

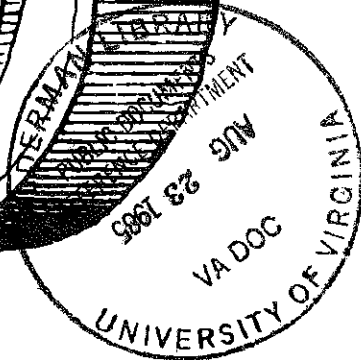
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THE VIRGINIA REGISTER

OF REGULATIONS

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AUGUST 19

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INFORMATION ABOUT THE VIRGINIA REGISTER OF REGULATIONS

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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Symbol Key

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

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

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

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

Public Hearing Date: October 22, 1985 - 10 a.m.
(See Calendar of Events Section for additional information)

Summary:

Six sections of these procedural rules are amended by these proposals. The amendments proposed will add a new § 1.15 entitled "Consent Settlement". The amendment to § 1.1 adds language to clarify that the hearing officer may proceed in the absence of an appearance by an interested party. Section 1.5 is amended to clarify that a person who wishes to complain against the continuation of a license should put the grounds for such complaint in writing. Section 1.6 clarifies the language with no substantive change. Section 1.7E makes it clear that the hearing officer has authority to immediately implement his decision regarding either the issuance of a license or the surrender of a license. Section 1.17 is amended to add the word "certified" to ensure that a transcript is certified by the hearing reporter.

Section 1.15 is proposed to provide another means for the board to expedite the hearing process and to settle cases which are not of such a serious nature that a hearing must be held in order to protect the public interest.

Section 2.1 is amended to clarify that an interested party may waive further hearing proceedings when he submits written exceptions to the hearing officer's decision and to have the board decide on those written exceptions. If an interested party fails to appear at the hearing the board may proceed in his absence to render a decision. Section 2.11 is amended to clarify that the request for a rehearing or reconsideration should contain a full and clear statement of the facts pertaining to the request, the grounds therefor, and a statement of the relief desired.

Part III, Wine and Beer Franchise Acts, is amended to incorporate the provisions of the Wine Franchise Act

which were adopted by the legislature at its 1985 session.

Part IV, Telephone hearings, is proposed to provide for hearings to be conducted by telephone, which will save considerable time and expenses to the board and parties to the hearing.

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 ~~Commission~~ board upon any application or in a disciplinary proceeding may appear and be heard in person, or by a 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.

§ 1.5. Complaints.

If substantial cause be shown the Commission, in its discretion, may arrange a hearing for persons who desire to register complaints against the continuation of a license and who desire to be heard in connection therewith.

The board in its discretion and for good cause shown may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director of Regulatory Division, setting forth the name and post office address of the person(s) against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

§ 1.6. Continuances.

Continuances Motions to continue a hearing will be

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granted as in actions at law. Request for continuances would be addressed to the Director, Division of Hearings, or the hearing officer who will preside over the hearing.

§ 1.7. Decisions.

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

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and

2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

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

C. Notice. At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and that notice of such decision, along with notice of the right to appeal to the ~~Commission~~ board, will be mailed to them or their representative and filed with the ~~Commission~~ board in due course. (See Part II § 2-1. for Appeals).

D. Prompt filing. The initial decision shall be reduced to writing, mailed to interested parties, and filed with the ~~Commission~~ 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 ~~Commission~~ board and request early or immediate implementation of the initial decision. The ~~Commission~~ 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 ~~Commission~~ 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 ~~Commission~~ 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.

1-16 § 1.17. Record.

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

initial decision.

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

§ 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 the 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 § 16 of this part.

E. Approval by the board. The board may 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.

PART II. HEARINGS BEFORE THE BOARD.

§ 2.1. Appeals.

A. An interested party may appeal to the ~~Commission~~ 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

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~~Commission board~~ provided a request therefor in writing is received within ~~ten~~ 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 ~~ten~~ (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.

§ 2.11. Rehearings and reconsideration.

The ~~Commission board~~ may, in its discretion, for good cause shown, grant a rehearing or reconsideration on the written ~~motion~~ petition of an interested party addressed to the Secretary of the ~~Commission Board~~ and received within ~~thirty~~ (30) days after the date of the final decision of the ~~Commission 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 ~~Commission board~~ may grant such at any time on its own initiative for good cause shown.

PART III.

WINE AND BEER FRANCHISE ACTS.

§ 3.1. Complaint.

Complaints shall be referred in writing to the secretary to the ~~Commission board~~ . The secretary's office, in consultation with the deputy for regulation, will determine if reasonable cause exists to believe a violation of Section 4-118.7 or 4-118.8 the Wine or Beer Franchise Acts, Chapters 2.1 and 2.2 of Title 4, of the Code of Virginia, has occurred and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute. In addition to the foregoing, if the Commission has reasonable cause to believe that any licensee has committed a violation in bad faith the Beer and Franchise Act (Chapter 2.1 of Title 4, Virginia Code) it may commence a proceeding to suspend or revoke such license, pursuant to Section 4-27(A)(1)(b), of the Code of Virginia.

§ 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of these rules. Further, the ~~Commission 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 ~~Commission board~~ as provided in Part II § 2-1 of these rules. Appeals shall be conducted in accordance with the provisions of Part II of these rules.

§ 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 ~~Commission board~~ , not a hearing officer, as soon as practicable with five days' notice to all parties which includes at a minimum all the wholesalers selling the winery or brewery's product. There will no continuances granted and the ~~Commission board~~ must rule within 24 hours of the hearing.

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 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.

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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.

* * * * *

Title of Regulations: VR 125-01-2. Advertising.

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

Public Hearing Date: October 22, 195 - 10 a.m.
(See Calendar of Events Section
for additional information)

Summary:

The proposed amendments to Regulation VR 125-01-2 are: (i) § 1 is amended to allow prominent living people to appear in alcoholic beverage advertising; (ii) § 2, is amended to allow references to manufacturers of alcoholic beverages to appear on certain advertising material used at the point-of-sale. Such advertising is otherwise prohibited and the amendment intends to allow only a reference to a manufacturer, not a brand, and only in connection with the advertising of a responsible drinking or moderation in drinking programs; (iii) §§ 3 and 4 are amended to permit the terms "liquor" and "spirits" to be used in advertising on the exterior of licensed establishments and prohibits the term "happy hour" from being used on the exterior of licensed establishments; (iv) amendment to § 6 raises the value of novelty and specialty items which may be given away from \$1 to \$2 in response to inflation; (v) § 9 is amended to allow wine wholesalers to place coupons on bottles of wine at their wholesale premises if done for all retailers equally; and (vi) § 10 is being amended to allow wholesale licensees to obtain point-of-sale advertising materials relating to charitable events directly from the source of material rather than requiring the charity to obtain the materials and provide them to the wholesaler, and will prohibit wholesalers from paying directly or indirectly for the sponsorship of public events or obtaining any

advertising value from the sponsorship of such events.

