by such licensee of wine ; *or beer or beverages* , which such wholesaler otherwise may sell to such retail licensee, provided that in a case of ~~packages containers~~ the ~~package container~~ does not exceed 52 fluid ounces in size (1.5 liter if in a metric-sized ~~package container~~ ) 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 container~~ .

3. Hospitality rooms; conventions. A person licensed by the board to manufacture wine ; *or 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 *and beer* 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 subdivisions B 3 b and B 4 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 *and beer* tastings.

Wine *and beer* wholesalers may participate in a wine *or beer* tasting sponsored by a wine ~~specialty~~ *gourmet* 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 *or beer* .

## D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and internal revenue bonded warehouses; receipts; violations; limitation upon sales.

### A. Release generally.

Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board;
2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;
3. Ships Boats 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; or
4. Persons for shipment outside this the 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 4.1-130 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 [ ~~three~~ two ] years, which records shall be available at all times during business reasonable hours for inspection by a member of the board or its special 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; and
3. Type and quantity of alcoholic beverage.

### E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5, § 9 are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

### A. Location.

Special mixed beverage licenses may be granted to persons by the board at places primarily engaged in the sale of meals where the place to be occupied is owned by the government of the United States, or any agency thereof, is located on land used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code

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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 sale of food and nonalcoholic beverages at such establishment shall be not less than 45% of the gross receipts from the sale of mixed beverages and food.

## 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 wine licenses ; wine; wine coolers .

### A. Definition:

Wherever the term "beverages" appears in these regulations, it shall mean beverages as defined in § 4-99 of the Code of Virginia. Section 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing 0.5% or more of alcohol by volume, and not more than 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.

Wherever the term "wine" appears in these regulations, it shall include "wine coolers" as defined in § 4.1-100 of the Code of Virginia. Wine coolers shall be treated as wine for the purposes of the regulations, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth for resale on such installations, in accordance with §§ 4.1-112 and 4.1-236 of the Code of Virginia and VR 125-01-6 § 7.

Any person licensed to manufacture, bottle or sell wine shall not be required to pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler. Such person shall have the privilege to manufacture, bottle or sell any wine cooler under the provisions of Title 4.1 of the Code of Virginia as long as his license remains in full force and effect.

§ 15. Wholesale alcoholic beverage and beverage sales;

winery and brewery discounts, price-fixing; price increases; price discrimination; inducements.

### A. Discounts, price-fixing.

No winery as defined in § ~~4-118.43~~ 4.1-401 or brewery as defined in § ~~4-118.4~~ 4.1-500 of the Code of Virginia shall require a person holding a wholesale license licensee 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 § ~~4-118.43~~ 4.1-401 or brewery as defined in § ~~4-118.4~~ 4.1-500 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 wineries, breweries and wholesalers.

No winery as defined in § ~~4-118.43~~ 4.1-401 or brewery as defined in § ~~4-118.4~~ 4.1-500 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 the 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. 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 the Commonwealth , except upon permission of the board as provided in § 4-25.1 B 4.1-219 of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels.

B. The term "other agricultural products," as used in subsection A of this section , includes wine.

C. A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments which need not be located on the premises. These two additional retail outlets may be moved throughout the state as long as advance board approval is obtained for the location, equipment and facilities of each remote outlet.

§ 17. Credit and debit cards.

Government stores may accept credit or debit cards from consumers for the retail purchase of alcoholic beverages. The board may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties or service charges where appropriate, establish credit procedures for returned merchandise and make any other decisions to carry out the purpose of this regulation.

§ 18. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. Generally.

The following definitions shall apply for purposes of this section:

1. "Keg." Any container capable of holding four gallons or more of beer ; or wine or beverages and which is designed to dispense beer ; or wine or beverages directly from the container for purposes of consumption; and

2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker or device approved by the board which is designed to be affixed to kegs and which displays a registration number and such other information as may be prescribed by the board.

B. Permits.

The board may grant to any person licensed to sell wine

; or beer or beverages at retail for off-premises consumption, a permit to sell such alcoholic beverages or beverages in kegs for off-premises consumption. Such permit shall be subject to suspension or revocation, as provided in § 4-37 § 4.1-225 of the Code of Virginia. No permit shall be required, however, to sell alcoholic beverages or beverages in kegs to banquet licensees or to retail licensees for on-premises consumption. Sales of such kegs to banquet licensees shall only be permitted upon presentation of a banquet license by the purchaser to the seller.

C. Restrictions.

1. No person licensed by the board to sell wine ; or beer or beverages at retail for off-premises consumption, or any officer, agent or employee thereof, shall sell any such alcoholic beverage or beverages in a keg without having (i) obtained a permit pursuant to subsection B of this section authorizing such sales, (ii) registered the sale on a form prescribed by the board, and (iii) affixed a registration seal on the keg at the time of sale; provided, if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G of this section , the wholesale licensee shall affix the registration seal.

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the board shall be properly completed and shall contain:

a. The name and address of the purchaser verified by valid identification as defined in VR 125-01-5 § 2 B.

b. The type and number of the identification presented by the purchaser;

c. A statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons under 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and

d. The particular address or location where the keg will be consumed, and the date or dates on which it will be consumed.

3. Where the purchaser obtains more than one keg for consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. Such keg registration declaration and receipt forms which contain the

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reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove and obliterate the keg registration seal from the keg and note such action on the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

D. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

E. Except in accordance with these regulations, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this regulation. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee of the board is in possession of a keg containing alcoholic beverages, and which keg does not bear the registration seal, or upon which the registration seal has been altered, defaced or obliterated, the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture.

F. Any retail licensee granted a permit by the board pursuant to subsection B of this section shall maintain a complete and accurate record of all registration forms and other documentation of the sale of kegs at the place of business designated in his license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall at all during reasonable times hours be open to inspection by the board or its authorized representatives, special agents and other law-enforcement officers.

G. Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to VR 125-01-3 § 3.

H. Except as authorized by the board, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply, however, to the return of the registered container to the seller.

## § 19. Waiver of banquet license tax.

### A. Qualifications.

Pursuant to § 4.1-111 of the Code of Virginia, the board may waive the banquet license tax for a duly organized not-for-profit corporation or association holding a nonprofit event. A "nonprofit event" means income from the event shall not exceed expenses for the event. Fixed costs, including but not limited to staff salaries, rent, utilities and depreciation, shall not be included as expenses.

### B. Restrictions and conditions.

1. The applicant shall sign an affidavit certifying the not-for-profit status of the corporation or association and that the event being held is nonprofit.

2. The applicant may serve alcoholic beverages in any combination, the amount to be no more than that which equals the total alcohol content by volume in two kegs of beer (31 gallons).

3. The granting of a waiver is limited to two events per fiscal year (July 1 - June 30) for any qualifying corporation or association.

### C. Exception.

The board may issue a permit authorizing a variance from subdivision B 2 for good cause shown.

## § 20. Grain alcohol; permits; records.

### A. Permits.

The board may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 101 at government stores for any of the following purposes:

1. Industrial use;
2. Commercial use;
3. Culinary use; or
4. Medical use.

The application for such permits shall be on forms provided by the board.

### B. Qualifications.

Permits may be issued to legitimate businesses for any

*one or more of the purposes stated in subsection A upon presentation of satisfactory evidence of the conduct of the business activity involved. For good cause shown, the board may issue a permit to an individual for any of the uses stated in subsection A.*

### *C. Records.*

*A person obtaining a permit must maintain complete and accurate records of all purchases for a period of [ ~~three~~ two ] years, and the board and its special agents shall have free access during reasonable hours to all records required to be kept pursuant to this section.*

### *D. Refusal, suspension or revocation of permit.*

*The board may refuse, suspend or revoke the permit if it shall have reasonable cause to believe that the permittee would use, has used or allowed to be used grain alcohol for any unlawful purpose, or that any cause exists under § 4.1-222 of the Code of Virginia for which the board may refuse to grant the applicant any license or has done any act for which the board might suspend or revoke a license under § 4.1-225 of the Code of Virginia.*

VA.R. Doc. No. R94-561; Filed February 2, 1994, 10:27 a.m.

**ABC**  
 VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
 APPLICATION FOR GRAIN ALCOHOL PERMIT

**INSTRUCTIONS**

There is no charge for this permit. Complete and return application to:  
 LICENSE RECORDS MANAGEMENT  
 VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
 2901 HERMITAGE ROAD  
 P.O. BOX 27491  
 RICHMOND, VA 23261-7491

**BUSINESS**

Company name \_\_\_\_\_  
 Street address \_\_\_\_\_  
 City \_\_\_\_\_  
 County \_\_\_\_\_  
 Virginia ZIP + 4 \_\_\_\_\_

**PURPOSE**

Intended use: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PURCHASING**

Purchase to be made from ABC store number: \_\_\_\_\_  
 Store address \_\_\_\_\_  
 City \_\_\_\_\_  
 County \_\_\_\_\_ Virginia ZIP \_\_\_\_\_

Estimate the amount of 190 proof grain alcohol required: BOTTLE SIZE PER MONTH OR PER YEAR  
 375 ML  
 1.75 L

**APPLICANT**

Applicant name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Daytime phone number \_\_\_\_\_

**FOR OFFICERS ONLY**

**SPECIAL AGENT**

Purpose:  Culinary  Commercial  Industrial  Medical  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_  
 Recommendation:  Approval  Denial  
 Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Termbury number \_\_\_\_\_

**SPECIAL AGENT IN CHARGE**

Permit number \_\_\_\_\_  
 Special Agent assigned \_\_\_\_\_  
 City/County \_\_\_\_\_  
 Effective date \_\_\_\_\_  
 Date \_\_\_\_\_  
 District \_\_\_\_\_  
 Purpose:  Culinary  Commercial  Industrial  Medical  
 Recommendation:  Approved  Denied  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

## STATE EDUCATION ASSISTANCE AUTHORITY

CFR 682, Appendix D .

**Title of Regulation:** VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.

**Statutory Authority:** § 23-38.33:1 C 7 of the Code of Virginia.

**Effective Date:** March 23, 1994.

### Summary:

*These regulations incorporate changes to federal statute and regulations, delete some lender due diligence requirements and respond to changes in federal interest reimbursement.*

*In § 2.1 B Lender of Last Resort, the agency requirements for the Lender of Last Resort (LLR) program were deleted based on changes made by the Omnibus Budget Reconciliation Act of 1993.*

*In § 5.5 B, C and D, federal reinsurance requirements mandate that guarantor review of death, disability and bankruptcy claims not exceed 45 days instead of 60 (60 is allowed for default claims); thus, the maximum number of days interest payable to lenders was reduced by 15 days.*

*Changes to regulations limiting the claim interest to no more than is reinsured by the U.S. Department of Education for claims returned to lenders bring this category of claims in line with others in terms of claim interest.*

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

**Agency Contact:** Copies of the regulation may be obtained from Marvin L. Ragland, Jr., State Education Assistance Authority, One Franklin Square, Suite 300, 411 East Franklin Street, Richmond, VA 23219, telephone (804) 775-8302. There may be a charge for copies.

VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs Under Title IV, Part B of the Higher Education Act of 1965 as amended.

### PART I. DEFINITIONS.

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

*"Abbreviated due diligence"* means a series of collection activities as described in U.S. Department of Education bulletin 88-G-138, Section (E) issued on March 11, 1988 34

*"Administrative hold"* means the postponement of guarantee processing for applications from a given school or lender.

*"Bankruptcy"* means the judicial action to declare a person insolvent and take his assets, if any, under court administration.

*"Borrower"* means a student or parent to whom a federal Stafford, federal PLUS or federal SLS loan has been made.

*"Capitalization of interest"* means the addition of accrued interest to the principal balance of a loan to form a new principal balance.

*"Comaker"* means one of two independent signers on a federal PLUS promissory note or repayment agreement who are jointly and individually responsible for repayment. Comakers shall be treated as borrowers in all due diligence activities.

*"Consolidation"* means the aggregation of federal consolidation loan program which combines multiple loans into a single Title IV, Part B loan.

*"Default"* means a condition of delinquency that persists for at least 180 days, or for 240 days in the case of quarterly-billed loans.

*"Deferment"* means postponement of ~~conversion to repayment status~~ or postponement of installment payments for reasons authorized by statute.

*"Delinquency"* means the failure to make an installment payment when due, failure to comply with other terms of the note, or failure to make an interest payment when due, when the borrower and the lender have previously agreed to a set interest repayment schedule.

*"Disbursement"* means the issuance of proceeds of a student loan by a lender or its agent.

*"Due diligence"* means minimum reasonable care and diligence in processing, making, servicing, and collecting loans as specified by the U.S. Department of Education, federal and state statute and by the State Education Assistance Authority.

*"Edvantage"* means the program established by the SEAA that guarantees long-term, variable interest loans to students, their families and other interested parties to help them meet the cost of higher education.

*"Endorser"* means a person who agrees to share the maker's liability on a note by signing the note or repayment agreement.

*"Forbearance"* means a temporary suspension of



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repayment of interest or principal or both, or the acceptance of payments less than the statutory minimum payment, or allowing the borrower an extension of time for making payment on terms agreed upon in writing by the lender and the borrower.

"Grace period" means a single continuous period between the date that the borrower ceases at least half-time studies at an eligible school and the time when the loan enters an active the repayment period.

"Guarantee" means the SEAA's legal obligation to repay the holder the outstanding principal balance plus accrued interest in case of a duly filed claim for default, bankruptcy, total and permanent disability, or death of the borrower or the death of the student on whose behalf a federal PLUS loan was made .

"Guarantee fee" means the fee paid to the SEAA in consideration for its guarantee.

"Interest" means the charge made to the borrower for the use of a lender's money.

"Interest benefits" means the payment of interest on behalf of a qualifying federal Stafford loan borrower by the U.S. Department of Education while the borrower is in school, in grace, or in a period of authorized deferment.

"Lender" means any financial institution or qualifying school meeting the eligibility requirements of the U.S. Department of Education and having a participation agreement with the SEAA.

"Limit" means the authority of the SEAA to limit school and lender loan volume or numbers of loans in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Non-Virginia resident" means any loan applicant who does not indicate Virginia residency on an application for a loan or does not indicate a permanent home address in the Commonwealth of Virginia.

"Non-Virginia proprietary school" means any school that has an assigned OE number that is registered by the U.S. Department of Education in a state other than Virginia, and meets one of the following criteria:

1. Is not classified by the Internal Revenue Service as a tax exempt entity, or
2. Has been defined by the U.S. Department of Education as a proprietary school or as a vocational school.

"OE number" means the identification number assigned by the U.S. Department of Education upon its approval of eligibility for a participating school or lender.

"Participation agreement" means the contract setting forth the rights and responsibilities of the lender and the

SEAA.

"Permanent and total disability" means the inability to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

"PLUS" means the federal PLUS loan program established under Title IV, Part B of the Higher Education Act that authorizes long-term low interest loans available to parents of dependent undergraduate ; graduate and professional students, to help them meet the cost of education.

"Repayment period" means the period of time from the day following the end of the grace period if any, to the time a loan is paid in full or is cancelled due to default or the borrower's death, total and permanent disability, or discharge in bankruptcy , or the borrower's or student's death .

"Satisfactory repayment arrangement" means a schedule agreed upon by the SEAA on a case-by-case basis to repay a defaulted loan in the shortest time possible according to the borrower's financial ability to repay the loan.

"School" means any school approved by the U.S. Department of Education for participation in the Title IV, Part B programs.

"SLS" means the federal SLS loan program established under Title IV, Part B of the Higher Education Act that authorizes long-term low-interest loans available to independent undergraduate, graduate and professional students, and to certain dependent undergraduate students, to help them meet the cost of education.

"Stafford" loan means the federal Stafford loan program established under Title IV, Part B of the Higher Education Act that makes long-term low-interest subsidized and unsubsidized loans available to undergraduate, graduate and professional students to help them meet the cost of education.

"State Education Assistance Authority (SEAA)" means the designated guarantor for Title IV, Part B loans in the Commonwealth of Virginia.

"Suspend" means the authority of the SEAA to temporarily withdraw school and lender program participation in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Terminate" means the authority of the SEAA to cease school and lender program participation in accordance with 34 CFR 668 Subpart G and VR 275-01-2.

"Title IV, Part B" means that portion of the federal Higher Education Act authorizing federally-guaranteed student loans, including federal Stafford, federal PLUS,

federal SLS and federal consolidation loans.

## PART II. PARTICIPATION.

### § 2.1. Borrower eligibility.

#### A. Requirements.

In order to be eligible for a Virginia Title IV, Part B loan, the student/parent borrower shall meet all of the federal eligibility requirements as well as the following criteria:

1. For a repeat borrower, unless he has borrowed less than the annual maximum, ~~seven months~~ 30 weeks shall have elapsed between the first day of the previous loan period and the first day of the loan period, for any subsequent application ~~or the student for whom the proceeds are being borrowed shall have advanced to a higher grade level.~~

2. Neither borrower nor comaker nor endorser may be in default on any previous Title IV, Part B or Edvantage loans; however, a borrower who has defaulted and has since made ~~full restitution to the SEAA including any costs incurred by the SEAA in its collection effort at least six consecutive monthly payments under satisfactory repayment arrangements~~ is considered eligible.

3. The status of a student applying for a ~~Stafford or PLUS Title IV, Part B~~ loan will be reviewed for the ~~seven-month 30-week~~ time lapse from the first day of the previous loan period; ~~or grade level progression,~~ on the basis of all previous SEAA-guaranteed loans made for or by that student. ~~The status of a student applying for a SLS loan will be reviewed for the one academic year or seven-month time lapse from the first day of the previous loan period; on the basis of all previous SEAA-guaranteed loans made for or by that student.~~

4. Non-Virginia resident borrowers attending non-Virginia proprietary schools are not eligible to receive SEAA-guaranteed loans.

#### [ B. Lender of last resort.

Eligible Stafford loan borrowers who are denied access to loans by two or more eligible lenders may submit loan applications to the Lender of Last Resort program. Borrower applications submitted to the Lender of Last Resort program must pass a credit check and borrowers must complete a debt management counseling session with the SEAA or its designee. ]

#### [ C. B. ] Rights.

Discrimination on the basis of race, creed, color, sex, age, national origin, marital status, or physically

handicapped condition is prohibited in any loan program using the SEAA guarantee.

### § 2.2. Lender participation.

#### A. Requirements.

A lender may participate in the Title IV, Part B program in Virginia by executing a participation agreement with the SEAA. Lenders may participate in any or all programs.

#### B. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a lender in Title IV, Part B programs in Virginia under terms consistent with the regulations of the SEAA and state and federal law.

### § 2.3. School participation.

#### A. Requirements.

Any school approved by the U.S. Department of Education for participation in Title IV, Part B programs is eligible for the Virginia Title IV, Part B programs. Summer school courses are eligible. Correspondence courses for which there is not a residential component, and home study courses are not eligible.

#### B. Foreign schools.

Applications and correspondence regarding loans for students ~~and PLUS borrowers~~ attending foreign schools shall be completed in English and all sums shall be stated in U.S. dollars.

#### C. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a school in the Virginia Title IV, Part B programs under terms consistent with the regulations of the SEAA and state and federal law.

## PART III. LOAN PROCESS.

### § 3.1. Lender responsibilities.

#### A. Due diligence.

In making, processing, servicing and collecting Title IV, Part B loans, the lender shall exercise due diligence as outlined in 34 CFR § 682. In addition, the lender shall: ~~SEAA requires lenders to request preclaims and supplemental preclaims assistance on a schedule specified by the agency.~~

~~1. Mail delinquency letters to delinquent borrowers for each delinquency cycle regardless of whether telephone contact is established with the borrower.~~

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2. Exercise due diligence with respect to endorsers by performing the following activities:

a. 31 through 60 days delinquent: The lender shall notify the endorser, in writing, of the borrower's delinquency and the endorser's secondary responsibility for repayment.

b. 60 through 90 days delinquent: The SEAA may require the lender to request preclaims assistance during this period.

c. 61 through 150 days delinquent: During each 30-day period comprising this period, the lender shall send at least two forceful collection letters and attempt to contact the endorser by telephone to cure the delinquency. The letters shall also warn the endorser that, if the delinquency is not cured, the lender will assign the loan to the SEAA, which in turn will report the default to a credit bureau, thereby damaging the endorser's credit rating, and may bring suit against both the borrower and endorser to compel repayment of the loan.

d. 120 to 270 days delinquent: The SEAA may require the lender to request supplemental preclaims assistance during this period.

e. 151 through 180 days delinquent: During this period the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to all national credit bureaus. The lender shall allow the endorser at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim with the SEAA or reporting the default to a credit bureau.

3. Exceptions to telephone requirements: A lender need not attempt to contact by telephone any borrower:

a. Who is incarcerated;

b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan; a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.

## B. Skip tracing.

The lender shall initiate skip tracing efforts during the enrollment, grace or repayment period within 10 days of receipt of information that the borrower's, comaker's or endorser's address or telephone number is invalid. These efforts shall include but not be limited to (i) contacting endorser, (ii) relatives, (iii) references, (iv) the post office, (v) telephone directory assistance, (vi) credit bureau organizations, (vii) creditors, and (viii) the

borrower's last educational institution of record. In addition, for loans for which the lender receives indication of an invalid telephone number or address on or after January 1, 1993, the lender shall perform the following:

1. 1-30 days after learning that an address or telephone number is invalid, the lender shall attempt to locate the address and phone number using at least the skip tracing methods described in this section. These efforts must be completed within 30 days of receiving indication that the address or phone number is invalid.

2. In each 90-day period after the initial skiptracing efforts described in this section, the lender shall make at least one follow-up attempt during each of these periods to locate the borrower's, comaker's or endorser's current address. During each period the lender shall make at least one attempt to locate the borrower's, comaker's or endorser's telephone number through directory assistance.

3. In the event that the loan is delinquent or becomes delinquent during the lender's efforts to locate a valid address or phone number, the lender must conduct skiptracing efforts during each 90-day period following the initial skiptracing efforts that are as comprehensive as those required during the initial 30-day period.

4. If the lender obtains a current address or telephone number before the date of default, the lender shall resume collection activities designated for the appropriate delinquency period.

5. If the lender obtains a current address after the 150th day of delinquency (210th day for loans billed quarterly), but prior to filing the default claim, the lender shall send the borrower, endorser and comaker a final demand letter and allow 30 days to respond before filing a default claim.

## C. Quarterly-billed loans.

Due diligence requirements for quarterly-billed loans are as follows:

1. 1 - 15 days delinquent: Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

2. 16 - 120 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to

contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency.

3. 121 - 240 days delinquent: Unless exempted under subdivision 7 of this subsection, the lender during this period shall engage in at least two diligent efforts to contact the borrower by telephone and send at least two collection letters urging the borrower to cure the delinquency and warning the borrower that if the delinquency is not cured, the lender will assign the loan to the SEAA who, in turn, will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

4. 110 - 130 days delinquent: The lender shall request preclaim assistance from the SEAA.

5. At no point during any period may the lender permit the occurrence of a gap in collection activity, as defined in federal regulations of more than 45 days (60 days in the case of a transfer).

6. Final demand: On or after the 210th day of delinquency, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and make payments sufficient to bring the loan current before filing a default claim on the loan.

7. Exceptions to telephone requirements: A lender need not attempt to contact by telephone any borrower:

a. Who is incarcerated;

b. Who is 150 or more days delinquent following the lender's receipt of a payment on the loan; a dishonored check received from the drawee as a payment on the loan or the expiration of an authorized deferment or forbearance.

#### D. B. Disbursement.

1. Stafford and SLS Title IV, Part B loan proceeds shall be disbursed in a check or checks made copayable to the borrower and the school, shall include the borrower's social security number, and shall be mailed to the financial aid office of the school named on the application.

2. PLUS loan proceeds shall be disbursed in a check payable to the parent, and shall be mailed to the parent's permanent address indicated on the application. PLUS disbursements may be made copayable to the parent and the school indicated on

the loan application at the agreement of the school and lender. In these cases, checks shall indicate the student's name and Social Security number and, unless authorized by the promissory note, the lender must retain in its file the borrower's authorization to make the check copayable, which indicates the student's name and Social Security number.

3. Loan proceeds for a student attending a foreign school shall be made payable to the borrower and mailed to the borrower's permanent address indicated on the application.

4. Loan proceeds may be disbursed by other funds transfer methods approved by the SEAA and the U.S. Department of Education.

#### § 3.2. School responsibilities.

##### A. General.

The school shall reply promptly to inquiries made by the SEAA or the lender concerning student borrowers. The school shall return the Student Status Confirmation Report to the SEAA within 30 days of its receipt. The SEAA reserves the right to place an administrative hold on institutions not complying with this requirement.

##### B. Certification.

1. The school shall certify the loan application no later than the last day of the loan period indicated on the application.

2. In the case of a loan processed electronically, the school must transmit the school certification data on or before the last day of the loan period.

3. The SEAA must have received a paper application/promissory note on or before the 30th day following the last day of the enrollment period indicated on the application, or the student's last date of attendance if the enrollment period was not completed. However, applications through the Lender of Last Resort program as described in § 2.1 B must be received on or before the 60th day following the last day of the loan period indicated on the application.

4. The certification of the financial aid officer's own loan application, the application of a spouse or dependent of a financial aid officer or an application where conflict of interest exists, is not sufficient. In any of these cases, the application shall be accompanied by certification of the immediate supervisor of the financial aid officer.

#### PART IV. ACTIVE LOAN.

#### § 4.1. Guarantee fee.

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A. The SEAA schedule of guarantee fees on Stafford, SLS and PLUS loans shall be set from time to time by the SEAA Board of Directors, subject to any limits and conditions set forth in federal regulations.

B. A loan cannot be sold or transferred until the guarantee fee has been paid in full.

C. Although the SEAA is not obliged to return any fee, it may refund a guarantee fee at the request of the lender when a loan is cancelled before disbursement, or when the school returns the funds by the 120th day following disbursement.

D. Lenders who wish to reinstate a cancelled guarantee six months or later after a cancellation may be required to pay a reinstatement fee to the SEAA in addition to the guarantee fee. The amount of the reinstatement fee shall be set from time to time by the SEAA Board of Directors. The SEAA will not charge a reinstatement fee in cases in which the guarantee was cancelled as a result of SEAA error.

## § 4.2. [ Capitalization of Guarantee on ] interest.

### A. Capitalization.

1. Before resorting to capitalization of interest in the case of a Stafford loan forbearance, the lender shall first make every effort to get the borrower (or endorser, where applicable) to make full payment of interest due, or if that is not possible, payment of interest as it accrues.

2. Except in the case of delinquent SLS loans, the borrower must agree in writing to any capitalization of interest.

3. During periods of forbearance or deferment for which interest is to be capitalized, the lender shall contact the borrower at least quarterly to remind him of the obligation to repay the loan.

### B. Guarantee on interest.

The SEAA will guarantee capitalized interest, and the interest accruing therefrom, under the following conditions, and where the lender has exercised due diligence:

1. The SEAA will pay interest on those loans not eligible for interest benefits where interest has accrued and has been capitalized during the in-school and grace periods, and during any eligible periods of deferment or forbearance.

2. The SEAA will pay interest that has accrued during the period from the date the first repayment installment was required until it was made (as in the case of the borrower's unanticipated early departure from school).

3. The SEAA will pay interest that has not been paid during a period of forbearance, or where the lender and the borrower agree, in writing where required, to accrue and capitalize the interest.

## § 4.3. Repayment.

### A. Minimum loan payment.

Except in the case of forbearance, any exception to federally established minimum loan payments must receive SEAA approval in advance.

### B. Repayment forms.

The SEAA must approve the use of repayment instruments other than the SEAA repayment agreement furnished to lenders.

### C. Consolidation.

The note(s) for any loans consolidated shall be marked "paid by renewal" and retained in the borrower's file.

## § 4.4. Forbearance.

### A. Eligibility.

The SEAA reserves the right to require lenders to receive advance approval of forbearances and to disallow such forbearance.

### B. Duration.

Total forbearance is limited to a maximum of 24 36 months, except:

1. In the case of a period of school enrollment the lender may grant a forbearance until the time the borrower has completed his studies at a nonparticipating school.

2. In the case of a late conversion to repayment or in cases in which the lender learns that a borrower is no longer eligible for a deferment earlier granted, the lender may grant a forbearance through the time at which he learns of the event which disqualifies the loan for grace or deferment plus a reasonable period for placing the loan into active repayment status.

3. In the case in which a lender places a loan into administrative forbearance during the automatic stay period during bankruptcy proceedings.

1. Conditions stated in 34 CFR 682.211 (f) and (g) do not count against the borrowers total forbearance eligibility.

4. 2. In addition, lenders may grant a maximum of nine months forbearances in order to allow loans ineligible for interest benefits to mature at the same

time as loans qualifying for interest benefits.

## C. Renewal.

Lenders shall not renew a forbearance in which the borrower owes past due interest. In such cases, the borrower must request, in writing, where required, that outstanding interest be capitalized or must pay the interest charges before any subsequent forbearance is granted by the lender.

## PART V. CLAIMS.

### § 5.1. Death claims.

To file a claim arising from the death of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), a certified copy of the death certificate or similar verifiable proof, the promissory note(s) and any signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the cases of loans made without a combined application/note, a *collection history* and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of receiving verifiable proof that the borrower has died.

### § 5.2. Total and permanent disability claims.

To file a claim arising from the total and permanent disability of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), the completed federal form(s), signed by a qualified physician (either an M.D. or D.O.), the promissory note(s) and any signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application(s) in the case of loans made without a combined application/note, a *collection history* and any support documents the lender may be able to furnish. The lender must submit the claim within 60 days of determining that the borrower has been certified totally and permanently disabled.

### § 5.3. Default claims.

To file a claim in the event of default, the lender shall complete and send to the SEAA the appropriate SEAA form(s). The default claim shall include the lenders proof that due diligence requirements have been met, the promissory note(s) and any signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, a

*collection history* and any support documents the lender may be able to furnish.

### § 5.4. Bankruptcy claims.

#### A. Lender responsibilities.

The lender shall determine that a bankruptcy petition has been filed when the lender receives the Notice of First Meeting of Creditors in which the student loan debt is listed. The lender shall not attempt to collect the loan and shall file a proof of claim with the bankruptcy court within 30 days of the receipt of the Notice of First Meeting of Creditors. The lender shall determine if the loan has been in repayment for more than seven years, exclusive of any deferment or forbearance period(s), on the date the lender receives the Notice of First Meeting of Creditors and the lender shall determine if the borrower has filed a Petition for Undue Hardship.

1. The lender shall file a Chapter 7 bankruptcy claim within 30 days of receipt of the Notice of First Meeting of Creditors if the loan has been in repayment for more than seven years.

2. The lender shall file a Chapter 7 bankruptcy claim within 10 days of receiving notification that the borrower filed a Petition for Undue Hardship if the loan has been in repayment for less than seven years.

3. The lender shall hold the loan in an administrative forbearance status until the Chapter 7 bankruptcy is concluded if the loan has been in repayment for less than seven years and no Petition for Undue Hardship was filed. When the bankruptcy action is concluded, the loan shall resume the same status it was in prior to the time the bankruptcy action was filed.

4. The lender shall file a bankruptcy claim within 30 days of receipt of a notice that a Chapter 13 bankruptcy petition has been filed by the borrower.

5. If a loan was obtained with a cosigner, and only one party has the obligation to repay the loan discharged in bankruptcy, the other remains obligated to repay the loan. In such cases, the lender shall not submit a bankruptcy claim to the SEAA and shall attempt to collect the loan from the other borrower. If the loan was obtained with an endorser and the borrower's obligation to repay the loan is discharged through bankruptcy, the endorser is not obligated to repay the loan. If the endorser's obligation to repay the loan is discharged through bankruptcy, the borrower remains obligated to repay the loan.

*When receiving a Notice of First Meeting of Creditors, the lender shall handle the loan as described by the U.S. Department of Education in 34 CFR 682.402, 682.511 and other federal guidance.*

6. In addition, in the event that the lender receives

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notice of an adversary proceeding after filing the claim, or in the event that the lender is directed by the court to file a proof of claim after filing the claim with the guarantor, the lender shall forward notice of the hearing to the SEAA Default Collections department by telephone or facsimile within five business days.

## B. Documentation.

To file a claim for a qualifying bankruptcy the lender shall complete and send to the SEAA the appropriate completed SEAA form, the notice of bankruptcy, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantor agency of the lender's proof of claim, the promissory note(s) and any signed repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, the loan application in cases of loans made without a combined application/note, a collection history, and any support documents the lender may be able to furnish, as well as any other information that may help the SEAA form the basis for an objection or an exception to the bankruptcy discharge.

## § 5.5. Payment of interest on claims.

### A. Default claims (monthly/quarterly).

The SEAA will pay interest for a maximum of ~~360/420~~ 330/390 days in the case of a qualifying default claim. The allowable interest includes up to 270/330 days for the lender to prepare and submit a qualifying default claim and up to ~~90~~ 60 days for the SEAA's review of the claim and payment processing. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days.

### B. Death and disability claims.

The SEAA will pay interest for no more than ~~150~~ [ ~~120~~ 105 ] days after the date on which the lender determines that the borrower has been certified totally and permanently disabled or that the borrower has died. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days.

### C. Bankruptcy claims.

The SEAA will pay interest for no more than ~~120~~ [ ~~90~~ 75 ] days after the date on which a lender receives notice of the first meeting of creditors for a qualifying Chapter 7 bankruptcy or a Chapter 13 bankruptcy. The SEAA will pay interest for no more than ~~100~~ [ ~~70~~ 60 ] days after the date on which the lender determines that the borrower has filed a Petition for Undue Hardship in the case of a Chapter 7 bankruptcy. Claim interest payment may not exceed federal reinsurance eligibility by more than 30 days. This limitation on claim interest does not include delinquent interest due at the time the borrower filed

bankruptcy.

### D. Claims returned to lender.

[ No interest is paid for the period of time during which an incomplete claim has been returned to the lender. For claims which are first rejected on or after January 1, 1993, in the event that the lender believes a claim has been returned in error, the lender can appeal to the SEAA for the payment of interest during the return period, not to exceed 30 days of interest. In the case of qualifying claims submitted under subdivision 2 of § 5-6 for which abbreviated due diligence is required, ] The SEAA will pay no more interest than is reinsured by the federal government.

## § 5.6. Return of claims for inadequate documentation.

For claims which are first rejected on or after January 1, 1993, lenders must observe the following:

1. Lenders must resubmit returned claims within 60 days of the date the claim was returned by the SEAA.

2. Lenders may not resubmit more than once a claim that has been returned to the lender for inadequate documentation unless the lender has performed abbreviated due diligence and provides all required documentation. This provision does not apply if the claim was returned as a result of SEAA error.

## § 5.7. Repurchase and reclaim.

A. If the SEAA determines that a claim has been paid in error or, in the case of a bankruptcy claim in which a hardship petition has been filed, the court determines the loan to be nondischargeable, the SEAA may require the lender to repurchase the loan.

B. If a lender determines that a claim has been submitted in error, the lender may reclaim the loan or may repurchase the loan if the claim has been paid.

## PART VI.

### ASSIGNMENT TO SERVICER OR SECONDARY MARKET.

## § 6.1. Servicing.

The lender may negotiate the servicing of loans under this program with a servicing agency. The servicer will be regarded as the lender's agent, and the lender will continue to be bound by the terms of these regulations.

## § 6.2. Secondary market.

The lender may negotiate the sale of loans under this program to a secondary market. No loan may be sold to any entity that is not party to a participation agreement with the SEAA except with the written permission of the SEAA. The lender or the secondary market shall notify

the SEAA promptly of the assignment of any loans to a secondary market.

VA.R. Doc. No. R94-553; Filed February 2, 1994, 11:46 a.m.

## BOARD OF HEALTH PROFESSIONS

**Title of Regulation:** VR 365-01-2. Regulations Governing Practitioner Self-Referral.

**Statutory Authority:** § 54.1-2510 of the Code of Virginia.

**Effective Date:** March 24, 1994.

### Summary:

*The Virginia Practitioner Self-Referral Act of 1993 establishes the statutory framework for determining the legality of investment, referral, and other activities of licensed, certified, and unregulated health care practitioners and entities in the Commonwealth. In administering and enforcing the Act, it is the intent of the Virginia Board of Health Professions to discover and discipline health care professionals and entities that violate the public trust. At the same time, the board will strive for policies and procedures that inhibit to the least possible extent the development and provision of accessible, cost-effective, quality health care services for all Virginians.*

*These regulations establish the structure and process for administering and enforcing the Act. Because each case decision related to permitting or prohibiting investment or referral activities will build upon prior decisions, the board has attempted to ensure maximum public involvement and due process in the continued evolution of the regulatory program.*

*The final regulations are identical to the proposed regulations except for the following changes which were made in response to public comments received during a series of five public hearings convened throughout the Commonwealth and to an opinion of the Attorney General related to the statutory authority of the board to determine violations of the Act on the part of practitioners.*

*1. Section 3.2 K has been amended to allow the board flexibility in the duration of time for which an exception to the Act is valid. The proposed regulation specified a duration of five years. The final regulation allows the board to grant an exception for a period of no more than five years.*

*2. Upon advice of counsel, the board offered two alternative versions of proposed § 4.2, "Disciplinary action against practitioners." The first established the process for determination of these violations by the Board of Health Professions; the second established the process for these determinations to be made by*

*the regulatory board licensing or certifying the practitioner. An opinion of the Attorney General advised that the first version was inconsistent with the statutory authority of the board. Based upon this opinion, the second version of § 4.2 was adopted as the final regulation of the board.*

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

**Agency Contact:** Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9904. There may be a charge for copies.

VR 365-01-2. Regulations Governing Practitioner Self-Referral.

### PART I GENERAL PROVISIONS.

#### § 1.1. Definitions.

*Statutory definitions of words and terms related to the Practitioner Self-Referral Act are established in § 54.1-2410 of the Code of Virginia.*

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

*"Act" means the Practitioner Self-Referral Act, Chapter 24.1 (§ 54.1-2410 et seq.) of Title 54.1 of the Code of Virginia.*

*"Applicant" means a practitioner or entity who has applied to the board for an advisory opinion on the applicability of the Act, or for an exception to the prohibitions of the Act.*

*"Appropriate regulatory board" means the regulatory board within the Department of Health Professions which licenses or certifies the practitioner.*

*"Board" means the Board of Health Professions.*

*"Committee" means the Advisory Committee on Practitioner Self-Referral of the Board of Health Professions.*

*"Department" means the Department of Health Professions.*

#### § 1.2. Public Participation Guidelines.

*VR 365-01-1 establishes the guidelines for participation by the public in rulemaking activities of the board.*



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## PART II. ADVISORY COMMITTEE ON PRACTITIONER SELF-REFERRAL.

### § 2.1. Composition.

A. The board shall appoint an Advisory Committee on Practitioner Self-Referral comprised of no fewer than five members of the board. At least two members of the committee shall be citizen members of the board.

B. The methods and terms of appointment shall be in accordance with the bylaws of the board.

### § 2.2. Responsibilities.

A. The committee shall [ , in accordance with § 9-6.14:11 of the Code of Virginia, ] receive and review requests and make recommendations to the board for the issuance of advisory opinions regarding the applicability of the Act.

B. The committee shall, in accordance with § 9-6.14:11 of the Code of Virginia, receive and review applications for exceptions to the prohibitions of the Act and make recommendations to the board for the issuance of exceptions to the Act.

### § 2.3. Meetings.

The committee shall meet at least once each quarter of the calendar year.

## PART III. ADVISORY OPINIONS AND EXCEPTIONS.

### § 3.1. Application for advisory opinions.

A. Any practitioner or entity may request an advisory opinion on the applicability of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form requested by the board. The request shall contain the following information:

1. The name of the practitioner or entity;
2. Identification of the [ practitioner or ] entity and description of the health care services being provided or proposed;
3. The type and amount of existing or proposed investment interest in the entity;
4. A description of the nature of the investment interest and copies of any existing or proposed documents between the practitioner and the entity including but not limited to leases, contracts, organizational documents, etc.; and
5. Certification and notarized signature of the

practitioner or principal of the entity requesting the [ advisory ] opinion that the information and supporting documentation contained therein is true and correct.

C. The committee shall review the application for completeness and may request such other additional information or documentation it deems necessary from the practitioner or entity.

D. When the committee determines that a request for an [ advisory ] opinion is complete and that it has sufficient information, it shall notify the practitioner or entity that it will consider its request at the next scheduled meeting. The practitioner or entity may request an informal fact finding conference with the committee within 30 days of the scheduled meeting.

E. At the conclusion of the meeting or conference, the committee shall issue a recommended advisory opinion to the board and to the practitioner or entity.

F. The practitioner or entity shall, within 30 days following the issuance of the recommended advisory opinion, notify the board in writing of its acceptance of the recommended advisory opinion.

G. The board shall consider the committee's recommendation at the next scheduled meeting, at least 14 days following the issuance of the committee's recommended advisory opinion. The board may afford an opportunity for public comment prior to a vote on the committee's recommendation. The board shall issue a written final decision.

H. Upon the notification that the practitioner or entity rejects the committee's recommended advisory opinion, the committee shall withdraw it and notify the practitioner or entity that it may request a hearing pursuant to § 9-6.14:12 of the Code of Virginia, within 30 days of such notice, to consider the issuance of an advisory opinion.

### § 3.2. Application for exception.

A. A practitioner or entity may request an exception to the prohibitions of the Act upon completion of an application and payment of a fee.