VR 125-01-2. Advertising.

~~Section 60-~~ § 1. Advertising generally; cooperative advertising; federal laws; beverages and cider; exceptions; restrictions.

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

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

C. Federal laws. - Advertising regulations adopted by the appropriate federal agency pertaining to alcoholic beverages shall be complied with except where they conflict with regulations of the ~~Commission board~~.

D. Beverages and cider. - Advertising of beverages, and cider as defined in ~~Sections 4-09 and~~ § 4-27, respectively, of the Code of Virginia, shall conform with the requirements of advertising beer.

E. Exceptions. - The ~~Commission board~~ may issue a permit authorizing a variance from these advertising regulations for good cause shown.

F. Restrictions. - No advertising shall contain any statement, symbol, depiction or reference that:

1. Would intend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent, or depicts any person or group of persons which is immodest, undignified or in bad taste, or is suggestive of any illegal activity;
3. Incorporates the use of any present or former athlete or athletic team or prominent living person 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

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product is government endorsed by the use of flags, seals or other insignia or otherwise;

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

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

8. Offers a special price on alcoholic beverages, unless such advertisement significantly conforms in size and content to the advertising of nonalcoholic merchandise offered for sale, except for coupons offered by manufacturers as provided in 125.01-2 § 9 of these regulations.

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

Section 61. § 2. Advertising; interior; retail licensees; show windows.

A. Interior advertising generally. - The advertising of alcoholic beverages inside retail establishments is within the discretion of the licensee, with the following exceptions:

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

a. Such references are contained in works of art;

b. Displayed in connection with the sale over the counter of novelty and specialty items as provided in ~~125.01-2~~ § 6 of these regulations. ~~or~~

c. Used in connection with the sponsorship of conservation and environmental, athletic and sporting, or charitable events in accordance with ~~125.01-2~~ § 10 ~~or~~ of these regulations.

d. Displayed on-service items such as placemats, coasters, glasses and table tents.

Further, alcoholic beverage brands or manufacturer references may be contained in wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which must be shipped in the case.

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

a. *Such materials shall contain no depictions of an*

alcoholic beverage product and no reference to any brands of alcoholic beverages;

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

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

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

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

B. Manufacturers, wholesalers, etc. - No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this state or not, may directly or indirectly sell, rent, lend, buy for or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising. *However, furnishing materials relating to moderation in drinking or responsible drinking programs is permitted.*

C. Show windows. - No advertising of alcoholic beverages, may be displayed in show windows facing outside the licensed establishment except that contained on table menus, or on newspaper tear sheets, provided such alcoholic beverage advertising is subordinate in size to the main advertising matter.

Section 62. § 3. Advertising; exterior; signs; trucks; uniforms.

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

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

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

2. No more than two signs, which must be directional in nature, not farther than ~~one-half~~ (1/2) mile from the licensed establishment limited in dimension to eight (8) feet in height or width, with advertising limited to brand names;

3. If the establishment is a winery also holding a winery off-premises license or is a farm winery, no more than two additional directional signs limited in dimensions to eight feet in height or width; and

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

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wholesaler.

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

1. No more than two signs at the establishment and, in 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 ~~twelve~~ { 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

2. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "~~Liquor,~~" "~~Spirits~~" and "~~Happy Hour~~" or words of similar import, and not including any reference to or depiction of "Bar," "Bar Room," "Saloon," "Speakeasy," or "~~Liquor,~~" "~~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.

~~Section 63.~~ § 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," and "Cocktail Lounges," "~~Liquor~~" and "~~Spirits.~~"

2. The following terms or depictions thereof are prohibited: "Bar," "Bar Room," "Saloon," and "Speakeasy," and "~~Liquor~~" or references or depictions of similar import.

3. Any references to "Happy Hour" or similar terms which include references to prices, including references to "special" or "reduced" prices, or similar terms of inducements to purchase or consume alcoholic beverages are prohibited.

B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser.

2. No manufacturer, bottler or wholesaler shall be deemed to have any financial interest in the business of a retail licensee nor to have sold or given to the retail licensee any property nor to have engaged in cooperative advertising solely by virtue of any advertisement appearing in college publications or trade publications of association of retail licensees which conform to the conditions and limitations herein.

3. Advertisements of wine and mixed beverages are not allowed in student publications unless in reference to a dining establishment.

4. Advertisements of beer, wine and mixed beverages in publications not of general circulation which are distributed primarily to a high school or younger age level readership are prohibited.

~~Section 65.~~ § 6. Advertising; novelties and specialties.

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

1. Only items not in excess of ~~one dollar (\$1.00)~~ \$2 in wholesale value may be given away.

2. Items in excess of ~~one dollar (\$1.00)~~ \$2 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, events of a charitable nature or athletic or sporting events, but otherwise must be sold at the reasonable open market price:

a. By mail upon request, and

b. Over the counter at retail establishment customarily engaged in the sale of novelties and specialties.

3. Wearing apparel distributed must be in adult sizes.

~~Section 68.~~ § 9. Advertising coupons.

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

1. A. Manufacturers of spirits, wine and beer may use only refund, not discount coupons. The coupons may not be honored at a retail outlet but must be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Coupons may be part of, or attached to, the package ~~only~~ if the winery or brewery put them on at the point of manufacture. Wholesale beer licensees in Virginia may not put them on the package at the wholesale premises ~~and but wine wholesalers may do so, if done for~~

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all retail licensees equally. Coupons may not be shipped in the case to retailers.

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

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

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

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

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

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

Section 69. § 10. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally. - Alcoholic beverages advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, athletic and sporting events.

B. Restrictions and conditions:

1. Programs and events on a high school or younger age level and college intramural events are prohibited.

2. Events on an amateur, semi-professional or intercollegiate level, are prohibited except for manufacturers of beer. Intercollegiate events must be approved in advance by the appropriate educational institutions.

3. Cooperative advertising as defined in ~~125-01-2~~ § 1 of these regulations is prohibited.

4. Awards or contributions of alcoholic beverages are prohibited.

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

6. 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.

7. Advertising in connection with the sponsorship of an event may be only in the media, on the inside of licensed or unlicensed retail establishments and at the site of the event.

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

9. Point-of-sale advertising shall be limited to counter cards, cannisters and table tents of reasonable size.

10. Public events permissible for sponsorship must be of limited duration such as tournament or limited fund raising events. An entire season of activities such as a college football season may not be sponsored.

11. Prior written notice of the event must be submitted to the Commission board describing the nature of the sponsorship and giving the date, time and place of it.

12. Manufacturers must pay for the sponsorship of the public events and wholesalers may not, in whole or in part, contribute or donate, either directly or indirectly, to a charity or nonprofit organization, so that the contribution is in any way considered in lieu of actual payment for sponsorship of the event.

13. No wholesaler firm name or trade name shall be used in connection with sponsorship.

* * * * *

Title of Regulations: VR 125-01-3. Tied-House.

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

Public Hearing Date: October 22, 1985 - 10 a.m.
(See Calendar of Events Section
for additional information)

Summary:

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The proposed amendment to § 2 of this regulation will allow wholesalers to restock wine and beer for a retailer at any time, except Sunday, not just at the time of sale or delivery; to allow wholesalers to build displays using the wine or beer only and to incorporate the provisions of former § 35 of the regulations concerning exchange of products into this section with changes which liberalize the rules concerning exchanging beer for retailers. Section 9 is being amended to increase the value and number of beer bottles and can openers which wholesalers may give to retailers and adds statutory language as a matter of information to make it clear that a retailer who consents to a violation of this section has also committed a violation. The amendment to § 10 is proposed pursuant to a recent amendment to § 4-79 of the Code of Virginia which permits wholesalers of alcoholic beverages to furnish routine business entertainment to retailers. The statutory amendment provided that the board shall permit and define routine business entertainment and this proposal will do that.

VR 125-01-3. Tied-House.

Section 34: § 2. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. - A wholesaler, with the express consent of the retailer, which may be a continuing consent may 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 and rearrange old stocks of wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area) . originally built or created by the retailer, provided that the fundamental plan or design of the original display is not materially altered.
2. Restock beer and wine with old or new stocks at the time of delivery or sale of new stocks .
3. Rotate, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer.
4. Transfer stocks of beer and wine, old or new between storerooms, between displays, and between storerooms and display at the time of delivery or sale of new stocks .
5. Create or build original displays using wine or malt beverage products only.
6. Exchange beer, for quality control purposes, on an identical quantity, brand and package basis. Any such exchange shall be documented by the word

"exchange" on the proper invoice.

B. Prohibited acts. - A wholesaler may not:

1. Create or build original displays (Stacking of cases permitted.)
2. Transfer old or new stocks of wine or beer other than as herein permitted.
3. 1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom.
4. 2. Mark or affix retail prices.
3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:
 - a. Products defective at the time of delivery may be replaced.
 - b. Products erroneously delivered may be replaced or money refunded.
 - c. Resaleable draft beer or beverages may be returned and money refunded.
 - d. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded.
 - e. Products which have been condemned and are not permitted to be sold in this state may be replaced or money refunded.
 - f. Beer may be exchanged on an identical quantity, brand or package basis for quality control purposes.

C. Definitions:

1. "Old stock" shall mean merchandise which has been previously delivered to the retailer's premises, including that placed by the retailer in a display in a sales area.
2. "Sale" as used in subsection (a) of this Regulation shall mean the bona fide soliciting and receipt of an order for alcoholic beverages.

Rescind in its entirety:

Section 35. Replacements, refunds and adjustments; exceptions. (a) No replacement, refund or adjustment of any kind shall be made by a wholesale licensee to a retail licensee on a sale of an alcoholic beverage or beverage except with respect to erroneous deliveries, defective merchandise or resaleable draft beer or draft beverages; provided, no such replacement, refund or adjustment shall

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be made after 30 days of delivery for erroneous deliveries or after 90 days of delivery for defective merchandise.

(b) Exceptions. - Notwithstanding the foregoing, refunds may be made for alcoholic beverages or beverages (1) in possession of a person whose license has been terminated by operation of law, by voluntary surrender or by order of the Commission, (2) which have been condemned and are not permitted to be sold in this State or (3) in the event of extenuating circumstances in regard to erroneous or defective merchandise in which special permission of the Commission is granted.

Section 58. § 9. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; cut case cards.

A. 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 must include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer.

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet excluding the following:

- (a) The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
- (b) Gas pressure gauges (may be sold at cost);
- (c) Draft arms or standards;
- (d) Draft boxes;
- (e) Refrigeration equipment or components thereof.

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

B. Bottle or can openers. - Any manufacturer, bottler or wholesaler may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the cumulative wholesale value of all such openers given to a retailer by an individual manufacturer bottler or wholesaler in any calendar year does not exceed fifty cents (50¢). Wholesale value of any such opener given to a retailer by an individual manufacturer, bottler or wholesaler does not

exceed \$1. Openers in excess of fifty cents (50¢) \$1 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

C. 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.

D. Cut case cards. - Any manufacturer, bottler or wholesaler of wine may sell, lend, buy for or give to any retailer of wine cut case cards, which are defined as promotional, two-dimensional printed matter no larger than double the largest single dimension of the case product to which they refer and supported entirely by the case, for use in displaying and advertising in the interior of his establishment other than in show windows, the sale of wines having an alcoholic content of 21% or less by volume, provided such manufacturer, bottler or wholesaler in furnishing such cards conforms with the regulations of the appropriate federal agency, relating to inside signs.

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

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

A. Generally. - Nothing in these regulations shall prohibit a wholesaler of alcoholic beverages licensed in Virginia from providing to a retail licensee of the board "routine business entertainment" which is defined as those activities enumerated in subsection B. below engaged in while discussing business matters and only to an extent which is usual and customary in a relationship between a buyer and seller.

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 to exclude from sale the products of any other wholesaler.