B. Requests shall be made on an application form prescribed by the board. The application shall contain the following information:

1. The name and identifying information of the practitioner or entity;
2. The information and documentation regarding community need and alternative financing as required by § 54.1-2411 B of the Code of Virginia.
3. Certification and notarized signature of the practitioner or principal of the entity requesting the exception that the information contained in the

application and supporting documentation is true and correct.

C. The committee shall review the application for completeness and may request additional information and documentation from the applicant.

D. When the committee determines that an application is complete and that it has sufficient information, it shall notify the applicant that it will consider the request at its next scheduled meeting. The applicant may request an informal fact finding conference with the committee within 30 days of the scheduled meeting.

E. At the conclusion of the meeting or conference, the committee shall issue a recommended decision regarding the request for an exception to the board and to the applicant.

F. The applicant shall, within 30 days following the issuance of the recommended decision, notify the board in writing of its acceptance of the recommended decision.

G. The board shall consider the committee's recommendation at its next scheduled meeting, at least 14 days following receipt of the recommendation. The board may afford an opportunity for public comment prior to a vote on the committee's recommendation. The board shall thereafter inform the applicant of its decision in writing.

H. The board shall act on an application within 90 days of determination of its completeness.

I. When an exception is granted, the practitioner or entity shall certify to the board compliance with the terms and conditions of subsections B and C of § 54.1-2411 of the Code of Virginia.

Violation of these terms and conditions shall constitute grounds for revocation of the exception and may constitute grounds for disciplinary action as provided in Part IV of these regulations.

J. Upon notification that the practitioner or entity rejects the committee's recommendation of an exception, the committee will withdraw it and notify the practitioner or entity that it may, within 30 days of such notice, request a hearing before the board pursuant to § 9-6.14:12 of the Code of Virginia to consider its application for exception.

K. Exceptions to the Act shall be valid for a period of [ no more than ] five years.

L. Subject to verification by the board, an exception shall be renewed upon payment of a renewal fee and the receipt of certification from the practitioner or entity that the conditions under which the original exception was granted continue to warrant the exception.

### § 3.3. Fees.

A. An application fee for an opinion on applicability of the Act shall be \$500.

B. An application fee for an exception to the Act shall be \$1,000.

C. The renewal fee for board approval of exceptions to the Act shall be \$250.

## PART IV. DISCIPLINE.

### § 4.1. Disciplinary action against entities.

A. The board shall determine violations of prohibitions of the Act on the part of an entity other than a practitioner as defined in § 54.1-2410 of the Code of Virginia in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

B. Upon determination of a violation by an entity, the board may impose a monetary penalty as provided in § 54.1-2412 C of the Code of Virginia.

### [ § 4.2. Disciplinary action against practitioners.

A. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner as defined in § 54.1-2410 of the Code of Virginia, the board shall provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of § 54.1-2510 of the Code of Virginia.

B. Pursuant to subdivision 14 of § 54.1-2510 of the Code of Virginia, the board shall determine whether a violation of the Act on the part of a practitioner has occurred in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. Upon determination of a violation of the Act by a practitioner, the board shall report this determination to the appropriate regulatory board within the department.

D. Violations of the Act by a practitioner, as determined by the board, shall be subject to disciplinary action by the appropriate regulatory board within the department in accordance with § 54.1-2412 D of the Code of Virginia.

(Upon advice of counsel, the board offers the following alternative to § 4.2 for comment.) ]

### § 4.2. Disciplinary action against practitioners.

A. Upon receipt of an investigative report of an alleged violation of the Act by a practitioner as defined in § 54.1-2410 of the Code of Virginia, [ the department, on behalf of ] the board [ , ] shall provide a copy of the report to the appropriate regulatory board within the department as required by subdivision 13 of § 54.1-2510 of the Code of Virginia.

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B. Violations of the Act by a practitioner shall be determined by the appropriate regulatory board within the department and shall be subject to disciplinary action by that board in accordance with § 54.1-2412 D of the Code of Virginia.

C. Upon closure of a case involving an alleged violation of the Act by a practitioner, the appropriate regulatory board shall provide a copy of the final order or of the letter of dismissal of the case to the board.

D. The board shall review periodically the disposition of cases involving allegations of violation of the Act by practitioners to ensure the protection of the public and the fair and equitable treatment of health professionals, as authorized by subdivision 11 of § 54.1-2510 of the Code of Virginia.

## § 4.3. Hearings.

The provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) shall govern proceedings on questions of violations of the Act.

VA.R. Doc. No. R94-552; Filed February 2, 1994, 11:37 a.m.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

### Title of Regulation: VR 370-01-000:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 9-164(2) of the Code of Virginia.

Effective Date: April 1, 1994.

### Summary:

*These regulatory changes are necessitated by changes to the Administrative Process Act which were enacted by the 1993 General Assembly. The regulations allow for public participation in the development of all regulations adopted by the council. The regulations will replace those adopted as emergency regulations in June 1993.*

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

Agency Contact: Copies of the regulation may be obtained from John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 East Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371. There may be a charge for copies.

VR 370-01-000:1. Public Participation Guidelines.

## § 1. Definitions.

A. For the purpose of these public participation

guidelines for development of regulations, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless specifically defined in this regulation, terms used shall have the meanings commonly ascribed to them.

C. Terms defined.

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Approving authority" "Council" means the Virginia Health Services Cost Review Council established by Chapter 26 (§ 9-156 et seq.) of Title 9 of the Code of Virginia which has the legal authority to adopt regulations.

"Director" means the executive director and staff of the Virginia Health Services Cost Review Council which positions are established pursuant to the Code of Virginia to implement programs and provide administrative support to the approving authority.

"Governor's Executive Order" means any policy or procedure issued by the Governor under § 2.1-41.1 or § 9-6.14:9.1 A of the Code of Virginia establishing the administrative policy and procedures for gubernatorial review and regulatory actions governed by the Administrative Process Act.

## § 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested parties in the formation and development or repeal of regulations and any revision thereto in accordance with the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia. ~~These procedures shall not only be utilized prior to the formation and drafting of regulations, but shall be utilized during the entire formation, promulgation and final adoption process.~~

B. At the discretion of the approving authority or the director, the procedures in § 3 may be supplemented by any means and in any manner to gain additional public participation in the regulation adoption process, provided such means allows for balanced participation by the interested parties.

C. The failure of any person or organization to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with the Administrative Process Act and Governor's Executive Order.

D. Any person may petition the council for the adoption, amendment, or repeal of a regulation. The petition, at a minimum, shall contain the following information:

I. Name of petitioner;

2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The council shall receive, consider, and respond to such petition within 180 days.

### § 3. Public participation procedures Mailing list.

A. The director shall establish and maintain a mailing list consisting of parties groups and individuals expressing an interest in working with the council for the formation, adoption, amendment, or repeal of regulations. This list shall consist of groups and individuals who have indicated an interest in being placed on such a list. In addition, the director shall contact hospital organizations, nursing home organizations, business groups, insurance organizations, consumer groups, and individuals who have indicated an interest in the work of the approving agency regarding whether they wish to be added to the list.

B. The council may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

C. The council shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

D. Persons or entities on the mailing list described in subsection A shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action;
2. A Notice of Comment Period;
3. A copy of any final regulation adopted by the council; and
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

### § 4. Ad hoc advisory committees.

A. The council or the director may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the

council.

B. The ad hoc committee shall provide professional specialization or technical assistance when the council or director determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

C. The advisory committee may be dissolved when the process for promulgating the specific regulation is completed.

### § 5. Public participation guidelines.

B. A. Whenever the approving authority so directs, or upon his own initiative, the director may commence the regulation adoption process according to these procedures and proceed to draft a proposal.

C. B. The director shall issue a Notice of Intended Regulatory Action (NOIRA) for all regulatory proposals in accordance with the Administrative Process Act.

1. The NOIRA shall include, in addition to the requirements of the Registrar of Regulations:

- a. A statement as to the need for regulatory action.
- b. A description, if possible, of alternatives available to meet the need.
- c. A request for comments on the intended regulatory action, to include any ideas to assist the director in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.
- d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
- e. A statement indicating whether a public hearing will be held on the proposed regulation after it is published.

2. The public comment period for NOIRAs under subdivision C B 1 of this section shall be no less than 15 30 days after publication in The Virginia Register.

D. C. The director shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register.
2. Distribution by mail to parties on the list established under subsection A of this section.

D. The director shall also disseminate the NOIRA to any individuals, groups or organizations not on the lists established under § 3 but who may, in his determination,

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be directly affected by the possible regulatory action. The director shall solicit the input of these individuals, groups or organizations in all situations where the proposed regulatory action will affect them.

E. After consideration of public input, the director may prepare the draft proposed regulation and prepare the Notice of Public Comment (NOPC) and any supporting documentation required for review by the Administrative Process Act and Governor's Executive Order. A summary of comments received in response to the NOIRA shall be distributed to the approving authority for its review. The NOPC shall include, in addition to the requirements of the Registrar of Regulations, a notice of the opportunity to comment on the proposed regulation and a request for comments on the costs and benefits of the proposal. The NOPC shall also state that an analysis of the following has been conducted by the agency and is available to the public upon request:

1. Statement of purpose - why the regulation is proposed and the desired end result or objective of the regulation.
2. Estimated impact:
  - a. Number and types of regulated entities or persons affected.
  - b. Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance.
  - c. Projected cost to agency for implementation and enforcement.
3. Explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.
4. An estimate of the impact of the proposed regulation upon small businesses or organizations in Virginia.
5. A discussion of alternative approaches that were considered to meet the need which the proposed regulation addresses, and agency assurance that the proposed regulation is the least burdensome available alternative.
6. A schedule setting forth when, within two years after a regulation is promulgated, the director will evaluate it for effectiveness and continued need.
7. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register.

F. The NOPC may also include the time, date, and location of a public hearing to receive comments on the proposed regulation. The hearing may be held at any time

during the public comment period. The hearing may be held in such location as the agency determines will best facilitate input from the affected parties.

G. The director shall prepare a summary of comments received in response to the NOIRA and submit them to the approving authority as part of the agency record.

H. Upon approval of the draft proposed regulation by the approving authority, the agency may *shall* publish the proposal for public comment.

I. The director ~~may~~ *shall* disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:
  - a. Publication in The Virginia Register.
  - b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.
2. Distribution by mail to parties on the list established under ~~subsection A of this section~~ § 3 A .
3. *Distribution by mail to parties identified pursuant to subsection D of this section.*

J. Concurrently with distribution of the NOPC to the Registrar of Regulations, the director shall submit the proposed regulation and supporting documentation required for review in accordance with the Administrative Process Act and Governor's Executive Order.

K. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act and Governor's Executive Order.

VA.R. Doc. No. R94-527; Filed January 28, 1994, 10:45 a.m.

\* \* \* \* \*

**Title of Regulation: VR 370-01-003. Regulations of the Virginia Health Services Cost Review Council Patient Level Data System.**

**Statutory Authority: §§ 9-164 and 9-166.5 of the Code of Virginia.**

**Effective Date: April 1, 1994.**

**Summary:**

*The Joint Commission on Health Care for All Virginians introduced legislation in the 1993 Session of the Virginia General Assembly to establish a patient level database system in Virginia. The legislation requires that the executive director contract with a nonprofit, tax-exempt health data organization which*

will compile, store, analyze, and evaluate patient level data. The legislation further requires that the council adopt reasonable fees for the filing of patient level data and regulations which will require hospitals to submit patient level data either to the council or to the nonprofit, tax-exempt organization.

Recently, a nonprofit, tax-exempt health data organization has been incorporated in Virginia by the name of Virginia Health Information Corporation (VHI). Many of the members of that board attended a retreat held last fall by Howard M. Cullum, Secretary of Health and Human Resources, to lay the ground work for the establishment of a patient level database system in Virginia.

The executive director has determined that pursuant to § 9-166.4 he will contract with VHI to have that organization compile, store, analyze, and evaluate patient level data.

These final regulations replace those adopted as emergency regulations by the council in June 1993.

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

**Agency Contact:** Copies of the regulation may be obtained from John A. Rupp, Virginia Health Services Cost Review Council, 805 East Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371. There may be a charge for copies.

VR 370-01-003. Regulations of the Virginia Health Services Cost Review Council Patient Level Data System.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings:

"Council" means the Virginia Health Services Cost Review Council.

"Complete filing" means that patient level data of at least 99% of a hospital's inpatient discharges for a calendar year quarter are submitted.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with expertise and capacity to

execute the powers and duties set forth for such entity in Chapter 26 (§ 9-156 et seq.) of Title 9 of the Code of Virginia.

"Processed, verified data" means data on inpatient records which have been subjected to edits. These edits shall be applied to data elements which are on the UB-82 Billing Form (or a successor Billing Form adopted by the Virginia Uniform Billing Committee for use by inpatient hospitals in Virginia). The edits shall have been agreed to by the executive director of the council and VHI. Inpatient records containing invalid UB-82 codes or all blank fields for any of the data elements subjected to edits shall be designated as error records. At least 98% of a complete filing of all records which are submitted by an inpatient hospitals in aggregate per calendar year quarter and which are subjected to these edits must be free of error for data to be considered processed and verified.

"System" means the Virginia Patient Level Data System.

"Virginia Health Information" or "VHI" means the Virginia nonstock corporation organized for the purpose of operating as a nonprofit, tax-exempt health data organization, with which the executive director has entered into a contract as required by § 9-166.4 of the Code of Virginia.

## PART II. PATIENT LEVEL DATA ELEMENTS.

### § 2.1. Reporting requirements for patient level data elements.

Every inpatient hospital shall submit each patient level data element listed below for each hospital inpatient, including a separate record for each infant, if applicable. Most of these data elements are currently collected from a UB-82 Billing Form. The column for a "Form Locator" indicates where the data element is located on the UB-82. For those elements, a column for the "Page Number" from the Uniform Billing Manual (UB-82), Revised on July 1989, which has been prepared for Virginia hospitals by the Virginia Uniform Billing Committee, is also provided which details a field description and any special instructions pertaining to that element. An asterisk (\*) indicates when the required data element is either not on the UB-82 or in the Uniform Billing Manual. The instructions provided under that particular data element should then be followed. If a successor Billing Form to the UB-82 form is adopted by the Virginia Uniform Billing Committee for use by inpatient hospitals in Virginia, information pertaining to the data elements listed below should be derived from that successor billing form.

	Form Locator	Page Number
1. Hospital identifier	1	10
2. Attending physician identifier	92	*

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Enter the six-digit nationally assigned Uniform Physician Identification Number (UPIN) for the physician assigned as the attending physician for an inpatient.

3. Operating physician identifier 93 \*  
Enter the six-digit nationally assigned UPIN for the physician identified as the operation physician for each inpatient procedure reported for up to six procedures.

4. Payor identifier 57 119-124

5. Employer identifier 73 148

6. Patient identifier \* \*  
Enter the nine-digit social security number of the patient. If a social security number has not been assigned, (i.e., for an infant) leave blank.

7a. Patient sex 13 29

7b. Race Code \* \*

If an inpatient hospital collects information regarding the choices listed below, the appropriate one digit code reflecting the race of the patient should be entered. If a hospital only collects information for categories 0, 1, or 2, then the appropriate code should be entered from those three selections.

0 = White

1 = Black

2 = Other

3 = Asian

4 = American Indian

5 = White Hispanic

6 = Black Hispanic

7c. Date of Birth 12 28

7d. Century Indicator 35, 36, 37, 38, 39=17 28

7e. Zip Code 11 27

7f. Patient relationship 67A, B, C 135-137  
to insured

7g. Employment status code 72 146-147

7h. Discharge (i.e., Patient) Status 21 38

7i. Birth weight (for infants) \* \*

Enter the birth weight in grams of newborns.

8a. Admission type 17 33

8b. Admission Source 18 35

8c. Admission Date 15 31

8d. Admission Hour 16 32

8e. Admission Diagnosis 27 44

9. Discharge Date 22 39

Only enter date of discharge.

10. Principal Diagnosis 77 152

Enter Secondary Diagnoses 78, 79, 80, 81 153  
(up to 8)

In addition, include diagnoses recorded in the comments section for DX6-DX9.

11. External cause of injury \* \*

Record all external cause of injury codes in secondary diagnoses position after recording

all treated secondary diagnoses.

12. Principal Procedure 84 156-157  
Enter Other Procedures and dates 83 155  
(up to 5). In addition,  
include procedures recorded in  
the comments section for PX4-PX6.

13. Revenue Center Code (up to 23) 51 80-114  
Revenue Center Units (up to 23) 52 115  
Revenue Center Charges (up to 23) 53 116

14. Total Charges 53 116  
(R.C. Code 001 is for total charges.  
See page 81.)

## PART III. FILING FORMAT.

### § 3.1. Options for filing format.

Inpatient hospitals of 100 beds or larger that submit patient level data directly to the council or VHI shall submit it in an electronic data format. Hospitals of less than 100 beds that submit patient level data directly to the council or VHI may directly submit it in electronic data format or in hard copy. If hard copy is utilized the hospital shall submit, for each inpatient discharged, a copy of the UB-82 and an addendum sheet for those data elements not collected on the UB-82 or defined in the Uniform Billing Manual. These hospitals must submit all patient level data in electronic data format by January 1, 1995.

If a hospital submits processed, verified data directly to VHI, it shall be in electronic format.

## PART IV. SUBMISSION PROCEDURE.

### § 4.1. Options for submission.

Each inpatient hospital shall submit the patient level data to the council for processing and verification. If data is submitted in this fashion, the council will transmit it to VHI along with any fees submitted by the hospital to the council for the processing and verification of such data.

As an alternative to submitting the patient level data to the council, an inpatient hospital may submit the patient level data to the office of VHI for processing and verification. If this alternative is chosen data shall be submitted to the following address:

Virginia Health Information Corporation  
Post Office Box 8727  
Richmond, Virginia 23226

If a hospital chooses this alternative it shall notify the council and the VHI of its intent to follow this procedure.

In lieu of submitting the patient level data to the council or to VHI, an inpatient hospital may submit

already processed, verified data to VHI. If an inpatient hospital chooses this alternative for submission of patient level data, it shall notify the council and the VHI of its intent to utilize this procedure.

If an inpatient hospital decides to change the option it has chosen, it shall notify the council of its decision 30 days prior to the due date for the next submission of patient level data.

#### § 4.2. Contact person.

Each hospital shall notify in writing the council and VHI of the name, address, telephone number and fax number of a contact person. If a hospital's contact person changes, the council and VHI shall be notified in writing as soon as possible of the name of the new person who shall be the contact person for that hospital.

#### § 4.3. Frequency of submission.

A. Inpatient hospitals shall submit patient level data for inpatients at least on a calendar year quarterly basis. If the data is submitted to the council or to VHI for processing and verification, it shall be received at the office of the council or the office of VHI within 45 days after the end of each calendar year quarter.

B. If inpatient hospitals choose to submit processed, verified data directly to VHI, it shall be received at the office of the VHI within 120 days after the end of each calendar year quarter.

### PART V. FILING FEES.

#### § 5.1. Establishment of annual fee.

The council shall prescribe a reasonable fee not to exceed one dollar per discharge for each inpatient hospital submitting patient level data pursuant to these regulations to cover the cost of the reasonable expenses in processing and verifying such data. The fee shall be established and reviewed annually by the council. Payment of the fee by a hospital shall be at the time quarterly inpatient data is submitted.

#### § 5.2. Payment of fee to nonprofit organization.

If an inpatient hospital chooses to submit its patient level data directly to VHI, that hospital may pay the fee described in § 5.1 to VHI at the time it submits its quarterly data. If a hospital pays its fee directly to VHI, the requirements of a fee to be paid to the council, as described in § 5.1, shall be waived by the council.

#### § 5.3. Waiver or reduction of fee.

If a hospital submits processed, verified patient level data to VHI, VHI may, in its discretion, grant a waiver or reduction of the fee if it determines that the hospital

has submitted properly processed, verified data.

#### § 5.4. Late charge.

A late charge of \$25 per working day shall be paid to the council by an inpatient hospital that does not submit, in aggregate, a complete filing of the patient level data required in Part II for all inpatients discharged in a calendar year quarter pursuant to the times established in § 4.3. This requirement may be waived by the council if an inpatient hospital can show that an extenuating circumstance exists. Examples of extenuating circumstance include, but are not limited to, the installation of a new computerized billing system, a bankruptcy proceeding, closure of the institution, change of ownership in the institution, or the institution is a new facility that has recently opened.

VA.R. Doc. No. R94-528; Filed January 28, 1994, 10:46 a.m.

### DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of 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 615-01-3. Maximum Resource Limit in the Aid to Families with Dependent Children (ADC) and General Relief (GR) Programs (AFDC) Program .

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

**Effective Date:** March 23, 1994.

#### Summary:

House Bill 1502, passed by the 1993 General Assembly, amended § 63.1-110 of the Code of Virginia and instructed the Department of Social Services to seek a waiver of federal regulations to modify resource rules. A federal waiver of 45 CFR 233.20(a)(3)(i)(B) has been approved by the Department of Health and Human Services for statewide implementation to waive the federal resource regulations.

This regulation adopts the provisions of House Bill 1502 by adding a savings account of up to \$5,000 for the purposes of education or down payment on a residence to those items specified as allowable resources. Ownership of this type of account will not affect eligibility for Aid to Families with Dependent Children (AFDC).



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VR 615-01-3. Maximum Resource Limit in the Aid to Families with Dependent Children (AFDC) Program.

## PART I. DEFINITIONS

### § 1.1. Definitions.

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

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive an assistance payment.

"Available resource" means real and personal property, both liquid and nonliquid, including cash, bank accounts, the cash value of life insurance, trust funds, stocks, bonds, mutual funds or any other financial instruments which the assistance unit has the right, authority or power to liquidate.

"Exempted resource in the Aid to Families with Dependent Children (~~ADC~~) (AFDC) Program" means the home in which the assistance unit lives and its contents; one motor vehicle with an equity value of \$1,500, or less that amount set in accordance with federal regulations at 45 CFR 233.20(a)(3)(i)(B)(2); income producing farm and business equipment; cash and other assets, the total of which do not exceed the established resource maximum of \$1,000 set in accordance with federal regulations at 45 CFR 233.20(a)(3)(i)(B); one burial plot per assistance unit member; ~~and~~ burial funds or funeral arrangements, or both, with an maximum equity value of \$1,500, or less specified by federal regulations at 45 CFR 233.20(a)(3)(i)(B)(3), per assistance unit member; and an interest-bearing savings account not to exceed \$5,000 for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school or any college or university or for making a down payment on a primary residence, one per assistance unit.

"Exempted resource in the General Relief (GR) Program" means the home in which the assistance unit lives and its contents; one motor vehicle, regardless of its value; the cash value of life, retirement or other related insurance policies with total face value not in excess of \$1,500, owned by an assistance unit member 21 years of age, or over; real property in litigation; income-producing farm and business equipment; income-producing real property, other than the home, unless the assistance unit's equity in the property is \$5,000, or more; cash and other assets, the total of which do not exceed the established resource maximum of \$1,000; burial plots owned by the assistance unit; burial funds ~~and~~ or funeral arrangements, or both, with an equity value of \$900, or less, per assistance unit member; .

## PART II. ALLOWABLE RESOURCES.

### § 2.1. Real or personal assets.

Any assets, real or personal, owned by an assistance unit, other than those specifically exempted, must be evaluated as an available resource and the value thereof considered in relation to the ~~\$1,000~~ maximum resource limit. The value of nonliquid real ~~and~~ or personal property, or both, to be deemed an asset to the assistance unit is their equity in the property. When the assistance unit has available resources totaling more than ~~\$1,000~~ the maximum resource limit, eligibility does not exist.

### § 2.2. Equity in property.

In the Aid to Families with Dependent Children (~~ADC~~) (AFDC) Program, the assistance unit's equity in a motor vehicle in excess of the exempted ~~\$1,500~~ value is considered in relation to the ~~\$1,000~~ allowable reserve. In the Aid to Families with Dependent Children (~~ADC~~) (AFDC) and General Relief (GR) Programs, the assistance unit's equity in burial funds ~~and~~ or funeral arrangements, or both, in excess of the exempted amount is to be considered in relation to the ~~\$1,000~~ allowable reserve.

### § 2.3. Savings account.

In the Aid to Families with Dependent Children (AFDC) Program, any funds withdrawn from the savings account established for the purpose of education or the down payment on a primary residence, used for the purposes stated in this section, and interest earned on the account, shall be disregarded in determining eligibility. Any amount withdrawn from the account for any purpose other than those stated in this section shall be treated as a countable resource to be considered in relation to the allowable reserve.

V.A.R. Doc. No. R94-556; Filed February 2, 1994, 11:39 a.m.

## VIRGINIA RACING COMMISSION

**Title of Regulation:** VR 662-01-01. Virginia Racing Commission Public Participation Guidelines for Adoption or Amendment of Regulations .

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** March 23, 1994.

### Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. The regulation brings the commission's public participation guidelines into conformity with recent changes in the Administrative Process Act.

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

Agency Contact: Copies of the regulation may be obtained from William H. Anderson, Virginia Racing Commission, 1500 East Main Street, Suite 301, Richmond, VA 23219, telephone (804) 371-7363. There may be a charge for copies.

VR 662-01-01. Public Participation Guidelines.

## § 1. Generally.

*A. Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia became effective on January 1, 1989, and vested the Virginia Racing Commission ("commission") with control of all horse racing with pari-mutuel wagering in the Commonwealth. Section 59.1-369 of the Code of Virginia authorizes the commission to promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth.*

*A. B. These public participation guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Virginia Racing Commission. These guidelines shall not apply to regulations adopted on an emergency basis.*

*B. C. In developing any regulation governing horse racing and pari-mutuel wagering, the Virginia Racing Commission ("commission") is committed to obtaining comments from interested people. The commission intends to involve all interested parties in the development of those regulations.*

*C. D. Anyone who is interested in participating in the process of developing regulations should notify the commission in writing. This notification should be sent to: Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia 23208, the commission's main business office.*

1. The commission will maintain a list of the people who notified the commission in writing.

2. The commission will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in § 4 of these guidelines.

*E. The commission shall place on its agenda, whenever appropriate, a period for public participation during its regular meetings.*

## § 2. Identification of needed regulations.

*A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: Chairman, Virginia Racing*

*Commission, P.O. Box 1123, Richmond, Virginia 23208.*

*A. Any person may petition the commission to request the development of a new regulation or amendment to an existing regulation. The commission upon receiving the petition shall receive, consider, and respond to the petition within 180 days. The commission's decision to initiate or not initiate rulemaking in response to petitions is not subject to judicial review. Requests should be sent to: Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.*

*B. The commission, at its discretion, may consider any regulatory request or change.*

## § 3. Identification of interested parties.

Before the commission develops a regulation, it will identify persons who either would be interested in or affected by the proposal. The methods for identifying interested parties shall include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia Chamber of Commerce. This list will be used to identify groups which might be interested in the regulation.

2. Using commission files to identify people who have raised questions or expressed an interest in the regulations.

3. Using a list, compiled by the commission, of persons who previously participated in public proceedings.

4. Obtaining from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the most recent General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

*5. The commission shall appoint a standing advisory panel which shall be consulted and requested to provide input to the commission regarding the formation and development of each of its regulations. The standing advisory panel shall consist of at least one representative from each of the following: the Virginia Thoroughbred Association, the Virginia Standardbred Association, the Virginia Arabian Racing Association, the Virginia Quarter Horse Association, the Virginia Steeplechase Association, the Association of Racing Commissioners International, and the Jockeys' Guild, together with at least one veterinarian, one attorney, and one accountant who possess expertise in their respective disciplines which is related to the breeding and racing of horses.*

*6. In addition to the standing advisory panel, the*

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*commission, in its discretion, may appoint and make use of ad hoc advisory panels to assist it in the formation and development of regulations whenever the commission considers the subject of such regulations to be outside the expertise of the members of its standing advisory panel or that some additional special expertise would be helpful in the formulation and development of such regulations, e.g., regulations regarding electronic data processing or satellite communications.*

## § 4. Notification of interested parties.

### A. Generally.

The commission will prepare a Notice of Intended Regulatory Action ("notice") before developing any regulation. The notice will identify the subject matter and purpose of the new regulation(s). The notice will specify a time deadline and location for interested persons to submit written comments.

*A. In the case of all regulations, except those regulations exempted by § 9-6.14.4.1 of the Code of Virginia, the commission shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action which describes the subject matter and intent of the planned regulation. At least 30 days shall be provided for public comment after publication of the Notice of Intended Regulatory Action. The commission shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.*

B. Notifying those interested. The methods for notifying interested persons shall include publishing the notice in the Virginia Register of Regulations (Virginia Register) and also may include the following:

1. Sending the notice to all persons identified as interested parties through the methods described in § 3 above ; and
2. Requesting that groups, associations, and organizations to whom the notice is sent publish the notice in newsletters or journals or use other means available to them to inform their members.

## § 5. Public participation in regulation development ; initial comment; preparing a proposed regulation .

A. **Initial comment.** After interested parties have responded to the notice, the commission will determine the level of interest.

1. If sufficient interest exists, and if time permits, the commission may schedule informal meetings before the development of the proposed regulation. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.

2. Instead of informal meetings, the commission may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice.

3. The commission may decide that the notice resulted in receipt of enough information so that it can develop the proposed regulation without either an informal meeting or additional written comments.

B. **Preparing a proposed regulation.** After the initial public input on the intended regulatory action, the commission will develop a proposed regulation for review, revision and adoption.

## § 6. Submission of regulation under the Administrative Process Act.

A. After the drafting process ends, the commission-approved regulation will be submitted to the Registrar of Regulations under the Administrative Process Act (APA), Chapter 1.1:1 (*§ 9-6.14:1 et seq.*) of Title 9 of the Code of Virginia. The commission-approved regulation will be published as a proposed regulation in the Virginia Register.

B. The commission will furnish a copy of the regulation published in the Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulation.

C. If the commission elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the commission that they will participate in the public hearing will be set out. People who choose to participate in the public hearing will be encouraged to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

C. *The commission shall state in the Notice of Intended Regulatory Action whether it intends to hold a public hearing on the proposed regulation after it is published. The commission shall hold such public hearings if required by basic law. If the commission states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the hearing. If the commission states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action: (i) the Governor directs that the commission shall hold a public hearing or (ii) the commission receives requests for a public hearing from 25 persons or more.*

D. When the commission issues an order adopting a regulation, it may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in the Virginia

Register and will specify the issue number.

§ 7. Publication and distribution of final regulation.

A. The commission will adopt all final regulations. The final regulations will be submitted for publication in the Virginia Register.

B. The commission will order the printing of all adopted final regulations and make appropriate distribution.

C. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the commission and compliance with the commission's regulations.

V.A.R. Doc. No. R94-537; Filed February 1, 1994, 9:35 a.m.

\* \* \* \* \*

Title of Regulation: VR 662-02-05. Satellite Facilities.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: March 23, 1994.

Summary:

*The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. The regulation sets forth the conditions under which pari-mutuel wagering on horse races may be conducted at satellite facilities.*

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

Agency Contact: Copies of the regulation may be obtained from William H. Anderson, Virginia Racing Commission, 1500 East Main Street, Suite 301, Richmond, VA 23219, telephone (804) 371-7363. There may be a charge for copies.

VR 662-02-05. Satellite Facilities.

PART I.  
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

*"Commission" means the Virginia Racing Commission.*

*"Licensee" includes any person holding an owner's, operator's, or limited license under §§ 59.1-375 through 59.1-386 of the Code of Virginia. The licensee under a*

*limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility.*

*"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the commission.*

*"Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.*

§ 1.2. Generally.

*The commission is authorized to issue licenses for satellite facilities for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The operation of satellite facilities shall be conducted so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in horse racing complete honesty and integrity.*

§ 1.3. Local referendum.

*The commission shall not grant a license to own or operate a satellite facility until a referendum approving the question is held in the county or city in which the satellite facility is to be located.*

§ 1.4. Observance of regulations.

*The holder of a license to own or operate a satellite facility shall be charged with the same duties and responsibilities as are the holders of unlimited licenses with respect to the observance and enforcement of the act and the regulations of the commission.*

§ 1.5. Interstate Horse Racing Act.

*The conduct of simulcast horse racing must comply with the provisions of the Interstate Horse Racing Act of 1978 (15 USC 3001 et seq.).*

§ 1.6. Majority ownership.

*The commission shall require that the majority ownership of satellite facilities be restricted to an entity licensed by the commission which owns a horse racetrack in the Commonwealth. Nothing in these regulations shall be deemed to preclude private local ownership or participation in any satellite facility.*

§ 1.7. Approval of simulcasting contracts.

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Any contractual agreement between a licensee and other entities concerning simulcast horse racing is subject to the approval of the commission.

## § 1.8. Disclosure of contracts.

Each licensee upon request shall provide to the commission copies of all contracts entered into by the licensee relating to the operation of a satellite facility.

## § 1.9. Restrictions on wagering.

Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

## § 1.10. Permits required.

All racing officials employed in a satellite facility shall apply for permits under the provisions of VR 662-03-01. All participants employed in a satellite facility shall apply for permits under the provisions of VR 662-03-02.

## PART II. APPLICATION FOR A LICENSE.

### § 2.1. Where to file application.

An applicant for a license to own or operate a satellite facility shall submit an application on a form, prepared by the commission, to the main office of the commission. The application shall be submitted either by certified mail or hand delivered.

1. An application to be sent by certified mail shall be addressed to:

Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, VA 23208

2. An application to be hand delivered shall be delivered to the Executive Secretary, Virginia Racing Commission at the commission's office in Richmond, Virginia.

3. Delivery to other than the commission's main office is not acceptable.

4. The applicant assumes full responsibility for the method chosen to deliver the application.

### § 2.2. Application fee.

An applicant for a license to own or operate a satellite facility must submit a nonrefundable application fee to the commission's designee at the time of application by a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of \$500. In the event the cost of the background investigation exceeds the application fee, the applicant must remit the amount

of the difference by certified check or bank draft within 10 days after receipt of a bill from the commission.

### § 2.3. Identification of applicant for a license.

An application for a license to own or operate a satellite facility shall include the name, address and telephone number of the applicant, and the name, position, address, telephone number and authorized signature of an individual to whom the commission may make inquiry.

### § 2.4. Applicant's affidavit.

An application for a license shall include an affidavit from the chief executive officer, director, officer or other participant in the applicant setting forth:

1. That the application is made for a license to own or operate a satellite wagering facility at which pari-mutuel wagering on horse racing is conducted;

2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers and personnel, and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

3. That the applicant seeks a grant of privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant;

4. That the applicant consents to inquiries by the Commonwealth of Virginia and the commission into the financial, character and other qualifications of the applicant by contacting individuals and organizations;

5. That the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, staff or agents;

6. That the affiant has read the application and knows the contents; the contents are true to the affiant's own knowledge, except matters therein stated as information and belief; as to those matters, the affiant believes them to be true;

7. That the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation or conditioning of a license or imposition of a fine, or any or all of the foregoing;

8. That the applicant will comply with all applicable local, state and federal statutes, regulations and ordinances;

9. The affiant's signature, name, organization, position, address, and telephone number; and

10. The date.

## § 2.5. Disclosure of ownership and control.

An applicant must disclose, if not already a licensee of the commission:

1. The type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

2. If the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business or trade names currently or previously used by the applicant, and copies of all state and federal tax returns for the past five years;

3. If the applicant is a corporation:

a. The applicant's full corporate name and any trade names currently or previously used by the applicant;

b. The jurisdiction and date of incorporation;

c. The date the applicant began doing business in Virginia and a copy of the applicant's certificate of authority to do business in Virginia;

d. Copies of the applicant's articles of incorporation, bylaws, and all state and federal corporate tax returns for the past five years;

e. The general nature of the applicant's business;

f. Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

g. The classes of stock of the applicant. As to each class, the number of shares authorized, number of shares subscribed to, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

h. Whether the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding,

and conditions under which they may be voted;

i. The names, in alphabetical order, and addresses of the directors and, in a separate list, officers of the applicant. The number of shares held of record directly or indirectly by each director and officer as of the application date of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

j. The names, in alphabetical order, and addresses of each recordholder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

k. Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of the most recent registration statement and annual report filed with the Securities and Exchange Commission;

l. Whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of the most recent registration statement filed with the securities regulator in that jurisdiction; and

m. Whether the securities registration and filing requirements of the Commonwealth of Virginia have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with Virginia's State Corporation Commission during the past five years;

4. If the applicant is an organization other than a corporation:

a. The applicant's full name and any aliases, business, or trade names currently or previously used by the applicant;

b. The jurisdiction of organization of the applicant;

c. The date the applicant began doing business in Virginia;

d. Copies of any agreements creating or governing the applicant's organization and all of the applicant's state and federal tax returns for the past five years;

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*e. The general nature of the applicant's business;*

*f. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, direct or indirect, including options, or other voting interest, whether absolute or contingent, in the applicant; and*

*g. The names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, direct or indirect, including options, as of the date of the application, or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;*

*5. If a nonindividual record or nonindividual beneficial holder of an ownership or other voting interest of 5.0% or more in the applicant is identified pursuant to subdivision 3 i or j, or subdivision 4 f and g, the applicant shall disclose the information required by those subdivisions as to record or beneficial holders of an ownership or voting interest of 5.0% or more in that nonindividual holder. The commission shall have the right to inquire for further disclosure of the applicant as it deems necessary. When an applicant is unable to provide the information required, it shall explain fully and document its inability to do so;*

*6. Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;*

*7. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this section has entered into regarding ownership or operation of the applicant's satellite facility, and copies of any such agreements in writing;*

*8. Any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation concerning the proposed satellite facility by the applicant, and copies of any such agreements in writing; and*

*9. Whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of 5.0% or more has held or holds a license or permit issued by any governmental authority to own or operate a horse racing facility, pari-mutuel wagering facility or any other form of gambling or has a financial interest in such an enterprise or conducts any aspect of horse racing or gambling. If so, the applicant must disclose*

*the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.*

## *§ 2.6. Disclosure of character information.*

*Unless the applicant for a license is already a licensee or holder of a permit from the commission, the applicant shall disclose and furnish particulars regarding whether the applicant or any individual or other entity identified pursuant to § 2.5 or § 2.12 of this regulation or a lease holder of the site of the facility has:*

*1. Been charged in any criminal proceeding other than in connection with a traffic violation. If so, the applicant must disclose the nature of the charge, the date charged, court and disposition;*

*2. Had a horse racing, gambling, business, professional, or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances and disposition;*

*3. Been accused in an administrative or judicial proceeding of violating a statute or regulation relating to horse racing or gambling;*

*4. Been charged in an administrative or judicial proceeding of violating a statute or regulation relating to unfair labor practices or discrimination;*

*5. Begun an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances and disposition;*

*6. Been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision and disposition;*

*7. Failed to satisfy any judgment, decree or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances; and*

*8. Been delinquent in filing a tax return required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.*

## *§ 2.7. Disclosure of site and facilities.*

*An applicant for a license must disclose with respect to the satellite facility:*

*1. The address of the facility, ownership of the site for the last three years, legal description, mortgagors, proof of title insurance, its size and geographical*

location, including reference to county and municipal boundaries;

2. A site map showing parking facilities, highways and streets adjacent to the facility, and separately showing any proposed highways and streets adjacent to the facility that are under construction, including their scheduled completion dates;

3. A description of the satellite facility, including portions of the facility not used for pari-mutuel wagering, giving:

- a. Total capacity;
- b. Total number of square feet;
- c. Dimensions of the facility;
- d. Configuration of the viewing, dining and concession facilities with the facility;
- e. Approximate location of mutuel windows and cash security areas;
- f. Description of the wagering equipment, including vendor and manufacturer, if known; and
- g. Preliminary architectural plans of the interior and exterior of the facility, if the proposed facility is to be constructed by the licensee.