2. Wholesaler personnel shall accompany the personnel of the retail licensee during such business entertainment.

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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. Manufacturers of alcoholic beverages shall not entertain retain licensees nor assist a wholesaler in providing entertainment to retail licensees.

6. No more than \$100 may be spent per 24-hour period on any individual retail licensee or employee thereof or, if the licensee is a partnership, on any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer.

7. No person enumerated in subsection B.6. above may be entertained more than four times per calendar year.

8. Wholesale licensees 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.

9. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125.01-7 § 10 (formerly § 43).

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Title of Regulations: VR 125-01-4. Requirements for Product Approval.

Statutory Authority: §§ 4-7 and 4-11 of the Code of Virginia.

Public Hearing Date: October 22, 1985 - 10 a.m.
(See Calendar of Events Section for additional information)

Summary:

The amendment to § 2 is proposed to remove a burden on wholesale wine licensees. It provides that for good cause shown, the board can exempt a wine from the requirement that it be analyzed or a laboratory certificate furnished. This is of considerable importance for rare or expensive wines.

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

~~Section 12.~~ § 2. Wines, qualifying procedures; disqualifying factors; samples; exceptions.

A. Qualifying procedures. - All wines sold in the state shall be first approved by the ~~Commission~~ board as to content, container and label.

1. A certification acceptable to the ~~Commission~~ board or on a form prescribed by the ~~Commission~~ board describing the merchandise may accompany each new brand and type of wine offered for sale in the state. A certification fee and a registration fee in such amounts as may be established by the ~~Commission~~ 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 ~~Commission~~ board ; provided, however, that wine already offered for sale by another state with which this state 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 ~~Commission~~ board .

3. All wine sold in this state 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 ~~Commission~~ 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 ~~Commission~~ 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. To which fruit juice, or artificial coloring has been added, except fruit juice may be contained in wine coolers containing ~~fourteen per cent~~ (14%) or less alcohol by volume and in sangria-type wines;

3. If the alcoholic content exceeds ~~twenty-one per cent~~ (21%) by volume;

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

C. Disqualifying factors as to labels. - While not limited thereto, the ~~Commission~~ board shall withhold approval of any label:

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

D. Samples. - A person holding a license as a winery, farm winery or a wholesale wine distributor shall upon request furnish the ~~Commission~~ board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the ~~Commission~~ board may require recertification of the merchandise involved in lieu of such a sample. A fee in such amount as may be established by the ~~Commission~~ 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 state as of December 1, 1960, and remains the same in content, label and container.

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Title of Regulations: VR 125-01-5. Retail Operations.

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

Public Hearing Date: October 22, 1985 - 10 a.m.
(See Calendar of Events Sections
for additional information)

Summary:

The proposed amendment to § 1 incorporates the statutory provisions raising the age of purchase and consumption of beer and 3.2 beverages to 21 years,

with a clause that permits those attaining the age of 19 years by July 1, 1985, be permitted to purchase and consume. Section 6 of these regulations is amended to allow hotels to sell miniature bottles of distilled spirits in bedrooms and in other private rooms during a scheduled private function. Section 16 is proposed to place restrictions on practices such as "happy hour" and other methods of selling alcoholic beverage drinks which tend to promote consumption to excess and possibly resulting in accidents on our highways.

VR 125-01-5. Retail Operations.

~~Section 1-~~ § 1. Restrictions upon sale and consumption of alcoholic beverages and beverages.

A. Prohibited sales. - Except as may be otherwise permitted under §§ 4-48, or 4-50 of the Code of Virginia, no licensee shall sell any alcoholic beverage or beverage to a person whom he shall know or have reason at the time to believe is (i) under the age of ~~twenty-one~~ 21 years, except as to beer and beverages, as provided herein, or (ii) is intoxicated, or (iii) is an interdicted person. No licensee shall sell beer or ~~sell any beverage as defined in § 4-09 of the Code of Virginia~~ beverages to another person whom he shall know or have reason at the time to believe is ~~under the age of nineteen years had not attained the age of 19 years by July 1, 1985~~.

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.

~~Section 30-~~ § 6. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers; employment of minors; mixed beverages stamps.

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 ~~Commission~~ board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.

2. Limitation on sale. - Serve as one drink the entire contents of any spirits containers having a greater capacity than a "miniature" of two (2) fluid ounces or 50 ml, nor allow any patron to possess more than two (2) drinks of mixed beverages at any one time. "Miniatures" may be sold ~~only~~ by carriers and by retail establishments licensed as hotels. However, such hotel licensees may sell miniatures only for consumption in bedrooms and in private rooms during a scheduled private function.

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3. Type 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 this 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 ~~Commission board~~ or a wholesale wine distributor.

3. Empty containers. - 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 (2) fluid ounces or less, or 50 ml.

C. Sales of spirits in closed containers. - If a restaurant for which a mixed beverage restaurant license has been issued under § 4-98.2 of the Code of Virginia is located on the premises of and in a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packages in original closed containers purchased from the ~~Commission 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 ~~Commission board~~.

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function.

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages and beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee.

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to

sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Employment of minors. - No mixed beverage licensee shall employ a person less than ~~eighteen~~ 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, or

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 the purpose, or

3. Providing entertainment when accompanied by or under the supervision of a parent or guardian.

§ 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 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 a "all you can drink for \$5.00".*

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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.

* * * * *

Title of Regulations: VR 125-01-6. Manufacturers and Wholesalers Operators.

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

Public Hearing Date: October 22, 1985 - 10 a.m.

Summary:

The proposed amendments are housekeeping in nature and only affect procedure. The date a report is due is changed and a requirement to furnish copies of invoices, which is already done in practice, is added.

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

Section 14. § 2. Wines; purchase orders generally; wholesale wine distributors.

A. Purchase orders generally. - Purchases of wine from the ~~Commission board~~, between licensees of the ~~Commission board~~ and between licensees and persons outside the state shall be executed only on orders on forms prescribed by the ~~Commission board~~ and provided at cost if supplied by the ~~Commission board~~.

B. Wholesale wine distributors. - Wholesale wine distributors shall comply with the following procedures;

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the ~~Commission board~~ by the wholesale wine distributor at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the ~~Commission board~~ by the distributor reflecting accurately the date received and any changes.

2. Sales in the state. Separate invoices shall be used for all nontaxed wine sales in the state 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 state.