## § 2.8. Disclosure of development process.

An applicant for a license may propose to lease, acquire or construct premises for each satellite facility. Such premises may be adjacent to or located within other businesses including but not limited to hotels and restaurants. Further, an applicant for a license must disclose with regard to the development of the satellite facility:

1. If the facility is to be constructed, the total cost of construction of the facility distinguishing between known costs and projected cost;
2. Separate identification of the following costs:
  - a. Facility design;
  - b. Site acquisition or rental costs;
  - c. Satellite reception and video equipment; and
  - d. Organizational, administrative, accounting and legal.
3. Documentation of the nature of interim financing, if any, and the nature of permanent financing, if any;
4. Documentation of fixed costs;

5. The schedule for construction, acquisition or leasing of the facility, giving, as the case may be:

- a. Acquiring or leasing the site;
- b. Soliciting bids;
- c. Zoning and construction permit approval;
- d. Awarding construction contracts;
- e. Beginning construction;
- f. Completing construction;
- g. Training staff; and
- h. Beginning of operation;

6. Schematic drawings;

7. Copies of contracts, if any, with performance bonds from the:

- a. Architect or other design professional;
- b. Project engineer;
- c. Construction engineer;
- d. Contractors and subcontractors; and
- e. Equipment procurement personnel;

8. Whether the site has been acquired or leased by the applicant; and

9. Whether present planning envisions future expansion of the facility.

## § 2.9. Disclosure of financial resources.

An applicant for a license must provide the following with regard to financial resources:

1. Unless the applicant is already the holder of a license from the commission, the applicant shall submit the most recently audited financial statement showing:
  - a. The applicant's current assets, including investments in affiliated entities, loans and accounts receivable;
  - b. Fixed assets;
  - c. Current liabilities, including loans and accounts payable;
  - d. Long-term debt and equity;



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*e. Contingent tax liability; and*

*f. Statement of income and expenses, and statement of cash flow.*

*2. Equity and debt sources of funds to develop, own and operate a satellite facility:*

*a. With respect to each source of equity:*

*(1) Identification of the source;*

*(2) Amount;*

*(3) Form;*

*(4) Method of payment;*

*(5) Nature and amount of present commitment; and*

*(6) Documentation, copies of agreements and actions which the applicant will take to obtain commitments for additional amounts.*

*b. With respect to each source of debt:*

*(1) Identification of the source;*

*(2) Amount;*

*(3) Terms of debt;*

*(4) Collateral;*

*(5) Identity of guarantors;*

*(6) Nature and amount of commitments; and*

*(7) Documentation, copies of agreements and actions the applicant will take to obtain commitments for additional amounts.*

*3. Identification and description of sources of additional funds needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.*

## *§ 2.10. Disclosure of financial plan.*

*An applicant for a license shall submit detailed financial projections for the operation of the satellite facility at the location that includes financing and income, expenses, profits or losses. The applicant shall include projections for purse money, the Virginia Breeders Fund, revenue to the Commonwealth and localities. The applicant shall also include the basis for the projections.*

## *§ 2.11. Disclosure of governmental actions.*

*An applicant for a license must disclose whether it is in compliance with all state statutes, local charter provisions,*

*local ordinances, and state and local regulations pertaining to the development, ownership and operation of the satellite facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.*

## *§ 2.12. Disclosure of management.*

*An applicant for a license must disclose with regard to the management of the satellite facility:*

*1. A description of the applicant's management plan, with budget and identification of management personnel by function, job description and qualifications for each management position, and a copy of the organization chart;*

*2. Management personnel to the extent known and with respect to each:*

*a. Legal name, alias or aliases and previous name or names;*

*b. Current residence and business addresses and telephone numbers;*

*c. Qualifications and experience in the following areas:*

*(1) General business;*

*(2) Marketing, promotion and advertising;*

*(3) Finance and accounting;*

*(4) Horse racing;*

*(5) Pari-mutuel wagering;*

*(6) Security; and*

*(7) Operation of satellite wagering facilities;*

*d. Description of the terms and conditions of employment and each applicant upon request shall provide to the commission a copy of each form of agreement;*

*3. Consultants and other contractors who have provided or will provide management-related services to the applicant and with respect to each:*

*a. Full name;*

*b. Current address and telephone number;*

*c. Nature of services;*

*d. Qualifications and experience; and*

*e. Description of terms and conditions of each contractor's agreement and a copy of the agreement;*

*4. Memberships of the applicant, management personnel and consultants in horse racing organizations;*

*5. Description of the applicant's marketing, promotion and advertising plans;*

*6. A description of the applicant's plan for concessions, including whether the licensee will operate the concessions and, if not who will; and*

*7. A description of training of the applicant's personnel.*

#### *§ 2.13. Disclosure of affirmative action plan.*

*An applicant for a license shall develop and disclose a plan to be in compliance with all laws pertaining to discrimination, equal employment and affirmative action; policies regarding recruitment, use and advancement of minorities; policies with respect to minority contracting; and a copy of the Equal Employment Opportunity statement. Such disclosure shall include, but not be limited to, a general policy statement, goals, objectives and strategies for ensuring that the licensee is in compliance with all relevant laws.*

#### *§ 2.14. Disclosure of lease.*

*If the applicant leases the site of the satellite facility, the applicant shall submit copies of any leasing agreement, and any other arrangements for the use of the facility between the applicant and the owner of the facility.*

#### *§ 2.15. Disclosure of safety and security plans.*

*An applicant for a license must disclose with regard to the development of the satellite facility the emergency services available; the fire, safety and security equipment and procedures; the security personnel to be employed; and a plan for uniform identification of employees, enabling customers to generally identify the function of each except undercover security personnel who shall carry a badge cleared with its local police jurisdiction. The disclosure shall include a description of the internal accounting controls to create cross checks and balances in order to safeguard assets and detect fraud and embezzlement.*

#### *§ 2.16. Disclosure of impact of the satellite facility.*

*An applicant for a license must disclose and document the projected impact of satellite facility, including:*

*1. Economic impact, giving:*

*a. Number of jobs created, permanent or temporary, type of work, compensation, employer, gender, and race;*

*b. Purchases of goods and services, types of purchases, and projected expenditures;*

*c. Public investment and private investment; and*

*d. State tax revenues generated and local tax revenues generated;*

*2. Environmental impact;*

*3. Impact on energy conservation and development of alternative energy sources; and*

*4. Social impact on the community in which the facility would be located.*

#### *§ 2.17. Disclosure of assistance in preparation of application.*

*An applicant must disclose the name, addresses and telephone numbers of individuals and businesses who assisted the applicant in the completion of its application and supply copies of all studies completed for the applicant.*

#### *§ 2.18. Personal information and authorization for release.*

*In an application for a license, the applicant shall include the following with respect to each individual identified as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of 5.0% or more in the applicant, any lease holder of a site of satellite facility, and each individual identified pursuant to subdivisions 2 and 3 of § 2.12.*

*1. Full name, business and residence addresses, and telephone numbers, residence addresses for the past five years, date of birth, place of birth, social security number if the individual is willing to provide it, and two references; and*

*2. An authorization for release of personal information, on a form prepared by the commission, signed by the individual providing that he:*

*a. Authorizes a review by, and full disclosure to the Federal Bureau of Investigation, an agent of the Virginia State Police, of all records concerning the individual;*

*b. Recognizes the information reviewed or disclosed may be used by the Commonwealth of Virginia and the commission to determine the individual's qualifications for a license; and*

*c. Releases authorized providers and users of the*

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information from any liability under state or federal data privacy statutes.

## PART III. SIMULCASTING SCHEDULE.

### § 3.1. Submission of a simulcasting schedule.

Upon the award of a license, the licensee shall submit to the main office of the commission, not later than 15 days after the award of the license, the proposed simulcasting schedule for each satellite facility for the current year, and if such award is made after the first business day of September, for the next calendar year as well.

Thereafter, the licensee shall submit to the main office of the commission, no later than the first business day of September, the simulcasting schedule for the satellite facility for the following calendar year. The commission may, in its discretion, extend the deadline for submission of such simulcasting schedule.

The commission may grant the licensee leave to amend such simulcasting schedule at such times as the commission deems necessary or appropriate to reflect the broadcast of additional or fewer races.

### § 3.2. Intra-state simulcasting schedule.

The licensee shall disclose the proposed simulcasting schedule of races, if any, emanating from the licensee's racetrack including:

1. The calendar dates;
2. The days of the week and hours of operation;
3. The total number of races per date;
4. The reason certain dates are sought; and
5. Any other information the licensee deems appropriate in assisting the commission in evaluating the disclosure.

### § 3.3. Inter-state simulcasting schedule.

If the simulcasting dates are requested from a location other than those emanating from the licensee's racetrack, the licensee shall disclose, to the extent known, the simulcast schedule including:

1. The specific dates;
2. The breed of horse;
3. The host track or tracks;
4. The number of races;

5. The number of races per date; and

6. Any other information the licensee deems appropriate in assisting the commission in evaluating the disclosure.

### § 3.4. Special events.

The licensee may make a request to the commission at any time during the calendar year to include any special events that are not included in the disclosure of the simulcasting schedules.

### § 3.5. Commission approval.

Within 15 days of receipt of the simulcasting schedules provided for herein, the commission shall accept, reject or modify any request made by a licensee in its inter-state simulcasting schedule, intra-state simulcasting schedule or special events. In the absence of commission approval, the executive secretary of the commission may grant temporary approval of the simulcasting schedule or any changes therein, pending ratification by the commission, at its next regularly scheduled meeting.

### § 3.6. Interruption of simulcast signal.

A. If there is a problem in the transmission of data or the simulcast signal between the racetrack and the satellite facility, it shall be within the discretion of the stewards to:

1. Order the race to be run on schedule;
2. Delay the race until the matter is resolved, if this is possible; or
3. After having delayed the race, if problem is not resolved and further delay is not possible, order the race to be run.

B. If a race is run before the resolution of a problem in the transmission of data or signal between the racetrack and the satellite facility, the stewards shall cause an announcement to be made that any pari-mutuel ticket issued before the running of the race is a valid ticket regardless of the nontransmission of data or the signal.

### § 3.7. Locking wagering machines.

The mutuel manager shall designate a person at the satellite facility to lock the ticket issuing machines at the start of the race in the event of a failure in the system or through the inadvertence of the stewards.

### § 3.8. Digital display.

Unless otherwise permitted by the commission, every simulcast will contain in its video content a digital display of actual time of day, the name of the racetrack from where the race emanates, the number of the race

*being displayed, and any other relevant information available to patrons at the racetrack.*

§ 3.9. Encryption.

*The licensee shall maintain security controls over its uplink and communication systems, including encryption of signals unless this requirement is specifically waived by the commission.*

**Notice:** The forms used in administering the Virginia Racing Commission Satellite Facilities Regulations are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Virginia Racing Commission, 1500 East Main Street, Suite 301, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

License Application for Satellite Facility:

- General Guidelines
- Identification of Applicant
- Applicant's Affidavit
- Disclosure of Site and Facilities
- Disclosure of Development Process
- Disclosure of Financial Resources
- Disclosure of Financial Plan
- Disclosure of Governmental Actions
- Disclosure of Management
- Disclosure of Affirmative Action Plan
- Disclosure of Lease
- Disclosure of Safety and Security Plans
- Disclosure of Impact and Satellite Wagering Facility
- Disclosure of Assistance in Preparation of Application
- Personal Information and Authorization for Release
- Disclosure of Ownership and Control
- Disclosure of Character Information

VA.R. Doc. No. R94-538; Filed February 1, 1994, 9:37 a.m.

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# STATE LOTTERY DEPARTMENT

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## DIRECTOR'S ORDER NUMBER ONE (94)

VIRGINIA'S TWENTY-THIRD INSTANT GAME LOTTERY, "SUNKEN TREASURE," END OF GAME.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's twenty-third instant game lottery, "Sunken Treasure," will officially end at midnight on Thursday, February 17, 1994. The last day for lottery retailers to return for credit unsold tickets from "Sunken Treasure" will be Thursday, March 10, 1994. The last day to redeem winning tickets for "Sunken Treasure" will be Tuesday, August 16, 1994, 180 days from the declared official end of the game. Claims for winning tickets from "Sunken Treasure" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of August 16, 1994, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director  
Date: January 10, 1994

VA.R. Doc. No. R94-529; Filed January 27, 1994, 3:38 p.m.

## DIRECTOR'S ORDER NUMBER TWO (94)

VIRGINIA'S THIRTIETH INSTANT GAME LOTTERY, "INSTANT LUCK," END OF GAME.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's thirtieth instant game lottery, "Instant Luck," will officially end at midnight on Thursday, April 21, 1994. The last day for lottery retailers to return for credit unsold tickets from "Instant Luck" will be Thursday, May 12, 1994. The last day to redeem winning tickets for "Instant Luck" will be Tuesday, October 18, 1994, 180 days from the declared official end of the game. Claims for winning tickets from "Instant Luck" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of October 18, 1994, will be deemed to have been received on time. This notice amplifies and conforms

to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director  
Date: January 10, 1994

VA.R. Doc. No. R94-530; Filed January 27, 1994, 3:39 p.m.

## DIRECTOR'S ORDER NUMBER THREE (94)

"INSTANT JACKPOT"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Instant Jackpot" promotional game and drawing rules for the Instant Game 40 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, February 10, 1994. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until February 28, 1994, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson  
Director  
Date: January 24, 1994

VA.R. Doc. No. R94-531; Filed January 27, 1994, 3:39 p.m.

## DIRECTOR'S ORDER NUMBER FOUR (94)

VIRGINIA'S "CASH 5" FREE TICKET GIVEAWAY GAME; FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section

# State Lottery Department

58.1-4006A of the Code of Virginia, I hereby promulgate the "Cash 5" Free Ticket Giveaway game rules for the promotional events for Virginia's fourth on-line game lottery. The promotion will be conducted from January 31 through February 26, 1994. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until February 28, 1994, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson  
Director  
Date: January 25, 1994

VA.R. Doc. No. R94-532; Filed January 27, 1994, 3:39 p.m.

## FINAL REGULATIONS

### STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

**Title of Regulation:** VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

**Statutory Authority:** §§ 9-6.14:7.1 and 58.1-4007 of the Code of Virginia.

**Effective Date:** March 23, 1994.

#### Summary:

*The amendments (i) provide for the identification of interested parties in the formation and development of regulations in § 3; and (ii) set forth the general policy of the department not to utilize ad hoc advisory panels in § 5. This section further states that the department will evaluate, within two years of the promulgation of a regulation, the effectiveness of the regulation; and may suspend, should it receive requests from more than 25 persons, the regulatory process for 30 days to solicit additional input on the proposed regulation.*

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

**Agency Contact:** Copies of the regulation may be obtained from Barbara L. Robertson, State Lottery Department, 2201 West Broad Street, Richmond, VA 23220, telephone (804) 367-3106. There may be a charge for copies.

VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.

#### § 1. Generally.

A. In developing any regulation, the State Lottery Board ("board") and the State Lottery Department ("department") are committed to obtaining comments from interested people.

B. Anyone who is interested in participating in the process of developing regulations should notify the department in writing. This notification should be sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

1. The department will maintain a list of the people who notified the department in writing.

2. The department will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in § 4 of these guidelines.

#### § 2. Identification of needed regulations.

A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

B. The department and board, at their discretion, may consider any regulatory request or change.

#### § 3. Identification of interested parties.

Before the department develops a regulation, it will identify persons who would be either interested in or affected by the proposal. The methods for identifying interested parties shall may include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia State Chamber of Commerce. This list will be used to identify groups which might be interested in the regulation.

2. Using department files to identify people who have raised questions or expressed an interest in the regulations.

3. Using a list, compiled by the department, of persons who previously participated in public proceedings.

# State Lottery Department

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4. Obtaining annually from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

## § 4. Notification of interested parties.

### A. Generally.

The department will prepare a Notice of Intended Regulatory Action ("Notice") before developing any regulation. The notice will identify the subject matter and purpose of the new regulation(s). The notice will specify a time deadline and location for interested persons to submit written comments.

### B. Notifying those interested.

The methods for notifying interested persons ~~will~~ may include, but not be limited to, the following:

1. Sending the notice to all persons identified as interested parties through the methods described in § 3 above ; ~~and~~
2. Publishing the notice in the Virginia Register of Regulations (Virginia Register) ; ~~and~~ .
3. ~~Requesting that groups, associations, and organizations to whom the notice is sent publish the notice in newsletters or journals or use other means available to them to inform their members.~~

*Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulation otherwise properly adopted under the Administrative Process Act.*

## § 5. Public participation in regulation development.

### A. Initial comment.

After interested parties have responded to the notice, the department will determine the level of interest.

1. ~~If sufficient~~ *It is the general policy of the department not to utilize standing or ad hoc advisory panels; however, if the Governor or more than 25 persons express interest exists in the proposed regulation , the department may schedule consultation in the form of informal meetings before the development of the regulation. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.*
2. Instead of informal meetings, the department may ask for additional written comments, concerns or suggestions on the development of the regulation from

those who responded to the notice.

3. The department may decide that the notice resulted in receipt of enough information so that it can develop the regulation without an informal meeting or additional written comments.

### B. Preparing a working draft.

After the initial public input on the intended regulatory action, the department will develop a working draft of the proposed regulation for the board to review, revise and approve, after consultation with the director.

*C. Within two years of the promulgation of a regulation, the department shall evaluate it for effectiveness and continued need. The department may conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulations. Notice of such proceedings shall be transmitted to the Registrar for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.*

## § 6. Submission of regulation under the Administrative Process Act.

1. After the drafting process ends, the board-approved regulation will be submitted to the Registrar of Regulations under the Administrative Process Act (APA), Title 9, Chapter 1.1:1 ; (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia. The board-approved regulation will be published as a proposed regulation in the Virginia Register.

2. The department will furnish a copy of the regulation published in The Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulation.

3. If the department elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the department that they will participate in the public hearing will be set out. People who choose to participate in the public hearing ~~will~~ may be asked to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

4. When the board issues an order adopting a regulation, the department may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in The Virginia Register and will specify the issue number.

*5. If the department receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the*

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department shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact. Department denial of petitions for a comment period on changes to the regulations shall be subject to judicial review.

## § 7. Publication and distribution of final regulation.

1. The board will adopt all final regulations after consultation with the director. The final regulations will be submitted for publication in The Virginia Register.
2. The board will order the department to print all adopted final regulations and make appropriate distribution.
3. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the department and compliance with the department's regulations.

VA.R. Doc. No. R94-539; Filed February 2, 1994, 8:34 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 447-01-2. Administration Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Effective Date:** March 23, 1994.

### Summary:

The amendments: (i) add definitions for certain terms used in the regulations; (ii) provide in § 3.5 appeal procedures for placement of an instant ticket vending machine or a self-service terminal; (iii) conform to state procurement guidelines in § 4.2 by raising the amount of purchase of goods exempt from competitive procurement from \$1,000 to \$2,000 and purchase amount of services from \$1,000 to \$5,000; and (iv) provide in § 4.21 that, pursuant to state procurement guidelines, contract change orders require the signature of the director. Additionally, no contract shall be modified for an amount to exceed \$10,000 or 25%, individually or cumulatively, of the original contract without prior approval of the director. Also, there are numerous housekeeping and technical changes made throughout these regulations.

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

**Agency Contact:** Copies of the regulation may be obtained from Barbara L. Robertson, State Lottery Department, 2201

West Broad Street, Richmond, VA 23220, telephone (804) 367-3106. There may be a charge for copies.

VR 447-01-2. Administrative Regulations.

## PART I. GENERAL PARAMETERS.

### § 1.1. Definitions.

The words and terms, when used in any of the department's regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means a request presented by a retailer, vendor or individual for an informal conference or formal hearing contesting the director's decision to refuse to issue or renew, suspend or revoke a lottery license for the appellant or award a contract to another vendor.

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means and includes any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America whose principal place of business is within the Commonwealth of Virginia and which is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit and handling of lottery funds, the accounting of those funds and the safekeeping of records.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the state lottery law.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposal Proposals. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposal Proposals, is accepted.

"Conference" or "consultation" means the informational or factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.



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*"Conference officer" or "hearing officer" means the director or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation or conclusion in a case decision matter.*

*"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.*

*"Contract" means an agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services.*

*"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.*

*"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.*

*"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.*

*"Department" means the State Lottery Department created by the state lottery law.*

*"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or state agency, which performs any or all of the following activities or services for the lottery:*

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or
4. The accounting for lottery funds.

*"Director" means the Director of the State Lottery Department or his designee.*

*"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money against a bank account.*

*"Goods" means any material, equipment, supplies, printing, and automated data processing hardware and software.*

*"Hearing" means agency processes other than those informational or factual inquiries of an informal nature.*

*"Household" means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes.*

*"Informalities" means defects or variations of a bid from the exact requirements of the Invitation for Bid Bids which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.*

*"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.*

*"Instant ticket vending machine" or "ITVM" means a remote machine allowing players to purchase lottery instant game tickets.*

*"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.*

*"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.*

*"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.*

*"Letter contract" means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.*

*"Lottery" or "state lottery" means the lottery or lotteries established and operated in response to the provisions of the state lottery law.*

*"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.*

*"Noncompetitive negotiations" means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.*

*"Nonprofessional services" means personal services not defined as "professional services."*

*"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.*

*"Notice of Intent to Award" means a written notice*

which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

*"Performance bond"* means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

*"Person"* means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

*"Personal interest," "personal interest in a contract," or "personal interest in a transaction"* means financial benefit or liability accruing to an officer or employee or to a member of his immediate family in any matter considered by the department.

*"Personal services contract"* means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.

*"Procurement"* means the procedures for obtaining goods or services. It includes all activities from the planning steps and preparation and processing of a request through the processing of a final invoice for payment.

*"Professional services"* means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.

*"Protest"* means a complaint about an administrative action or decision brought by a vendor to the department with the intention of receiving a remedial result.

*"Purchase order"* (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:

1. To award a contract resulting from an Invitation For Bids (IFB).
2. To establish a blanket purchase agreement.
3. As a delivery order to place orders under state contracts or other requirements-type contracts which were established for such purpose.

*"Request for Information (RFI)"* means a document used to get information from the general public or potential vendors on a good or service. The department

may act upon the information received to enter into a contract without issuing an IFB or an RFP.

*"Request for Proposals (RFP)"* means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.

*"Responsible vendor"* means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance; and
4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

*"Responsive vendor"* means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.

*"Sales," "gross sales," "annual sales"* and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation and, any discount or adjustment allowed for the retailer's payment of prizes of less than \$601.

*"Self-service terminal" or "SST"* means a remote electromechanical machine allowing players to purchase tickets for on-line lottery games available through clerk-activated terminals.

*"Services"* means any work performed by a vendor where the work is primarily labor or duties and is other than providing equipment, materials, supplies or printing.

*"Sole source"* means that only one source is practicably available to furnish a product or service.

*"Solicitation"* means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

*"Surety bond"* means an insurance agreement in which a third party agrees to be liable to pay a specified amount

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of money to the department in the event the retailer fails to meet his obligations to the department.

"Vendor" means one who can sell to, supply or install goods or services for the department.

## § 1.2. Generally.

The purpose of the state lottery is to produce revenue consistent with the integrity of the Commonwealth and the general welfare of its people. The operations of the State Lottery Board and the State Lottery Department will be conducted efficiently, honestly and economically.

## § 1.3. State Lottery Board.

### A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. It may also request information from the public. The board may have additional meetings as needed. (See Part III, Board Procedures.)

### B. Inspection of department records.

At the board's request, the department shall produce for review and inspection the department's books, records, files and other information and documents.

## § 1.4. Director.

The director shall administer the operations of the State Lottery Department following the authority of the Code of Virginia and these regulations.

## § 1.5. Ineligible players of the lottery.

Board members, officers or employees of the lottery, or any board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer, employee, or any person under the age of 18 years of age may not purchase tickets or receive prizes of the lottery.

## § 1.6. Advertising.

### A. Generally.

Advertising may include but is not limited to print advertisements, radio and television advertisements, billboards, point of purchase and point of sale display materials. The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.

### B. Lottery retailer advertising.

Any lottery retailer may use his own advertising materials if the department has approved its use in writing before it is shown to the public. The department shall develop written guidelines for giving such approval.

### C. Information provided by department.

The department may provide information displays or other material to the retailer. The retailer shall position the material so it can be seen easily by the general public.

### D. Special advertising.

The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

### E. Winner advertising.

The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery.

### F. Other advertising.

The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.

## § 1.7. Operations of the department.

### A. Generally.

The department shall be operated in a manner which considers the needs of the Commonwealth, lottery retailers, the public, the convenience of the ticket purchasers, and winners of lottery prizes.

### B. Employment.

The department shall hire people without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

1. All employees shall be recruited and selected in a manner consistent with the policies which apply to classified positions.

2. Sales and marketing employees are exempt from the Virginia Personnel Act.

### C. Internal operations.

The department will operate under the internal administrative, accounting and financial controls

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specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.

2. Internal operations apply to automated and manual systems.

#### D. External operations.

The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

#### E. Apportionment of lottery revenue.

Moneys received from lottery sales will be divided approximately as follows:

50%	Prizes
45%	State Lottery Fund Account (On and after July 1, 1989, administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)
5.0%	Lottery retailer discounts compensation

#### F. State Lottery Fund Account.

The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Funding will be from gross sales.

1. Within the State Lottery Fund, there shall be a "Lottery Prize Special Reserve Fund" subaccount created in the State Lottery Fund account which will be used when lottery prize ~~pay-outs~~ *payouts* exceed department cash on hand. ~~Immediately prior to initial lottery sales, \$500,000 shall be transferred to the Lottery Prize Special Reserve Fund from start-up treasury loan funds in the State Lottery Fund.~~ Thereafter, 5.0% *Five percent* of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

a. The calculation of the 5.0% will be made for

each instant or on-line game.

b. The funding of this subaccount may be adjusted at any time by the board.

2. Reserved.

3. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director with concurrence of the State Comptroller and the Auditor of Public Accounts.

4. In accordance with the Appropriation Acts of ~~Assembly Act~~ *Assembly Act*, the State Comptroller provides an interest-free line of credit not to exceed \$25,000,000 to the department. This line of credit is in lieu of the Operations Special Reserve Fund required to be established by the Comptroller in accordance with § 58.1-4022 B of the Code of Virginia. Draw-downs against this line of credit are available immediately upon request of the department.

#### G. Administrative and operations costs.

Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.

#### H. Audit of lottery revenues.

The cost of any audit shall be paid from the State Lottery Fund.

1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.

2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.

#### I. Other matters.

The board and director may address other matters not mentioned in these regulations which are needed or desired for the efficient and economical operation and administration of the lottery.

## PART II. BANKS AND DEPOSITORIES.

§ 2.1. Approval of banks.

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The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

A. A bank or banks shall serve as agents for electronic funds transfers between the department and lottery retailers as required by these regulations and by contracts between the department, the State Treasury, retailers, and the banks.

B. In selecting the bank or banks to provide these services, the State Treasurer and the director shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.

C. There shall be no limit on the number of banks approved under this section.

## § 2.2. Approval of depositories.

The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers. Additionally, the director may contract for other financial services to process subscriptions and other deposit applications.

## § 2.3. Compensation.

A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.

B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.

C. Depositories will be compensated based on vouchers for services rendered.

## § 2.4. Depository for transfer of tickets.

A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.

B. Reserved.

C. In determining whether to use depositories for transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.

## PART III.

## LOTTERY BOARD PROCEDURES.

### Article 1.

#### Board Procedures for the Conduct of Business.

### § 3.1. Officers of the board.

A. Chairman and ~~vice-chairman~~ *vice chairman*.

The board shall have a chairman and a ~~vice-chairman~~ *vice chairman* who shall be elected by the board members.

B. Term of officers.

The board will elect its officers annually at its January meeting to serve for the calendar year.

### § 3.2. Board meetings.

A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information from the public.

B. Special meetings.

The board may hold additional meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. Notice of special meetings shall be given to all board members at least two calendar days before the meeting. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

C. Quorum.

Three or more board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.

D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.

### § 3.3. Committees of the board.

A. Ad hoc committees.

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The board chairman may at his discretion appoint such ad hoc committees as he deems necessary to assist the board in its work.

## B. Purpose of committees.

An ad hoc committee may be established to advise the board on a matter referred to it or to act on a matter on behalf of the board if so designated.

1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.

a. Three members shall constitute a quorum.

b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.

c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.

2. A committee established to act in an advisory capacity to the board may include members of the general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

c. All actions of advisory committees shall be presented to the board in the form of recommendations.

## Article 2.

### Procedures for Appeals on Licensing Actions.

§ 3.4. ~~Hearings~~ *Conferences* on denial, suspension or revocation of a retailer's license.

#### A. Generally.

An instant lottery retailer applicant or an instant lottery retailer surveyed for an on-line license who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked *or any retailer that believes it is eligible for placement of an instant ticket vending [ machine ] (ITVM) or self-service terminal (SST) based on criteria established by the department but which has [ ~~not been surveyed~~ been denied such placement ]* may appeal the licensing decision and request a ~~hearing~~ *conference* on

the licensing action.

B. ~~Hearings~~ *Conferences* to conform to Administrative Process Act provisions.

The conduct of license appeal ~~hearings~~ *conferences* will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia relating to Case Decisions.

1. An initial ~~hearing~~ *conference* consisting of an informal fact finding process will be conducted by the director *or the appointed conference officer* in private to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to Court Review.

§ 3.5. Procedure for appealing a licensing decision.

#### A. Form for appeal.

Upon receiving a notice that (i) an application for an instant game license, or the survey of an instant retailer for licensing as an on-line retailer, or the renewal of a license, has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, *or (iii) any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department,* the applicant or licensed retailer may appeal in writing for a ~~hearing~~ *conference* on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer.

2. The appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in § 3.5 A.

#### B. Where to file appeal.

An appeal to be mailed shall be addressed to:

# State Lottery Department

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State Lottery Director  
State Lottery Department  
Post Office Box 4689  
Richmond, Virginia 23220

An appeal to be hand delivered shall be delivered to:

State Lottery Director  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

1. An appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by § 3.5 A.
2. Delivery to State Lottery Department regional offices or to lottery sales personnel by hand or by mail is not effective.
3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

## C. Content of appeal.

The appeal shall state:

1. The decision of the director which is being appealed;
2. The basis for the appeal;
3. The retailer's license number or the Retailer License Application Control Number; and
4. Any additional information the appellant may wish to include concerning the appeal.

## § 3.6. Procedures for conducting informal fact finding licensing ~~hearings conferences~~.

### A. ~~Director Conference officer~~ to conduct informal ~~hearing conference~~.

The ~~director conference officer~~ will conduct an informal fact finding ~~hearing conference~~ with the appellant for the purpose of resolving the licensing action at issue.

### B. ~~Hearing Conference~~ date and notice.

The ~~director conference officer~~ will hold the ~~hearing conference~~ as soon as possible but not later than 30 days after the appeal is filed. A notice setting out the ~~hearing conference~~ date, time and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the ~~hearing conference~~.

### C. Place of ~~hearings conferences~~.

All informal ~~hearings conferences~~ shall be held in Richmond, Virginia, unless the ~~director conference officer~~ decides otherwise.

### D. Conduct of ~~hearings conferences~~.

The ~~hearings conferences~~ shall be informal. They shall not be open to the public.

1. The ~~hearings conferences~~ will be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.
2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.
3. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the ~~director's conference officer's~~ prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

6. The ~~director conference officer~~ may exclude information at any time which he believes is not germane or which repeats information already received.

7. The ~~director conference officer~~ shall declare the ~~hearing conference~~ completed when both parties have finished presenting their information.

### E. ~~Director Conference officer~~ to issue written decision.

Normally, the ~~director conference officer~~ shall issue his decision within 15 days after the conclusion of an informal ~~hearing conference~~. However, for a ~~hearing conference~~ with a court reporter, the ~~director conference officer~~ shall issue his decision within 15 days after receipt of the transcript of the ~~hearing conference~~. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

### F. Appeal to board for hearing.

After receiving the ~~director's conference officer's~~ decision on the informal ~~hearing conference~~, the appellant

# State Lottery Department

may elect to appeal to the board for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the ~~director's~~ *conference officer's* decision on the informal hearing *conference* ;

2. Mailed to:

Chairman, State Lottery Board  
State Lottery Department  
Post Office Box 4689  
Richmond, Virginia 23220

OR

Hand delivered to:

Chairman, State Lottery Board  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

3. The same procedures in § 3.5 B for filing the original notice of appeal govern the filing of the notice of appeal of the ~~director's~~ *conference officer's* decision to the board.

4. The appeal shall state:

a. The decision of the ~~director~~ *conference officer* which is being appealed;

b. The basis for the appeal;

c. The retailer's license number or the Retailer License Application Control Number; and

d. Any additional information the appellant may wish to include concerning the appeal.

## § 3.7. Procedures for conducting formal licensing hearings.

A. Board to conduct formal hearing.

The board will conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

B. Number of board members hearing appeal.

Three or more members of the board are sufficient to hear an appeal. If the chairman of the board is not present, the members present shall choose one from among them to preside over the hearing.

C. Board chairman may designate an ad hoc committee to hear appeals.

The board chairman at his discretion may designate an ad hoc committee of the board to hear licensing appeals

and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.

D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.

E. Notice, time and place of hearing.

A notice setting the hearing date, time and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.

F. Conduct of hearings.

The hearings shall be conducted in accordance with the provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

1. The hearings will be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The provisions of §§ 9-6.14:12 through 9-1.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

G. Board's decision.

Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained in the department and become a part of the case file.

2. The written decision will contain:

a. A statement of the facts to be called "Findings of Facts";



# State Lottery Department

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b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and

c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

## H. Court review.

After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the Administrative Process Act.

### Article 3. Procedures for Promulgating Regulations.

#### § 3.8. Board procedures for promulgating regulations.

The board shall promulgate regulations, in consultation with the director, in accordance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia).

1. The board will provide for a public participation process to be set out in "Guidelines for Public Participation in Regulation Development and Promulgation."

2. Public hearings may be held if the subject matter of a proposed regulation and the level of interest generated through the public participation process warrant them.

### PART IV. PROCUREMENT.

#### § 4.1. Procurement in general.

A. To promote the free enterprise system in Virginia, the State Lottery Department will purchase goods or services by using competitive methods whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.

B. Reserved.

C. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.

D. When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities," published by the Department of General Services, Division of Purchases and Supply.

#### § 4.2. Exemption and restrictions.

A. Purchase of goods and services of ~~\$1,000~~ \$2,000 or less shall be exempted from competitive procurement procedures. *Purchase of services of \$5,000 or less shall be exempted from competitive procurement procedures.* Specific purchases of goods and services of more than ~~\$1,000~~ \$2,000 and services of more than \$5,000 may be exempted from the competitive procurement procedures when the director determines in writing that the best interests of the department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.

B. All purchases shall be made in compliance with the standards of ethics in § 4.23 of these regulations.

C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.

D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.

E. Whenever a purchase is exempt from competitive procurement procedures under these regulations, *except purchases of \$2,000 or less*, the contracting officer is obliged to make a *written* determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions.

#### § 4.3. Requests for information.

A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.

B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.

C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.

1. Additional RFI's may be published for a good or a service, as determined on a case-by-case basis.

2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.

# State Lottery Department

D. All costs of developing and presenting the information furnished will be paid for by the vendor.

E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.

F. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.

#### § 4.4. Request Requests for Proposals.

A. A written Request for ~~Proposal~~ *Proposals* (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.

B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.

C. The department shall publish or post a public notice of the RFP.

1. All solicitations shall be posted for not less than five working days on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.

2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.

D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.

E. The department will evaluate each vendor proposal.

1. The evaluation will consider the vendor's response to the factors in the RFP.

2. The evaluation will consider whether the vendor is

qualified, responsive and responsible for the contract.

F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.

#### G. Award of RFP Contract.

1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.

2. Price will be considered but is not necessarily the determining factor.

3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.

#### § 4.5. Invitations for Bids.

A. A written Invitation for ~~Bid~~ *Bids* (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.

B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.

1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.

2. It may contain other optional data.

#### C. Public notice of the IFB shall be given.

1. The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted for not less than five working days at the department's central office in a public area used to post purchase notices, and shall be given to any other interested vendor.

2. The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.

#### D. Receiving IFB's.

1. Bids shall be received until the date and time set forth in the IFB.

# State Lottery Department

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2. Late bids shall not be considered.

## E. Opening IFB's.

The IFB may provide that bids shall be publicly opened. If bids are publicly opened, the following items shall be read aloud:

1. Name of bidder;
2. Unit or lot price, as applicable; and
3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.

## F. Evaluating IFB's.

The department shall evaluate each vendor bid.

1. The evaluation shall consider whether the bid responds to the factors in the IFB.
2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.
3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.

## G. Award of IFB contract.

The department shall award the contract to the lowest responsive and responsible bidder.

## § 4.6. Sole source procurements.

A. A sole source procurement shall be made when there is only one source practicably available for goods or services. Because there is only one source practicably available, a sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.

B. For a sole source procurement of more than ~~\$1,000~~ \$2,000 but not more than \$15,000, the department will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods or services procured, the date of the procurement and factors leading to the determination of sole source.

C. For a sole source procurement greater than \$15,000, on the day the director awards the procurement, he will post for not less than five working days a written statement in a public area used to post purchase notices at the department's central office. The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors

leading to the determination of sole source, and the date of the procurement.

## § 4.7. Emergency purchase procurement.

A. An emergency purchase procurement shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.

B. For an emergency purchase of more than ~~\$1,000~~ \$2,000 but not more than \$15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

C. For an emergency purchase greater than \$15,000, on the day the director awards the procurement, a written statement shall be posted for not less than five working days in a public area used to post purchase notices at the department's central office. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

## § 4.8. Procedures for small purchases.

### A. Generally.

Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$15,000.

### B. Price quotations.

Price quotations may be obtained through oral quotations in person or by telephone without the use of an RFI, RFP or IFB.

### C. Written confirmation.

If the contract is \$2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$2,000.

D. Except in the case of an emergency under § 4.7 or for purchases of ~~\$1,000~~ [ goods of ] \$2,000 or less [ or services of \$5,000 or less ], the department will attempt to obtain at least three quotations.

E. In letting small purchase contracts, the department may consider factors in addition to price.

## § 4.9. Procurement of nonprofessional services.

# State Lottery Department

A. Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.

B. Nonprofessional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified expert or source practicably available for the services to be procured.

## § 4.10. Procurement of professional services.

A. Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services should be made on the basis of qualifications, resources, experience and the cost involved.

B. Professional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.

C. Professional services procurement by competitive negotiation shall be in accordance with § 4.11.

## § 4.11. Guidelines for competitive procurement of professional services.

A. In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs and methods to be utilized

in arriving at a price for the services.

B. At the request of an offeror, properly marked, proprietary information shall not be disclosed to the public or to competitors.

C. At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are deemed to meet best the department's procurement needs.

D. Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.

E. If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under consideration, a purchase may be negotiated and awarded to that offeror.

F. The department must ensure that all points negotiated are properly documented and become a part of the procurement file.

G. The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.

H. A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures.

## § 4.12. Time to submit and accept RFI's, RFP's or IFB's.

A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.

1. All vendors shall take responsibility for their chosen method of delivery to the department.

2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.

3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.

4. All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.

# State Lottery Department

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B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.

## § 4.13. Questions on bids.

Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.

## § 4.14. How to modify or withdraw proposals or bids.

A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.

B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.

1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.

2. A proposal or bid may be withdrawn after opening if the department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.

C. A vendor may not modify a proposal or bid after the purchase award is made.

## § 4.15. Rejection of bids.

The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department.

## § 4.16. Testing of product.

Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.

## § 4.17. Proposal bid or performance security.

A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.

1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.

2. When required, security will not be waived, except upon action by the director.

B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.

## § 4.18. Assignment of contracts.

A vendor may not assign any contract to another party without permission of the director.

## § 4.19. Strikes, lockouts or acts of God.

Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.

## § 4.20. Remedies for the department on goods and services which do not meet the contract.

A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.

B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law.

## § 4.21. Administration of contracts.

### A. Generally.

The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.

### B. Records.

The department shall keep all records relating to a contract for three years after the end of a contract.

1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.

2. Records shall be open to the public except for proprietary information for which protection has been properly requested.

## C. Change orders.

1. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.

2. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.

3. Modifications which increase the original contract price by an amount less than \$5,000 may be made by letters shall require the signature of the director or the signature of the designee granted authority to sign for the amount amended, except a contract may be modified for payment purposes by an amount not to exceed 10% of the total contract without a written change order or amendment. In no event shall a contract be modified for an amount of \$10,000 or 25%, whichever is greater, individually or cumulatively without approval and signature of the director. Modifications shall be effected by issuance of a letter in the form of a change order or amendment to the original agreement issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract. In no event shall the cumulative amount of the contract increased by all such letters exceed \$10,000.

4. All contract changes of \$5,000 or more require a formal written amendment to the contract. *Reserved.*

## D. Cancellation orders.

The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in § 4.20 A and B.

## E. Overshipments and overruns.

The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.

F. Inspection, acceptance and rejection of goods or services.

1. The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.

2. In rejecting goods or services, the department will notify the vendor as soon as possible.

3. The department will state the reasons for rejecting the goods or services and request prompt replacement.

4. Replacement goods or services shall be made available at a date acceptable to the department.

## G. Complaints.

The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.

## H. Invoice processing.

To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Title 11, Chapter 7, Article 2.1 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.

## I. Default actions.

Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.

## J. Termination for convenience of the department.

1. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

2. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.

3. If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the

# State Lottery Department

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department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.

4. Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia.

## § 4.22. Vendor background.

A. A vendor shall allow the department to check his background. The background check may extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.

B. Before contracting with the department, the department may require a vendor to sign an agreement with the department to allow a criminal investigation of the entities and persons named in § 4.22 A.

C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.

## § 4.23. Ethics in contracting.

### A. Generally.

Except for more stringent requirements set forth in this section, the department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Title 11, Chapter 7, Article 4 of the Code of Virginia.

### B. Employee role with vendors prohibited.

A department employee who has responsibility to buy from vendors may not:

1. Be employed by a vendor at the same time;
2. Have a business associate or a member of his household be an officer, director, trustee, partner or hold a similar position with a vendor or play a role in soliciting contracts for vendors;

3. Himself or his business associate or a member of his household own or control an interest in a vendor of at least 5.0%;

4. Himself or his business associate or a member of his household have a personal interest in a contract procured for the department; or

5. Himself or his business associate or a member of his household negotiate or have an arrangement about prospective employment with a vendor.

### C. Offers, requests, or acceptance of gifts.

No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.

### D. Kickbacks.

No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.

E. Vendors to give certified statement on ethics in contracting.

Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.

F. Department employees to give notice of subsequent employment with vendors.

Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year of terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.

G. Any contract which violates the contracting ethics in the Code of Virginia and these regulations may be voided and rescinded immediately by the department.

## § 4.24. Preference for Virginia products and firms.

A. In the case of a tie bid or proposal, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

B. Whenever any bidder or offeror is a resident of any other state and such state under its laws allows a resident

# State Lottery Department

contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or offeror who is a resident of Virginia.

## PART V. PROCUREMENT APPEALS AND DISPUTES.

### § 5.1. Generally.

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this regulation applies to all vendors. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this regulation. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.