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 ~~Commission board~~ and provided at cost if supplied by the ~~Commission board~~, and in compliance with the instructions on the forms.

6. Reports to the ~~Commission board~~. Prior to the fifteenth day of each calendar month each ~~Each~~ month wholesale wine distributors shall, on forms prescribed by the ~~Commission board~~ and in accordance with the instructions set forth therein, report to the ~~Commission board~~ the purchases and sales made during the preceding month; the amount of "State wine tax" collected from retailers pursuant to § 4-22.1 of the Code of Virginia; and the quantity of wine on hand at the close of business on the last day of the month based on the 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 15th day of the month or, if the 15th day is not a business day, the next business day thereafter.

* * * * *

Title of Regulations: VR 125-01-7. Other Provisions.

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

Public Hearing Date: October 22, 1985 - 10 a.m.

(See Calendar of Events Section for additional information)

Summary:

The proposed amendment to § 2 is made to comply with a court ruling which stated that farm winery licenses may not be exempt from tax, and to comply with the statutory amendment that raises the legal age for purchase and consumption of beer and 3.2 beverages. The amendments to § 9 of these regulations are proposed to clarify that records regarding beer must be kept for three years, not two; that licensees may use modern recordkeeping methods and that the exemption from reporting changes in ownership for companies whose stock is publicly traded applies only to changes in stock ownership. Section 13 is being amended to delete language granting a special privilege to certain licensees because the former restrictions on licensees have been removed and the special privileges are unnecessary. The amendments make § 15 applicable to wine, not just beer as is required by the adoption of the Wine Franchise Act by the legislature at its 1985 session and clarifies the circumstances under which a winery or brewery may discriminate in price among its wholesalers. Section 16 is amended to change the name of the Alcoholic Beverage Control Commission to the Alcoholic Beverage Control Board to comply with the legislative enactment of a standard nomenclature system which provides for all permanent collegial

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bodies such as the governing body of the Department of Alcoholic Beverage Control to be called a "Board." The proposed amendments, § 17, incorporates previous guidance concerning the 25% limitation on out-of-state raw materials; and interpretation of "other agricultural products" as used in the statute and the nature of the additional retail outlet farm winery licensees may have.

VR 125-01-7. Other Provisions.

Section 17. § 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider. - The procedures established by regulations of the ~~Commission~~ board for the handling of wine having an alcoholic content of not more than ~~fourteen per cent~~ 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 ~~Commission~~ 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 ~~twelve~~ 12 ounces (375 ml. if in a metric sized package nor more than ~~(1)~~ one gallon (3 three liters if in a metric sized package).

D. Labels. - If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the ~~Commission~~ board.

E. Markup. - The markup or profit charged by the ~~Commission~~ board shall be eight cents per liter or fractional part thereof. ~~No markup or profit shall be charged on cider manufactured under farm winery licenses.~~

F. Age limits. - Persons must be ~~nineteen~~ twenty-one 21 years of age or older to purchase or possess cider. However, if a type of cider has an alcoholic content of more than seven per cent (~~7%~~) by volume and has been approved by the Commission as wine, persons must be twenty one years old or older to purchase or possess it.

Section 28. § 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. Generally. - All licensees of the ~~Commission~~ board shall keep complete and accurate records at the licensee's place of business for a period of two (~~2~~) years except with respect to records regarding beer and 3.2 beverages which shall be kept three years as required by § 58.1-709, of the Code of Virginia, which records shall at all times during business hours be available for inspection by any

member of the ~~Commission~~ board or its agents. Licensees of the board may commit these records to microfilm or other available technologies at any time during the period specified herein.

B. Retail licensees generally. - Retail licensees shall keep records of the purchases and sales of alcoholic beverages and beverages, and also records of the purchases and sales of foods and other merchandise including, but not limited to, purchase invoices of such alcoholic beverages, beverages, foods and other merchandise. The records of the purchases and sales of alcoholic beverages and beverages shall be kept separate and apart from other items.

C. Mixed beverage restaurant licensees. - In addition to the requirements of paragraphs A and B hereof, and separate and apart therefrom, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales, and the following additional records:

1. Upon delivery of a mixed beverage restaurant license by the ~~Commission~~ board, the licensee shall furnish to the ~~Commission~~ board or its agents a complete and accurate inventory of all alcoholic beverages and beverages then held in inventory on the premises by the licensee.

2. Each licensee at least annually on forms prescribed by the ~~Commission~~ board shall submit to the ~~Commission~~ board, within ~~thirty~~ 30 days following the first day of the month next following the month in which the mixed beverage restaurant license was originally issued:

a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages, held in inventory at the close of business at the end of the annual review period, and

b. An accounting of the annual purchases of food, nonalcoholic beverages, alcoholic beverages, and beverages, including alcoholic beverages purchased for sales as mixed beverages, and miscellaneous items, and

c. An accounting of the monthly and annual sales of all merchandise specified in subsection C. 2(b).

D. "Sale" and "sell" - The terms "sale" and "sell" shall include exchange, barter and traffic, and delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages, other alcoholic beverages and beverages, and of meals or food.

E. Gross receipts, food, alcoholic beverages, etc. - In determining "gross receipts from the sale of food" for the purposes of Chapter 1.1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia, no licensee shall include any receipts for

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food for which there was no sale, as defined in this section. Food which is made available at an unwritten, nonseparate charge to patrons or employees during so called "happy hours," private social gatherings, promotional events, or at any other time, shall not be included in such gross receipts.

If in conducting its review pursuant to § 4-98.7 of the Code of Virginia the ~~Commission board~~ determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages, other alcoholic beverages or beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the ~~Commission board~~ may calculate the number of mixed drinks, alcoholic beverages and beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

F. Reports. - Any changes in the officers, directors or shareholders owning ~~ten percent~~ { 10% } or more of the outstanding capital stock of a corporation shall be reported to the ~~Commission board~~ within ~~thirty~~ { 30 } days; provided, however, that ~~this subsection shall not be applicable to licensed 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.~~

~~Section 40.~~ § 13. Special mixed beverage licensees; location; special privileges; taxes on licenses.

A. Location. - Special mixed beverage licenses may be granted to persons by the ~~Commission board~~ at places primarily engaged in the sale of meals where the place to be occupied is owned by the government of the United States, or any agency thereof, is located on land used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, which licenses shall convey all of the privileges and subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein.