### § 5.2. Appeals, protests, time frames and remedies related to solicitation and award of contracts.

#### A. If a vendor is considered ineligible or disqualified.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

#### B. If a vendor is not allowed to withdraw a bid in certain circumstances.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

a. The certified check shall be payable to the State Lottery Department.

b. The cash bond shall name the State Lottery Department as obligor.

c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

#### C. If a vendor is considered not responsible for certain contracts.

1. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

#### D. If a vendor protests an award or decision.

1. Any vendor or potential vendor may protest the award or the department's decision to award a contract. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a ~~10~~ *10-day* time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.



# State Lottery Department

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6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

§ 5.3. Appeals, time frames and remedies related to contract disputes and claims.

A. Generally.

In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Contract claims.

Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.
2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.
3. Nothing in this regulation shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.
4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.
5. The director's decision will state the reasons for the action.

C. Claims relief.

Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

§ 5.4. Form and content of appeal to the director.

A. Form for appeal.

The vendor shall make the appeal to the director in writing. The appeal shall be mailed to the State Lottery Director, State Lottery Department, P.O. Box 4689,

Richmond, Virginia 23220 or hand delivered to the department's central office at the Bookbindery Building, 2201 West Broad Street, Richmond, Virginia 23220.

B. Content of appeal.

The appeal shall state the:

1. Decision of the department which is being appealed;
2. Basis for the appeal;
3. Contract number;
4. Other information which identifies the contract; and
5. Reasons for the action.

C. Vendor notification.

The director's decision on an appeal will be sent to the vendor by certified mail, return receipt requested.

1. The director shall follow the time limits in the regulations and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.
2. The director's decision will state the reasons for the action.

§ 5.5. State Lottery Department appeal hearing procedures.

A. Generally.

The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.
2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.
3. Legal counsel may represent the vendor or the department. Counsel is not required.
4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.
5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.
6. Witnesses may be asked to testify. The director

does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

## B. Public hearings for appeals.

1. Hearings shall be open to the public. The director may adjourn the public hearing to discuss and reach his decision in private.

2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.

3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

## C. Order during the hearing.

Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.

2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

4. After all evidence has been presented, the director shall reach his decision in private.

## § 5.6. Notice, time and place of hearings.

### A. Notice and setting the time.

All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

### B. Place of hearings.

All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

## § 5.7. Who may take part in the appeal hearing.

### A. Generally.

The director may request specific people to take part in the hearing.

B. Hearings on ineligibility, disqualification, responsibility or denial of a request to withdraw a bid.

The protesting vendor and the department shall participate.

### C. Hearings on claims or disputes.

The protesting vendor and the department shall participate.

## § 5.8. Director's decision.

### A. Generally.

The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.

### B. Hearings with court reporter.

For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.

### C. Format of decision.

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."

2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.

3. The decision will be signed by the director.

### D. Copies of the decision.

Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

## § 5.9. Appeal to courts.

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.

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B. Nothing in these regulations shall prevent the director from taking legal action against a vendor.

**Notice:** The forms used in administering the State Lottery Department Administration Regulations are not being published, however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Informal Conference Request (Rev. 7/93)  
Formal Hearing Request  
State Lottery Department Agency Purchase Order

VA.R. Doc. No. R94-537; Filed February 2, 1994, 8:19 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 447-02-1. Instant Game Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Effective Date:** March 23, 1994.

**Summary:**

*The amendments (i) authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 1.11; (ii) exclude family-oriented businesses from those determined to be frequented predominantly by persons under 18 years of age as provided in § 1.11; (iii) add a provision to § 2.4 stating that a cash prize or free ticket purchased by an individual or individuals ineligible to play a lottery game shall revert to the State Lottery Fund; and (iv) stipulate in § 3.20 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets. Additionally, the amendments incorporate numerous housekeeping and technical changes throughout these regulations.*

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

**Agency Contact:** Copies of the regulation may be obtained from Barbara L. Robertson, State Lottery Department, 2201 West Broad Street, Richmond, VA 23220, telephone (804) 367-3106. There may be a charge for copies.

VR 447-02-1. Instant Game Regulations.

## PART I.

### LICENSING OF RETAILERS FOR INSTANT GAMES.

#### § 1.1. Definitions; licensing.

The words and terms, when used in any of the department's regulations, shall have the same meaning as defined in these regulations, unless the context clearly indicates otherwise.

##### A. Definitions for instant games.

*"Altered ticket"* means a lottery ticket which has been forged, counterfeited or altered.

*"Bearer instrument"* means a lottery ticket which has not been signed by or on behalf of a person or a legal entity. Any prize won on an unsigned ticket is payable to the holder, or bearer, of that ticket.

*"Book"* or *"ticket book"* means the same thing as *"pack."*

*"Damaged ticket"* means a lottery ticket pulled from distribution by the department due to poor quality, e.g., bent, torn or defaced, thereby rendering it unfit to play.

*"Erroneous ticket"* means a lottery ticket which contains an unintentional manufacturing or printing defect. A player holding such a lottery ticket is entitled to a replacement ticket of equal value.

*"Game"* means any individual or particular type of lottery authorized by the board.

*"Instant game"* means a game that uses preprinted tickets with a latex covering over a portion of the ticket. The covering is scratched off by the player to reveal immediately whether the player has won a prize or entry into a prize drawing. An instant game may include other types of non-on-line lottery games.

*"Instant ticket"* means an instant game ticket with a latex covering the game symbols located in the play area. Each ticket has a unique validation number and ticket number.

*"License approval notice"* means the form sent to the retailer by the lottery department notifying him that his application for a license has been approved and giving him instructions for obtaining the required surety bond and setting up his lottery bank account.

*"Lottery retailer"* or *"lottery sales retailer"* or *"retailer"* means a person licensed by the director to sell and dispense lottery tickets, materials or lottery games for instant lottery games or for both instant and on-line lottery games.

*"Low-tier winner"* or *"low-tier winning ticket"* means an instant game ticket which carries a cash prize of \$25 or less or a prize of additional unplayed instant tickets.

*"Manufactured omitted tickets"* means those tickets

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pulled from distribution due to poor quality by the manufacturer prior to distribution to the department.

*"Omitted tickets"* means those tickets pulled from distribution by the department for testing purposes and quality assurance.

*"Pack"* generally means a set quantity of individually wrapped unbroken, consecutively numbered, fanfolded instant game tickets which all bear an identical book or pack number which is unique to that book or pack among all the tickets printed for a particular game.

*"Player"* means a person who is a lottery customer who has purchased or intends to purchase any lottery ticket or tickets for a specific lottery game or drawing, or an agent or representative of such person. Licensed lottery retailers and their employees may be a lottery customer; however, they may not act as agents or representatives of a player.

*"Prize"* means any cash or noncash award to holders of winning instant or on-line tickets.

*"Retailer,"* as used in these instant game regulations, means a licensed instant lottery retailer, unless the context clearly requires otherwise.

*"Ticket"* or *"tickets"* means a lottery instant game preprinted ticket which is identifiable to a particular game or drawing.

*"Ticket number"* means the preprinted unique number or combination of letters and numbers which identifies that particular ticket as one within a particular game or drawing.

*"Validation"* means the process of determining whether a lottery ticket is a winning ticket.

*"Validation number"* means the unique number or number-and-letter code printed on the front of an instant ticket sometimes under a latex covering bearing the words "Do not remove," "Void if removed" or similarly worded label, or the unique number assigned by the on-line central computer and printed on the front of each on-line ticket.

## B. Licensing of retailers for instant games.

The director may license as lottery retailers for instant games persons who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments,

commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

## § 1.2. Eligibility.

### A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may submit an application for licensure, except no person may submit an application for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or
3. Who is a vendor of lottery tickets or material or data processing services, or whose business is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

### B. Application not an entitlement to license.

The submission of an application for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

## § 1.3. Application procedure.

### Filing of forms with the department.

Any eligible person shall first file an application with the department on forms supplied for that purpose, along with the required fees as specified elsewhere in these regulations. The applicant shall complete all information on the application forms in order to be considered for licensing. The forms to be submitted include:

1. Retailer License Application;
2. Personal Data Form(s); and
3. Retailer Location Form.

State Lottery Law makes falsification, concealment or misrepresentation of a material fact, or making a false, fictitious or fraudulent statement or representation in an application for a license a misdemeanor.

## § 1.4. General standards for licensing.

### A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

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1. The financial responsibility and security of the applicant, to include:

- a. A credit and criminal background investigation;
- b. Outstanding delinquent state tax liability;
- c. Required business licenses, tax and business permits; and
- d. Physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to the public, to include:

- a. The hours of operation;
- b. The availability of parking and transit routes, where applicable;
- c. The location in relation to major employers, schools, or retail centers;
- d. The population level and rate of growth in the market area; and
- e. The traffic density, including levels of congestion in the market area.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

- a. The number of and proximity to other lottery retailers in the market area;
- b. The expected sales volume and profitability of potentially competing lottery retailers; and
- c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers.

4. The volume of expected lottery ticket sales, to include:

- a. Type and volume of the products and services sold by the retailer;
- b. Dollar sales volume of business;
- c. Sales history of business and market area; and
- d. Volume of customer traffic in place of business.

5. The ability to offer high levels of customer service to instant lottery players, to include:

- a. Ability to display point of sale material;
- b. A favorable image consistent with lottery standards;

c. Ability to pay prizes during maximum selling hours; and

d. Commitment to authorize employee participation in all required instant lottery training.

B. Additional factors for selection.

The director may develop and, by administrative order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

§ 1.5. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond from a surety company entitled to do business in Virginia. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of \$5,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and

2. Submit the surety company's letter or certificate with the required annual license fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety

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bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next annual license review action.

## § 1.6. Lottery bank accounts and EFT authorization.

### A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the Automatic Clearing House (ACH) system.

### B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed or due from the purchase of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

### C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

### D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department to record establishment of his account.

### E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

### F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

## § 1.7. License term and annual review.

### A. License term.

A general license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board.

B. Annual license review. The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

### C. Reserved.

### D. Amended license term.

The annual fee for an amended license issued under the requirements of § 1.9 C will be due on the same date as the fee for the license it replaced.

### E. Special license.

The director may issue special licenses to persons for specific events and activities. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. Instant game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

### F. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

## § 1.8. License fees.

### A. License application fee.

The fee for a license application for a lottery retailer general license to sell instant game tickets shall be \$25, *unless otherwise determined by the board*. The general license fee to sell instant game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

### B. License fee.

The annual fee for a lottery retailer general license to sell instant game tickets shall be an amount fixed by the board at its November meeting for all annual license reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is reviewed. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a

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retailer's anniversary date.

## C. Amended license application fee.

The fee for processing an amended license application for a lottery retailer general license shall be an amount as approved by the board at its November meeting for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license application shall be submitted in cases where a business change occurs as specified in § 1.9 B.

§ 1.9. Transfer of license prohibited; invalidation of license.

### A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

### B. License invalidated.

A license shall become invalid for any of the following reasons:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship); or
3. Change in the business owners listed in the original application form for which submission of a Personal Data Form is required under the license application procedure.

### C. Amended application required.

A licensed lottery retailer who anticipates a change as listed in subsection B shall notify the department of the anticipated change at least 15 30 calendar days before it takes place and submit an amended application. The director shall review the changed factors in the same manner that would be required for a review of an original application.

§ 1.10. Display of license.

~~License displayed in general view.~~

Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 1.11. Denial, suspension, revocation or noncontinuation of license.

### A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;
2. The person has been convicted of a crime involving moral turpitude;
3. The person has been convicted of any fraud or misrepresentation in any connection;
4. The person has been convicted of bookmaking or other forms of illegal gambling;
5. *The person has been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;*
- ~~5.~~ 6. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, *but excluding family-oriented businesses* ;
- ~~6.~~ 7. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
- ~~7.~~ 8. The nature of the person's business is not consonant with the probity of the Commonwealth; ~~or~~
- ~~8.~~ 9. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery ; *or*
10. *The person has been suspended permanently from a federal or state program and that person has exhausted all administrative actions pursuant to the respective agency's regulations.*

B. Grounds for refusal to license partnership or corporation.

The director may refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation does not meet the eligibility criteria and standards for licensing as set out in these regulations or if any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A.

### C. Appeals of refusal to license.

*Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by § 3.4 of VR 447-01-2.*

~~E.~~ D. Grounds for suspension, revocation or refusal to continue license.

# State Lottery Department

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for lottery tickets received, for prizes claimed and paid or for the proceeds of the sale of lottery tickets;
2. Failure to file or maintain the required bond or the required lottery bank account;
3. Failure to comply with applicable laws, instructions, terms and conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;
4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;
5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules and regulations of the department;
6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;
7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers;
8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing application process;
9. Failure to comply with lottery game rules;
10. Failure to meet minimum point of sale standards;
11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, [ *but* ] *excluding family-oriented businesses* ;
12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; or
13. The nature of the person's business is not consonant with the probity of the Commonwealth ; or
14. *Permanent revocation or suspension from any federal or state program whereby all administrative procedures pursuant to the respective agency's regulations were exhausted.*

⊖ E. Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection C D , the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

E. F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

F. G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

## § 1.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

## § 1.13. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any retailer's lottery material that has not been approved for use by the department.

## § 1.14. Inspection of premises.

Access to premises by department.



# State Lottery Department

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Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

## § 1.15. Examination of records; seizure of records.

### A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

### B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

## § 1.16. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

## § 1.17. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

## § 1.18. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

### A. Forms of payment for tickets; deposit of lottery receipts.

Each lottery retailer shall purchase the tickets distributed to him. The moneys for payment of these tickets shall be deposited to the credit of the State Lottery Fund by the department. The retailer shall make payments to the department by Electronic Funds Transfers (EFT); however, the director reserves the right to specify one or more of the following alternative forms of payment under such conditions as he deems appropriate:

1. Cash;

2. Cashier's check;

3. Certified check;

4. Money order; or

5. Business check.

### B. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the purchasing and payment of tickets and the settlement of accounts.

### C. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be assessed an interest charge on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

### D. Service charge for dishonored EFT transfer or bad check.

The director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

### E. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt that are incurred by the department and the agencies to which the debt is referred.

### F. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

## § 1.19. Training of retailers and their employees.

Each retailer or his designated representative or representatives is required to participate in training given by the department in the operation of each game. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

## § 1.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

## PART II. INSTANT GAMES.

### § 2.1. Development of instant games.

The director shall select, operate, and contract for the operation of instant games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each instant game after consultation with the director. These details include, but are not limited to:

1. Prize amounts and prize structure,
2. Types of noncash prizes, if any, and
3. The amount and type of any jackpot or grand prize which may be awarded.

The actual number of prizes and prize structure may vary from that adopted by the board because of the omission of defective tickets in the manufacturing process, an increase or decrease in the number of tickets ordered, or the removal of tickets from inventory to perform the department's quality control inspection procedures.

### § 2.2. Prize structure.

~~The~~ *Unless otherwise determined by the board, the prize structure for any instant game shall be designed to return to winners approximately 50% of gross sales.*

A. The specific prize structure for each instant game shall be approved in advance by the board.

B. Prizes may be cash or noncash awards, including instant game tickets.

### § 2.3. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. Lottery retailers may not discount the sale price of instant game tickets or offer free tickets as a promotion with the sale of instant tickets. This section shall not prevent a retailer from providing free instant tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to

participate in the lottery.

B. This section shall not apply to the redemption of a winning instant ticket the prize for which is another free ticket.

### § 2.4. Sales, gift of tickets to minors prohibited.

An instant game ticket shall not be sold to, purchased by, redeemed from or given as a gift to any individual under 18 years old. No prize shall be paid on a ticket purchased by or transferred to any person under 18 years ~~old~~ *of age*. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.*

### § 2.5. Chances of winning.

The director shall publicize the overall chances of winning a prize in each instant game. The chances may be printed on the ticket or contained in informational materials, or both.

### § 2.6. End of game.

Each instant game will end on a date announced in advance by the director. The director may suspend or terminate an instant game without advance notice if he finds that this action will serve and protect the public interest.

### § 2.7. Sale of tickets from expired games prohibited.

No instant game tickets shall be sold after that game ends.

### § 2.8. Licensed retailers' compensation.

~~A. Licensed~~ *Unless otherwise determined by the board, licensed retailers shall receive 5.0% compensation on all instant game tickets purchased from the department for resale by the retailer.*

B. The director may award cash bonuses or other incentives to retailers. The board shall approve any bonus or incentive system. The director will publicize any such system by administrative order.

C. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of source.

### § 2.9. Price for ticket packs.

For each pack, retailers shall pay the retail value, less the 5.0% retailer compensation and less the value of the low-tier winning tickets in the pack. For example, for a pack of tickets with a retail value of \$300, and guaranteed

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low end prize structure of \$154, the retailer would pay \$131: \$300 (the pack value) minus \$154 for low-tier winners, less the retailer's \$15 compensation.

## § 2.10. Purchase of instant tickets.

A. Retailers shall purchase packs of tickets directly from the department or through designated depositories.

B. Retailers shall pay for tickets via an electronic funds transfer (EFT) initiated by the department.

1. The department will initiate the EFT after tickets are delivered to the retailer. The schedule will be determined by the director.

2. If an electronic funds transfer is refused, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations. The service charge, interest and penalty charges may be waived under § 1.18 F of these regulations.

3. The director may approve another form of payment for designated retailers under conditions to be determined by the director.

4. If the director permits payment by check and if payment on any check is denied, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations.

C. Once tickets are accepted by a retailer, the department will not replace mutilated or damaged tickets, unless specifically authorized by the director.

D. Ticket sales to retailers are final.

1. The department will not accept returned tickets except as provided for elsewhere in these regulations or with the director's advance approval.

2. The retailer is responsible for lost, stolen or destroyed tickets unless otherwise approved by the director.

## § 2.11. Retailers' conduct.

A. Retailers shall sell instant tickets at the price fixed by regulation, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies or with the department's specific approval.

D. Tickets shall be sold during all normal business hours unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. Retailers shall not sell instant tickets after the announced end of an instant game.

G. Retailers shall not break apart ticket packs to sell instant tickets except to sell tickets from the same pack at separate selling stations within the same business establishment.

H. Retailers shall not exchange ticket packs or tickets with one another or sell ticket packs or tickets to one another.

I. On the back of each instant ticket sold by a retailer, the retailer shall print or stamp the retailer's name, address and retailer number. This shall be done in a manner that does not conceal any of the preprinted material.

J. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold and a prize is claimed.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by a person 18 years of age or older.

## § 2.12. Returns of unsold tickets.

A. Each retailer may return for credit full, unbroken ticket packs to the department at any time before the announced end of the game and before the return of any partial packs.

B. After the twelfth week of any instant game, each retailer may return broken partial packs of tickets to the department for credit. Partial pack returns are limited to one pack return per register where tickets have been sold for that game. At the same time partial packs are returned, the retailer must return all eligible partial packs and all full packs for that game remaining in his inventory. No additional partial packs or full packs will be accepted from the retailer by the department for credit after partial packs have been returned.

C. All tickets in the possession of a retailer remaining unsold at the announced end of the game, the return of which are not prohibited by § 2.12 B, whether partial pack or full pack, must be returned to the department not later than 21 calendar days after the announced end of each

instant game or any final prize drawing or no credit will be allowed to the retailer for tickets remaining unsold by that retailer.

## PART III. PAYMENT OF PRIZES FOR INSTANT GAMES.

### § 3.1. Prize winning tickets.

Prize-winning instant tickets are those that have been validated and determined in accordance with the rules and regulations of the department to be official prize winners. Consistent with these regulations, criteria and specific rules for winning prizes shall be published and posted by the director for each instant game and made available for all players. Final validation and determination of prize winning tickets remains with the department.

### § 3.2. Unclaimed prizes.

All instant game winning tickets shall be received for payment as prescribed in these regulations within 180 days after the announced end of the game or of the event which caused the ticket to be a winning entry, whichever is later. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day. Tickets which have been mailed in an envelope bearing a *United States Postal Service* postmark on or before the 180th day will be deemed to have been received on time.

A. Any non-low-tier instant game cash prize which has been won as a result of a drawing but which is not claimed within 180 days after the instant game drawing shall revert to the State Literary Fund.

B. Any non-low-tier instant game cash prize which has been won other than by drawing, but which is not claimed within 180 days after the announced end of the instant game shall revert to the State Literary Fund.

C. Any instant game low-tier prize-winning ticket which has been purchased but which is not claimed within 180 days after the announced end of the instant game shall revert as a bonus compensation to the account of the retailer which sold the instant game low-tier prize-winning ticket.

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

### § 3.3. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they

live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless otherwise determined by the director.

### § 3.4. No prize paid to people under 18 years of age .

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.*

### § 3.5. Where prizes claimed.

Winners may claim instant game prizes from the retailer from whom the ticket was purchased or the department in the manner specified in these regulations *or in game rules*

### § 3.6. Validating winning tickets.

A. Winning tickets shall be validated by the retailer or the department as set out in these regulations or in any other manner which the director may determine.

B. Any instant lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

### § 3.7. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is \$601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service.

1. If the department, a retailer or these regulations require that a claim form be filed, the FEIN shall be shown on the claim form.

2. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

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3. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

4. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate judicial order.

## § 3.8. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

## § 3.9. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

## § 3.10. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the director and employees of the department, terminates upon payment of a lottery prize.

## § 3.11. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment; or
4. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the ~~Set-Off~~ *Setoff* Debt Collection Act if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been

furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

## § 3.12. When periodic prize payment may be delayed.

The director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation. Delayed payments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim.

## § 3.13. Ticket is bearer instrument.

A ticket that has been legally issued by a lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

## § 3.14. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification and the submission of a prize claim form if one is required, unless otherwise delayed in accordance with these regulations.

## § 3.15. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

## § 3.16. Penalty for counterfeit or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a forged, counterfeit or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

## § 3.17. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following

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criteria and can be validated through other means. The exception does not apply to an instant game ticket the prize for which is a free ticket or is \$25 or less.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;
2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;
3. The prize has not been claimed within the required redemption period; and
4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

## § 3.18. Erroneous or mutilated ticket.

The department is not liable for erroneous or mutilated tickets. The director, at his option, may replace an erroneous or mutilated ticket with an unplayed ticket for the same or a later instant game.

## § 3.19. Retailer to pay low-tier prizes.

Low-tier prizes (those of \$25 or less in cash or free instant game tickets) shall be paid by the retailer who sold the winning ticket, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

## § 3.20. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.
2. If payment of a prize by a check presented to a claimant by a retailer is denied for any reason, the retailer is subject to the same service charge interest and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.
3. Retailers shall pay claims for low-tier prizes during all normal business hours.
4. Prize claims shall be paid only at the location specified on the license.
5. The department will reimburse a retailer for prizes from \$26 to and including \$600 paid up to 180 days after an instant game ends.

*6. In no case shall a retailer impose a fee, or additional charge, for cashing a winning lottery instant game ticket.*

## § 3.21. Retailer to validate winning ticket.

Before paying a prize claim, the retailer should validate the winning ticket. The retailer should follow validation procedures listed in these regulations or obtained from the department. Retailers who pay claims without validating the ticket do so at their own financial risk.

## § 3.22. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize-winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

## § 3.23. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims paid in error.

## § 3.24. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

## § 3.25. Prizes of \$600 or less.

A retailer may elect to pay instant prizes from \$26 to and including \$600 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. If the retailer elects to pay prizes of \$600 or less, the following terms and conditions apply:

1. The retailer shall execute an agreement with the department to pay higher prize limits.
2. The retailer shall pay all prizes agreed to up to and including \$ 600 on validated tickets presented to that retailer.
3. The retailer shall display special informational material provided by or approved by the department informing the public of the exceptional prize payments available from that retailer.
4. Nothing in this section shall be construed to prevent the department from accepting an agreement from a retailer to pay prize amounts \$26 or more but less than \$601.

## § 3.26. Additional validation requirements.

Before paying any prize from \$26 to and including \$600,

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the retailer or the department should:

1. Reserved
2. Inspect the ticket to assure that it conforms to each validation criterion listed in these regulations and to any additional criteria the director may specify;
3. Report to the department the ticket number, validation code and validation number of the ticket; and
4. Obtain an authorization number for prize payment from the department.

## § 3.27. When prize shall be claimed from the department.

The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present a completed claim form and the signed ticket at any department regional office or mail both the completed claim form and the signed ticket to the department central office.
2. If a ticket holder is unable to return to the retailer from which the ticket was purchased to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both a completed claim form and the signed ticket to the department central office.
3. If the prize amount is over the limit paid by the retailer from which the ticket was purchased, the ticket holder may present a completed claim form, if required, and the signed ticket to any department regional office or mail both a completed claim form and the signed ticket to the department central office.

## § 3.28. Prizes of \$25,000 or less.

Prizes of \$25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.29. Prizes of more than \$25,000.

Prizes *Unless otherwise determined by the department, prizes* of more than \$25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.30. When ~~claims~~ claim form required.

A ~~claims~~ claim form for a winning ticket may be obtained from any department office or any lottery sales retailer.

A. ~~Claims~~ Claim forms shall be required to claim any prize from the department's central office.

B. ~~Claims~~ Claim forms shall be required to claim any prize of \$ 601 or more from the department's regional offices.

C. Reserved.

D. The director may, at his discretion, require ~~claims~~ claim forms to be filed to claim prizes.

## § 3.31. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

A. If the claim is not valid, the department will notify the ticket holder promptly.

B. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

C. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

## § 3.32. Withholding, notification of prize payments.

A. When paying any prize of \$601 or more, the department shall:

1. File the appropriate income reporting form(s) with the state Department of Taxation and the federal Internal Revenue Service; and
2. Withhold any federal and state taxes from any winning ticket in excess of \$5,001.

B. Additionally, when paying any prize of \$101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's *Set-Off Setoff Debt Collection Program Act*.

## § 3.33. Grand prize event.

If an instant game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director.
2. Participation in the drawing(s) shall be limited to those tickets which are actually received and validated

by the department on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent instant game. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each instant game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

#### § 3.34. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

#### § 3.35. Valid ticket described.

To be valid, a Virginia lottery game ticket shall meet all of the validation requirements contained in the rules for the specific instant game and listed here:

1. The ticket shall have been issued by the department in an authorized manner.
2. The ticket shall not be altered, unreadable, reconstructed, or tampered with in any way.
3. The ticket shall not be counterfeit in whole or in part.
4. The ticket shall not have been stolen or appear on any list of void or omitted tickets on file with the department.
5. The ticket shall be complete and not blank or partly blank, miscut, misregistered, defective, or printed or produced in error.
6. The ticket shall have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one ticket number, exactly one validation code, and exactly one validation number. These items shall be present in their entirety, legible, right side up, and not reversed in any manner.
7. The validation number of an apparent winning ticket shall appear on the department's official list of validation numbers of winning tickets provided by the vendor of the instant tickets. A ticket with that validation number shall not have previously been paid.
8. The ticket shall pass all additional confidential validation requirements set by the department.

#### § 3.36. Invalid ticket.

An instant ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its instant game is invalid. An invalid ticket is not eligible for any prize.

#### § 3.37. Replacement of ticket.

The director may replace an invalid ticket with an unplayed ticket from the same or another instant game. If a defective ticket is purchased, the department's only liability or responsibility shall be to replace the defective ticket with an unplayed ticket from the same or another instant game or to refund the purchase price, at the department's option.

#### § 3.38. When ticket is partially mutilated or not intact.

If an instant ticket is partially mutilated or if the ticket is not intact but can still be validated by other validation tests, the director may pay the prize for that ticket.

#### § 3.39. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

#### § 3.40. When prize payable over time.

Unless the rules for any specific instant game provide otherwise, any cash prize of \$100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

#### § 3.41. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

#### § 3.42. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

**NOTICE:** The forms used in administering the State Lottery Department Instant Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.



# State Lottery Department

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Retailer License Application  
Retailer Location Form  
Personal Data Form (SLD-0061; Rev. 10/93)  
Retailer Data Collection  
Virginia Lottery Retailer License  
Commonwealth of Virginia Lottery Bond Application  
Special Notice on Bonding for Lottery Retailers (Renewal)  
Authorization Agreement for Preauthorized Payments (SLD-0035A)  
Winner Claim Form  
Accounts Receivable Transaction Form (Returned Item Debits)  
Accounting Transaction Form  
Virginia Lottery Retailer Advertising Approval Form  
Virginia Lottery Agreement to Pay Mid-Tier Prizes  
Virginia Lottery Ticket Dispenser Agreement  
Virginia Lottery Returned Ticket Receipt, Full Pack Returns  
Virginia Lottery Returned Ticket Receipt, Partial Pack Returns  
Ticket Invoice  
Virginia Lottery Stolen Ticket Report  
Winner Gram  
We're Sorry But...  
Agreement to Share Ownership and Proceeds of Lottery Ticket  
Statement of Person(s) Receiving Gambling Winnings, Form 5754  
Instant Ticket Vending Machine Form (SLD-0043; 7/93)

VA.R. Doc. No. R94-540; Filed February 2, 1994, 8:27 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 447-02-2. On-Line Game Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Effective Date:** March 23, 1994.

**Summary:**

*The amendments (i) add a provision to §§ 1.9 and 3.9 stating that a cash prize or free ticket purchased by individual(s) ineligible to play a lottery game shall revert to the State Lottery Fund; (ii) identify in § 2.9 the installation fee for a self-service terminal; (iii) authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 2.11; (iv) provide in § 3.6 that the department shall not redeem prize-winning tickets previously cancelled by a retailer; (v) stipulate in § 3.24 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets; and (vi) set out the procedure in § 3.33 for the transfer to the Literary Fund of an unclaimed prize if there are multiple winning tickets, one or more of which are*

*not claimed. Additionally, the amendments incorporate numerous housekeeping and technical changes throughout these regulations.*

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

**Agency Contact:** Copies of the regulation may be obtained from Barbara L. Robertson, State Lottery Department, 2201 West Broad Street, Richmond, VA 23220, telephone (804) 367-3106. There may be a charge for copies.

VR 447-02-2. On-Line Game Regulations.

## PART I. ON-LINE GAMES.

§ 1.1. General definitions for on-line games.

The words and terms, when used in any of the department's regulations, shall have the same meaning, as defined in these regulations, unless the context clearly indicates otherwise. Definitions that relate to instant games are incorporated by reference in the On-Line Game Regulations (VR 447-02-2).

*"Auto pick"* means the same as "easy pick."

*"Breakage"* means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.

*"Cancelled ticket"* means a ticket that (i) has been placed into the terminal, whereupon the terminal must read the information from the ticket and cancel the transaction or (ii) whose validation number has been manually entered into the terminal via the keyboard and cancelled.

*"Certified drawing"* means a drawing in which a lottery official and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

*"Confirmation (or registration) notice"* means the subscription notification letter or card mailed to the subscriber which confirms the game numbers for the game panel played, and the plan start date and number of draws.

*"Drawing"* means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).

*"Duplicate ticket"* means a ticket produced by any means other than by an on-line terminal with intent to

imitate the original ticket.

*"Easy pick"* means computer generated numbers or items.

*"Game panel"* means the play(s) entered on a playslip by the player or by the subscriber on the subscription application.

*"Game numbers"* means the numbers designated by the player on the playslip or subscription application or the computer-generated numbers if easy pick is selected.

*"Group-designated agent"* means the individual listed on the back of a ticket or on the subscription application who is elected by the group of players to act as the representative or subscriber on the group's behalf in handling all correspondence and payment disbursements resulting from the group's activity.

*"Number of draws"* means the actual number of draws for which a multiple play or subscription is valid.

*"On-line game"* means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct communication with an on-line game main frame operated by or at the direction of the department.

*"On-line lottery retailer"* means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets at a specific location.

*"On-line system"* means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

*"On-line terminal"* means the department's computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.

*"On-line ticket"* means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

*"Person"* means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

*"Plan"* means the duration of the subscription as determined by the number of draws designated by the subscriber on the subscription application or renewal notice.

*"Play"* means a wager on a single set of selected numbers.

*"Player-selected item"* means a number or item or group of numbers or items selected by a player in

connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as "auto picks," "easy picks" or "quick picks."

*"Playslip"* means an optically readable card issued by the department, used in marking a player's game plays.

*"Present at the terminal"* means that a player remains physically present at the on-line lottery terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.

*"Quick pick"* means the same as "easy pick."

*"Registration"* means the process of entering subscription information concerning the subscriber, plan and selected numbers into the central computer system.

*"Retailer,"* as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

*"Roll stock"* or *"ticket stock"* means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

*"Share"* means a percentage of ownership in a winning ticket or subscription plan.

*"Start date"* means the first draw date for which a multiple play or subscription is effective.

*"Subscriber"* means the individual designated on the subscription application whose entry has been entered into the department's central computer system and who has received confirmation from the department of his designated numbers and includes the group-designated agent for a group, organization, family unit, or club.

*"Subscription"* means a method to play a lottery on-line game by purchasing subscription plays, using a designated set of numbers, for a specific period of time, and for which the player is automatically entered in each drawing or game during the period for which the subscription is effective.

*"Subscription application"* means the form(s) used by an individual or group-designated agent to play lottery games by subscription.

*"Subscription renewal"* means the process by which a subscription plan is renewed by the subscriber in accordance with procedures established by the department.

*"Ticket" or "tickets"* means an on-line lottery game

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*ticket produced by a terminal on ticket stock issued by the department, the front of which contains the applicable game caption, information identifying the drawing or drawings for which the ticket is valid, one or more lettered game plays, the total price of the ticket, a bar code representation of the ticket serial number, a ticket validation number, an alphabetic dual security characterization, and the time the ticket was issued. The front of the ticket may also contain a message to the player. On the back of the ticket must be a ticket stock sequential number preceded or followed by two letters and a synopsis of lottery rules. The front of the ticket may, in lieu of game information, bear information designating the ticket as a coupon which is redeemable for some designated benefit.*

“Winning combination” means two or more items or numbers selected by a drawing.

## § 1.2. Development of on-line games.

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games,
2. Individual prize amounts and overall prize structure,
3. Types of noncash prizes, if any,
4. The amount and type of any jackpot or grand prize which may be awarded and how awarded, and
5. Chances of winning.

## § 1.3. Prize structure.

The prize structure for any on-line game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

## § 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules.

That time will be designated by the director.

## § 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. Unless authorized by the board, lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

B. This section shall not apply to the redemption of a winning on-line game ticket the prize for which is another free ticket.

## § 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.
2. Cancellation may only be effected by the following two procedures:
  - a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.
  - b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such

credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error or if the ticket was issued by another lottery-approved device. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

## § 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

## § 1.8. Licensed retailers' compensation.

A. ~~Licensed~~ *Unless otherwise determined by the board, licensed* retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system by administrative order. The director may then award such cash bonuses or other incentives to retailers. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

## § 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise. Retailers shall give prompt service to lottery customers present and waiting at the terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of

on-line ticket orders for which the customer is not present at the terminal. Failure to render prompt service to lottery customers may result in administrative action by the director including but not limited to license suspension or revocation or disabling the on-line terminal so that it will not process transactions.

E. Tickets shall be sold only at the location listed on each retailer's license from the department. For purposes of this section, the sale of an on-line lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the licensee and the player shall take place on site at the lottery terminal including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the ticket. No part of the sale may take place away from the lottery terminal.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, given as a gift to or redeemed from any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and cash prizes greater than \$25 revert to the State Lottery Fund.*

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by the manager or supervisor in charge at the location where the tickets are being sold.

L. Federal Internal Revenue Code, 26 U.S.C. 60501 requires lottery retailers who receive more than \$10,000 in cash in one transaction, two or more related transactions in the aggregate, or a series of connected transactions exceeding \$10,000 in the aggregate, from a single player or his agent, to file a Form 8300 with the Internal Revenue Service. IRS encourages retailers to report all suspicious transactions, even if they do not meet the \$10,000 threshold. "Cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary

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instruments not customarily accepted as money.

## § 1.10. End of game; suspension.

The director may suspend or terminate an on-line game without advance notice if he finds that this action will serve and protect the public interest.

## PART II. LICENSING OF RETAILERS FOR ON-LINE GAMES.

### § 2.1. Licensing.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

### § 2.2. Eligibility.

#### A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or
3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

#### B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

### § 2.3. General standards for licensing.

#### A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

#### 1. The financial responsibility and integrity of the retailer, to include:

- a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;
- b. A check for outstanding delinquent state tax liability;
- c. A check for required business licenses, tax and business permits; and
- d. An evaluation of physical security at the place of business, including insurance coverage.

#### 2. The accessibility of his place of business to public, to include:

- a. The hours of operation compared to the on-line system selling hours;
- b. The availability of parking including ease of ingress and egress to parking;
- c. Public transportation stops and passenger traffic volume;
- d. The vehicle traffic density, including levels of congestion in the market area;
- e. Customer transaction count within the place of business;
- f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and
- g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

#### 3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

- a. The number of and proximity to other lottery retailers in the market area;
- b. The expected impact on sales volume of potentially competing lottery retailers;
- c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and

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- d. The population to terminal ratio, compared to other geographical market areas.
4. The volume of expected lottery ticket sales, to include:
  - a. Type and volume of the products and services sold by the retailer;
  - b. Dollar sales volume of the business;
  - c. Sales history of the market area;
  - d. Sales history for instant tickets, if already licensed as an instant retailer;
  - e. Volume of customer traffic in place of business; and
  - f. Market area potential, compared to other market areas.
5. The ability to offer high levels of customer service to on-line lottery players, including:
  - a. A history demonstrating successful use of lottery product related promotions;
  - b. Volume and quality of point of sale display;
  - c. A history of compliance with lottery directives;
  - d. Ability to display jackpot prize amounts to pedestrians and vehicles passing by;
  - e. A favorable image consistent with lottery standards;
  - f. Ability to pay prizes of \$600 or less during maximum selling hours, compared to other area retailers;
  - g. Commitment to authorize employee participation in all required on-line lottery training; and
  - h. Commitment and opportunity to post jackpot levels near the point of sale.

#### B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

#### C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit

required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line retailer. The forms to be submitted shall include:

1. Signed retailer agreement;
2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and
3. Executed bond requirement.

#### § 2.4. Bonding of lottery retailers.

##### A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of \$10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to \$10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of \$10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.
2. Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

##### B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and
2. Submit the surety company's letter or certificate with the required annual license review fee to the State Lottery Department.

##### C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

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## D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

## E. Limit on sales in excess of bond.

Under no circumstances shall the retailer allow total, weekly, net on-line and instant sales from a single location for the seven-day period ending at the close of the lottery fiscal week (normally Tuesday night) to exceed five times the amount of the bond for that licensed location, unless such retailer has first obtained written permission from the director. The director, in his sole discretion, may require additional bond or other security as a condition for continued sales, may accelerate the collection from the retailer of the net proceeds from the sale of lottery tickets, or may temporarily suspend the requirement that no retailer may sell lottery tickets in excess of five times the amount of the bond for that licensed location for all on-line lottery retailers or for individual retailers on a case-by-case basis.

## § 2.5. Lottery bank accounts and EFT authorization.

### A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

### B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

### C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

### D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return

the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

### E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

### F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

## § 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

### A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

### B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's on-line terminal will be inactivated. The retailer will not be reactivated until payment is made by cashier's check, certified check or wire transfer, and if deemed a continuing credit risk by the department, not until an informal hearing is held to determine if the licensee is able and willing to meet the terms of his license agreement. Additionally, interest will be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

### C. Service charge for dishonored EFT transfer or bad check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

## D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

## E. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

## § 2.7. License term and annual review.

### A. License term.

A general on-line license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

### B. Annual license review.

The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

### C. Amended license term.

The annual fee for an amended license will be due on the same date as the fee for the license it replaced.

### D. Special license.

The director may issue special licenses. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. On-line game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

### E. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked

or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

## § 2.8. License fees.

### A. License fee.

*The Unless otherwise determined by the board, the fee for a lottery retailer general license to sell on-line game tickets shall be \$25. Payment of this fee shall entitle the retailer to sell both on-line and instant game tickets. The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.*

### B. Annual license fee.

The annual fee for a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a retailer's anniversary date.

### C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

## § 2.9. Fees for operational costs.

### A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be \$275 unless otherwise determined by the director. *This fee Additionally, the installation fee for a self-service terminal shall be \$275 for existing on-line retailers and \$395 for new retailers. All fees may be subject to change based upon an annual cost review by the department.*

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of \$25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

### B. Weekly on-line telecommunications line charge.



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Each retailer shall be assessed a weekly charge of \$15 per week. This fee may be subject to change based upon an annual cost review by the department.

§ 2.10. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship); or
3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

§ 2.11. Denial, suspension, revocation or of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;
2. The person has been convicted of a crime involving moral turpitude;
3. The person has been convicted of any fraud or misrepresentation in any connection;
4. The person has been convicted of bookmaking or other forms of illegal gambling;
5. The person has been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent

statement or misrepresentation;

6. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, *but excluding family-oriented businesses*;

7. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

8. The nature of the person's business is not consonant with the probity of the Commonwealth; or

9. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery; or

*10. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations.*

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to continue license.

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for on-line terminal ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;
2. Failure to file or maintain the required bond or the required lottery bank account;
3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;
4. Conviction, following the approval of the license, of

any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards;

11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, *but excluding family-oriented businesses*;

12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; ~~or~~

13. The nature of the person's business is not consonant with the probity of the Commonwealth; *or*

14. *Permanent revocation or suspension from any federal or state program whereby all administrative remedies pursuant to the respective agency's regulations have been exhausted.*

E. Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection *E D*, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying

the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

## § 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

## § 2.13. Display of license.

License displayed in general view. Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

## § 2.14. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been approved for use by the department.

## § 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

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## § 2.16. Examination of records; seizure of records.