B. Special privileges.

1. The licensee shall be exempt from compliance with the provisions pertaining to the number and sizes of tables in Section ~~51~~ except that the surface areas of tables shall not be less than five hundred and seventy-six (576) square inches.

2. "Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the sales thereof shall be not less than ~~forty-five per centum~~ 45% of the gross receipts from the sale of alcoholic beverages, mixed beverages, beverages as defined in § 4-99 and meals.

C. Taxes on licenses. - The annual tax on a special

mixed beverage license shall be five hundred dollars { \$500 ~~00~~ } and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be twenty five dollars { \$25 ~~00~~ } per day.

~~Section 57.~~ § 15. Wholesale beer alcoholic beverage and beverage sales; discounts, price-fixing; price increases; price discrimination; retailers.

A. Discounts, price fixing. - No person holding a winery or brewery license, a bottler's license or a wine or beer importer's license shall require a person holding a wholesale beer license to discount the price at which the wholesaler shall sell any beer 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 beer alcoholic beverage or beverage.

B. Notice of price increases. - No person holding a winery or brewery license, a bottler's license or a wine or beer importer's license shall increase the price charged any person holding a wholesale beer license for beer 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 ~~commission 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 ~~thirty~~ 30 calendar days following the date on which the notice is postmarked; provided that the ~~commission board~~ may authorize such price increases to take effect with less than the aforesaid ~~thirty~~ 30 calendar days notice if a winery, brewery, bottler or beer importer so requests and demonstrates good cause therefor.

C. No price discrimination by wineries, breweries and wholesalers. - No ~~brewery winery as defined in § 4-118.23 or brewery, as defined in § 4-118.4 of the Code of Virginia, shall discriminate in price of beer alcoholic beverages between different wholesale purchasers and no wholesale wine or beer licensee shall discriminate in price of beer 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 between charged to any such wholesaler or retail purchasers does occur, the Commission board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.~~

D. Retailers Inducements. - No person holding a license authorizing sale of beer alcoholic beverages or beverages

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at *wholesale* or retail shall knowingly induce or receive a discrimination in price prohibited by paragraph C. of this section.

~~Section 50.~~ § 16. Alcoholic Beverage Control Commission Board.

Whenever in these rules and regulations the word "Board," "board," or "Commission" shall appear, and the clear context of the meaning of the provision in which it is contained is intended to refer to the Alcoholic Beverage Control ~~Commission Board~~, it shall be taken to mean the ~~Commission board~~.

§ 17. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state, except upon permission of the board as provided in § 4-25.1, B. of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels.

B. The term "other agricultural products" used in subsection A, includes wine.

C. The additional retail establishment authorized by statute to be located at a reasonable distance from the winery is not required to be a permanent one. It may be moved as necessary as long as one such remote outlet is operating at any given time. The location, equipment and facilities of each remote outlet shall be approved in advance by the board.

COMMISSION OF GAME AND INLAND FISHERIES

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

Title of Regulations: VR 325-04-2. Motorboat Numbering.

Statutory Authority: § 29-127 of the Code of Virginia.

Public Hearing Notice: A public hearing on the advisability of adopting, or amending and adopting, each of the proposed changes, or any part thereof, will be held at the offices of the Commission of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 9:30 a.m. on August 23, 1985, at which any interested citizen present shall be heard. If the Commission is satisfied that proposed changes in its regulations, or any parts thereof, are advisable, in the form in which

published or as amended as a result of the public hearing, the Commission may adopt each such proposal, acting upon the proposals separately or in block.

Summary:

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

The Commission of Game and Inland Fisheries has ordered to be published, pursuant to § 29-125, 29-126 and 29-127 of the Code of Virginia, the following proposed changes in Commission regulations applicable STATEWIDE.

VR 325-04.
WATERCRAFT.

VR 325-04-2.
Motorboat Numbering.

Amend § 1. to read as follows:

§ 1. Application for certificate of number.

An application or renewal application for a certificate of number for a motorboat, as required by the Virginia Motorboats and Watercraft Safety Law, shall contain the following information: The name and address of owner, county or city where boat is principally kept used, present number on boat (if any), hull material (wood, fiberglass, metal, inflatable, other), type of propulsion (outboard, inboard and inboard/outboard, auxiliary sail - outboard, inboard), type of fuel (gas, diesel, electric), make and year built (if known), length overall, statement as to use (pleasure, livery, dealer, manufacturer, commercial passenger, commercial fishing, commercial other), a statement of ownership by applicant and signature of owner.

HAZARDOUS WASTE FACILITY SITING COUNCIL

Title of Regulations: VR 352-01-2. Schedule of Fees for Hazardous Waste Facility Site Certification.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Public Hearing Dates: (See Calendar of Events Section)

Summary:

The proposed regulations establish fees and the procedures for fees assessment for applicants proposing to site hazardous waste facilities in the Commonwealth of Virginia. The regulations assess applicants for three charges. Applicants are required to pay legal notices, copying charges for all reports and charges for holding briefings, meetings and hearings (estimated between \$2,000 and \$4,000

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depending upon geographic location). Second, fees are assessed for Class I facilities (storage) at \$10,000, or 1% of estimated construction costs, whichever is greater, but not to exceed \$20,000. Class II-V facilities have a fixed fee of \$20,000. The third fee proposed is to cover council's cost for consultant assistance to aid the council in processing applications. This amount will be set at the time of application and will vary according to the complexity of the facility. The maximum total fee for an application for a major facility will be \$24,000 plus the consultant cost. The maximum fee for a small storage facility is \$12,000.

VR 352-01-2. Schedule of Fees for Hazardous Waste Facility Site Certification.

PART I.

Article I.

Purpose and Authority.

§ 1.1. Authority for regulation.

These regulations are issued under the authority of Title 10, Article 17.1, § 10-186.5 of the Code of Virginia. (the Virginia Hazardous Waste Facility Siting Act or the Act.)

§ 1.2. Purpose of regulations.

Section 10-186.5(11) of the Code of Virginia, authorizes the Hazardous Waste Facility Siting Council to "adopt a schedule of fees to charge applicants and to collect such fees for the cost of processing applications and site certifications." These regulations establish an application fee and guidelines for its collection.

§ 1.3. Severability.

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

Article II. Definitions.