### A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

### B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

## § 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

## § 2.18. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

## § 2.19. Training of retailers and their employees.

Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

## § 2.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

## PART III ON-LINE TICKET VALIDATION REQUIREMENTS.

## § 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.
2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.
3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)
4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.
5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.
6. The ticket shall not have been cancelled.
7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)
8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.
9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.
10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.
11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.
12. The ticket shall pass all other confidential security checks of the department.
13. Any on-line lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.
14. Playslips may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other

automated device. Any playslip marked by methods other than those authorized by these regulations is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a playslip manually from using any device intended to permit such person to make such a mark for his sole personal use or benefit.

## § 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

## § 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

## § 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

## § 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

## § 3.6. Prize winning tickets.

### A. Validation of prize winning ticket.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

### B. Cancellation of prize winning ticket.

*In cancelling on-line lottery tickets, retailers must comply with § 1.6 of these regulations. The department shall not redeem prizes for tickets which would have been prize-winning tickets but for the fact that they have been cancelled by the retailer.*

## § 3.7. Unclaimed prizes.

A. Except for free ticket prizes, all claims for on-line game winning tickets must be ~~postmarked~~ *mailed in an envelope bearing a United States Postal Service postmark* or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.

B. Any on-line lottery cash prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admissions to events and the like.

C. All claims for on-line game winning tickets for which the prize is a free ticket must be ~~postmarked~~ *mailed in an envelope bearing a United States Postal Service postmark* or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day. This section does not apply to the redemption of free tickets awarded through the subscription program. (see § 4.14)

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

## § 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless authorized by the director.

## § 3.9. No prize paid to people under 18 years of age .

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket to any person ineligible to purchase a ticket is ineligible to

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receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and cash prizes greater than \$25 revert to the State Lottery Fund.*

## § 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations *or in game rules*. Licensed on-line retailers are authorized and required to make payment of all validated prizes of \$600 or less.

## § 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

## § 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is \$601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate the individuals in whose names the claim shall be entered and those persons' social security numbers shall be furnished.

E. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate

judicial order.

## § 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

## § 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

## § 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize.

## § 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the *Set-Off Setoff Debt Collection Act* if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

## § 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in

order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

### § 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

### § 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

### § 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

### § 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

### § 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an on-line game ticket the prize for which is a free ticket.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;
2. The prize for which the claim is filed is an unclaimed winning prize as verified in the

department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

### § 3.23. Retailer to pay all prizes of \$600 or less.

Prizes of \$600 or less shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

### § 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for all prizes of \$600 or less during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.

4. Prize claims shall be payable only at the location specified on the license.

5. The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

*6. In no case shall a retailer impose a fee, additional charge, discount for cashing a winning lottery instant or on-line game ticket.*

### § 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

### § 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

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## § 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

## § 3.28. Prizes of \$600 or less.

A retailer shall pay on-line prizes of \$600 or less won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of \$600 or less.

## § 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the signed ticket and a completed claim form to the department regional office or mail both the signed ticket and a completed claim form to the department central office.

2. If a ticket holder is unable to return to any on-line retailer to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

3. If the prize amount is \$601 or more, the ticket holder may present the signed ticket and a completed claim form at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

## § 3.30. Prizes of \$25,000 or less.

*Prizes* Unless otherwise determined by the board, prizes of \$25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.31. Prizes of more than \$25,000.

Prizes of more than \$25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director consistent with ~~§ 1.1~~ § 1.2 of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

## § 3.33. When prize payable over time.

A. Unless the rules for any specific on-line game provide otherwise, any cash prize of \$100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

B. *In case of a prize payable over time, if such prize is shared by two or more winning tickets, one or more of which are not claimed within the 180-day redemption period, the department will transfer that portion of the prize to the Literary Fund in accordance with procedures approved by the State Treasurer.*

## § 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

## § 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

## § 3.36. When ~~claims~~ claim form required.

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A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of \$601 or more from the department's regional offices. This section does may not apply to the redemption of prizes awarded through a subscription plan as identified in § 4.14.

§ 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

1. If the claim is not valid, the department will promptly notify the ticket holder.
2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.
3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

A. When paying any prize of \$601 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service; and
2. Withhold federal and state taxes from any winning ticket in excess of \$5,001.

B. Additionally, when paying any prize of \$101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's Set-Off Setoff Debt Collection Program Act .

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

## PART IV. SUBSCRIPTION PLAN.

§ 4.1. Development of subscription.

In addition to regulations set forth in this part, the conduct of subscriptions is subject to all applicable rules and regulations of the department.

§ 4.2. Subscriptions.

Subscriptions may be purchased for periods specified by the department in rules applicable to the lottery game to which the subscription applies.

§ 4.3. Subscription price.

The sale price of a subscription shall be determined by the board.

§ 4.4. Subscription cancellation.

A. A subscription entered into the department's central computer system cannot be cancelled by a subscriber or group-designated agent except when a subscriber or group-designated agent becomes employed by the lottery as an employee, board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer or employee during the subscription period.

B. A subscription cannot be assigned by a subscriber or group-designated agent to another person.

C. Funds remitted to the department as payment for the subscription are not refundable to the subscriber or group-designated agent unless provisions identified in subsection A of this section are present.

§ 4.5. Effective date.

The subscription shall be effective on the start date indicated in the confirmation notice for that subscription.

§ 4.6. Retailer compensation.

*Active Unless otherwise determined by the board, active licensed lottery retailers shall receive 5.0% compensation on sales of subscriptions. The compensation shall be based on all subscriptions purchased at any active licensed lottery retailer location as well as on all subscription applications mailed or delivered to the department's central office with payment and bearing a valid licensed lottery retailer number. In addition, active licensed lottery retailers shall be compensated for renewals of subscriptions which originated at their retailer location. Retailer compensation for a subscription shall be cancelled in the event the tender for the subscription payment is not honored by the payor institution or if the licensed lottery retailer does not provide the retailer number.*

§ 4.7. Validation requirements.

Only those subscriptions entered into the department's central computer system and which are confirmed are valid entries eligible for prizes. Otherwise, game numbers selected on a subscription application are not eligible to win a prize in any drawing.



# State Lottery Department

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## § 4.8. Purchase of subscription.

A. Subscription applications may be distributed through the department's central office, any department regional office, any licensed lottery retailer, or any other means as determined by the department.

B. An individual, group, family unit, club, or other organization otherwise eligible to purchase lottery tickets may purchase a subscription by mail from the department's central office or from other locations as determined by the department.

C. In order to purchase a subscription, an individual, group, family unit, club, or other organization must furnish a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations.

D. After receipt of the subscription at the department's central office, the subsequent entry of data into the central computer system, and the bank clearance of the subscriber's method of payment, the department shall mail a confirmation notice to the subscriber or group-designated agent at the address provided on the subscription application.

## § 4.9. Subscription application requirements.

A. A subscription application must meet the following requirements in order to be accepted for entry:

1. The numbers selected by the player must contain the prescribed number of unduplicated game numbers from numbers available for play in the game. If permitted by the rules of the game, numbers may be duplicated;

2. The subscription application must contain a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations;

3. If a subscription is entered for a group, corporation, family unit or club, one individual must be designated as the group agent;

4. The subscription application must be an official department application; and

5. The designated numbers selected by the player or group-designated agent for a subscription shall remain unchanged for the duration of the subscription once the designated numbers are entered into the department's central computer system and confirmed by the player. If any easy pick option is selected by the player, the randomly-selected numbers shall remain unchanged for the duration of the subscription.

B. A subscription application will be rejected for any of the following reasons:

1. If a subscription application is received by the

department on an unofficial subscription form;

2. If no numbers are designated in a selected game panel and an available easy pick option is not selected;

3. If more or fewer than the prescribed set of numbers are selected;

4. If numbers are duplicated within the game panel, unless permitted by game rules;

5. If both a prescribed set of numbers and easy pick is designated in the same game panel;

6. If payment is not for the correct amount and is not made payable to the "Virginia Lottery," if a check or money order is returned unpaid, if a third-party check is remitted for payment, or if remittance is dishonored, the registration and the confirmation notice are void automatically for all drawings including those which may have occurred prior to the remittance being dishonored;

7. If the application contains an out-of-state address;

8. If the application is not signed;

9. If an individual (subscriber, group-designated agent or recipient) is under the age of 18, according to birth date recorded on the application; or

10. If an individual is found to be a Virginia Lottery Department employee, vendor employee, or household member, otherwise prohibited from playing any lottery game.

C. If the subscription is rejected by the department, both the subscription application and subscription payment will be returned to the subscriber or group-designated agent with a letter of explanation and no prize will be paid on any play appearing on the rejected subscription application for any drawing deriving from that subscription application.

These regulations assume that an easy pick option is available. If not available in a subscription plan, the criteria for accepting or rejecting a subscription application is modified accordingly.

## § 4.10. Subscription gifts.

A. Any recipient of a subscription gift must have a valid Virginia address or Virginia post office box.

B. Numbers selected by the subscriber for the recipient cannot be cancelled or reselected.

C. All other provisions of these regulations shall apply to subscription gifts, subscription purchasers and subscription recipients.

# State Lottery Department

## § 4.11. Subscription renewals.

A. Approximately six weeks prior to the end of a subscription, a renewal notice will be mailed to a subscriber or group-designated agent at the address on file with the department. Subscribers or group-designated agents may renew the subscription by returning the renewal notice with payment to the department's central office. Renewal notices may be obtained from the department's central office or other locations as determined by the lottery. Renewal notices shall not be mailed to subscribers or group-designated agents who no longer have a valid Virginia address or Virginia post office box.

B. Renewals will not be accepted unless the individual subscriber or group-designated agent furnishes a valid Virginia address or Virginia post office box.

## § 4.12. Change of name.

In the event a subscriber or group-designated agent's name changes during the subscription period, he may notify the department in writing of such change. Proof of name change may be required by the department at any time. The department reserves the right to refuse to change a name registered as a subscriber.

## § 4.13. Change of address.

In the event a subscriber or group-designated agent moves out of state during the subscription period and notifies the department of the change of address, the subscription will remain in effect until the number of draws for that subscription plan has expired. The subscriber or group-designated agent will not be eligible to receive a subscription renewal notice.

## § 4.14. Payment of prizes.

A. Before any prize of \$601 or greater can be paid, the department must be provided with the subscriber's taxpayer identification number, if it has not already been provided on the subscription application. The department will make reasonable efforts to obtain the missing taxpayer identification number. Payment will be delayed until the number is provided. Prizes for which no taxpayer identification number has been furnished within 180 days of the date of the drawing in which the prize was won will be forfeited.

B. ~~The~~ *Unless otherwise determined by the board, the* department will monitor subscriptions and mail nonannuitized prize payments to subscription winners without the necessity of a claim form being filed by the subscription winners. Prizes shall be subject to payment of any taxes and ~~Set-Off~~ *Setoff* Debt Collection Act amounts due and the department shall deduct applicable taxes and ~~set-off~~ *set off* debt amounts prior to mailing prize payments.

C. Subscribers winning a free play will receive a check as payment of free ticket prize(s) from the department at the end of their subscription(s). In lieu of awarding free tickets to a subscriber or group-designated agent, the check will pay the cumulative value of all free tickets won during the subscription plan. The value of free play tickets won on a subscription shall be the same as the purchase price for a single-play, on-line ticket in the same game as determined by the board.

D. The department will notify subscription winners of annuitized prizes by certified mail or telephone, at the address or telephone number shown on the subscription application on file with the department, and request that they come to the department's central office to receive the first prize payment. Subsequent checks will be mailed to subscription winners. Claim forms for annuitized prizes will not be required.

E. Prize payments will be processed in the name of an individual or group-designated agent according to information furnished on the subscription application.

1. A group, family unit, club or other organization which is not a legal entity or which does not possess a Federal Employer's Identification Number (FEIN) may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and are taxable.

2. If the prize winner does not furnish a social security number or taxpayer identification number, the prize will be deemed unclaimed and the department will not pay the prize. Failure to furnish the social security number or taxpayer identification number may expose the prize winner(s) to the risk that the prize will remain unclaimed after 180 days from the date of the drawing and will be forfeited.

F. If for any reason a payment is returned by the U.S. Postal Service and a new address cannot be located, such payments will be held by the department under the state's unclaimed property laws and transferred to the state if not claimed within 180 days following the drawing. Thereafter the department shall not be liable for payment and winners who make claims after this time period will be referred to the Unclaimed Property Division, Virginia Department of the Treasury.

G. Any subscription cash prize which remains unclaimed for any reason other than the preceding subsection after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. This includes, but is not limited to, failure or refusal to furnish a taxpayer identification number to complete the claim for a prize won.

## § 4.15. Player responsibility.

A. The department is not liable for department or

# State Lottery Department

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licensed lottery retailer employee errors.

B. The player(s) assumes responsibility for any delays resulting from the choice of method of forwarding a subscription application to the department.

C. The subscriber or group-designated agent is responsible for verifying the accuracy of the lottery game data as recorded on the confirmation notice mailed to the subscriber or group-designated agent by the department.

D. The player shall notify the department if an error has been made. Notification shall be postmarked within 10 business days of date of the confirmation notice.

E. Player-requested corrections are not effective until entry of the corrected data into the department's central computer system and a corrected confirmation notice is mailed to the subscriber by the department. Such corrections are not retroactive. Any errors in lottery game data remain valid for all drawings occurring while the erroneous data remains effective but such erroneous game data is no longer valid for drawings occurring after the erroneous data is corrected and a corrected confirmation notice is issued.

## § 4.16. Department responsibility.

A. The department is responsible for entering the subscription data, including authorized corrections, on the department's central computer system within a reasonable period of time from receipt of the subscription application and clearance of remittance or receipt of the Request for Corrections notice.

B. If for any reason a subscription play is not accepted, the liability of the department and its retailers is limited to a refund of the purchase price for that play.

## § 4.17. Disputes.

A. The department is neither liable for nor has it any responsibility to resolve disputes among group members for group subscriptions.

B. The decision of the director shall be final.

NOTICE: The forms used in administering the State Lottery Department On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

On-Line Game Survey (SLD-120)  
Retailer Data Collection  
Lottery Retailer Surety Bond  
Retailer Agreement - Lion III or Self-Serve

Terminal(s) (SLD-0064, 10/92)  
Virginia Lottery Licensed Retailer Certificate (4/90)  
Things to Do  
Commonwealth of Virginia Lottery Bond Application  
Special Notice on Bonding for Lottery Retailers  
Virginia Lottery On-Line Play Center;  
Agreement/Order Form (SLD-0136, 4/89)  
Authorization Agreement for Preauthorized Payments  
(SLD-0035A)  
On-Line Ticket Stock Return (X-0120, 6/89)  
On-Line Weekly Settlement Envelope (SLD-0127)  
Weekly Settlement Form  
A/R Online Accounting Transaction Form (X-0105,  
6/89)  
Cash Tickets Envelope/Cancelled Tickets Envelope  
Ticket Problem Report  
Winner Claim Form (SLD-0007, 3/89)  
Winner-Gram  
We're Sorry But ...  
Subscription Playslip  
Subscription Application  
Confirmation Letter  
Statement by Person(s) Receiving Gambling Winnings  
(Form 5754)  
Report of Cash Payments Over \$10,000 Received in a  
Trade or Business (Form 8300, 3/92)  
Agreement to Share Ownership and Proceeds of  
Lottery Ticket

VA.R. Doc. No. R94-538; Filed February 2, 1994, 8:17 a.m.

# MARINE RESOURCES COMMISSION

## MARINE RESOURCES COMMISSION

### EMERGENCY REGULATION

**Title of Regulation:** VR 450-01-0095. Restrictions on Oyster Harvest.

**Statutory Authority:** §§ 28.2-201 and 28.2-507 of the Code of Virginia.

**Effective Dates:** January 26, 1994, to February 24, 1994.

#### Preamble:

*This regulation establishes restrictions on the harvest of oysters from all public oyster grounds in the Chesapeake Bay and its tributaries and on all oyster grounds on the Seaside of Eastern Shore.*

VR 450-01-0095. Restrictions on Oyster Harvest.

#### § 1. Authority, other regulations, and effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-210 and 28.2-507 of the Code of Virginia.

B. Other restrictions on oyster harvesting may be found in Chapter 5 (§ 28.2-500 et seq.) of Title 28.2 of the Code of Virginia and in VR 450-01-0008, VR 450-01-0022, VR 450-01-0026, VR 450-01-0027, VR 450-01-0035, VR 450-01-0038, VR 450-01-0085, and VR 450-01-0086.

C. This emergency regulation replaces previous VR 450-01-0095 which was made effective October 1, 1993.

D. The effective date of this emergency regulation is January 26, 1994.

E. This emergency regulation shall terminate on February 24, 1994.

#### § 2. Purpose.

The purpose of this regulation is to protect and conserve Virginia's oyster resource, which has been depleted by disease, harvesting, and natural disasters.

#### § 3. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster rocks, beds and shoals are as follows:

A. James River Seed Area: January 26, 1994, through February 24, 1994.

B. Seaside of Eastern Shore: October 1, 1993, through March 31, 1994.

#### § 4. Closed harvest season and areas.

*It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:*

*All public oyster grounds in the Chesapeake Bay and its tributaries, except the James River Seed Area: January 1, 1994, through September 30, 1994.*

*B. All oyster grounds on the Seaside of Eastern Shore: April 1, 1994, through September 30, 1994. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the commission as set forth in § 7 of this regulation.*

#### § 5. Time limit.

*Harvest on public grounds in the James River Seed Area shall be from sunrise to 2 p.m. It shall be unlawful for any person to harvest oysters from the public grounds in the James River Seed Area prior to sunrise or after 2 p.m. of each day.*

#### § 6. Gear restrictions.

*It shall be unlawful for any person to harvest oysters from public oyster grounds with shaft tongs longer than 18 feet in total overall length.*

#### § 7. Harvest permit required.

A. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from leased oyster grounds or fee simple ground on the Seaside of Eastern Shore without first obtaining a permit from the Marine Resources Commission.

B. Applicants for the permit shall have paid all rent fees and shall specify the location of the lease of fee simple ground to be harvested and shall verify that the ground is properly marked as specified by VR 450-01-0038.

C. No person shall hold more than two permits at any time.

#### § 8. Maximum cull size.

*In the James River Seed Area, it shall be unlawful for any person to harvest oysters whose shells measure more than two and one-half inches in length, except as provided in § 9 of this emergency regulation. Oysters greater than two and one-half inches in length shall be returned immediately to their natural beds where taken.*

#### § 9. Culling tolerance or standards.

*Section 5. "Culling Tolerance and Standards," of VR 450-01-0035 is amended such that in the James River Seed Area, if more than one six quart measure of shells and oysters greater than two and one-half inches in length is found per bushel of seed oysters inspected it shall constitute a violation of this regulation.*

# Marine Resources Commission

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§ 10. *Culling and inspection procedures.*

All oysters taken from the seed areas of the James River shall be subject to § 6, "Culling and Inspection Procedures," of VR 450-01-0035 and § 9 of this emergency regulation.

§ 11. *Penalty.*

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor. In addition to the penalties prescribed by law, any person violating the provisions of this emergency regulation shall return all oysters harvested to the water, shall cease harvesting on that day, and all harvesting apparatus shall be subject to seizure.

/s/ William A. Pruitt  
Commissioner

V.A.R. Doc. No. R94-564; Filed February 2, 1994, 11:59 a.m.

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# GENERAL NOTICES/ERRATA

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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## GENERAL NOTICES

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### † Designation of Regional Solid Waste Management Planning Area

In accordance with the provisions of § 10.1-1411 of the Code of Virginia, and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Waste Division of the Department of Environmental Quality intends to designate Washington County and the Towns of Abingdon, Damascus, and Glade Spring as a solid waste management region. The director has approved a comprehensive solid waste management plan for this area. Washington County is the designated contact for implementation of the plan.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on March 15, 1994, to Ms. Anne M. Field, Department of Environmental Quality, 629 East Main Street, P. O. Box 10009, Richmond, Virginia 23240-0009, Fax: 804/762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the Director of the Waste Division will notify the affected local governments of his designation of the region or of the need to hold a public hearing on the designation.

#### † Notice to Sources of Air Pollution Concerning the Application Schedule for Federal Air Operating Permits

This is a notice of the availability of the list of sources or source categories required to file applications with the Department of Environmental Quality for federal operating permits.

Public Notice and Meetings. In preparation for this publication, the department published a notice of public meetings and a comment period in the November 29, 1993, Virginia Register. These meetings were held between November 30 and December 9, 1993. Written comments were invited in the notice and the meetings. The postmark deadline for the department's receipt of these written comments was December 28, 1993.

The department has considered these written comments and the comments given at the public meetings in

formulating the application schedule and this notice.

Application Schedule. The schedule will give the priority of source applications. The department will notify sources known to it that are required to submit applications (see Sources Subject to Federal Air Operating Permits below). There will be opportunities to change these priorities (see Changes in Application Priorities below).

Due to uncertainties regarding the timing of full program implementation, the department is not accepting federal operating permit applications at this time, nor is it assigning due dates for permit applications. However, the department will notify sources, as soon as possible, when applications can be accepted.

Sources Subject to Federal Air Operating Permits. Sources which must file applications pursuant to the priority list are (1) solid waste incinerators subject to provisions of Parts IV and V of the regulations adopted pursuant to Section 129(e) of the federal Clean Air Act, and (2) major sources, which are defined as follows:

stationary sources with potential to emit 100 tons per year or more of any air pollutant other than hazardous air pollutants; stationary sources of hazardous air pollutants with potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants; and, for the Northern Virginia ozone nonattainment area, sources of volatile organic compounds or oxides of nitrogen with potential to emit 50 tons per year or more.

Nonmajor sources are deferred from permitting requirements under this program until after the initial round of permits are issued to the major sources described above.

Development of Priority List. The application priority list was developed by a random selection of large and small sources within each air region. This is a listing of the priorities of application due dates; it is not a schedule of final permit issuance.

Federal operating permits for major sources must be issued in equal yearly numbers in each of the first three years following the approval (anticipated to be no sooner than November 15, 1994) of Virginia's federal operating permit program (VR 120-08-0511 B 1). As indicated above, the department will determine precise due dates for applications at a later time.

State Operating Permits. The owner of a source subject to

# General Notices/Errata

the federal operating permit program may, in some cases, avoid the requirement by applying for and obtaining a state operating permit pursuant to VR 120-08-04. These cases arise when the state operating permit imposes enforceable limits on potential to emit that are lower than the threshold amount for federal operating permits. This application must be filed with the department by October 1, 1994, for major sources. To apply for a state operating permit, please request the necessary forms from the appropriate regional office.

**Changes in Application Priorities.** The application priority list reflects the comments received in the public meetings and during the public comment period, and the department's consideration of its workload. The list is subject to change without notice based on these considerations and those enunciated above. No rights are conveyed insofar as scheduling is concerned, other than those expressly provided in individual notices of application due dates.

Sources receiving individual notices, or reading this notice, are invited to advise the department's appropriate Regional Air Director whether circumstances exist which would warrant a change in this published application priority list as it applies to individual sources. Such circumstances could include:

1. Whether a source not listed in the first third, including a source subject to Reasonably Available Control Technology (RACT) requirements, wishes to be listed therein, for any reason;
  2. Whether a single owner of multiple facilities desires a different priority of application due dates as they apply to the owner in question (i.e., making sure that multiple applications for a common owner are not all due at once, when the random priority list failed to take these wishes into account);
  3. Whether a given source is likely to be subject to Maximum Achievable Control Technology (MACT) requirements which will be published sometime after the source's probable application due date as it appears in the application schedule.
- In each of the first three cases, the source should indicate the adjustment in the schedule that is desired.
4. Whether a source wishes to apply for a state operating permit.
  5. Whether a source, not listed in the schedule as a major source, has reason to think it is major for purposes of federal operating permits.

**Application Forms and Due Dates.** In the future, the department will be sending out federal operating permit application forms to all the sources on this application priority list.

**Further Information.** For further information or to request a change in the application schedule, a source should contact the appropriate air regional office for the facility location in question. Sources wishing to obtain the application priority list (written or on a computer disc) may do so at:

Department of Environmental Quality, Air Division  
Office of Permit Evaluation  
Attn: Title V Application Schedule  
P.O. Box 10009  
Richmond, Virginia 23240

Sources wishing to review the list may do so at any regional office or at the department's Innsbrook office:

4900 Cox Road  
Glen Allen, Virginia 23060

## VA DEQ - ABINGDON REGION \* OPERATING PERMIT APPLICABILITY LIST

TOTAL NUMBER OF SOURCES ON THIS LIST = 225

REG NO SOURCE .....	ORDER
10020 UNITED COAL/SULLINS ACADE .....	30
10031 CROWDER, H D & SONS, INC .....	9
10032 W-L CONST. & PAVING,INC .....	131
10035 PENDLETON CONST CORP .....	157
10037 MAYMEAD,INC .....	157
10039 WOODWAY STONE CO .....	103
10044 SOUTHWEST VA.MENTAL HLTH .....	220
10045 SARA LEE KNIT PDTS .....	90
10047 WONDERKNIT SCOREBOARD .....	86
10050 BRUNSWICK COMPOSITES .....	184
10060 REYNOLDS METALS CO .....	36
10061 CYPRUS FOOTE MINERAL CO .....	136
10069 OLD BEN COAL CO .....	130
10083 VISADOR CO,BRISTOL DIV .....	162
10100 LEA INDUSTRIES .....	83
10102 CLINCH RIVER QUARRIES .....	99
10106 VA.IRON COAL & COKE CO .....	34
10119 STERLING CASKET HARDWARE .....	127
10124 KEOKEE COMB SCH .....	173
10131 VISADOR CO .....	56
10133 COLUMBUS MCKINNON CORP. ....	222
10137 BURTON,J.I.HIGH SCHOOL .....	117
10147 CAROLINA TURKEYS OF VA .....	151
10159 VAUGHAN FURNITURE CO .....	108
10161 GALAX APPAREL CORP .....	125
10193 ROGERS GROUP,INC .....	51
10194 BRUNSWICK COMPOSITES .....	22
10200 JEWELL COAL & COKE CO .....	15
10206 DILLON, E & CO .....	42
10207 VA HOUSE FURN CORP .....	135
10209 AMERICAN SCREW .....	85
10211 MORRISON MOLDED FBR GLASS .....	121
10212 LEBANON QUALITY CLEANERS .....	188
10213 AUSTINVILLE LIME CO .....	105
10215 SALEM STONE CORPORATION .....	104

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10216 BLACK DIAMOND CO,THE	95	10430 MARTY MATERIALS CO	204
10219 BLACK WATCH COAL CO	218	10431 JOHNSTON MEMORIAL HOSPITA	16
10228 SAWYERS FURNITURE CO	65	10432 CUMBERLAND COLLIERIES INC	190
10230 POUNDING MILL QUARRY CORP	49	10441 HARMAN MINING CORP	149
10231 POUNDING MILL QUARRY CORP	23	10443 VAUGHAN FURN CO,THE	60
10233 CLINCHFIELD COAL CO	139	10448 COMPTON,LUTHER & SONS	111
10235 CLINCHFIELD COAL CO	155	10470 INDEPENDENCE HIGH SCH	112
10237 CLINCHFIELD COAL CO	178	10484 VIRGINIA WOODWORKING CO	73
10239 WASHINGTON COUNTY STONE	186	10492 GEORGE WYTHE HIGH SCH	55
10244 GENERAL SHALE PRODTS CORP	7	10494 FORT CHRISWELL HIGH SCH	159
10248 TAZEWELL HIGH SCHOOL	13	10496 RURAL RETREAT SCHOOL	11
10273 DIXON LUMBER CO INC	33	10502 HBA CAST PRODS,INC	171
10274 GREER,ELMO & SONS,INC	58	10509 LEA INDUSTRIES	223
10277 VA.MFG.CO.INC.	14	10525 BO PAR DOCK CO	210
10279 KY-VA STONE CO	110	10536 BLUEFIELD COLLEGE	69
10282 WOODWAY STONE CO	75	10538 WEBB FURNITURE ENTERPRISE	126
10284 MARLEY MOULDINGS,INC	52	10554 GRAYSON SUPPLY CO	70
10286 U S GYPSUM CO	168	10559 BARKER MICROFARADS	98
10291 JEWELL RIDGE MINING CORP	146	10563 MCCLURE CONCRETE,INC	74
10292 JEWELL RIDGE MINING CORP	172	10603 PARAMONT MINERALS CORP	2
10293 WESTMORELAND COAL CO	48	10623 GRUNDY SR HS	224
10294 DAMASCUS HOSIERY MILLS	20	10625 LEE FARMERS COOP	217
10299 DIXIE CEMENT CO,INC	219	10627 GRABEEL'S FEED MILL	169
10302 WEBB FURNITURE ENT/PLT.#4	156	10629 ARATEX UNIFORM RENTAL	82
10305 CARDINAL STONE CO	140	10635 NAUTILUS	129
10307 CLINCH VALLEY COLLEGE	199	10636 VA.INSULATED PDTS	116
10308 VAUGHAN-BASSET FURN CO	96	10637 ELECTROLUX CORP	101
10313 EMERSON ELECTRIC	187	10640 H & H STONE	21
10316 SERVICE MILL,INC	180	10645 JOHNSON'S GREENHOUSES	114
10318 LIMESTONE DUST CORP, THE	91	10647 SOUTHWEST VIRGINIA TRAINI	78
10326 NAUTILUS	113	10669 HURLEY HIGH SCHOOL	119
10330 MARLEY MOULDINGS,INC	77	10682 MARTY MATERIALS CO	57
10332 WEBB FURNITURE ENTERPRISE	142	10683 PERMAC INC	138
10338 HUNTER PAVING,INC	61	10684 WELLMORE COAL PREP #7	216
10339 BURLINGTON IND-LEE CARPET	205	10685 WESTMORELAND COAL CO	179
10341 FLAV-O-RICH, INC	161	10689 ISLAND CREEK COAL CO	43
10348 WELLMORE COAL CORP	192	10690 REEDY COAL CO,INC	215
10350 BEATRICE POCAHONTAS CO	3	10691 WISE DOCK COMPANY	32
10351 ISLAND CREEK COAL CO	198	10694 MOTIVATION COAL CO	46
10352 ISLAND CREEK COAL CO	118	10700 BRUNSWICK COMPOSITES	194
10353 ISLAND CREEK COAL CO VP#2	41	10704 ISLAND CREEK COAL CO	193
10354 ISLAND CREEK COAL CO VP#1	8	10706 SANDVIK ROCK TOOLS	102
10355 PARSONS & RIVERS,INC	203	10712 LIGHTNIN	5
10356 WESTINGHOUSE ELECTRIC COR	120	10714 HAROLD KEENE COAL CO	167
10368 MARION SENIOR HIGH SCH	124	10720 PENDLETON CONST CORP	31
10375 ROANOKE FASIONS,INC	181	10727 CHEYENNE PROCESSING CO	221
10379 LITTLE HENRY'S EXCAVATING	122	10731 MASCO IND	212
10385 WHITE EXCAVATING CO	89	10734 JEWELL RIDGE MINING CORP	100
10387 COLUMBUS MCKINNON CORP.	165	10761 VIRGINIA IRON COAL & COKE	28
10390 MEDUSA AGGREGATES CO	163	10766 SKYLINE ENT OF VA,INC	176
10391 BLAND CORRECTIONAL FARM	71	10767 WESTMORELAND COAL CO DERB	81
10394 F&M CONST CO	84	10769 MULLINS COAL CO INC VA	39
10395 POUNDING MILL QUARRY CORP	214	10770 WESTMORELAND COAL CO CRES	29
10396 WYTHE STONE CO	141	10771 WESTMORELAND COAL CO PRES	38
10400 WASHINGTON SQUARE CLINIC	88	10772 WESTMORELAND COAL CO RODA	62
10402 FRIES,TOWN OF	1	10777 WELLMORE COAL-DOCK #1	79
10410 POLYMER CORP, THE	107	10780 MOTIVATION COAL CO	134
10414 PEPSI COLA BOTTLING CO	123	10782 TACOMA COAL CORP	25
10423 SMYTH CO.COMM.HOSPITAL	158	10785 WYTHE STONE CO	19
10424 VA HOUSE FURN CORP	68	10791 PINE BRANCH MINING,INC	202
10429 LONGWOOD ELASTOMERS,INC	206	10804 CLINCHFIELD COAL CO	27



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10813 TEXASGULF,INC .....	200
10814 ASEA BROWN BOVERI POWER T .....	97
10818 JEWELL SMOKELESS COAL PRE .....	132
10823 JEWELL SMOKELESS COAL .....	80
10830 MERILLAT IND.,INC .....	87
10832 GRAHAM MIDDLE SCHOOL .....	144
10834 W-L CONST&PAVING .....	37
10837 WELLMORE COAL PREP #8 .....	170
10838 VULCAN MAT'LS.CO .....	12
10851 WESTMORELAND COAL CO .....	207
10852 TAZEWELL MIDDLE SCHOOL .....	160
10854 WHITAKER COAL CORP .....	40
10855 CLINCHFIELD COAL CO .....	76
10859 CLINCHFIELD COAL CO .....	185
10873 LEE READY MIX .....	47
10886 GALAX GLASS & MIRROR .....	150
10891 H & H STONE CO .....	182
10892 VALENITE,INC .....	63
10893 VA IRON COAL & COKE CO .....	35
10903 DILLON,E.& CO,PLT.#2 .....	177
10905 UNITED COAL/KNX CRK#3 .....	213
10906 RAPOCA ENERGY CO-NORTON D .....	201
10914 UNITED COAL/KNOX CRK/VA-B .....	17
10916 POWELL MTN COAL PREP .....	53
10917 AMERICAN COAL TRADING INC .....	152
10931 MCCLURE CONCRETE CO,INC .....	128
10939 SALTVILLE SILICA .....	72
10945 CONSOLIDATION COAL CO .....	197
10959 SIGMON COAL CO .....	196
10969 GREGORY COAL CORP .....	195
10971 BOSTIC,H C COAL CO .....	106
10972 BOSTIC,H C COAL CO .....	208
10973 VA IRON COAL & COKE CO .....	44
10979 EAST TENNESSEE NATURAL GA .....	175
10987 WEBB FURNITURE ENTERPRISE .....	109
10990 APAC-VIRGINIA,INC .....	166
10999 W-L CONST.& PAVING .....	26
11008 VAUGHAN FURNITURE .....	211
11013 WESTMORELAND COAL CO .....	147
11021 LA.PACIFIC CORP .....	6
11022 DILLON.E & COMPANY .....	94
11026 EAST RIVER METALS,INC .....	115
11027 D.W.L,INC .....	225
11030 UNITED STATE GYPSUM CO .....	64
11042 LYALLS STONE CO .....	148
11043 W-L CONSTRUCTION & PAVING .....	24
11046 E.TN.NAT.GAS CO .....	183
11050 MAYMEAD LIME CO .....	4
11058 FEDERAL PACIFIC TRANSFORM .....	67
11059 MORTON INTERNATIONAL,INC .....	92
11061 DOTSON WHEEL CORP .....	137
11062 TWIN CO.COMM.HOSP .....	66
11072 UTILIY TRAILER MFG CO .....	189
11074 APPALACHIAN PLASTICS, INC .....	54
11075 MERILLAT INDUSTRIES, INC. ....	10
11085 CONSOLIDATED GLASS & MIRR .....	145
11090 MOUNTAIN READY-MIX,INC .....	174
11095 CERAMIC TECHNOLOGY,INC .....	50
11097 ELECTRIC MOTOR REPAIR & S .....	164
11098 VIRGINIA-CAROLINA CONCRETE .....	191

11103 WOODTECH, INC .....	59
11105 KLOCKNER-PENTAPLAST, INC .....	143
11119 W-L CONSTRUCTION &PAVING, .....	18
11121 HILLS COAL CO .....	209
11125 THREE SEASONS, INC .....	45
11126 WOOD WORLD,INC. ....	154
11130 TRAY COAL PROCESSORS,INC .....	93

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TOTAL NUMBER OF SOURCES = 252

REG NO SOURCE .....	ORDER
Valley Cleaners .....	227
20001 DRAGON CORPORATION .....	165
20002 STRUCTURAL STEEL CO .....	212
20005 FRAZIER QUARRY,INC .....	53
20008 HOLLINS COLLEGE .....	47
20010 VA.MAID HOSIERY MILL INC .....	1
20016 KAWNEER AMAX CO .....	197
20017 RADFORD UNIVERSITY .....	75
20018 ELKTON LIMESTONE&PAVING .....	128
20019 DOUBLE ENVELOPE .....	83
20021 LONE JACK LIMESTONE .....	81
20022 CUPP BLACK-TOP,INC .....	78
20026 B&S CONTRACTING,INC .....	24
20027 B&S CONTRACTING,INC .....	34
20031 ADAMS CONSTRUCTION CO .....	237
20032 ADAMS CONST CO .....	118
20036 ADAMS CONSTRUCTION CO .....	175
20037 ADAMS CONSTRUCTION CO .....	236
20042 VALLEY BLOX,INC .....	7
20043 NAT'L FRUIT PRODTS CO .....	46
20057 ITT ELECTRON TUBE DIV .....	55
20058 DEJARNETTE ST SANATORIUM .....	12
20059 SUTERS CABINET SHOPS .....	10
20060 ROANOKE TIMES&WORLD-NEWS .....	126
20067 VICTOR TUBE CORPORATION .....	229
20068 PACKAGING COR.OF AMER .....	151
20077 MUNDET-HERMITITE,INC .....	206
20081 VA FOUNDRY CO, INC .....	211
20082 WAMPLER-LONGACRE,INC .....	235
20085 ELKTON LIMESTONE&PAVING .....	241
20087 ROCCO FEEDS,INC .....	113
20088 COMMUNITY HOSP.OF ROANOKE .....	38
20091 GROENDYK MFG.CORP .....	198
20111 ROANOKE DYEING & FINISHIN .....	50
20116 BARGER,C.W.& SON .....	157
20117 JAMES MADISON UNIVERSITY .....	185
20119 COVINGTON CITY/ASPHALT PL .....	234
20123 YOKOHAMA TIRE CORP .....	139
20124 VPI & STATE UNIVERSITY .....	143
20131 ROANOKE ELECTRIC STEEL CO .....	108
20135 ROWE FURNITURE CORP .....	142
20139 JEFFERSON MILLS .....	26
20144 VALLEY PROTEINS,INC .....	89
20150 TOM'S FOOD .....	111
20153 BUSH,DUNHAM,INC .....	35
20157 COLUMBIA GAS TRANS.CORP .....	129

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20176 MONTEVIDO HIGH SCH .....	17	20450 BLUE RIDGE STONE CORP .....	228
20180 ASHBY,TURNER HIGH SCH .....	13	20451 HARRIS FLOORING CO.VA .....	247
20181 BROADWAY HIGH SCH .....	99	20456 ROCKYDALE QUARRIES CORP .....	11
20184 VALLEYDALE PACKERS,INC .....	163	20457 ROCKYDALE QUARRIES CORP .....	98
20187 WAMPLER-LONGACRE CHICKEN, .....	105	20458 JAMES RVR LIMESTONE .....	252
20189 AMERICAN SAFETY RAZOR CO .....	160	20465 N&W RR CO .....	140
20203 BOND LUMBER&MILLWORK CORP .....	210	20466 N & W RAILWAY CO .....	29
20204 ANDREW LEWIS SEC.SCH .....	118	20468 N & W RAILWAY CO .....	52
20206 BELMONT QUARRY CO. ....	100	20469 AKZO COATINGS .....	207
20208 MUNDY,C.S.QUARRIES,INC .....	58	20470 PULASKI FURNITURE CORP .....	203
20209 VFP,INC .....	200	20471 LONE JACK LIMESTONE,INC .....	231
20212 SINGER FURNITURE .....	32	20474 MODERN MATERIALS .....	183
20213 HALMODE APPAREL .....	202	20476 BRIDGEWATER COLLEGE .....	133
20214 KING'S DAUGHTER'S HOSP .....	9	20477 VA HOSPITAL MED CTR .....	187
20218 ROANOKE CONCRETE PROD .....	158	20478 VIRGINIA MILITARY INSTITU .....	110
20222 MILLER CONTAINER CORP .....	40	20480 SHENANDOAH PRPTIES .....	179
20225 APG LIME CORPORATION .....	2	20482 ACCO STONE CO .....	90
20232 ROANOKE CEMENT COMPANY .....	122	20483 ROCKINGHAM MILLING CO .....	85
20235 CENTRAL CONCRETE SERV .....	166	20484 SALEM STONE CORP .....	5
20239 WELLS,W.T.CO .....	22	20500 AUBURN HIGH&MID.SCH .....	134
20269 BURLINGTON IND,INC .....	14	20503 CHRISTIANSBURG HI&ELEM SC .....	69
20271 BURLINGTON IND .....	195	20505 ROANOKE COLLEGE .....	167
20272 BURLINGTON IND,INC .....	112	20508 TRI-CITY CONCRETE PROD,IN .....	176
20273 PRECISION FABRICS GROUP .....	226	20510 HERCULES, INC .....	135
20299 BELLE HETH SCHOOL .....	248	20513 ROCKINGHAM MILLING CO .....	242
20302 OLD VIRGINIA BRICK CO .....	224	20514 WALKER MFG.CO .....	63
20304 HOECHST CELANESE CORP .....	180	20515 REYNOLDS METAL CO .....	27
20307 NARROWS ELEM.SCH .....	74	20516 REEVES BROTHERS,INC .....	169
20310 PEMBROKE ELEM.SCH .....	80	20517 DUPONT DE NEMOURS,E.I. ....	145
20314 FUEL OIL&EQUIP CO .....	56	20518 VIRGINIA METALCRAFTERS .....	246
20315 LIGHTWEIGHT BLOCK CO .....	3	20520 INGERSOLL RAND CO .....	141
20318 O-I BROCKWAY PLASTICS .....	209	20523 HOOKER FURNITURE CORP .....	174
20320 JAMES RIVER LIMESTONE CO .....	28	20524 MERCK&CO,INC .....	61
20321 HOOVER COLOR CORP .....	109	20526 BONDCOTE CORPORATION .....	156
20322 MAGNOX PULASKI INC .....	25	20529 GENERAL SHALE CORP .....	68
20323 WASHINGTON & LEE UNIV .....	93	20536 PULASKI HIGH SCH .....	66
20328 WESTVACO CORP .....	86	20544 KOPPERS IND.,INC .....	213
20329 WESTVACO CORP .....	51	20548 ETHAN ALLEN,INC .....	71
20330 MCHARG ELEM.SCH .....	106	20553 WAMPLER/LONGACRE,INC .....	205
20332 ROCCO FURTHER PROCESSING .....	221	20554 MAGNETITE,T.F.CORP .....	219
20334 WALKER M/C & FNDRY CORP .....	60	20560 WHITE FOUNDRY CO,INC .....	188
20337 WAYN-TEX,INC .....	130	20562 HIGHLAND HIGH SCHOOL .....	222
20338 HANCOCK,JOHN W.,JR .....	193	20563 HOLLY FARMS PUULTRY .....	97
20341 EASTERN RIDGE LIME CO,LP .....	4	20565 LUCK STONE CORP .....	147
20342 GEORGIA-BONDED FIBERS,INC .....	59	20569 JAMES RIVER LIMESTONE .....	33
20370 GLENVAR HIGH SCH .....	170	20572 GENICOM CORP .....	149
20381 LYNCHBURG FNDRY-RADFORD P .....	43	20573 CORNING GLASS WORKS .....	65
20391 ACADIA .....	101	20587 BURRELL MEMORIAL HOSP .....	164
20397 SHELL OIL CO .....	245	20588 PEARCE,DOUGLAS INC .....	31
20398 SO.STATES COOP,INC .....	131	20589 VIRGINIA BLOCK CO .....	153
20406 PAINTER SPACE PRINT .....	208	20590 CATAWBA HOSPITAL .....	62
20411 LOFTON CORP .....	115	20592 GENERAL ELECTRIC CO .....	161
20412 VA.DEPT.OF CORRECTIONS .....	249	20598 GREEN HILL INC .....	18
20413 CROMPTON CO, INC .....	136	20600 ROCKINGHAM MEM.HOSP .....	87
20420 FEDERAL-MOGUL CORP .....	82	20615 ROANOKE MEMORIAL HOSP .....	243
20424 COLLINS,KATE JR.HIGH SCH .....	48	20616 ROANOKE MEM.REHAB.CENTER .....	76
20431 HOLSTON RVR.QUARRY .....	121	20619 RADFORD COMM.HOSPITAL .....	196
20432 RADFORD LIMESTONE CORP .....	30	20621 SALEM READY MIX CONCRETE .....	171
20433 RADFORD LIMESTONE CORP .....	190	20622 BATH CO COMMUNITY HOSP .....	144
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50083 PHILIP MORRIS USA .....	214	50292 BRENCO INC .....	93
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50086 SADLER BROS OIL CO .....	106	50295 EVANS LUMBER COMPANY .....	188
50088 SOUTHAMPTON TEXTILE CO .....	85	50298 VIRGINIA STATE UNIVERSITY .....	2
50090 VIRGINIA DYEING CORP .....	231	50301 RICHMOND TERMIAL RAILWAY .....	177
50093 C E DUNN & SONS .....	40	50302 R,F,&P RR CO .....	173
50094 BELDING HAUSMAN RABRICS I .....	3	50304 REYNOLDS METALS CO .....	136
50096 HASKELL CHEM. CO, INC .....	100	50305 MARTIN MARIETTA AGGREGATE .....	265
50098 RICHMOND GOODWILL IND .....	232	50309 COLONIAL HGT'S JR.HI.SCH .....	46
50099 REYNOLDS METAL-PLT #44 .....	31	50314 CONSOLIDATED CIGAR CORP .....	233
50101 GENERAL CHEMICAL CORP .....	119	50315 PATRICK HENRY HIGH SCH .....	37
50102 RICHMOND COCO-COLA CO .....	142	50316 LEE DAVIS HIGH SCH .....	75
50118 VCU-WEST ACADEMIC CAMPUS .....	260	50331 VULCAN MATERIALS CO .....	160
50121 CONOCO,INC .....	102	50334 CITGO PETROLEUM CORP .....	25
50126 VA COMMONWEALTH UNIV/MCV .....	167	50336 VIRGINIA POWER .....	244
50127 DEFENSE GEN.SUPPLY CTR .....	257	50341 JAMES RIVER BRICK CO .....	92
50132 UNION ENVELOPE .....	11	50344 WESTVACO .....	196
50134 US TOBACCO CO .....	176	50349 BAKER EQUIP ENGR CO .....	180
50138 MILLHISER INC .....	63	50353 PURINA MILLS,INC .....	169
50144 PARKER OIL CO .....	221	50355 MANCHESTER BOARD&PAPER CO .....	181
50145 CHARLES ZOPPA CO .....	243	50356 SONOCO PRODUCTS CO .....	130
50159 TITMUS OPTICAL CO.INC .....	216	50358 WM BYRD PRESS,INC .....	17
50160 REYNOLDS METAL CO .....	32	50360 WEST SAND & GRAVEL .....	7
50164 CHESTER INT.SCH .....	47	50363 AQUALON .....	108
50167 MATOACA HIGH SCH .....	141	50369 KOPPERS CO .....	107
50169 MASONITE CORP .....	96	50370 STONE CONTAINER CORP .....	56
50170 Richmond Plastics .....	206	50375 HOERNER WALDOLF CORP .....	262
50179 SEWARD LUGGAGE DIV .....	205	50376 EXXON CO,USA .....	116
50195 AMERICAN TOBACCO CO,THE .....	208	50387 TARMAC MID-ATLANTIC INC .....	114
50199 INTERBAKE FOOD CO INC .....	123	50391 SPURLOCK COMPANY .....	139
50205 FRIEND SAND & GRAVEL CO .....	235	50393 HYMAN VIENER & SONS .....	253
50209 UNIVERSITY OF RICHMOND .....	71	50397 E I DUPONT DE NEMOURS & C .....	183
50210 T FRANK FLIPPO & SONS .....	153	50399 TIDEWATER QUARRIES INC. ....	124
50216 TARMAC-LONESTAR .....	10	50400 TIDEWATER QUARRIES INC. ....	157
50217 FELDSPAR CORPORATION .....	186	50406 GREAT A&P TEA CO.INC .....	81
50223 TARMAC MID-ATLANTIC,INC .....	182	50412 ST.MARY'S HOSPITAL .....	23
50224 FERGUSSON, J W & SONS .....	228	50417 CHILDREN'S HOSPITAL .....	9
50228 TARMAC MID-ATLANTIC,INC .....	122	50418 ICI AMERICAS,INC .....	132
50230 TARMAC MID-ATLANTIC, INC .....	246	50426 AMERICAN ALCHEMY CO .....	215
50232 ALLIED-SIGNAL,INC. ....	198	50428 JAMES RIVER CORP .....	61
50233 ALLIED SIGNAL CORP .....	144	50429 LUCK STONE CORP .....	161
50245 RANDOLPH-MACON COLLEGE .....	256	50431 LUCK STONE CORP .....	218
50249 REYNOLDS METALS CO .....	174	50439 RICHMOND TECH CENTER .....	202
50250 FIRESTONE FBRS/TEXTILES .....	190	50450 MOSBY MIDDLE SCH .....	14
50252 REYNOLDS METAL CO .....	84	50454 MARSHALL,JOHN,HIGH SCH .....	68
50253 GEORGIA-PACIFIC CORP .....	82	50456 KENNEDY,J.F.HIGH SCH .....	225
50257 RECO INDUSTRIES .....	49	50457 JEFFERSON,THOMAS HIGH SCH .....	76
50257 RECO INDUSTRIES .....	112	50468 CHIMBORAZO ELEM.SCH .....	126
50258 EXXON USA .....	237	50471 ELKHARDT MID.SCH .....	185
50260 REYNOLDS METAL CO .....	147	50480 BLACKWELL ELEM.SCH .....	213
50262 SHOW CASE WOODWORKING .....	158	50481 ARMSTRONG HIGH SCH .....	4
50264 EMPORIA FOUNDRY INC .....	187	50497 HUGUENOT HIGH SCH .....	131
50266 VULCAN MATERIALS CO .....	170	50506 WALKER,MAGGIE HIGH SCH .....	12
50270 CUSTOM PAPERS-RICHMOND .....	209	50507 RICHMOND PUB SCH WHSE .....	241
50271 LOUIS DREYFUS ENERGY .....	57	50513 WYTHE,GEO.HIGH SCH .....	110
50272 SOUTHERN STATES COOP .....	88	50518 INLAND CONTAINER CORP .....	44
50278 AMOCO OIL CO .....	194	50528 CARPENTER, E R CO .....	140
50282 SPENCER BROS.,INC. ....	26	50533 KOCH FUELS,INC .....	229
50283 GEORGIA-PACIFIC CORP .....	29	50534 REYNOLDS METALS CO .....	251

50535 LAYFIELD LUMBER CO .....	201	50750 HENRICO COUNTY GOV.CNTR .....	151
50536 BENJAMIN MOORE & CO .....	135	50752 SHOOSMITH BROTHERS,INC .....	195
50540 WESTBROOK PSYC.HOSP. ....	212	50756 CHIPPENHAM MED.CTR .....	239
50546 AMF INC .....	43	50761 VA DEPT HYWAYS .....	125
50547 VA CORRECTIONAL CENTER FO .....	230	50765 F & M PROP,INC .....	60
50552 UPACO ADHESIVES INC .....	45	50766 HON COMPANY .....	109
50553 KENSINGTON GARDENS .....	248	50776 UNIO THEOLOGICAL SEMINARY .....	53
50554 E I DU PONT DE NEMOURS & .....	137	50788 SOUTHERN STATES COOP INC .....	148
50561 THALHIMER BROS INC .....	18	50790 GILMOUR COURT APTS .....	250
50562 THALHIMER BROS INC .....	220	50791 VIRGINIA HOSP LAUNDRY INC .....	150
50564 U S ARMY FORT LEE .....	77	50792 COLLEGIATE SCHOOLS,THE .....	259
50565 SHORT,B.P.& SON PAVING .....	8	50793 HENDERSON,THOMAS H. ....	70
50568 ABC FOUNDRY .....	94	50827 14 ST.TOWER OFFICE BLDG. ....	163
50575 REYNOLDS METALS CO .....	189	50831 ALLIED SIGNAL,INC .....	62
50579 PRESSION&WARTHAM INC .....	184	50832 TARMAC MID-ATLANTIC,INC .....	52
50583 COWLING BROTHERS SUPPLY C .....	80	50833 ROSLYN CONVERTERS,INC .....	261
50584 HALLIGAN,P.O. ....	42	50836 IMTT-RICHMOND .....	191
50589 STONE CONTAINER CORP. ....	211	50838 I R INTERNATIONAL,INC .....	50
50590 FEDERAL BLDG .....	203	50840 BEAR ISLAND PAPER CO .....	222
50591 U S COURTHOUSE .....	242	50846 SO.GRAVURE,INC .....	133
50592 MILLER & RHODES .....	51	50850 VIRGINIA MUSEUM .....	164
50594 MILLER & RHOADS .....	249	50856 B.I.CHEMICALS,INC .....	240
50595 SPENCER BROS,INC .....	95	50862 BLAKEMORE CONST .....	48
50597 BERKSHIRE APTS .....	19	50865 ARRARAT ROCK PROD CO .....	5
50600 DEPT OF CORRECTIONS .....	162	50872 RICHMOND METROPOLITAN HOS .....	91
50606 JAME RIVER CORR CTR .....	226	50880 QUEBECOR PRINTING RICHMON .....	13
50610 RICHMOND COLISEUM .....	58	50889 JOHNSTON-WILLIS HOSP .....	224
50614 BLANDFORD ELEM.SCH .....	33	50891 Goldschmidt Chemical Corp .....	236
50627 MONROE PRESTWOULD CORP .....	127	50897 BRAKE SUPPLY .....	129
50632 CENTRAL NAT'L BANK .....	27	50900 ROSS ASSOC .....	6
50633 CITY SAFETY BLDG .....	238	50906 SUPER RADIATOR .....	171
50635 CITY HALL .....	73	50909 PRIMARY CORP .....	111
50637 CITY LIBRARY .....	193	50921 VIRGINIA SOLID FUELS INC .....	36
50642 FAIRFIELD MID.SCH .....	154	50923 RICHMOND BARREL&BOX CO .....	79
50664 RIVER TOWER ASSOCIATES .....	145	50925 WESTVACO CORPORATION .....	24
50667 SEABOARD COAST LINE RR .....	217	50934 RASCHIG CORP .....	165
50668 7TH&FRANKLIN LIMITED PART .....	90	50941 GEORGIA PACIFIC CORP .....	247
50674 TUCKER,J.R,HIGH SCH .....	16	50943 TARMAC MID-ATLANTIC,INC .....	86
50675 HOTEL JEFFERSON .....	267	50946 LUCK STONE CORP.-POWHATAN .....	168
50679 RANDOLPH.VA.SPEC.ED.SCH .....	156	50949 GRAVURE PACKAGING,INC. ....	255
50683 HERMITAGE MID.SCH .....	199	50950 JAMES RIVER COGEN.CO .....	1
50684 HENRICO HIGH SCH .....	72	50967 HOPEWELL COGENERATION LTD .....	152
50685 BROOKLAND MID.SCH .....	20	50969 HENRICO DOCTORS HOSPITAL .....	67
50691 VIRINA HIGH SCHOOL .....	263	50974 GREENSVILLE MEMORIAL HOSP .....	113
50692 HIGHLAND SPRINGS HIGH SCH .....	207	50979 ENERGY RESOURCES OF HENRI .....	166
50694 TUCKAHOE MID SCH .....	78	50984 MARUCHAN VIRGINIA,INC .....	35
50695 FREEMAN HIGH SCH .....	99	50988 RICHMOND POWER ENTERPRISE .....	118
50703 NABISCO,INC .....	54	50997 VIRGINIA ELECTRIC PWR .....	159
50704 CROWN CENTRAL PETROLEUM .....	104	51009 COLUMBIA GAS TRANS CORP .....	266
50706 ALLEN INDUSTRIES .....	175	51014 GESMAR CORPORATION .....	146
50707 RICHMOND GRAVURE INC .....	69	51018 DOSWELL LTD. PARTNERSHIP .....	115
50711 LITTLE OIL CO,THE .....	210	51019 LG&E-WESTMORELAND HOPEWEL .....	39
50716 ADAMS OIL COMPANY .....	21	51021 COGENTRIX OF DINWIDDIE .....	89
50720 VULCAN MATERIALS CO .....	66	51028 PRE CON,INC .....	172
50721 APAC-VIRGINIA INC .....	105	51033 COGENTRIX OF RICHMOND, IN .....	245
50722 PHILIP MORRIS,PARK 500 .....	34	51034 PRIMARY CORPORATION .....	101
50724 RICHARD BLAND COLLEGE .....	149	51052 THE PINE FACTORY LTD. ....	155
50727 APAC-VIRGINIA INC .....	219	51066 PERFORMER YACHTS,INC .....	120
50728 PECK IRON & METAL .....	197	51095 CSX TRANSPORTATION, INC .....	83
50730 AT&T .....	38		
50735 HOPEWELL,HRWTF .....	28		

# General Notices/Errata

VA DEQ - CHESAPEAKE REGION \* OPERATING  
PERMIT APPLICABILITY LIST

TOTAL NUMBER OF SOURCES = 201

REG NO SOURCE ..... ORDER

Wayside Cleaners .....	69
40217 NASA WALLOPS FLT.FAC .....	52
40304 DELMARVA POWER & LIGHT CO .....	119
40348 TAYLOR, J W PACKING CO .....	20
40483 PERDUE FARMS,INC .....	99
40574 KMC FOODS,INC .....	37
40575 NORTHAMPTON-ACCOMACK MEM. ....	8
40602 DELMARVA PWR &LIGHT CO .....	73
40613 JONES,J.F.LUMBER CO .....	188
40624 BAGWELL OIL COMPANY, INC .....	60
40633 ARCADIA H.S .....	19
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40722 DYNACHEM TECHNOLOGIES,INC .....	97
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60049 BEALE,H.P.& SONS .....	54
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20257 WRANGLER,NORTH AREA	127	21139 Columbia Gas Transmission	139
20263 PLUMLY,P.W.LUMBER CORP	182	21158 Green Bay Packaging, Inc	75
20325 PERRY,STUART M,INC	287	21170 Seaward International	61
20326 PERRY,STUART M,INC	8	70001 LOUDOUN MEMORIAL HOSPITAL	180
20333 O'SULLIVAN CORP	198	70003 MWAA/DULLES INTERNATIONAL	150
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21068 ALLIED WOOD PRODUCTS,INC.	33	70219 PLAZA ASSOC	112
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21095 AMOCO FOAM PRODUCTS CO	7	70224 CITGO PETROLEUM CORP	113
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VA DEQ - LYNCHBURG REGION \* OPERATING PERMIT  
APPLICABILITY LIST

TOTAL NUMBER OF SOURCES = 270

REG NO SOURCE ..... ORDER

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30274 CRADDOCK-TERRY,INC .....	154	30419 ERICSSON GE MOBILE COMM .....	120
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30288 BASSETT FURNITURE CO .....	137	30459 BRUNSWICK BOX CO,INC .....	122
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## VIRGINIA CODE COMMISSION

### NOTICE TO STATE AGENCIES

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: 371-0169.

### FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in The Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

#### FORMS:

- NOTICE of INTENDED REGULATORY ACTION - RR01
- NOTICE of COMMENT PERIOD - RR02
- 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 at the above address.

### ERRATA

#### DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulations: VR 615-45-5. Investigation of Child Abuse and Neglect in Out of Family Complaints.

Publication: 10:7 V.A.R. 1861-1867 December 17, 1993.

#### Correction to Final Regulation:

Page 1866, top of column 2, insert "Written notification of the findings shall be submitted to the facility administrator and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged abuser/neglector is notified."

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# CALENDAR OF EVENTS

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## 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

#### BOARD FOR ACCOUNTANCY

##### Continuing Professional Education Committee

† **March 25, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to review the Continuing Professional Education Program and associated regulations.

**Contact:** Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

##### Regulatory Review Committee

† **April 5, 1994 - 9:30 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to:

1. Review fee adjustment options
2. Modify CPE requirements
3. Review reporting requirements for criminal convictions and findings in civil proceedings
4. Change § 5.3 of the regulations by changing “or” to “and”
5. Consider new regulation-license holder to certificate status conversion to license holder

5. Review agreement for endorsement with Canadian provinces
6. Review registration of all CPA businesses
7. Review licensure of out-of-state CPAs doing business in the Commonwealth
8. Review other amendments
9. Consider change in education hours

**Contact:** Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

### VIRGINIA AGRICULTURAL COUNCIL

**March 28, 1994 - 8:30 a.m.** – Open Meeting  
**March 29, 1994 - 8:30 a.m.** – Open Meeting  
Sheraton Inn, 2350 Seminole Trail, Charlottesville, Virginia.  
♿ (Interpreter for the deaf provided upon request)

A meeting to hear and act upon project proposals for financial assistance through the Virginia Agricultural Council. The council will entertain public comment a the close of all other business for a period not to exceed 30 minutes. Any person who needs accommodation in order to participate during the meeting should contact the Assistant Secretary to the Virginia Agricultural Council at least 10 days before the meeting date so that suitable arrangements can be made for appropriate accommodation.

**Contact:** Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank Street, Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

**February 22, 1994 - 1 p.m.** – Open Meeting  
**February 23, 1994 - 9 a.m.** – Open Meeting  
Washington Building, Room 204, 1100 Bank Street,  
Richmond, Virginia. ♿

A regular meeting to discuss legislation, regulations and fiscal matters and to receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments for a period not to exceed 30 minutes.

Any person who needs any accommodation in order to

participate at the meeting should contact Roy E. Seward, Secretary of the Board, at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Building, Room 211, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

## Virginia Dark-Fired Tobacco Board

**February 25, 1994 - 10 a.m. – Open Meeting**  
Sheldon's Restaurant, Keysville, Virginia. ☒

The board will meet to consider funding proposals for research, promotion and education projects pertaining to Virginia dark-fired tobacco and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

**Contact:** D. Stanley Duffer, Secretary, P. O. Box 129, Halifax, VA 24558, telephone (804) 572-4568.

## Virginia Marine Products Board

**March 8, 1994 - 5:30 p.m. – Open Meeting**  
Kiln Creek Golf and Country Club, 1003 Brick Kiln Boulevard, Newport News, Virginia. ☒

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on: finance, marketing, past and future program planning, publicity/public relation, and old/new business.

Any person who needs any accommodation in order to participate at the meeting should contact Shirley Estes at least 10 days before the meeting date so that suitable arrangements can be made. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

## Pesticide Control Board

† **March 10, 1994 - 10 a.m. – Open Meeting**  
Department of Agriculture and Consumer Services, Washington Building, Board Room No. 204, 1100 Bank Street, Richmond, Virginia.

The board will review public comment received on the board's proposed Public Participation Guidelines. The board may adopt the final regulations. The public comment period ended on January 31, 1994. No public comment will be accepted at this meeting; however, the meeting is open to the public. Any person who

needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23209, telephone (804) 371-6558.

## STATE AIR POLLUTION CONTROL BOARD

**February 25, 1994 – Written comments may be submitted until close of business on this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ – Federal Operating Permits for Stationary Sources)**. The proposed regulation establishes an operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Comparison with federal requirements: With respect to the duration of a permit, Title V of the Act provides for several time periods. The basic provisions of the Act provide that permits for most sources are to be issued for a term not less than three years nor more than five years. Exceptions to the basic provisions are made for incinerators subject to federal regulations and sources of acid rain producing pollutants (mostly large electrical utilities). For the acid rain permits, the term must be for five years. For the incinerators, the permit term must not exceed 12 years; however, the permits must be reviewed every five years. The proposed regulation sets the permit term at five years for all sources. This was done to provide consistency and simplicity to the program, as well as equity of requirements for all source types.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each



# Calendar of Events

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business day until the close of the public comment period: Department of Environmental Quality Abingdon Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Contact:** Nancy Saylor, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4421.

\* \* \* \* \*

**February 25, 1994** – Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision KK – Permit Program Fees for Stationary Sources)**. The regulation requires owners of stationary sources of air pollution (with some exceptions) to pay annual emission fees in order to generate revenue sufficient to cover all reasonable direct and indirect costs of the permit program and prescribes the timetable and method for assessment and collection.

Comparison with federal requirements: The regulation exceeds the federal mandates for stringency in two

provisions. The first provision is in the inclusion of small sources in the list of sources subject to fees. By issuing state operating permits to small sources, the department can help them escape the burden of the Title V permit requirements by limiting their potential to emit. The fees paid by the small sources will defray the cost of issuing these permits. The second provision is in the collection of fees prior to EPA's approval of the program. The operating permit regulation provides for applications to be submitted to the department between September 15 and November 15, 1994. In order to begin processing these applications upon EPA's approval, the department must hire and train additional staff to be in place by that time. The early collection of fees will allow for the timely hiring of the additional staff.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period. Department of Environmental Quality, Abingdon Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box

## Calendar of Events

10009, Richmond, VA 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

**Contact:** Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

### ALCOHOLIC BEVERAGE CONTROL BOARD

**February 23, 1994 - 9:30 a.m. – Open Meeting**

**March 7, 1994 - 9:30 a.m. – Open Meeting**

**March 21, 1994 - 9:30 a.m. – Open Meeting**

**April 4, 1994 - 9:30 a.m. – Open Meeting**

**April 18, 1994 - 9:30 a.m. – Open Meeting**

Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. ☒

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

**Contact:** Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, VA 23261, telephone (804) 367-0616.

### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

**February 23, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to **repeal** regulations entitled: **VR 130-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 130-01-01:1. Public Participation Guidelines**. The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure, certification and registration of architects, professional engineers, land surveyors, landscape architects and interior designers in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-404 of the Code of Virginia.

**Contact:** Willie Fobbs, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

† **March 10, 1994 - 9 a.m. – Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from December 2, 1993, meeting; (ii) review correspondence; and (iii) review enforcement files.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

### Board for Architects

**February 24, 1994 - 9 a.m. – Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from November 18, 1993, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

### Board for Landscape Architects

† **March 3, 1994 - 9 a.m. – Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from November 30, 1993, meeting; (ii) review applications; and (iii) review correspondence.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

### Board for Land Surveyors

† **March 9, 1994 - 9 a.m. – Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from January 18, 1994, meeting; (ii) review applications; (iii) review correspondence; and (iv) review enforcement files.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

### Board for Professional Engineers

† **March 3, 1994 - 1 p.m. – Open Meeting**

# Calendar of Events

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Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from December 1, 1993, meeting; (ii) review applications; (iii) review correspondence; and (iv) review enforcement files.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

## ASAP POLICY BOARD - VALLEY

† **March 14, 1994 - 8:30 a.m.** – Open Meeting  
Augusta County School Board Office, Fishersville, Virginia.

☒

A regular meeting of the local policy board which conducts business pertaining to the following:

1. Court referrals
2. Financial report
3. Director's report
4. Statistical reports

**Contact:** Rhoda G. York, Executive Director, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (703) 943-4405.

## VIRGINIA BOARD FOR ASBESTOS LICENSING

† **March 3, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, Conference Room 3, 3600 West Broad Street, Richmond, Virginia. ☒

An organizational meeting and board meeting.

**Contact:** David E. Dick, Assistant Director, Board for Asbestos Licensing, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

## AUCTIONEERS BOARD

† **March 15, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regular board business and other matters which may require board action.

**Contact:** Geralde W. Morgan, Senior Administrator, Department for Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**February 25, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to adopt regulations entitled: **VR 115-01-3. Regulations Governing Public Participation Guidelines.** The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2602 of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

† **March 7, 1994 - 9:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 3, Richmond, Virginia. ☒

A regularly scheduled board meeting.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☒

\* \* \* \* \*

**March 28, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed amendments is to delete expired requirements and incorporate legislation effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

## BOARD FOR BRANCH PILOTS

**February 23, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to **repeal** regulations entitled: **VR 535-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 535-01-00:1. Public Participation Guidelines**. The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of branch pilots in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-902 of the Code of Virginia.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

\* \* \* \* \*

**March 24, 1994 - 9:30 a.m. – Public Hearing**  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

**March 24, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to **amend** regulations entitled: **VR 535-01-01. Board for Branch Pilots Rules and Regulations**. The purpose of the proposed amendments is to adjust application and renewal fees and establish Assisted Radar Plotting Aids (ARPA) training for full and limited licensed branch pilots in Virginia.

Statutory Authority: §§ 54.1-902 and 54.1-113 of the Code of Virginia.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**March 3, 1994 - 10 a.m. – Open Meeting**  
Science Museum of Virginia Conference Room, 2500 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the

meeting. A tentative agenda will be available by February 24.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 East Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## Central Area Review Committee

**March 17, 1994 - 10 a.m. – Open Meeting**  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

## Northern Area Review Committee

**March 17, 1994 - 2 p.m. – Open Meeting**  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

## Southern Area Review Committee

† **March 23, 1994 - 1 p.m. – Open Meeting**  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are

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welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

† **February 28, 1994 - 10 a.m.** – Public Hearing  
Recreation Department and Community Activity Center, 250 South 4th Street, Wytheville, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **March 3, 1994 - 10 a.m.** – Public Hearing  
City Hall, City Council Chambers, 810 Union Street, 11th Floor, Norfolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **March 7, 1994 - 10 a.m.** – Public Hearing  
Fairfax City Hall, 10455 Armstrong Street, Room 305, Fairfax, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **March 10, 1994 - 2 p.m.** – Public Hearing  
Richmond Marriott Hotel, 500 East Broad Street, Salon 5, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to solicit comment on planning for the next 3-Year Child Care and Development Block Grant Plan. Public comments will be received.

**Contact:** Mary Ellen Verdu, Director, Virginia Council on Child Day Care and Early Childhood Programs, Washington Building, 1100 Bank Street, Suite 1116, Richmond, VA 23219, telephone (804) 371-8603.

## INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

### Coordinating Committee

† **March 18, 1994 - 8:30 a.m.** – Open Meeting  
Office of Coordinator, Interdepartmental Regulation, 730 East Broad Street, Richmond, Virginia. ☒

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

**Contact:** John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, 730 E. Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1960.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Falls of the James Scenic River Advisory Board

**March 18, 1994 - Noon** – Open Meeting  
City Hall, Planning Commission Conference Room, Fifth Floor, Richmond, Virginia.

A review of river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

### BOARD FOR CONTRACTORS

**March 14, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to **repeal** regulations entitled: **VR 220-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 220-01-00:01. Public Participation Guidelines**. The proposed guidelines will set procedures for the Board for Contractors to follow to inform the public and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-1102 of the Code of Virginia.

**Contact:** Florence R. Brassier, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785.

### Recovery Fund Committee

**March 23, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ☒

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

**Contact:** Holly Erickson, Assistant Administrator, Recovery Fund, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

### BOARD FOR COSMETOLOGY

**March 7, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

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A general business meeting.

\* \* \* \* \*

**Contact:** Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

**March 26, 1994** – Written comments may be submitted until this date.

## CRIMINAL JUSTICE SERVICES BOARD

**April 6, 1994 - 9 a.m.** – Public Hearing  
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to adopt regulations entitled: **VR 255-01-2. Public Participation Guidelines.** The proposed regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

**March 1, 1994** – Written comments may be submitted until this date.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-03-2. Regulations Relating to Private Security Services.** This regulation sets forth and establishes the private security services regulatory program for the Commonwealth of Virginia.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

Statutory Authority: § 9-182 of the Code of Virginia.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

Written comments may be submitted until March 1, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, P. O. Box 10110, Richmond, VA 23240-9998.

**February 24, 1994 - 8:30 a.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**Contact:** Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

## BOARD OF DENTISTRY

**March 26, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **VR 255-01-1. Virginia Board of Dentistry Regulations.** The proposed amendments set forth requirements for continuing education for dentists and dental hygienists, allow licensure by endorsement for dentists, allow specialists to advertise in a board-approved manner, provide for an administrative procedure for reinstatement of license, establish administrative fees for licensure by credentials and licensure reinstatement to cover administrative costs, and amend regulations for clarity and simplicity.

**Contact:** Dr. Ernest W. Martin, Assistant Superintendent, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

## STATE EDUCATION ASSISTANCE AUTHORITY

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

**February 25, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: **VR 275-00-1. Public Participation Guidelines.** The amendments address methods for the identification and notification of interested parties.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

Statutory Authority: §§ 9-6.14:7.1 and 23-38.33:1(C)(7) of the Code of Virginia.

Written comments may be submitted through February 25, 1994, to Marvin Ragland, Virginia Student Assistance Authorities, 411 E. Franklin Street, Richmond, VA 23219.

**Contact:** Sherry A. Scott, Policy Analyst, State Education Assistance Authority, 411 E. Franklin Street, Richmond, VA

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23219, telephone (804) 775-4071 or toll-free 1-800-792-5626.

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD

† April 7, 1994 - 5:30 p.m. - Open Meeting

† May 5, 1994 - 5:30 p.m. - Open Meeting

Chesterfield County Administration Building, 10001  
Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund  
Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Coordinator, Emergency  
Services, Chesterfield Fire Department, P. O. Box 40,  
Chesterfield, VA 23832, telephone (804) 748-1236.

## LOCAL EMERGENCY PLANNING COMMITTEE - CITIES OF HAMPTON, NEWPORT NEWS, WILLIAMSBURG AND POQUOSON AND THE COUNTY OF YORK

† March 7, 1994 - 9:30 a.m. - Public Hearing

Hampton Central Library, 4207 Victoria Boulevard, Room  
A, Hampton, Virginia. ☒

A public hearing on the adoption of an Emergency  
Response Plan. The plan was prepared to satisfy the  
requirements of § 303(c) of Title III of the Superfund  
Amendments and Reauthorization Act of 1986 and  
describes the methods and procedures to be followed  
in the event of a release or spill of extremely  
hazardous substances.

Copies of the plan are available for review in the  
offices of the Hampton Roads Planning District  
Commission, Harbour Centre, Suite 502, 2 Eaton Street,  
Hampton, VA 23669, during normal business hours.

Contact: Henry M. Cochran, Deputy Executive Director,  
Hampton Roads Planning District Commission, 2 Eaton  
Street, Suite 502, Hampton, VA 23669, telephone (804)  
728-2067.

## LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

April 20, 1994 - 7 p.m. - Open Meeting

Henrico County Public Safety Building, Division of Fire,  
3rd Floor, Parham and Hungary Spring Roads, Richmond,  
Virginia. ☒

A meeting to satisfy requirements of the Superfund  
Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services  
Coordinator, Division of Fire, P. O. Box 27032, Richmond,  
VA 23273, telephone (804) 672-4906.

## LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

February 23, 1994 - 9 a.m. - Open Meeting  
Salem Civic Center, Room C, 1001 Roanoke Boulevard,  
Salem, Virginia. ☒

A meeting to (i) receive public comment; (ii) receive  
report from community coordinators; and (iii) receive  
report from standing committees.

Contact: Chief Dan Hall, Fire Chief/Coordinator of  
Emergency Services, 105 S. Market Street, Salem, VA  
24153, telephone (703) 375-3080.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

† March 9, 1994 - 6:30 p.m. - Public Hearing  
Henry County Administration Building, Board Room, Kings  
Mountain Road, Martinsville, Virginia. ☒

A public hearing to consider an application from  
Dutailier Virginia, Inc. to modify a wood furniture  
finishing facility at 761 Stultz Road in Henry County,  
Virginia. An informational briefing will be conducted  
before the hearing, starting at 6:30 p.m. The public  
hearing will begin at 7 p.m.

Contact: Larry Leonard, Environmental Engineer Senior,  
Department of Environmental Quality, Lynchburg Adj  
Office, 7701-03 Timberlake Road, Lynchburg, VA 24502,  
telephone (804) 582-5120.

## Technical Advisory Committee for the Development of Regulations

† March 15, 1994 - 10 a.m. - Open Meeting  
Department of Environmental Quality, Training Room,  
Innsbrook Corporate Center, 4900 Cox Road, Glen Allen,  
Virginia.

A continuation meeting on the Management of Coal  
Combustion By-Products. Other tentatively scheduled  
meetings are March 29, April 5 and April 19, 1994.

Contact should be made prior to the meeting date so  
as to be informed of any changes in time of meeting,  
location or meeting cancellation.  
The meeting scheduled for February 15, 1994, was  
cancelled.

Contact: Mike Murphy, Department of Environmental  
Quality, P. O. Box 10009, Richmond, VA 23240, telephone  
(804) 762-4003.

## Waste Tire End User Reimbursement Advisory Committee

March 8, 1994 - 10 a.m. - Open Meeting  
Monroe Building, Conference Room C, 101 North 14th

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Street, Richmond, Virginia. ☒

A meeting to assist DEQ in developing regulations for reimbursing users of waste tire material, pursuant to §§ 10.1-1422.2 and 10.1-1422.3 of the Code of Virginia.

**Contact:** Allan Lassiter, Waste Tire Program Manager, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 762-4215.

## Work Group on Detection/Quantitation Levels

† **May 4, 1994 - 1:30 p.m.** – Open Meeting  
Department of Environmental Quality, Lab Training Room, Room 111, 4949 Cox Road, Glen Allen, Virginia.

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of the Department of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for May 18, June 1, June 15, June 29, July 13, July 27, August 10 and August 24. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

**Contact:** Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

## VIRGINIA MUSEUM OF FINE ARTS

### Board of Trustees

† **March 17, 1994 - Noon** – Open Meeting  
Virginia Museum of Fine Arts Auditorium, 2800 Grove Avenue, Richmond, Virginia. ☒

A bi-monthly meeting of the full board to receive reports from the president and committees and from the director and staff, and to consider art acquisitions and budget review.

**Contact:** Emily C. Robertson, Secretary of the Museum, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone (804) 367-0553.

### Collections Committee

† **March 15, 1994 - 2 p.m.** – Open Meeting  
Virginia Museum of Fine Arts (Location to be determined)  
☒

A meeting to consider gifts, purchases, and loans of art works.

**Contact:** Emily C. Robertson, Secretary of the Museum, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone

(804) 367-0553.

### Finance Committee

† **March 17, 1994 - 11 a.m.** – Open Meeting  
Virginia Museum of Fine Arts, Conference Room, 2800 Grove Avenue, Richmond, Virginia. ☒

A regular meeting to review budgets and food service operations.

**Contact:** Emily C. Robertson, Secretary of the Museum, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone (804) 367-0553.

### Nominating Committee

† **March 15, 1994 - Noon** – Open Meeting  
Virginia Museum of Fine Arts, Conference Room, 2800 Grove Avenue, Richmond, Virginia. ☒

A meeting to consider candidates for the 1994-1995 Board of Trustees; personnel matters will be discussed in closed session.

**Contact:** Emily C. Robertson, Secretary of the Museum, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone (804) 367-0553.

## DEPARTMENT OF FORESTRY

**March 14, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Virginia that the Department of Forestry intends to **repeal** regulations entitled: **VR 312-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 312-01-1:1. Public Participation Guidelines**. Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize Public Participation Guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such regulations not only shall be utilized prior to formation and drafting of the proposed regulation, but also shall be utilized during the formation, promulgation and final adoption of all regulations. The purpose of the proposed action is to adopt Public Participation Guidelines which ensure that interested persons are able to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

**Contact:** Ron Jenkins, Department of Forestry, P. O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.



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## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to adopt regulations entitled: **VR 320-01-5. Public Participation Guidelines.** The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2803 of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-3307.

† **March 9, 1994 - 9:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☒

A regularly scheduled meeting.

**Contact:** Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

\* \* \* \* \*

**March 28, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Regulations of the Resident Trainee Program for Funeral Service. The purpose of the proposed amendments is to add a definition, place a maximum time limit for registration, and to establish reporting and supervision requirements.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

## BOARD OF GAME AND INLAND FISHERIES

† **March 3, 1994 - 9 a.m.** – Open Meeting

† **March 4, 1994 - 9 a.m.** – Open Meeting

Board of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will convene its meeting at 9 a.m. and the entire board or committees of the board (Liaison, Finance and Planning, Wildlife and Boat, and Law and Education) will discuss and review a status report on introduced legislation that impacts the department, a status report on shooting preserves in Virginia, a report on the bear chase season, a Notice for Public Comment on proposed boat regulation changes, along with a proposal that the board adopt its proposed Public Participation Guidelines. In addition, an executive session may be held and land, legal and personnel matters will be discussed.

The public meeting will reconvene at 9 a.m. on Friday morning. The agency's Public Participation Guidelines will be presented to the board for consideration and any action that might be appropriate. Other general and administrative matters, as necessary, will be presented to the board for consideration and any action that might be appropriate.

PLEASE NOTE A CHANGE IN THE BOARD'S MEETING PROCEDURE. They will now accept public comment on the first day of their meeting (Thursday). Previously, this day was utilized for committee meetings.

**Contact:** Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 West Broad Street, P. O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000/TDD ☎

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**March 18, 1994 - 9:30 a.m.** – Public Hearing

Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia.

**March 28, 1994** – Written comments may be made until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-01-1. Definitions and Miscellaneous.** The purpose of the proposed amendments is to establish a fee structure for permits required by the Code of Virginia, and in accordance with Chapter 623 of the 1993 Acts of Assembly. The public hearing is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Karen Tuck, Administrative Services Division, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, telephone (804) 367-1000 (V/TDD). Persons needing interpreter services for the deaf must notify Ms. Tuck no later than Monday, March 7, 1994. The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the guidelines.

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Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

**Contact:** Mark D. Monson, Chief, Administrative Services, 4010 W. Broad Street, P. O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000/TDD ☎

## DEPARTMENT OF HEALTH (STATE BOARD OF)

**April 8, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-01-100. Public Participation Guidelines.** These proposed amendments are identical to those contained within the emergency Public Participation Guidelines effective July 1, 1993, and promulgated to maintain the board's compliance with revisions to the Administrative Process Act effective on that same day. These revised guidelines clarify the actions to be taken by the staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The proposed guidelines also identify how the public may initiate consideration of regulations for development or review.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

**Contact:** Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main Street, Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

\* \* \* \* \*

† **March 8, 1994 - 9 a.m.** – Public Hearing  
Department of Health, Main Street Station, Community Room, 1500 East Main Street, Richmond, Virginia.

† **April 25, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.** The regulations set forth eligibility, criteria, award process, terms, conditions, and circumstances under which Virginia medical scholarships will be awarded.

Statutory Authority: §§ 32.1-12, 32.1-122.5, 32.1-122.6 and 32.1-122.6:01 of the Code of Virginia.