§ 1.4. Section 10-186.3 of the Virginia Hazardous Waste Facility Siting Act defines several words and terms used in this regulation. Unless the context clearly indicates otherwise, those words and terms will have the same meaning when used in these regulations. In addition, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4, of the Code of Virginia.

"Council" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4 of the Code of Virginia.

"Processing fee" means the average estimated cost of handling an application for certification of site approval. Such costs include photocopying, mailing, print and broadcast media notices, travel expenses (transportation, meals, and lodging) for members of the council and additional personnel, production of transcripts, meeting room rental, compensation for members of the council, etc. Staff time is not included.

"Consultant fee" means the council may contract with technical consultants for assistance in evaluating an application for certification of site approval. Because the complexity of issues and problems associated with assessing an application increase with the nature of the proposed facility, the consultant fee may not be the same for all categories of facilities. The consultant fee is based on the cost for hiring consultants who are expert in various fields. Such cost includes compensation for the consultant's time, laboratory work, travel expenses (transportation, meals, lodging), production of documents, etc.

PART II. APPLICABILITY AND WAIVER.

§ 2.1. Applicability of fees.

Any person applying for a certification of site suitability is subject to the regulations regarding payment of fees.

§ 2.2. Waiver of fees.

A. The council may, in its discretion, waive all or part of the fees if it determines that the public interest is served thereby due to special circumstances.

B. In the event an applicant believes he should be entitled to a waiver of fees, the applicant should request the waiver in writing to the council. The request may be made anytime after the applicant submits the final impact analysis, but no later than the date the application for certification of site approval is due.

C. The request for waiver of fees shall be sent to the council by registered mail and shall contain at a minimum the following information:

1. The name and address of the applicant;
2. The location of the facility and a brief description of its operation;
3. A brief description of the nature and extent of the construction to be done;
4. A discussion of the reasons a waiver of all or part of the fees is appropriate, with particular focus on

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how the public interest will be served by a waiver;

5. Any additional information or documentation the applicant believes will be helpful.

D. The council will consider the request for a waiver of fees at its next regularly scheduled meeting. The applicant requesting waiver may attend the meeting and make a presentation, although no additional evidence may be offered.

E. Within 30 days of the meeting at which the request for waiver is considered, the council will determine whether it will waive the fee requirement, and will notify the applicant in writing of its decision.

PART III. FEES.

§ 3.1. Application fee.

The fee required to accompany the application for certification of site approval shall consist of two parts: the processing fee and the consultant fee.

§ 3.2. Processing fee.

The processing fee shall accompany the application for certification for site approval. The amount of the processing fee shall be \$20,000 for Class II-V facilities.

Fees for Class I facilities will be \$10,000 or equal to 1% of the estimated construction cost, whichever is greater, but not to exceed \$20,000.

§ 3.3. Consultant fee.

The consultant fee shall be determined by the council prior to and accompany the application for certification for site approval. The amount of the fee may vary with the nature of the proposed facility.

§ 3.4. Review of costs.

The executive director will review annually the costs upon which the processing fee and the consultant fee are based. The executive director may recommend adjustment of the fees to the council to reflect the changes in costs.

PART IV. PAYMENT OF FEES.

§ 4.1. Payment of fee.

The application fee is due when the applicant submits the application for certification of site approval. At the time the application fee is due, the applicant must have paid all expenses incurred in the publication and distribution of the applicant's notice of intent, draft impact analysis and notice thereof, and notice of the public hearing on draft certification of site approval.

§ 4.2. Acknowledgement of receipt of fee.

The executive director shall promptly acknowledge by certified mail the receipt of a draft certification of site approval with payment of application fee. Notice to the applicant of receipt of the fee payment should not be construed as any comment on the completeness of the application.

§ 4.3. Manner of payment.

Fees shall be paid by cashier's check or certified check made payable to the Commonwealth of Virginia, Virginia Hazardous Waste Facility Siting Council.

§ 4.4. Effect of failure to pay fee.

No application will be deemed complete until proper payment is received by the council. Pursuant to § 10-186.12(C) of the Code of Virginia, within 15 days of receipt of an application for certification of site approval, the executive director shall notify an applicant whether an application is complete.

PART V. REFUNDS.

§ 5.1. Refunds.

The council may refund all or part of the fee in the event of a termination of the application process prior to the council's final decision on certification of site approval if the council determines that, as a result of cause by federal or state government action, the applicant is unable to complete the site certification despite his good faith.

§ 5.2. Request for refund.

An applicant desiring such a refund must make the request in writing to the council within 30 days of the federal or state government action making the applicant unable to complete the site certification process. The request shall be sent by certified mail and shall, at a minimum, contain the following information:

1. Name and address of the applicant;
2. Location of the proposed facility and a brief description of its operation;
3. A copy of the document containing the federal or state government action making completion of the site certification process impossible or impracticable for the applicant despite the applicant's good faith, or if a copy of such document cannot be obtained, a complete description of the government action; and
4. A comprehensive discussion of the way in which the government's action has resulted in the applicant's good faith inability to complete the site certification process, with supporting documentation, if any.

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§ 5.3. Decision on refund.

At its next regularly scheduled meeting, the council will consider the request for refund. The applicant may attend and make a presentation to the council as well as answer any questions members of the council may have. The applicant may not present any additional information to the council unless such information was unavailable at the time the request for refund was made.

* * * * *

Title of Regulations: VR 352-01-3. Technical Assistance Fund Administrative Procedures.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Public Hearing Dates: (See Calendar of Events Section)

Summary:

The proposed regulations specify procedures for application, disbursement and accounting for local technical assistance funds distributed by the siting council. The regulations make available to local governments in which a facility is proposed a grant of up to \$20,000 per proposal and an additional \$10,000 based on a 50/50 matching amount.

The total amount available for distribution is \$50,000; therefore, minimum assistance will be available for the first two proposals. Technical assistance funds may not be used for legal services or negotiators.

VR 352-01-3. Technical Assistance Fund Administrative Procedures.

PART I.

Article I. Purpose and Authority.

§ 1.1. Authority for regulation.

These regulations are issued under the authority of Title 10, Article 17.1, § 10-186.5 of the Code of Virginia. (the Virginia Hazardous Waste Facility Siting Act or the Act.)

§ 1.2. Purpose of regulations.

Section 10-186.9(C) of the Code of Virginia, makes available to the governing body of a host community a reasonable sum from the technical assistance fund. These regulations establish procedures for obtaining funds and guidelines for their use.