**Contact:** Eula Moore, Director, Office of Primary Care

Development, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-4891.

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† **March 8, 1994 - 9 a.m.** – Public Hearing  
Department of Health, 1500 East Main Street, Epidemiology Conference Room 121, Richmond, Virginia.

† **April 25, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.** The regulations provide an incentive to registered nurses in Virginia to become nurse practitioners or nurse midwives and subsequently provide services in medically underserved areas.

Statutory Authority: §§ 32.1-12, 32.1-122.5 and 32.1-122.6:02 of the Code of Virginia.

**Contact:** Karen Connelly, Director of Public Health Nursing, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 371-4090 or FAX (804) 371-2911.

## Food Service Advisory Committee

**February 22, 1994 - 10 a.m.** – Open Meeting  
Department of Housing and Community Development, Jackson Center, 501 North Second Street, 2nd Floor Conference Room, Richmond, Virginia. ☎

A regular meeting. This committee meets at least once a year to discuss and recommend food service policy, regulation, and programmatic changes to the Commissioner of Health for implementation.

**Contact:** John E. Benko, Division Director, Division of Food and Environmental Health, 1500 E. Main Street, Suite 115, or P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-3559.

## BOARD OF HEALTH PROFESSIONS

**March 13, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to adopt regulations entitled: **VR 365-01-1:1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

**Contact:** Richard D. Morrison, Ph.D., Deputy Director for Research, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9904.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**March 8, 1994 - 9:30 a.m. – Open Meeting**  
James Monroe Building, 101 N. 14th Street, 9th Floor, Richmond, Virginia. ☎

A general business meeting.

**Contact:** Anne Pratt, Associate Director, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 361-8017/TDD ☎

## VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **March 2, 1994 - Noon – Open Meeting**  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

A general business meeting.

**Contact:** Margaret Peters, Information Director, Department of Conservation and Recreation, 221 Governor Street, Richmond, VA, 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**March 1, 1994 - 9 a.m. – Open Meeting**  
**April 5, 1994 - 9 a.m. – Open Meeting**  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **March 7, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Housing

Development Authority intends to amend regulations entitled: **VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.**

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

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

\* \* \* \* \*

† **March 7, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.**

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

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

## COUNCIL ON INFORMATION MANAGEMENT

† **March 18, 1994 - 9 a.m. – Open Meeting**  
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. ☎

A regular bi-monthly meeting.

**Contact:** Linda Hening, Administrative Staff Specialist, Council on Information Management, 1100 Bank Street, Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

### Advisory Committee on Mapping, Surveying and Land Information Systems

† **March 3, 1994 - 10 a.m. – Open Meeting**  
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. ☎

A regular bi-monthly meeting.

**Contact:** Chuck Tyger, Council on Information Management, 1100 Bank Street, Suite 901, Richmond, VA 23219, telephone (804) 786-8169 or (804) 225-3624/TDD ☎

## VIRGINIA'S INTERCOMMUNITY TRANSITION COUNCIL

† **March 3, 1994 - 9:30 a.m. – Open Meeting**  
The Holiday Inn Fair Oaks, 1787 Lee Jackson Memoria

Highway, Fairfax, Virginia.

State and local representatives from 13 state agencies and representatives of the business and consumer community form the Virginia Intercommunity Transition Council (VITC). The VITC meets quarterly to focus on strategic targets to move Virginia forward in the development of statewide and systematic transition services for all youth with disabilities. From 11:30 to 12:30 of every meeting is designated for public comment to enable persons or groups who are not standing members of the VITC to express opinions and recommendations to the VITC regarding transition issues.

**Contact:** Kathy Trossi, Education Services, Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-6230, toll free 1-800-552-5019, or (804) 367-0315/TDD or Sharon deFur, Associate Specialist, Department of Education, Monroe Building, 23rd Floor, P. O. Box 2120, Richmond, VA 23216, telephone (804) 225-3242.

## DEPARTMENT OF LABOR AND INDUSTRY

† **April 4, 1994 - 7 p.m.** – Public Hearing  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

† **April 22, 1994** – Written comments may be submitted this through this date.

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 **repeal** regulations entitled: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and In Orchards** and **adopt** regulations entitled: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards**. The regulation prohibits the employment of minors under 16 years of age in specified hazardous occupations on farms, in gardens and in orchards. The prohibited occupations include operating a tractor of over 20 PTO horsepower; operating or assisting to operate other heavy equipment such as pickers, combines, mowers, harvesters, bailers, grinders, augers, and tillers; operating or assisting to operate earthmoving equipment, fork-lifts, potato combines, and chain saws; working in enclosed areas occupied by dangerous animals; working from ladders; driving certain vehicles; working inside enclosed areas containing dangerous atmospheres; handling poisonous chemicals; handling blasting agents; and handling anhydrous ammonia.

The regulation exempts children below the age of 16 employed by their parents on their own farms, student learners, students in federal extension service and 4-H tractor and machine operation training programs, and

students in vocational agricultural training programs. Agricultural employers are required to maintain basic records on minor employees.

The proposed regulation is drafted to be substantively identical to parallel federal child labor regulations insofar as practicable. It is not identical for the following reasons.

In certain cases regarding hazardous occupations, the Code of Virginia is more stringent than the parallel federal regulation. In these matters the department has no discretion and must comply with Virginia statutory law.

The federal child labor regulations have not been revised for many years. Certain training programs required by federal regulations no longer exist. This proposed regulation would permit the use of equivalent currently available training programs.

Since this proposed regulation will replace the Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (VR 425-01-81, effective July 1, 1992), the current regulation is being repealed. The agency filed an emergency regulation on June 30, 1993, which is effective through June 29, 1994.

Statutory Authority: §§ 40.1-6(3) and 40.1-100(A)(9) of the Code of Virginia.

**Contact:** John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to adopt regulations entitled: **VR 425-01-100. Public Participation Guidelines**. Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Department of Labor and Industry's Commissioner on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were

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adopted by the commissioner June 24, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Department of Labor and Industry to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Department of Labor and Industry (department) set out procedures to be followed by the department which ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the commissioner which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

**Contact:** Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

† **February 22, 1994 - 7 p.m.** – Open Meeting  
Wytheville Community College, Bland Hall Auditorium, 1000 East Main Street, Wytheville, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **February 23, 1994 - 7 p.m.** – Open Meeting  
Handley High School Auditorium, Handley Boulevard, Winchester, Virginia.

† **March 1, 1994 - 7 p.m.** – Open Meeting  
Mary Bethune Conference Center, 40 Cowford Road, Halifax, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **March 2, 1994 - 7 p.m.** – Open Meeting  
Albemarle County Office Building, 401 McIntire Road, Charlottesville, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **March 8, 1994 - 7 p.m.** – Open Meeting  
VPI Eastern Shore Agricultural Experiment Station, 33446 Research Drive, Painter, Virginia. ☒ (Interpreter for the deaf provided upon request)

An open meeting to provide information and answer questions concerning the proposed Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards, VR 425-01-81:1. This regulation will protect the health, safety and welfare of minors employed in agricultural occupations. This will be accomplished by prohibiting minors under 16 years of age from being employed in certain clearly identified hazardous occupations.

**Contact:** John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384 or (804) 786-2376/TDD ☒

## Virginia Apprenticeship Council

**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Apprenticeship Council intends to adopt regulations entitled: **VR 425-01-102. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as “any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.” Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the council June 28, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Apprenticeship Council to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Apprenticeship Council (council) set out procedures to be followed by the council and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the council have a full and fair opportunity to participate at every stage. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the

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formulation of regulations, to solicit and use public comments and suggestions, to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 40.1-117 and 9-6.14:7.1 of the Code of Virginia.

**Contact:** Thomas E. Butler, Assistant Commissioner, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2327.

† **March 10, 1994 - 10 a.m.** – Open Meeting  
Richmond Technical Center, Room 201, 2020 Westwood Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the council. The tentative agenda is: (i) the adoption of the council's Public Participation Guidelines; (ii) reports on related instruction; and (iii) report on school-to-work transition.

**Contact:** Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2381 or (804) 786-2376/TDD ☎

## Virginia Safety and Health Codes Board

† **February 24, 1994 - 2 p.m.** – Public Hearing  
Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, 4th Floor Conference Room, Richmond, Virginia.

† **April 22, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Safety and Health Codes Board intends to repeal regulations entitled: **VR 425-02-11. VOSH Administrative Regulations Manual.** The VOSH Administrative Regulations Manual provides an operational framework of rules and procedures for the administration of the Virginia Occupational Safety and Health Program. Some amendments have been made to the regulation since its initial adoption in 1986. A complete revision of the regulation which will simplify and clarify the language of the administrative manual is being proposed as a new regulation. This regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

**Contact:** John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

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**March 11, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Safety and Health Codes Board intends to adopt regulations entitled: **VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Codes Program.** This proposed regulation is the first complete revision of the Administrative Regulation Manual adopted in 1986. It contains substantive changes primarily in the areas of additional definition of terms, clarification of the 48-hour accident reporting requirements of employers, the agency's response to requests for information by subpoena, and the VOSH program response to federal judicial action, such as vacation of § 1910.1000 permissible exposure limits (PEL).

This revision will also simplify the regulation by omitting requirements already stipulated in Title 40.1 of the Code of Virginia in those cases where no further regulatory language is necessary to carry out that mandate.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

**Contact:** John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

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**February 25, 1994** – Written may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Safety Health Codes Board intends to adopt regulations entitled: **VR 425-02-101. Public Participation Guidelines.** Section 9-0.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Safety and Health Codes Board on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the board June 21, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Safety and Health

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Codes Board to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Safety and Health Codes Board (board) set out procedures to be followed by the board and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the board which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch. The regulation also provides a procedure to notify the public of proposed Federal Occupational Safety and Health regulatory action and encourages the public's participation in the formulation of these regulations at the federal level.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22(5) of the Code of Virginia.

**Contact:** Bonnie H. Robinson, Agency Regulatory Coordinator, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

## DEPARTMENT OF LABOR AND INDUSTRY; SAFETY AND HEALTH CODES BOARD; APPRENTICESHIP COUNCIL

† **February 24, 1994 - 2 p.m.** – Public Hearing  
Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th Street, 4th Floor Conference Room, Richmond, Virginia.

† **April 22, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Safety Health Codes Board; Apprenticeship Council intends to repeal regulations entitled: **VR 425-01-68. Public Participation Guidelines.** Public Participation Guidelines were adopted by the Department of Labor and Industry, the Safety and Health Codes Board, and the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which

included the additional provisions required by legislation enacted by the 1993 General Assembly were adopted by the department, board and council prior to July, 1993 and are in effect until June 19, 1994. New guidelines for the department, the Safety and Health Codes Board and the Apprenticeship Council are being promulgated. Therefore, when the new guidelines are adopted, this regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

**Contact:** Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

## LIBRARY BOARD

† **March 14, 1994 - 10:30 a.m.** – Open Meeting  
Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, 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 Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

## Archives and Records Management Committee

† **March 14, 1994 - 9 a.m.** – Open Meeting  
Virginia State Library and Archives, Office of the State Archivist, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to archives and records management.

**Contact:** Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

## Automation and Networking Committee

† **March 14, 1994 - 9:45 a.m.** – Open Meeting  
Virginia State Library and Archives, 11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to automation and networking as they relate to the Virginia State Library Board.

**Contact:** Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

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## General Library Committee

† **March 14, 1994 - 9 a.m.** – Open Meeting  
Virginia State Library and Archives, Office of the Director  
of the General Library Division, 11th Street at Capitol  
Square, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to the General  
Library Division as they relate to the Virginia State  
Library Board.

**Contact:** Jean H. Taylor, Secretary to State Librarian,  
Virginia State Library and Archives, 11th Street at Capitol  
Square, Richmond, VA 23219, telephone (804) 786-2332.

## Legislative and Finance Committee

† **March 14, 1994 - 9:45 a.m.** – Open Meeting  
Virginia State Library and Archives, Conference Room B,  
11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to legislative  
and financial matters as they relate to the Virginia  
State Library Board.

**Contact:** Jean H. Taylor, Secretary to State Librarian,  
Virginia State Library and Archives, 11th Street at Capitol  
Square, Richmond, VA 23219, telephone (804) 786-2332.

## Public Library Development Committee

**March 14, 1994 - 9 a.m.** – Open Meeting  
Virginia State Library and Archives, 11th Street at Capitol  
Square, Room 4-24, Richmond, Virginia. ☒

A meeting to discuss the issues on the agenda for the  
Library Board to be held later that morning.

**Contact:** Tony Yankus, Director, Library Development, 11th  
Street at Capitol Square, Richmond, VA 23219-3491,  
telephone (804) 786-2320, toll-free 1-800-336-5266 or (804)  
786-3618/TDD ☒

## COMMISSION ON LOCAL GOVERNMENT

† **April 6, 1994 - 11 a.m.** – Open Meeting  
† **April 7, 1994 - 9 a.m.** – Open Meeting  
Hillsville area; site to be determined

Oral presentation regarding the town of Hillsville's  
proposed annexation of 3.4 square miles of territory in  
Carroll County.

Persons desiring to participate in the commission's  
proceedings and requiring special accommodations or  
interpreter services should contact the commission's  
offices at (804) 786-6508 or (804) 786-1860/TDD ☒

**Contact:** Barbara W. Bingham, Administrative Assistant,  
Commission on Local Government, 805 E. Broad Street,

Suite 702, Richmond, VA 23219, telephone (804) 786-6508  
or (804) 786-1860/TDD ☒

† **April 6, 1994 - 7 p.m.** – Public Hearing  
Hillsville area; site to be determined.

Public hearing regarding the town of Hillsville's  
proposed annexation of 3.4 square miles of territory in  
Carroll County.

Persons desiring to participate in the commission's  
proceedings and requiring special accommodations or  
interpreter services should contact the commission's  
offices (804) 786-6508 or (804) 786-1860/TDD ☒

**Contact:** Barbara W. Bingham, Administrative Assistant,  
Commission on Local Government, 805 E. Broad Street,  
Suite 701, Richmond, VA 23219, telephone (804) 786-6508,  
or (804) 786-1860/TDD ☒

## STATE COUNCIL ON LOCAL DEBT

**March 16, 1994 - 11 a.m.** – Open Meeting

**April 20, 1994 - 11 a.m.** – Open Meeting  
James Monroe Building, 101 N. 14th Street, 3rd Floor,  
Treasury Board Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting subject to cancellation  
unless there are action items requiring the council's  
consideration. Persons interested in attending should  
call one week prior to the meeting date to ascertain  
whether or not the meeting is to be held as  
scheduled.

**Contact:** Gary Ometer, Debt Manager, Department of the  
Treasury, P. O. Box 1879, Richmond, VA 23215, telephone  
(804) 225-4928.

## STATE LOTTERY BOARD

† **February 28, 1994 - 10 a.m.** – Open Meeting  
State Lottery Department, 2201 West Broad Street,  
Richmond, Virginia. ☒ (Interpreter for the deaf provided  
upon request)

A regular monthly meeting of the board. Business will  
be conducted according to items listed on the agenda  
which has not yet been determined. Two periods for  
public comment are scheduled.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, State  
Lottery Department, 2201 W. Broad Street, Richmond, VA  
23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☒

## MARINE RESOURCES COMMISSION

**February 22, 1994 - 9:30 a.m.** – Open Meeting  
2600 Washington Avenue, 4th Floor, Room 403, Newport



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News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; and shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Sandra S. Schmidt, Secretary to the Commission, P. O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll free 1-800-541-4646 or (804) 247-2292/TDD ☎

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**April 8, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care; Durable Medical Equipment.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, which clarify the requirements and the process for providing durable medical equipment and supplies.

Durable medical equipment, supplies, and appliances are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

DMAS previously required that a recipient who received durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies were 1) to assess the recipient's needs in the actual environment in which

he would be using the items, 2) to determine the quantity of supplies needed to meet his current condition, 3) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and 4) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions imposed by the recipient's current health status. Previously, DMAS never specified those services which will not be covered under home health services program.

In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.

Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition that predicates the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies. The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

In addition to these changes, the population for which nutritional supplements will be covered is expanded under home health services. Coverage of oral administration does not include the provision of routine infant formulae.

These proposed regulations will supersede emergency regulations issued in June 1993. In FY 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new

reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

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

Written comments may be submitted through April 8, 1994, to Mary Chiles, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**March 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-86. Hospital Credit Balance Reporting.** The purpose of this proposal is to promulgate regulations which ensure that hospitals refund Medicaid overpayments in a timely fashion. Untimely review and refunding of Medicaid overpayments result in Medicaid program funds being unavailable for payment of services.

Title XIX of the Social Security Act, § 1902(a)(25), provides that states take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available to recipients of Medicaid. Medicaid is by law the payor of last resort.

In December 1992, the Office of the Inspector General (IG) of the U.S. Department of Health and Human Services issued a report entitled "Medicaid Accounts Receivables with Credit Balances at Hospitals Participating in the Medicaid Program Administered by the Virginia Department of Medical Assistance Services." As a result of a review of a sample number of hospitals participating in the Virginia Medicaid program, hospitals were determined to be receiving and retaining Medicaid overpayments contrary to federal law and regulations.

Failure to enact this regulation will result in Medicaid overpayments not being refunded to this agency either in a timely manner or at all.

The primary advantage to the public of the adoption of this regulation is that public funds appropriated for the coverage of medical care services for the indigent and poor will be more quickly returned to DMAS for appropriate expenditure.

The primary disadvantage to the hospital providers, which receive Medicaid funds in payment for services rendered, is that they will be required to more diligently monitor their credit balance accounts and more quickly return funds to DMAS. These providers will no longer have the short term use of these public funds. Since these same providers are being required by the Medicare Program to perform the same function, Medicaid's requirements are expected to be minimally additional to Medicare's.

All hospitals, which number approximately 150, will be affected by this proposed regulation. There will be no additional costs to this provider group's operations because reviewing accounts for credit balances is part of routine bookkeeping practice. There will be no additional costs to DMAS to administer this regulation because these funds would have eventually been recovered through the cost settlement or third party liability processes. This regulation will merely speed up the funds recovery process.

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

Written comments may be submitted through March 25, 1994, to Jesse Garland, Director, Fiscal Division, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

\* \* \* \* \*

**March 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services; VR 460-02-3.1500. Standards for the Coverage of Organ Transplant Services.** The purpose of the proposed amendments is to expand coverage of transplantation for children, under age 21 only, to liver, heart, and bone marrow (both autologous and allogeneic) transplantation. Coverage of transplantation is continued for cornea and kidney. The proposal is identical to the emergency regulation currently in effect.

# Calendar of Events

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

Written comments may be submitted through March 25, 1994, to Betty Cochran, Department of Medical Assistance Services, 600 E. Broad Street, Richmond, VA 23219.

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

\* \* \* \* \*

**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend and adopt regulations entitled: **VR 460-01-46:1, 460-01-76, 460-01-79.19, 460-02-4.3900, 460-02-4.3910, 460-02-3.1300, 460-03-3.1301, 460-02-4.1410, and 460-04-4.3910. PASARR; Education Component in NF's; NF Residents' Appeal Rights.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. The final regulations published by HCFA are similar to the original requirements but with several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness. Second, HCFA is allowing states to determine personnel qualifications for specific parts of the Level II evaluation process. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation

required that "the nursing facility ... provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified. Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

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

Written comments may be submitted through February 25, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219

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

\* \* \* \* \*

**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-2.6100:1. Eligibility Conditions and Requirements: Guardianship Fees in Post-Eligibility Treatment of Income.** Medicaid eligibility policy has long allowed deduction of guardianship fees in determining countable income for the purposes of calculating patient pay for institutional and home- and community-based waiver services. Since a guardian has control of an individual's income, he deducts his fee before any of the income is applied to the bills of an incompetent individual. Thus, this income is not available to be applied to the cost of institutional and home- and community-based waiver services.

If Medicaid does not add guardianship fees to the personal needs allowance, then Medicaid calculations of the patient's income available for patient pay will exceed that amount actually available and Medicaid will not pay the full balance of the institutional and home- and community-based waiver services bill. The result will be an outstanding balance for the institutional and home- and community-based waiver services that the provider can collect neither from the patient nor from Medicaid.

The Medicaid eligibility policy has recognized that the income available for patient pay is the net income after deduction of guardianship fees. The long-standing policy was based upon interpretation of the way in which the Social Security Administration calculates income for eligibility for Supplemental Security Income. The Health Care Financing Administration issued an instruction that confirmed that guardianship fees are allowable deductions, but directed states to specify that deduction in the State Plan for Medical Assistance. This regulatory change is designed to specify the deduction of guardianship fees as required by the Health Care Financing Administration and will ensure that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

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

Written comments may be submitted through February 25, 1994, to Ann Cook, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14.7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100, 460-02-3.1300, 460-03-3.1301, 460-04-8.10, 460-04-3.1300. Criteria for Preadmission Screening and Continued Stay.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and community-based care services are evaluated for appropriate placement.

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 - June 18, 1993. DMAS held 4 public hearings in different statewide locations and received numerous comments from individuals and organization. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that

they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to § 9-6.14.1 et seq. of the Code of Virginia, DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14.7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror the current emergency regulations on which the agency has received no comments.

Nursing Home Preadmission Screening Committees will still use a separate assessment instrument for preadmission screening, the purpose of which is to determine appropriate medical care between community services and institutionalization.

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows. The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are non-covered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second

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Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

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

Written comments may be submitted through February 25, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**March 11, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1102, 460-02-3.1300. Case Management Services; Utilization Review of Case Management for Recipients of Auxiliary Grants.** During the 1993 session, the General Assembly passed significant legislation governing the Auxiliary Grant Program and licensure of homes for adults. This new legislation required that all recipients of auxiliary grants must be evaluated using the state designated uniform assessment instrument to determine their need for residential care as a condition of eligibility for an auxiliary grant. The law provides that no public agency shall incur a financial obligation if the individual is determined ineligible for an auxiliary grant. This requirement is to become effective on June 1, 1994.

During the same session, the General Assembly also revised the law governing licensing of homes for adults. These residential facilities will be called adult care residences and will be licensed to provide either residential living or assisted living.

In preparation for implementation of these new requirements, a new system of reimbursement for adult care residences was developed. This new reimbursement method will provide for payments for residential and assisted living for individuals who are in financial need. Residents of licensed adult care residences who meet the financial eligibility requirements for the Auxiliary Grant Program and

who require at least a residential level of care based on an assessment by a case manager shall be eligible to receive an auxiliary grant. Individuals who are eligible for auxiliary grants may also receive a payment for assisted living from the DMAS if their needs are determined, according to an assessment, to meet the level of care criteria for assisted living which are being promulgated by the DMAS in separate regulations.

Assessments and case management for auxiliary grant and assisted living will be provided by case managers employed by human service agencies in accordance with the Code of Virginia. The case managers will be responsible for assessing the applicant's or recipient's need for care using a uniform assessment instrument as required by regulations of the Department of Social Services. In addition to assessment, the case manager will be responsible for locating, coordinating and monitoring the services needed by auxiliary grant recipients residing in licensed adult care residences. The case manager will notify the eligibility worker in the local department of social services of the results of the assessment and will notify the DMAS if the applicant or recipient meets the criteria for assisted living. In addition, the case manager will notify the DMAS if changes occur in the condition of the client that affect his continued level of care.

These regulations describe the qualifications of case managers and case management agencies. Adopting these regulations will permit the Commonwealth to carry out the requirement of the law that recipients of auxiliary grants receive an assessment to determine their need and appropriate placement assuring that each individual will be placed in an adult care residence able to meet his needs and will monitor any changes in his condition which may indicate a need for a more appropriate placement as his condition changes. In addition, Medicaid coverage of case management for this group will permit federal financial participation in the cost of administering the case management requirement.

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

Written comments may be submitted through March 11, 1994, to Ann Cook, Department of Medical Assistance Services, Policy Division, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1922. Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance.** This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates. Other Types of Care, item j, Payment Title XVIII Part A and Part B Deductible/Coinsurance.

DMAS pays Medicare premiums for individuals who are eligible for both Medicare and Medicaid. This policy results in Medicare's coverage of their medical care, allowing for the use of 100% federal Medicare dollars, thereby reducing the demand for general fund dollars.

Medicare pays inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered services except for \$84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

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

Written comments may be submitted through February 25, 1994, to C. Mack Brankley, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1923. Establishment of Rate Per Visit: State Plan for Medical Assistance Relating to Home Health Reimbursement.** This proposal will

promulgate permanent regulations to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The 1993 General Assembly, in the Appropriations Act, directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission recommended that a revision be made to the existing statistical methodology.

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

Written comments may be submitted through February 25, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

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

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1, 460-03-4.1941. Nursing Home Payment System: 95% Rule, Criminal Record Checks, Blood Borne Pathogens.** The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

**95% Occupancy Rule:** Prior to the emergency regulation, DMAS set a nursing facility's (NF) interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the

# Calendar of Events

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second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

**Criminal Record Checks:** The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia. This proposed regulation intends to make permanent those policies currently in effect under an emergency regulation.

**Blood Borne Pathogens:** The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991 Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in the Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The General Assembly, in Item 312.1 of the 1993 Budget Bill, directed DMAS to study the cost of reimbursing nursing facilities for complying with these new requirements. DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little or no additional reimbursement.

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

Written comments may be submitted through February 25, 1994, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

## Drug Utilization Review Board

† **March 31, 1994 - 3 p.m.** – Open Meeting

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting. Routine business will be conducted.

**Contact:** Carol B. Pugh, Pharm.D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

## BOARD OF MEDICINE

### Informal Conference Committee

† **March 1, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

† **March 9, 1994 - 9 a.m.** – Open Meeting  
Sheraton Inn, Route 3 and I-95, Fredericksburg, Virginia. ☒

**March 16, 1994 - 10:30 a.m.** – Open Meeting  
Sheraton Inn, Roanoke Airport, 2727 Ferndale Drive, Roanoke, Virginia.

† **April 7, 1994 - 9 a.m.** – Open Meeting  
Sheraton Resort and Conference Center, Route 3 and I-95, Fredericksburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

### Advisory Board on Occupational Therapy

† **March 14, 1994 - 10 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A meeting to review regulations relating to foreign educated therapists, i.e., the TOFLE and TSE exams and to review any other issues which may come before the advisory board. The chairperson will entertain public comments during the first 15 minutes of the meeting.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

## Advisory Board on Physical Therapy

† **March 16, 1994 - 10 a.m.** – Public Hearing  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A public hearing on physical therapy regulations will be held for public comment and regulatory review. The building is accessible to the disabled.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

## 16TH ANNUAL SYMPOSIUM ON MENTAL HEALTH AND THE LAW

**March 31, 1994 - 9 a.m.** – Open Meeting  
**April 1, 1994 - 9 a.m.** – Open Meeting  
Richmond Hyatt Hotel, Richmond, Virginia. ☒

Symposium on mental health law issues.

**Contact:** Bettie T. Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Blue Ridge Hospital, Box 100, Charlottesville, VA 22908, telephone (804) 924-5435.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

**February 23, 1994 - 10 a.m.** – Open Meeting  
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. Agenda to be published on February 16, 1994. Agenda can be obtained by calling Jane Helfrich.

Tuesday: Informal Session - 8 p.m.  
Wednesday: Committee Meetings - 9 a.m.  
Regular Session - 10 a.m.  
See agenda for location.

**Contact:** Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

## VIRGINIA MENTAL HEALTH PLANNING COUNCIL

† **March 30, 1994 - 10 a.m.** – Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The council meets at least four times per year. Its mission is to advocate for a consumer and family oriented, integrated and community-based system of mental health care of the highest quality. The council continuously monitors and evaluates the implementation of the state's mental health plan.

**Contact:** Jeanette DuVal, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 371-0359 or (804) 371-8977/TDD ☎

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

† **March 5, 1994 - 8:30 a.m.** – Open Meeting  
Smith Hall, Virginia Military Institute, Lexington, Virginia. ☒

A regular meeting to (i) receive committee reports; (ii) consider 1994-1995 budget; and (iii) receive reports on visits to academic divisions and departments.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (804) 464-7206.

## DEPARTMENT OF MOTOR VEHICLES

† **April 22, 1994 - 9 a.m.** – Public Hearing  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.

† **April 22, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to amend regulations entitled: **VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.** The proposed amendments revise the existing regulations in accordance with the legislative changes made to the Administrative Process Act in 1993.

Statutory Authority: §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

**Contact:** Marc Copeland, Legislative Analyst, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1875.

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**NOTE: CHANGE IN PUBLIC HEARING TIME AND LOCATION**

**March 4, 1994 - 2:30 p.m.** – Public Hearing  
Department of Motor Vehicles, 2300 West Broad Street,  
Richmond, Virginia.

**April 11, 1994** – Written comments may be submitted until  
this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Department of Motor  
Vehicles intends to adopt regulations entitled: **VR  
485-50-9302. Regulations Governing Requirements for  
Proof of Residency to Obtain a Virginia Driver's  
License or Photo Identification Card.** The regulation  
establishes the process and the documentation that will  
be required by the Department of Motor Vehicles for  
proof of residency in Virginia.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and  
46.2-348 of the Code of Virginia.

Written comments may be submitted until April 11, 1994,  
to Simon J. Stapleton, Department of Motor Vehicles,  
Room 319, P. O. Box 27412, Richmond, VA 23269-0001.

**Contact:** Clarence H. Bradbury, Policy Analyst, Department  
of Motor Vehicles, Room 314, P. O. Box 27412, Richmond,  
VA 23269-0001, telephone (804) 367-0408.

## BOARD OF NURSING

† **March 22, 1994 - 8:30 a.m.** – Open Meeting  
† **March 23, 1994 - 8:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
Conference Room 2, Richmond, Virginia. ☒ (Interpreter for  
the deaf provided upon request)

A regular meeting to consider matters relating to  
nursing education programs, discipline of licensees,  
licensure by examination and other matters under the  
jurisdiction of the board.

Public comment will be received during an open  
forum session beginning at 11 a.m. on Tuesday, March  
22, 1994. At 3 p.m. on March 22, 1994, the board will  
consider proposed amendments to regulations related  
to changes in the administration of licensing  
examinations and to those regulations related to  
education program approval to ensure compliance with  
changes in the Administrative Process Act.

**Contact:** Corinne F. Dorsey, R.N., Executive Director,  
Department of Health Professions, 6606 W. Broad Street,  
4th Floor, Richmond, VA 23230-1717, telephone (804)  
662-9909 or (804) 662-7197/TDD ☎

† **March 24, 1994 - 8:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,

Conference Room 2, Richmond, Virginia. ☒ (Interpreter for  
the deaf provided upon request)

A panel of the Board of Nursing will conduct formal  
hearings. If the agenda is not filled with formal  
hearings, two special conference committees will  
conduct informal conferences as time permits. Public  
comment will not be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director,  
Board of Nursing, 6606 W. Broad Street, 4th Floor,  
Richmond, VA 23230-1717, telephone (804) 662-9909 or  
(804) 662-7197/TDD ☎

## Education Advisory Committee

† **February 28, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 4, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A meeting to consider matters related to educational  
programs approved by the Board of Nursing and make  
recommendations to the board as needed. Public  
comment will be accepted at 10:30 a.m.

**Contact:** Corinne F. Dorsey, R.N., Executive Director,  
Board of Nursing, 6606 W. Broad Street, 4th Floor,  
Richmond, VA 23230-1717, telephone (804) 662-9909 or  
(804) 662-7197/TDD ☎

## Special Conference Committee

**February 22, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
4th Floor, Richmond, Virginia. (Interpreter for the deaf  
provided upon request)

A meeting to conduct an informal conference with  
certified nurse aides to determine if any action should  
be recommended to the Board of Nursing. Public  
comment will not be received.

**Contact:** Corinne F. Dorsey, Executive Director, Board of  
Nursing, 6606 West Broad Street, Richmond, VA 23230,  
telephone (804) 662-9909 or (804) 662-7197/TDD ☎

† **March 21, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
Conference Room 2, Richmond, Virginia. ☒ (Interpreter for  
the deaf provided upon request)

A meeting to conduct informal conferences in the  
morning. A panel of the Board of Nursing will conduct  
formal hearings in the afternoon. Public comment will  
not be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director,  
Board of Nursing, 6606 W. Broad Street, 4th Floor,  
Richmond, VA 23230-1717, telephone (804) 662-9909 or  
(804) 662-7197/TDD ☎

## BOARD OF NURSING HOME ADMINISTRATORS

**March 28, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **VR 500-01-2.1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed amendments is to revise continuing education requirements of the board, to establish as permanent fee increases in emergency regulations, and to delete public participation guidelines.

Statutory Authority: §§ 54.1-2400 and 54.1-3100 of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111.

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**February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to adopt regulations entitled: **VR 500-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of the Code of Virginia.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

## BOARD FOR OPTICIANS

† **April 15, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regular board business and any other matters which may require board action.

**Contact:** Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD OF OPTOMETRY

March 16, 1994 - 8:30 a.m. – Public Hearing

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

† **April 22, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Optometry intends to adopt regulations entitled: **VR 510-01-2. Public Participation Guidelines.** These regulations will replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia.

Written comments may be submitted through April 22, 1994, to Carol Stamey, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** Elizabeth A. Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910.

## Ad Hoc Regulatory Advisory Committee

**March 1, 1994 - 2:30 p.m.** – Open Meeting  
Department of Health Professions, Conference Room 3,  
6606 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to discuss potential amendments to the board's regulations regarding contact lens prescriptions. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☒

## VIRGINIA OUTDOORS FOUNDATION

**February 22, 1994 - 10 a.m.** – Open Meeting  
James Monroe Building, Treasury Board Conference Room,  
3rd Floor, 101 North 14th Street, Richmond, Virginia. ☒

A general business meeting. Agenda available upon request.

**Contact:** Leslie H. Grayson, Acting Executive Director, Virginia Outdoors Foundation, P. O. Box 322, Aldie, VA 22001, telephone (703) 327-6118.

## BOARD OF PHARMACY

**February 26, 1994** – Written comments may be submitted until this date.

# Calendar of Events

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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 530-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines which are currently in effect. No public hearing is planned unless requested.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

**Contact:** Scotti Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911.

## POLYGRAPH EXAMINERS ADVISORY BOARD

† **March 22, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to administer the polygraph examiners licensing examination to eligible polygraph examiner interns and to consider other matters which may require board action.

**Contact:** Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD OF PROFESSIONAL COUNSELORS

**April 11, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors intends to **repeal** regulations entitled: **VR 560-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 560-01-01:1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3500 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Board of Professional Counselors, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9912.

## BOARD OF PSYCHOLOGY

† **March 15, 1994 - 11 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,

Conference Room 1, Richmond, Virginia. ☒

A meeting to conduct general board business. Public comment will be received.

**Contact:** Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad St. Richmond, VA 23230-01717, telephone (804) 662-9913.

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**April 11, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to **repeal** regulations entitled: **VR 565-01-1. Public Participation Guidelines.** and **adopt** regulations entitled: **VR 565-01-1:1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3600 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-9912.

## Credentials Committee

† **March 4, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
Conference Room 1, Richmond, Virginia. ☒

A meeting to review credentials. No public comment accepted.

**Contact:** Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913.

† **March 15, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
Conference Room 1, Richmond, Virginia. ☒

A meeting to conduct an informal fact finding in accordance with §§ 54.1-2400(1), 54.1-2400(7) and 9-6.14:7.1 of the Code of Virginia; and VR 565-01-2 (1993), § 2.2 A 2a (3)(b) to determine the eligibility of an applicant for graduate coursework acceptance. No public comment will be received.

**Contact:** Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913.

## REAL ESTATE APPRAISER BOARD

**March 1, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

## VIRGINIA RESOURCES AUTHORITY

† **March 8, 1994 - 9:30 a.m.** – Open Meeting  
The Mutual Building, 909 East Main Street, Board Room,  
Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of February 8, 1994; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

† **April 12, 1994 - 9:30 a.m.** – Open Meeting  
The Mutual Building, 909 East Main Street, Board Room,  
Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of March 8, 1994; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

† **May 10, 1994 - 9:30 a.m.** – Open Meeting  
The Mutual Building, 909 East Main Street, Board Room,  
Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of April 12, 1994; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **March 9, 1994 - 10 a.m.** – Open Meeting  
Henrico County Eastern Government Center, Community Room, 3820 Nine Mile Road, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia; and VR 355-34-02.

**Contact:** Constance G. Talbert, Secretary to the Board, 1500 E. Main Street, Suite 117, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**March 14, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

Statutory Authority: §§ 63.1-25, 63.1-236, and 63.1-236.1 of the Code of Virginia.

Written comments may be submitted until March 14, 1994, to Sandra Sanroma, Department of Social Services, 2nd Floor, 730 E. Broad Street, Richmond, VA 23219-1849.

**Contact:** Margaret J. Friedenbergh, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

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**February 28, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR**

# Calendar of Events

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**615-53-01.2. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement its child day care programs.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Written comments may be submitted until February 28, 1994, to Paula S. Mercer, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849.

**Contact:** Margaret Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1820, telephone (804) 692-1820.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **April 12, 1994 - 10 a.m. – Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A general business meeting.

**Contact:** David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

## DEPARTMENT OF TAXATION

**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.** This regulation has been revised as follows:

1. The regulation governs the development of regulations which are not exempt from the public participation provisions of the Administrative Processes Act.
2. The amendments to the regulation provide:
  - a. The general policy for regulation revision, and conditions for petitioning the Department of Taxation (the “department”) for revision of a particular regulation.
  - b. Procedures by which the department develops a

list of interested parties for participation in the regulation development process.

c. Procedures by which the department will notify interested parties.

d. Procedures by which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on proposed regulations, and procedures for publication and adoption of final regulations.

3. The regulation was initially adopted on September 18, 1984, and became effective on October 25, 1984. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

4. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-302. Corporate Income Tax: Definitions.** This regulation has been revised as follows:

1. The definitions of “compensation” and “sales” have been moved to VR 630-3-413 and VR 630-3-414, respectively. Amendments to these definitions have been made in the respective regulations.
2. The definitions of “income from Virginia sources” and “foreign source income” have been moved to regulations VR 630-3-302.1 and VR 630-3-302.2, respectively. These are new regulations, and have significantly amended the definitions previously contained in this regulation.
3. The definition of “corporation” has been amended to include any publicly traded partnership that is

taxed as a corporation for federal purposes.

4. Duplicate language was removed from the definition of "affiliated." The language was more appropriate in the regulations issued under § 58.1-442 of the Code of Virginia.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-302.2. Foreign Source Income.** This regulation has been revised as follows:

1. The definition of foreign source income, which was previously defined in VR 630-3-302, has been replaced by this new (and separate) regulation. The original definition has been expanded, and comprehensive examples added for clarity.
2. The regulation contains guidance for determining the source of income. In situations where the federal sourcing rules are not incorporated by reference, detailed sourcing rules are provided.
3. The regulation provides that the apportionment factors must exclude items of income which qualify for the subtraction.
4. The regulation incorporates previously published policy that:
  - a. Provides guidance as to the types of income that qualify for the subtraction. Income of a type not specifically provided does qualify regardless of its source.
  - b. Provides a definition of the term "technical fees" for purposes of the subtraction. Numerous examples have been provided to assist taxpayers in determining what constitutes a "technical fee" which qualifies for the subtraction.

c. Provides examples of how expenses are apportioned to, and netted against, the income which qualifies for the subtraction. The subtraction must be determined net of related expenses determined in accordance with federal sourcing rules.

d. Reinforces the utilization of federal Form 1118 as a starting point for the computation.

5. The regulation provides guidance with respect to income arising from the sale of software. The regulation breaks this type of income into license fees, programming services, and wholesale and retail activity. The eligibility of each type of income is separately addressed.

6. The regulation provides detailed rules for sourcing income from the sale of an intangible property. The sale of software is distinguished from the sale of intangibles.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.** This regulation has been revised to clarify existing department policy with respect to (i) amended tax returns filed due to a change in federal taxable income, and (ii) when extensions are available for amended income tax returns which are filed due to a change in federal taxable income.

In particular, this regulation clarifies the department's position with respect to amended returns. In filing an amended return due to a change in federal taxable income, a corporation is required to either concede the accuracy of an I.R.S. final determination, or explain why the determination is erroneous. If a corporation pays any additional tax resulting from a final determination without filing an amended return, and the department has sufficient information

# Calendar of Events

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available with which to verify the tax computation, the department may waive the amended return requirement.

Corporations in general are required to file an amended return within 90 days from a final determination date. Under this regulation, corporations are permitted to apply for a six-month extension of the required filing, after meeting the applicable requirements.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-312. Corporate Income Tax: Limitations on Assessments.** The existing regulation provides a three-year limitation on the department for assessing taxes from the date such taxes were due. The three-year limitation is not applicable in situations where (i) no return was filed, (ii) a false or fraudulent return was filed, or (iii) a change in federal taxable income was not reported.

The existing regulation also permits the department to assess additional tax within one year of the date a report of change in federal taxable income was filed.

The term "erroneous refund" is defined under the existing regulation, and recovery times are provided for the department. The department is permitted (i) two years to recover an erroneous refund if it was originally made due to an error on the part of the department, and (ii) five years to recover if the refund was made because of fraud or misrepresentation on the part of a taxpayer.

The changes made to the existing regulation are made in order to clarify the regulation. There are no substantive changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323. Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning before January 1, 1988.** This regulation has been revised as follows:

1. The regulation applies to the ACRS additions and subtractions required in taxable years beginning before January 1, 1988.

2. The provisions of this section were repealed for taxable years beginning on or after January 1, 1988. ACRS additions which had not been previously recovered are allowed as subtractions in determining Virginia taxable income pursuant to § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1. This regulation provides guidance in determining the balance of ACRS subtractions that are allowed to be recovered pursuant to § 58.1-323.1 in post 1987 taxable years.

3. The regulation incorporates previously published policy that:

a. Makes it clear that Modified Accelerated Cost Recovery (MACRS) deductions were subject to the ACRS addition.

b. Makes it clear that deductions under the Alternative Depreciation System did not require an ACRS addition.

c. Makes it clear that the ACRS additions did not create a separate Virginia basis, that ACRS subtractions do not follow assets in the event of a sale, and that no lump sum recovery of ACRS subtractions is permitted in the event of a sale of the assets.

d. Makes it clear that REIT's are subject to the ACRS addition, but that no subtraction may be passed through to REIT shareholders.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to

conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1880, telephone (804) 367-0167.

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March 14, 1994 - 10 a.m. - Public Hearing  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.** This regulation has been revised as follows:

1. Section 58.1-323.1 of the Code of Virginia has been amended subsequent to its enactment to defer the timing of subtractions allowed to corporate taxpayers; the amendments to this regulation incorporate such legislative changes.
2. The amendments to the regulation also provide:
  - a. Where a net operating loss is carried back to a taxable year beginning after December 31, 1987, the post-1987 ACRS subtraction for such year shall be redetermined. Where, after such net operating loss carryback, a post-1987 ACRS carryback is created or increased, the revised amount may be carried to subsequent years.
  - b. Where a net operating loss carryback creates or increases the amount of a post-1987 ACRS carryover, the year(s) to which the revised ACRS carryover can be carried may be amended within the statute of limitations prescribed for filing the carryback claim arising from the net operating loss. Where the statute of limitations is otherwise closed for such carryover year, the amended return is limited solely to the changes arising from the changes to the post-1987 ACRS carryover.
  - c. Carryovers of unused subtractions are not determined at the entity level by conduit entities.
  - d. Unused post-1987 ACRS subtractions may be carried over until fully utilized.
  - e. Where a net operating loss incurred in a taxable year beginning before January 1, 1988, is deducted in a taxable year beginning on or after January 1, 1988, the net ACRS addition carried with the loss

(as provided in VR 630-3-402.3 and VR 630-2-311.1) shall be eliminated. Also, post-1987 ACRS subtractions are not considered to be Virginia additions or subtractions that must be carried forward or back with a net operating loss for purposes of VR 630-3-402.3 or VR 630-2-311.1.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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March 14, 1994 - 10 a.m. - Public Hearing  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

March 14, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-400.1. Corporate Income Tax: Telecommunication Companies.** This regulation has been revised as follows:

1. New definitions have been added to the regulation, and duplicate language deleted.
2. Guidance on the taxation of telephone companies which are organized as mutual associations or cooperatives has been added to the regulation. Examples are provided.
3. Guidance is provided with respect to credits received from pass through entities.
4. Guidance in determining the minimum tax and minimum tax credit where an affiliated group of corporations files a consolidated or combined return which contains one or more telecommunications company is provided. A telecommunications company contained in a combined or consolidated return must use procedures contained in the regulation to determine the amount of the group's corporate income tax that such company is deemed to have paid for purposes of determining the minimum tax or credit allowed.
5. Detailed examples are provided for guidance in situations where more than one telecommunications company is included in a combined or consolidated return.



# Calendar of Events

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6. A telecommunications company may petition the State Corporation Commission for a review and recertification of the company's status or amount of gross receipts certified. Upon receipt of such redetermination, the telecommunications company must file an amended return in accordance with procedures contained therein. Any application for refund must be filed in accordance with the procedures contained in § 58.1-1823 of the Code of Virginia.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income.** This regulation has been revised as follows:

1. The regulation originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1 defines additions required in determining Virginia taxable income, VR 630-3-402.2 defines subtractions and adjustments allowed in determining Virginia taxable income, and VR 630-3-402.3 defines adjustments necessary to Virginia taxable income when net operating losses are present.

2. The amendments to the regulation provide:

- a. A definition of federal taxable income.
- b. References to the new regulations, and delete duplicate language.
- c. That a homeowner's association is subject to Virginia corporate income tax on its homeowner's association taxable income.
- d. That a political organization is subject to Virginia

corporate income tax on its political organization taxable income.

e. That a foreign corporation is subject to Virginia corporate income tax on its branch profits dividend equivalent, gross transportation income, and income for which an election has been made under § 897(i) of the Internal Revenue Code.

f. That net operating loss adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

g. That the adjustments required in determining the federal alternative minimum tax do not apply in determining Virginia taxable income.

h. That adjustments are required by VR 630-3-442.1 and VR 630-3-442.2 for consolidated and combined returns, respectively.

i. That federal taxable income as reported on the federal return generally will be relied upon for Virginia purposes. The department will usually not accept a difference from the federal return if such difference has an impact on federal tax liabilities.

j. That certain adjustments may be necessary to reconcile federal taxable income for Virginia purposes to federal taxable income as actually reported.

k. That affiliated corporations may be required to make special adjustments where federal and Virginia returns are filed on a different basis, or where a federal consolidated return contains corporations which are not subject to the Virginia corporate income tax.

l. That if a federal consolidated return is filed, but separate Virginia returns are filed, federal taxable income must be determined as if separate federal returns had been filed.

m. In determining federal taxable income as if separate federal returns had been filed, no effect is given for any deferral of gain, loss, income, or deduction which may have been permitted as a result of filing a federal consolidated return.

n. Unless otherwise provided, elections made on a federal consolidated return shall be considered to have been made by each separate company in determining its separate federal taxable income.

o. If an election was made under § 338(h) 10 of the Internal Revenue Code, the Virginia returns of any members of the selling group shall reflect the amount and character of income recognized in the federal consolidated return.

3. The regulation was initially adopted on September 14, 1984, but revised on February 1, 1987, with a retroactive effective date of January 1, 1985. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1180, telephone (804) 367-0167.

\* \* \* \* \*

**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.
2. This new regulation provides:
  - a. That the additions to Virginia taxable income are only added to federal taxable income to the extent such items are excluded or deducted from federal taxable income.
  - b. Additions to Virginia taxable income are made net of any related expenses that were disallowed in determining federal taxable income.
  - c. If an item excluded or deducted from federal taxable income has been included in Virginia taxable income by operation of another section of the Code of Virginia, the item will not be added again pursuant to this regulation.
  - d. That interest on the obligations of any state other

than Virginia, or on the obligations of a political subdivision of any other state, must be added to federal taxable income in determining Virginia taxable income. The addition to Virginia taxable income is net of expenses which were disallowed under § 265 of the Internal Revenue Code. The regulation provides that zero coupon bonds, or equivalent types of obligations, may produce interest income that must be added back to federal taxable income.

e. That interest or dividends on United States obligations that are exempt from federal income tax but not from state income tax must be added to federal taxable income in determining Virginia taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

f. That any Virginia corporate income tax imposed by § 58.1-400 of the Code of Virginia deducted in determining federal taxable income must be added back in determining Virginia taxable income.

g. Any net income taxes or other taxes, including franchise and excise taxes which are based on, measured by, or computed with reference to net income imposed by any other taxing jurisdiction deducted in determining federal taxable income must be added back in determining Virginia taxable income.

h. A tax satisfies the net income requirement if its base is computed by reducing gross receipts to permit the recovery of significant costs and attributable to such gross receipts. For this purpose, the environmental tax imposed pursuant to § 59A of the Internal Revenue Code is a tax based on net income that must be added back in determining Virginia taxable income.

i. A tax measured by capital stock, net worth, property or other measure unrelated to net income is not deemed to be a tax based on, measured by, or computed with reference to net income. In the event that a taxing authority imposes a tax on a basis other than net income, but such tax only applies to the extent it exceeds a tax based on net income, such tax shall be added back in determining Virginia taxable income to the extent the total tax is (or would have been) determined by net income.

j. The minimum tax on telecommunications companies imposed pursuant to § 58.1-400.1 of the Code of Virginia applies in any year that such tax exceeds the corporate income tax. If a corporation deducts the minimum tax in determining federal taxable income, such tax shall be added back in determining Virginia taxable income to the extent the corporate income tax would have been imposed

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for such year.

k. That unrelated business taxable income of a tax exempt organization must be added to federal taxable income in determining Virginia taxable income.

l. That any ESOP credit carryover that is deducted in computing federal taxable income under § 404(i) of the Internal Revenue Code shall be added to federal taxable income in determining Virginia taxable income.

m. That, to the extent not already included in federal taxable income, Virginia taxable income shall include the amount required to be included in income for purposes of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

b. If an item has been excluded from Virginia taxable income by operation of another section of the Code of Virginia, the item will not be subtracted again pursuant to this regulation.

c. If an item of income qualifies for a subtraction or exclusion from Virginia taxable income pursuant to more than one section of the Code of Virginia, the taxpayer is limited to one subtraction for such item, but may utilize whichever subtraction is most beneficial to the taxpayer.

d. If an item does not qualify for a subtraction under this regulation, or under the Code of Virginia, no subtraction is allowed.

e. That interest on the obligations of the United States, to the extent exempted from state taxation under federal laws, shall be subtracted from federal taxable income.

f. Guarantees by the United States of obligations of private individuals or corporations do not qualify for the subtraction.

g. Repurchase obligations usually will not qualify for the subtraction.

h. Interest paid on federal tax refunds, equipment purchase contracts, or other normal business transactions does not qualify for the subtraction.

i. The subtraction for U. S. interest must be determined net of any related expenses.

j. That interest on obligations of the Commonwealth of Virginia shall be subtracted to the extent included in federal taxable income. Such addition shall be net of any expenses which were disallowed under § 265 of the Internal Revenue Code.

k. That income realized by a pass-through entity will generally have the same character in the hands of the recipient as in the hands of the pass-through entity.

l. A subtraction is allowed for certain DISC dividends. Distributions which are excluded from the shareholder's income as made out of previously taxed income are eligible for the Virginia subtraction if 50% or more of the income of a DISC was assessable in Virginia for the preceding year, or the last year in which the DISC had income. The subtraction for DISC dividends must be reduced to the extent of any related expenses.

m. That if federal taxable income includes a refund or credit for overpayment of income taxes to Virginia or any other state, the amount of such refund or credit shall be subtracted from federal taxable income in determining Virginia taxable

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

\* \* \* \* \*

**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 – Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. That the subtractions from Virginia taxable income are only allowed to the extent such items are included in federal taxable income.

income. Generally, there are no offsetting expenses which reduce the subtraction.

n. That income included in federal taxable income pursuant to § 78 of the Internal Revenue Code shall be subtracted in determining Virginia taxable income. Because § 78 income is deemed to have been received, there are generally no expenses which reduce the subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

o. That to the extent a deduction for wages was disallowed by § 280C (a) of the Internal Revenue Code in determining federal taxable income, a subtraction shall be allowed in determining Virginia taxable income. Because this subtraction relates to a deduction which is disallowed in computing federal taxable income, it does not have to be reduced by related expenses.

p. That the amount of Subpart F income required to be included in federal taxable income shall be subtracted in determining Virginia taxable income. Because such income is deemed to have been received, there are generally no expenses which reduce the Virginia subtraction. Because there is a separate subtraction for this type of income, it does not have to be included with foreign source income for purposes of determining the subtraction allowed for foreign source income.

q. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income equal to the amount of foreign source income as defined by § 58.1-302 of the Code of Virginia and VR 630-3-302.2. The subtraction allowed by this section shall not include any amount which is allowed as a subtraction as § 78 income, Subpart F income, or dividends received.

r. That for taxable years beginning on or after January 1, 1988, taxpayers may claim a subtraction in determining Virginia taxable income for the outstanding excess cost recovery as provided by § 58.1-323.1 of the Code of Virginia and VR 630-3-323.1.

s. That to the extent included in federal taxable income, there shall be a subtraction in determining Virginia taxable income for the amount of dividends received from a corporation when the corporation receiving the dividend owns 50% or more of the voting power of all classes of stock of the payer. Foreign source dividends from corporations in which the taxpayer owns 50% or more of the voting power of all classes of the stock of the payer may be claimed as a subtraction pursuant to this section in lieu of the subtraction for foreign source income.

t. That the amount of any qualified agricultural contribution shall be subtracted from federal taxable income in determining Virginia taxable income. Contributions that qualify for the subtraction in determining Virginia taxable income are contributions of agricultural products made by a corporation engaged in the trade or business of growing or raising such products.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

\* \* \* \* \*

**March 14, 1994 - 10 a.m. - Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 - Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-402.3. Corporate Income Tax: Net Operating Losses.** This regulation has been revised as follows:

1. VR 630-3-402 originally provided guidance for additions, subtractions, and other adjustments required in determining Virginia taxable income. In order to increase utility and comprehension, the regulation has been divided into four separate regulations. VR 630-3-402.3, a new regulation, defines adjustments necessary to Virginia taxable income when net operating losses are present. VR 630-3-402.1, a new regulation, defines additions required in determining Virginia taxable income. VR 630-3-402.2, a new regulation, defines subtractions and adjustments allowed in determining Virginia taxable income. VR 630-3-402 now governs the determination of Virginia taxable income.

2. This new regulation provides:

a. There is no express authority in the Code of Virginia for a Virginia net operating loss, a net operating loss carryback or carryover. However, because the computation of Virginia taxable income begins with federal taxable income the starting point for determining Virginia taxable income is affected by the federal net operating loss deduction.

b. For Virginia purposes, the ability to utilize a net operating loss carryback or carryover is dependent on the taxpayer's ability to utilize the net operating loss carryback or carryover to reduce federal taxable income.

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c. In determining Virginia taxable income, certain modifications are made to federal taxable income as provided by the Code of Virginia. Modifications from a loss year follow the loss for Virginia purposes and affect Virginia taxable income as the net operating loss is absorbed.

d. To prevent double deduction or taxation for Virginia purposes, the definition of federal taxable income is modified accordingly in any year in which a net operating loss is absorbed. Federal limitations, rules and elections regarding the utilization of net operating losses control the ability to utilize losses for Virginia purposes.

e. In any loss year, a corporation is required to determine all of the modifications to federal taxable income required by the Code of Virginia. A corporation incurring a net operating loss may have Virginia taxable income and owe Virginia income tax after making the required modifications. A similar result may occur in any year in which a net operating loss is carried back or over.

f. Virginia modifications attributable to a loss year follow the carryback or carryover of the net operating loss suffered in the loss year. In any year in which a loss is utilized to reduce federal taxable income, Virginia modifications attributable to such loss will be applied proportionately to the amount of the loss utilized.

g. Because there is no provision for a separate Virginia net operating loss, income allocated out of Virginia taxable income cannot create or increase a Virginia net operating loss. Neither the allocable income nor the apportionment factor of the loss year is a modification which follows the net operating loss.

h. The recovery of the outstanding balance of excess cost recovery in post 1987 taxable years pursuant to § 58.1-323.1 of the Code of Virginia has its own carryover and recovery provisions, and is not a modification that follows a net operating loss.

i. No Virginia modifications follow a capital loss or charitable contribution.

j. The net sum of loss year modifications follows the net operating loss to the year utilized. The net modifications, which may be positive or negative, will be added or subtracted accordingly in determining Virginia taxable income in the year in which the net operating loss is absorbed. If the net operating loss is utilized to reduce federal taxable income in more than one taxable year, the net modifications will be applied proportionately to the utilization of the loss. If Virginia taxable income in a loss year equals or exceeds zero, then all of the net operating loss and Virginia subtractions have

been offset by Virginia additions, and a net positive Virginia modification equal to 100% of the loss shall follow the carryback or carryover of such loss.

k. Generally, federal taxable income means federal taxable income as defined by § 63 of the Internal Revenue Code and any other income taxable under federal law. In order to prevent Virginia modifications associated with a net operating loss from being subject to double deduction or double taxation, the definition of federal taxable income is modified in any year in which a corporation incurs a net operating loss, or claims a net operating loss deduction. In determining the amount of a net operating loss, no deduction is allowed for a net operating loss deduction from any other year. For Virginia purposes, federal taxable income in a loss year shall be determined without net operating loss deductions attributable to any other taxable year.

l. If a net operating loss is carried back, and the federal taxable income in the carryback year is sufficient to fully absorb the loss, no adjustment is necessary for Virginia purposes. If a net operating loss is carried back, and federal taxable income in the carryback year is insufficient to fully absorb the carryback, then for Virginia purposes federal taxable income is defined as zero.

m. If a net operating loss is carried over, and the federal taxable income in the carryover year is sufficient to fully absorb the loss, no adjustment is necessary to federal taxable income for Virginia purposes. If a net operating loss is carried over, and federal taxable income in the carryover year is insufficient to fully absorb the carryover, then for Virginia purposes federal taxable income is defined as zero.

n. Federal law permits a corporation to carry a net operating loss back to each of the three taxable years preceding the loss year, and then over to each of the 15 taxable years following the taxable year of the loss. Because Virginia law does not provide for a separate Virginia net operating loss, federal law and regulations control the ability to utilize a net operating loss for Virginia purposes. The fact that a corporation has no Virginia source income or is not otherwise subject to tax in a carryover or carryback year does not affect the Virginia treatment.

o. If a corporation elects to relinquish the entire carryback period for federal purposes such election is binding for Virginia purposes. Any federal provision which acts to limit the availability of a net operating loss shall apply for Virginia purposes.

p. Corporations filing consolidated or combined Virginia returns may be subject to special rules where federal and Virginia returns are filed on a

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different basis or with different members. See VR 630-3-442.1 and VR 630-3-442.2.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.** This regulation has been revised as follows:

1. Chapter 614 of the 1987 Acts of the General Assembly restored the special bad debt deduction for savings and loan associations to the percentage of income (40%) that existed before the Tax Reform Act of 1986 reduced the federal deduction to 8.0%. An example of the calculation has been provided.
2. The amendments clarify that railway companies must increase federal taxable income by any net operating loss deduction attributable to a taxable year beginning before January 1, 1979, and may modify their federal taxable income for Virginia purposes if a net operating loss incurred in a taxable year beginning on or after January 1, 1979, is carried back to a taxable year beginning before January 1, 1979.
3. The amendments refer telecommunication companies to VR 630-3-400.1 for guidance in making the adjustments required for net operating losses.
4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.
5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1180, Richmond, VA 23282-1180, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-409. Corporate Income Tax: Property Factor.** The existing regulation provided guidance with respect to computing the property apportionment factor for corporations. Specifically, it provides that the property factor is a fraction, the numerator of which is average property used in Virginia, and the denominator of which is the average amount of property utilized everywhere. Property is defined to include all real and tangible personal property in which a corporation has any right of use or possession.

One revision to this regulation clarifies that property in transit between locations shall be considered to be at the destination for purposes of determining its location for inclusion in the property factor.

An additional revision deletes the reference to computing the property factor for corporations that are general partners in a partnership. A new regulation will be promulgated to clarify and provide guidance with respect to the determination of a corporate partner's apportionment factor, with respect to the partnership property, payroll, and sales.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-411. Corporate Income Tax: Average Value of Property.** The existing regulation provides guidance with respect to how the "average" value of property

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for purposes of determining the property apportionment factor is determined: either (i) by averaging the amounts owned at the beginning and ending of the year, or (ii) by using property amounts averaged on a monthly basis.

The regulation has been revised to include a requirement that under an election pursuant to § 338(h)(10) of the Internal Revenue Code, a target corporation will be required to use monthly averaging in determining its Virginia property numerator in the year of the sale deemed to occur when ownership of a target corporation is transferred from a seller to a buyer.

The regulation has also been revised to clarify when a consolidated group may be required to use monthly averaging, when the group has as a member a target corporation acquired pursuant to an election under § 338(h)(10) of the Internal Revenue Code.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.** This regulation has had only minor changes made to it, so that it will conform to the requirements of the Virginia Administrative Process Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.** This regulation has been revised as follows:

1. Definitions were consolidated in the first section of the regulation.

2. The regulation makes it clear that the provisions of § 58.1-431 of the Code of Virginia only applied to property placed in service before January 1, 1988.

3. The references to § 44C of the Internal Revenue Code were changed to § 23 in accordance with the federal recodification of this section.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-440. Corporate Income Tax: Accounting.** This regulation has been revised as follows:

1. The amendments to the regulation provide:

a. Where a corporation has a taxable year of less than 12 months, the taxable income does not need to be prorated because the corporate tax does not contain graduated rates. However, if short taxable years would affect the limitation of a credit or other modification, proration shall be required.

b. Information used for apportionment purposes shall be consistent with and, if possible, reconciled to

information contained in the federal income tax return.

c. Adjustments under § 481 of the Internal Revenue Code apply in determining Virginia taxable income. Adjustments required by § 481 of the Internal Revenue Code apply for Virginia purposes regardless of whether the taxpayer was subject to tax in Virginia during the year the accounting method was changed.

d. A member of a federal consolidated return may be required to make certain adjustments to its federal taxable income if it files a Virginia return on a different basis than its federal return. If, after having made such adjustments, a federal change in accounting method would result in double taxation or deduction for Virginia purposes, than an adjustment shall be allowed to the extent of such duplication.

2. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

3. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination.** The amendments to this regulation provide:

1. Even though a controlled foreign corporation may be excluded from a consolidated or combined return, such corporation may be subject to tax on some or all of its income, and may be required to file a return with the department. The fact that a controlled foreign corporation is subject to tax or required to file

a return does not mean that such corporation may be included in a Virginia consolidated return.

2. A foreign corporation is defined by reference to U. S. Treasury Regulation § 301.7701-5.

3. The income of a controlled foreign corporation is derived from sources without the United States if such corporation is not subject to income tax on its world-wide income under § 11 of the Internal Revenue Code, or less than 80% of the gross income of such controlled foreign corporation is considered to be effectively connected with the conduct of a U. S. trade or business.

4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.** This regulation has been revised as follows:

1. The accounts of two or more related trades or businesses may be consolidated if the department determines such consolidation is necessary to accurately distribute or apportion gains, profits, income, deductions, or capital between or among such trades or businesses.

2. This regulation applies to situations where the federal taxable income is correctly stated, but income subject to Virginia taxation is inaccurate.

3. A taxpayer may apply to the department for consolidation in accordance with the instructions



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therein.

4. Permission for consolidation under this regulation may be granted if adequate separate accounting records are maintained, the entities are related, the entities are subject to Virginia taxation, and the entities are owned by the same interests as described therein.

5. The department will generally not permit the consolidation of two or more corporations that are not otherwise eligible for consolidation pursuant to VR 630-3-442.1 except where the department finds consolidation necessary to accurately determine Virginia taxable income.

6. Other duplicate language has been deleted.

7. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

8. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled: **VR 630-3-446.1. Corporate Income Tax: Foreign Sales Corporations.** The regulation provides guidance with respect to adjusting the income of affiliated groups under § 58.1-446 of the Code of Virginia, if such groups had a Domestic International Sales Corporation (DISC) as a member. This regulation is being repealed because (i) DISC's no longer exist under federal income tax law, and (ii) the existing regulations under § 58.1-446 provide adequate guidance with respect to Interest-Charge DISC's.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Alvin H. Carpenter, III, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-449. Corporate Income Tax: Supplemental Accounts.** This regulation has had only minor revisions made to it, which were made so that it would conform to the provisions of the Virginia Administrative Process Act.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Alvin H. Carpenter, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0963.

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**March 14, 1994 - 10 a.m. – Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-453. Corporate Income Tax: Extension of Time for Filing Returns.** The amendments to the regulation provide:

1. Where a corporation has been granted a federal extension of time to file, a Virginia extension will be granted to a date six months after the original Virginia due date or 30 days after the extended federal due date, whichever is later.
2. The penalty imposed by § 58.1-453 of the Code of Virginia will be imposed in addition to interest, and in addition to the penalty imposed under § 58.1-455 of the Code of Virginia.
3. If the taxpayer has received a federal extension, the department will accept a timely filed Virginia extension signed by the same person authorized to sign the taxpayer's federal extension.

4. The regulation was adopted on September 14, 1984

## Calendar of Events

effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. - Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax.** The amendments to the regulation provide:

1. A tax liability of less than \$1,000 in a preceding year does not automatically exempt a corporation from filing estimated taxes in the subsequent year.
2. The declaration of estimated tax may only be amended once in each interval between installment dates.
3. A telecommunications company subject to tax pursuant to § 58.1-400.1 of the Code of Virginia must make estimated tax payments pursuant to this regulation if the total estimated tax due, less credits allowed, can be reasonably expected to exceed \$1,000. For this purpose, "estimated tax" includes the corporate income tax and the minimum tax on telecommunications companies.
4. Declarations are to be made on forms prescribed by the department, which will be provided in preprinted format wherever possible. However, the failure of the department to provide a form will not excuse a taxpayer from making a declaration.
5. Filing a registration application or declaration of estimated tax is not an election of a method of reporting.
6. The regulation was adopted on September 14, 1984,

effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

7. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

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**March 14, 1994 - 10 a.m. - Public Hearing**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.** This regulation has been revised as follows:

1. Declarations shall be filed using prescribed forms, and signed as provided therein.
2. The regulation provides the manner in which payment shall be made, and the types of checks which are acceptable.
3. The regulation provides guidance for filing estimated tax payments by affiliated groups filing consolidated or combined returns.
4. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.
5. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

# Calendar of Events

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**March 14, 1994 - 10 a.m.** – Public Hearing  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

**March 14, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-504. Corporate Income Tax: Failure to Pay Estimated Income Tax.** This regulation has been revised as follows:

1. The definitions have been moved to the beginning of the regulation, new definitions have been added, and existing definitions were amended.

2. The amendments clarify the exceptions to the underpayment penalty.

**Exception 1 - Prior Years Tax.** For this exception, the prior year's tax is equal to the sum of the corporate income tax and the minimum tax on telecommunications companies imposed under § 58.1-400.1 of the Code of Virginia, but without reduction for any credits allowed against the tax. For this purpose, the prior years return is deemed to show a liability for tax regardless of whether some or all of such tax was offset by credits. For purposes of exception 1, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

**Exception 2 - Tax on prior year's income using current year rates.** For this exception, the prior year's return does not have to show a tax liability, and any credits allowed on the prior year's return may be offset against the tax calculated using the tax calculated using the current year's rates. For purposes of exception 2, the amount of prior year's tax must be paid in timely installments in the current year even though the preceding year's tax did not exceed the estimated tax filing threshold of § 58.1-500 of the Code of Virginia.

3. The amendments provide that the rate of interest used to determine the underpayment penalty shall be the rate of interest established pursuant to § 6621 of the Internal Revenue Code plus 2.0% as provided in § 58.1-15 of the Code of Virginia.

4. The amendments provide guidance to affiliated corporations filing consolidated and combined returns in determining the penalty provided by this regulation or the exceptions thereto.

5. The regulation was adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulation was issued prior to the January 1, 1985, effective date of the amendments to the Virginia Register Act (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, and accordingly was never published in The Virginia Register of Regulations.

6. The regulation has been revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** David M. Vistica, Tax Policy Analyst, Department of Taxation, P. O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

## DEPARTMENT OF THE TREASURY (TREASURY BOARD)

**March 16, 1994 - 9 a.m.** – Open Meeting

**April 20, 1994 - 9 a.m.** – Open Meeting

James Monroe Building, 101 N. 14th St., 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the board.

**Contact:** Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

## BOARD OF VETERINARY MEDICINE

† **February 23, 1994 - 9 a.m.** – Open Meeting

Williamsburg Lodge and Conference Center, 310 South England Street, Williamsburg, Virginia. ☞ (Interpreter for the deaf provided upon request)

Informal conferences. Brief public comment will be received at the beginning of the meeting.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD ☞

† **February 24, 1994 - 8:30 a.m.** – Open Meeting

Williamsburg Lodge and Conference Center, 310 South England Street, Williamsburg, Virginia. ☞ (Interpreter for the deaf provided upon request)

A board meeting and formal hearing. Brief public comment will be received at the beginning of the meeting.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804)

# Calendar of Events

662-7197/TDD ☎

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**February 24, 1994 - 9 a.m.** – Public Hearing  
Williamsburg Lodge, 310 South England Street,  
Williamsburg, Virginia.

**April 8, 1994** – Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Board of Veterinary  
Medicine intends to adopt regulations entitled: **VR  
645-01-0:1. Public Participation Guidelines.** These  
regulations replace emergency regulations currently in  
effect which provide guidelines for the involvement of  
the public in the promulgation of regulations for the  
board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code  
of Virginia.

Written comments may be submitted through April 8, 1994,  
to Terri Behr, Board of Veterinary Medicine, 6606 W.  
Broad St., 4th Floor, Richmond, VA 23230-1717.

**Contact:** Elizabeth A. Carter, Executive Director, Board of  
Veterinary Medicine, 6606 W. Broad Street, Richmond, VA  
23230-1717, telephone (804) 662-9915.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Vocational Rehabilitation Advisory Council

**March 5, 1994 - 10:30 a.m.** – Open Meeting  
Department for the Visually Handicapped, 397 Azalea  
Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf  
provided upon request)

Council meets quarterly to advise the Department for  
the Visually Handicapped on matters related to  
vocational rehabilitation services for the blind and  
visually impaired citizens of the Commonwealth.

**Contact:** James G. Taylor, Vocational Rehabilitation  
Program Specialist, 397 Azalea Avenue, Richmond, VA  
23227, telephone (804) 371-3140, toll free 1-800-622-2155 or  
(804) 371-3140/TDD ☎

## VIRGINIA RACING COMMISSION

**February 25, 1994** – Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Racing  
Commission intends to amend regulations entitled: **VR  
662-01-02. Regulations Pertaining to Horse Racing**

**with Pari-Mutuel Wagering (§ 2.24. Appeals of  
denial, fine, suspension or revocation of license).** The  
purpose of the proposed amendment is to repeal an  
unnecessary section of the regulation.

Statutory Authority: § 59.1-369 of the Code of Virginia.

**Contact:** William H. Anderson, Policy Analyst, Virginia  
Racing Commission, P. O. Box 1123, Richmond, VA 23208,  
telephone (804) 371-7363.

## VIRGINIA VOLUNTARY FORMULARY BOARD

**March 31, 1994 - 10:30 a.m.** – Open Meeting  
1100 Bank Street, 2nd Floor Board Room, Richmond,  
Virginia.

A meeting to consider public hearing comments and  
review new product data for products pertaining to  
the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of  
Pharmacy Services, 109 Governor Street, Room B1-9,  
Richmond, VA 23219, telephone (804) 786-4326.

## STATE WATER CONTROL BOARD

**March 10, 1994 - 7 p.m.** – Public Hearing  
Department of Environmental Quality, Board Room,  
Innsbrook Corporate Center, 4900 Cox Road, Richmond,  
Virginia.

**March 15, 1994 - 7 p.m.** – Public Hearing  
Galax City Council Chambers, Municipal Building, Center  
Street, Galax, Virginia.

**March 16, 1994 - 7 p.m.** – Public Hearing  
Washington County Public Library, Valley and Oak Hill  
Streets, Abingdon, Virginia.

**March 17, 1994 - 7 p.m.** – Public Hearing  
Buchanan Town Council Chambers, Municipal Building,  
Main Street, Buchanan, Virginia.

**March 22, 1994 - 7 p.m.** – Public Hearing  
Charlottesville City Council Chambers, City Hall, 7th and  
Downtown Mall, Charlottesville, 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 amend regulations entitled: **VR  
680-21-00. Water Quality Standards (VR 680-21-01.3.  
Antidegradation Policy).** The purpose of these  
amendments is to amend the antidegradation policy by  
designating five surface waters for special protection  
as exceptional waters. Applicable federal requirements:  
The EPA Water Quality Standards Regulation (40 CFR  
131.12) is the regulatory basis for the EPA requiring  
the states to establish the exceptional waters category

## Calendar of Events

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and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters. Locality particularly affected: While this proposal affects specific localities (Albemarle, Botetourt, Carroll and Washington Counties), the board does not believe any locality to be adversely affected. In addition, local governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. Informal question and answer period: An informal question and answer period will be held one-half hour before each public hearing. Accessibility to persons with disabilities: The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, February 28, 1994. Opportunity for formal hearing: The board will hold a formal (evidential) hearing at a time and place to be established if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23 (b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Monday, March 7, 1994. Request for comments: The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the proposal. Written comments should be directed to Ms. Doneva Dalton at the address below by 4 p.m. on Monday, April 11, 1994. Other information: The board has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact the contact person listed below.

Statutory Authority: § 62.1-44.15 (3a) of the Code of Virginia.

Written comments may be submitted until April 11, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

**Contact:** Jean Gregory, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

† **March 17, 1994 - 12:30 p.m.** – Open Meeting  
Municipal Building, Board of Supervisors Room, 112 North Main Street, Bridgewater, Virginia.

The State Water Control Board's staff is scheduling a series of meetings of the North River Surface Water

Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of the data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and sets the various stages of conservation plans.

Other tentative scheduled meetings are Thursday, April 21, 1994, and May 19, 1994. Contact should be made prior to the meeting date so as to be informed of any changes in the time or location of the meeting, or possible cancellation.

**Contact:** Thomas Felvey, Program Manager, Department of Environmental Quality, Water Division, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† **March 23, 1994 - 7 p.m.** – Open Meeting  
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **March 24, 1994 - 7 p.m.** – Open Meeting  
Roanoke County Board of Supervisors Room, First Floor, 5204 Bernard Drive, Roanoke, Virginia ☎ (Interpreter for the deaf provided upon request)

A public meeting to receive oral and written comments on the proposed amendment to the Antidegradation Policy of the Water Quality Standards Regulation (VR 680-21-01) to increase the participation of local governments in the nomination and designation process for exceptional waters. The State Water Control Board intends to consider amending the regulation to offer local governments the opportunity to determine if a proposed exceptional waters nomination is consistent with local comprehensive planning as part of the process.

**Contact:** Jean Gregory, Department of Environmental Quality, Water Division, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

### BOARD OF YOUTH AND FAMILY SERVICES

**February 28, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-05-001. Standards Governing Research on Clients and Records of the Department.** These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the Department of Youth and Family Services, including provision for a

Human Research Committee.

Statutory Authority: § 66-10.1 of the Code of Virginia.

**Contact:** Donald R. Carignan, Policy Coordinator, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

**March 10, 1994 - 8:30 a.m. - Open Meeting**  
700 Centre Building, 4th Floor, 7th and Franklin Streets,  
Richmond, Virginia. ☒

Committee meetings will begin at 8:30, and a general meeting will begin at 10 a.m. to review programs recommended for certification or probation, to consider adoption of draft policies and other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### February 22

Agriculture and Consumer Services, Board of Health, Department of  
- Food Service Advisory Committee  
† Labor and Industry, Department of Marine Resources Commission  
Nursing, Board of  
- Special Conference Committee  
Outdoors Foundation, Virginia

#### February 23

Alcoholic Beverage Control Board  
Agriculture and Consumer Services, Board of Emergency Planning Committee, Local - Roanoke Valley  
† Labor and Industry, Department of Mental Health, Mental Retardation and Substance Abuse Services, State  
† Veterinary Medicine, Board of

#### February 24

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
- Board for Architects  
Education, Board of  
† Veterinary Medicine, Board of

#### February 25

Agriculture and Consumer Services, Department of  
- Dark-Fired Tobacco Board, Virginia  
Professional Counselors, Board of

#### February 28

† Lottery Board, State  
† Nursing, Board of  
- Education Advisory Committee

#### March 1

Hopewell Industrial Safety Council  
† Labor and Industry, Department of  
† Medicine, Board of  
- Informal Conference Committee  
Optometry, Board of  
- Ad Hoc Regulatory Advisory Committee  
Real Estate Appraiser Board

#### March 2

† Historic Preservation Foundation, Virginia  
† Labor and Industry, Department of

#### March 3

† Architects, Professional Engineers, Land Surveyors and Landscape Architects  
- Landscape Architects, Board for  
- Professional Engineers, Board for  
† Asbestos Licensing Board, Virginia  
Chesapeake Bay Local Assistance Board  
† Game and Inland Fisheries, Board of  
† Information Management, Council on  
- Advisory Committee on Mapping, Surveying and Land Information Systems  
† Intercommunity Transition Council, Virginia's

#### March 4

† Game and Inland Fisheries, Board of  
† Psychology, Board of  
- Credentials Committee

#### March 5

† Virginia Military Institute  
- Board of Visitors  
Visually Handicapped, Department for the  
- Vocational Rehabilitation Advisory Council

#### March 7

Alcoholic Beverage Control Board  
† Audiology and Speech-Language Pathology, Board of Cosmetology, Board for

#### March 8

Agriculture and Consumer Services, Department of  
- Marine Products Board  
Environmental Quality, Department of  
- Waste Tire End User Reimbursement Advisory Committee  
Higher Education for Virginia, State Council of  
† Labor and Industry, Department of  
† Virginia Resources Authority

#### March 9

† Architects, Professional Engineers, Land Surveyors, and Landscape Architects, Board for  
- Land Surveyors, Board for

# Calendar of Events

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- † Funeral Directors, Board of
- † Medicine, Board of
  - Informal Conference Committee
- † Sewage Handling and Disposal Appeals Review Board

## March 10

- † Agriculture and Consumer Services, Department of
  - Pesticide Control Board
- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- † Labor and Industry, Department of
- Youth and Family Services, Board of

## March 14

- † ASAP Policy Board - Valley
- † Library Board, State
  - Archives and Records Management Committee
  - Automation and Networking Committee
  - General Library Committee
  - Legislative and Finance Committee
  - Public Library Development Committee
- † Medicine, Board of
  - Advisory Board on Occupational Therapy

## March 15

- † Auctioneers Board
- † Environmental Quality, Department of
  - Technical Advisory Committee for the Department of Regulations
- † Fine Arts, Museum of
  - Collections Committee
  - Nominating Committee
- † Psychology, Board of
  - Credentials Committee

## March 16

- Local Debt, State Council on
- Medicine, Board of
  - Informal Conference Committee
- Treasury Board

## March 17

- Chesapeake Bay Local Assistance Board
  - Central Area Review Committee
  - Northern Area Review Committee
- † Fine Arts, Museum of
  - Finance Committee
  - Board of Trustees
- Treasury Board
- † Water Control Board, State

## March 18

- † Children's Residential Facilities, Interdepartmental Regulation of
  - Coordinating Committee
- Conservation and Recreation, Department of
  - Falls of the James Scenic River Advisory Board
- † Information Management, Council on

## March 21

- Alcoholic Beverage Control Board
- † Nursing, Board of
  - Special Conference Committee

## March 22

- † Nursing, Board of
- † Polygraph Examiners Advisory Board

## March 23

- † Chesapeake Bay Local Assistance Board
  - Southern Area Review Committee
- Contractors, Board for
  - Recovery Fund Committee
- † Environmental Quality, Department of
- † Nursing, Board of
- † Water Control Board, State

## March 24

- † Environmental Quality, Department of
- † Nursing, Board of

## March 25

- † Accountancy, Board for
  - Continuing Professional Education Committee

## March 28

- Agricultural Council, Virginia

## March 29

- Agricultural Council, Virginia

## March 30

- † Mental Health Planning Council, Virginia

## March 31

- Voluntary Formulary Board, Virginia
- † Medical Assistance Services, Department of
  - Drug Utilization Review Board
- Mental Health and the Law, 16th Annual Symposium on

## April 1

- Mental Health and the Law, 16th Annual Symposium on

## April 4

- Alcoholic Beverage Control Board

## April 5

- † Accountancy, Board for
  - Regulatory Review Committee
- Hopewell Industrial Safety Council

## April 6

- † Local Government, Commission on

## April 7

- † Emergency Planning Committee, Local - Chesterfield County
- † Local Government, Commission on
- † Medicine, Board on

# Calendar of Events

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- Informal Conference Committee

## April 12

† Virginia Resources Authority  
† Professional Soil Scientists, Board for

## April 15

† Opticians, Board for

## April 18

Alcoholic Beverage Control Board

## April 20

Local Debt, State Council on  
Emergency Planning Committee, Local - Henrico  
Treasury Board

## May 4

† Environmental Quality, Department of  
- Work Group on Detection/Quantitation Levels

## May 5

† Emergency Planning Committee, Local - Chesterfield  
County

## May 10

† Virginia Resources Authority

## PUBLIC HEARINGS

## February 24

† Labor and Industry, Department of  
- Apprenticeship Council  
- Safety and Health Codes Board  
Veterinary Medicine, Board of

## February 28

† Child Day Care and Early Childhood Programs,  
Council on

## March 3

† Child Day Care and Early Childhood Programs,  
Council on

## March 4

Motor Vehicles, Department of

## March 7

† Child Day Care and Early Childhood Programs,  
Council on  
† Emergency Planning Committee, Local - Cities of  
Hampton, Newport News, Williamsburg and Poquoson  
and the County of York

## March 8

† Health, Department of

## March 9

† Environmental Quality, Department of

## March 10

† Child Day Care and Early Childhood Programs,  
Council on  
Water Control Board, State

## March 14

Taxation, Department of

## March 15

Water Control Board, State  
Mental Health, Mental Retardation and Substance  
Abuse Services, Department of

## March 16

† Medicine, Board of  
- Advisory Board on Physical Therapy  
† Optometry Board  
Water Control Board, State

## March 17

Water Control Board, State

## March 18

Game and Inland Fisheries, Board of

## March 22

Water Control Board, State

## March 24

Branch Pilots, Board for

## April 4

† Labor and Industry, Department of

## April 6

Criminal Justice Services, Department of  
† Local Government, Commission on

## April 22

† Motor Vehicles, Department of



# Calendar of Events

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