§ 1.3. Severability.

If any clause, sentence, paragraph, subdivision, section or part of these regulations shall be adjudged by any court

of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

Article II. Definitions.

§ 1.4. Section 10-186.3 of the Code of Virginia defines several words and terms which are used in this regulation. Unless the context clearly indicates otherwise, those words and terms will have the same meaning when used in these regulations. In addition, the following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4, of the Code of Virginia.

"Council" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4, of the Code of Virginia.

"In kind services" means those services provided by the host community which give technical assistance.

"Technical assistance" means aid which enables the governing body of the host community to better understand and assess the environmental, economic, and social impact of a hazardous waste facility at a particular site. The purpose of technical assistance is to help the governing body to evaluate properly and accurately an applicant's siting proposal, and to enable that body to negotiate a siting agreement competently. "Technical assistance" does not include legal services or services of a negotiator as such.

PART II. AVAILABILITY.

§ 2.1. Technical assistance fund.

Money from the technical assistance fund, established by § 10-186.9(C) of the Code of Virginia, shall be available to each host community. This money may be used only to provide the governing body of the host community with technical assistance, as defined elsewhere in these regulations.

§ 2.2. Amount of allocation.

The council shall make available to the host community up to \$20,000 per proposed facility.

§ 2.3. Additional funds.

The council may award additional funds to a host community on a 50/50 matching basis, not to exceed

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\$10,000, in the event additional technical assistance is required. The host community may match all or part of the additional funds by in kind services.

PART III. APPLICATION FOR FUNDS.

§ 3.1. Time frame.

At any time between receipt of the notice of intent and the due date of the report of the governing body on the siting agreement negotiations, the host community may request an allocation from the technical assistance fund.

§ 3.2. Form and manner of request for allocation.

The host community's request for an allocation from the technical assistance fund shall be adopted by the governing body. The request shall be sent to the council by registered mail.

§ 3.3. Contract.

Upon receipt of the request, the executive director shall promptly send to the host community a contract based on the model provided in Appendix I for the distribution of funds to localities. The contract must be approved and executed by the governing body of the host community and returned to the board by registered mail.

§ 3.4. Allocation.

Within 30 days of receipt of the executed contract the council shall authorize the allocation of funds to the host community.

§ 3.5. Additional funding.

A. A host community may request, during the same time period designated for the requests for allocation in § 3.1 of these regulations, additional monies from the technical assistance fund. If awarded, these monies will be provided on a 50/50 matching basis, not to exceed \$10,000.

B. The request for additional funding must be adopted by the governing body and sent to the council by registered mail. The request must contain the following information:

1. A cover letter providing background information and a brief summary of the request;
2. A detailed breakdown of the manner in which the original allocation was or will be spent;
3. A description of the additional technical assistance desired and the reasons it is necessary;
4. A detailed breakdown of each aspect of the technical assistance desired and the cost for each aspect;

5. A description of the way in which the host community proposes to supply its 50% of the total cost. If the host community proposes to apply funds to match those provided by the council, the application should include a resolution by the governing body to that effect. If the host community match is to be made by in kind services, then the application should contain a thorough description of each service to be provided and an estimate of its value; and

6. Any other relevant information or supporting documents the host community wishes to include.

C. The council shall evaluate the request for additional funding within 30 days of receipt of the request. The council shall notify the host community of the date, time, and location of the meeting to consider the request. A representative of the host community may make an oral presentation to the meeting, but will not be permitted to present any additional evidence.

D. Within 30 days of the meeting described in § 3.5(C), the council shall determine what additional funds, if any, shall be distributed to the host community for technical assistance.

PART IV. ACCOUNTABILITY.

§ 4.1. Unused monies.

Any money awarded to a host community from the technical assistance fund and which is not spent shall be returned to the council within 60 days of the host community's report on the siting agreement negotiations.

§ 4.2. Accounting of monies spent.

Within 60 days of the due date of the host community's report on the siting agreement negotiations, the governing body of the host community shall provide the council with a certified accounting statement of all monies expended from the technical assistance fund. The statement shall also include appropriate information regarding the host community's expenses in the event that the host community received additional funding that it was obliged to match.

§ 4.3. Misused monies.

In the event the council learns that monies awarded to a host community from the technical assistance fund have not been spent on technical assistance, the council shall take any action it deems necessary to recover the misused monies.

APPENDIX I.

TECHNICAL ASSISTANCE FUND GRANT.

Pursuant to § 10-186.9(C) of the Code of Virginia, Title

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10, Article 17.1 (the Virginia Hazardous Waste Facility Siting Act or the Act), the Virginia Hazardous Waste Facility Siting Council (the council) shall make available to the governing body of a host community a reasonable sum of money from the technical assistance fund. (The host community) is this day receiving the sum of from the technical assistance fund.

The host community agrees to take the grant subject to all the requirements and restrictions imposed by the Act and by the regulations of the council regarding the technical assistance fund and to use the grant only to provide itself with technical assistance as defined in those regulations.

The host community further agrees that in expending the grant it will comply with the Virginia Public Procurement Act, Title 11, Chapter 7 of the Code of Virginia. In particular, the host community agrees that in the solicitation or award of contracts it shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror, and that it will solicit contracts from businesses from a list made available by the Office of Minority Business Enterprise.

The host community agrees to return to the council any unused monies from the grant along with a certified accounting statement of all monies expended from the grant, within 60 days of the due date of the host community's report on the siting agreement negotiations. The host community acknowledges its liability for any monies from the grant which the council finds have not been spent on technical assistance.

Title of Regulations: VR 352-01-4. Administrative Procedures for Hazardous Waste Facility Site Certification.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Public Hearing Dates: (See Calendar of Events Section)

Summary:

The proposed regulations establish the council's administrative procedures for processing applications for site certification. The proposed regulations detail submission requirements for the notice of intent, impact statements and application for site certification. Additional detail is given for the final decision-making process including the powers of the hearing officer and the rights of parties involved, and rules of evidence.

VR 352-01-4. Administrative Procedures for Hazardous Waste Facility Site Certification.

PART I.

Article I. Purpose and Authority.

§ 1.1. Authority for regulation.

These regulations are issued under the authority of Title 10, Article 17.1 (the Virginia Hazardous Waste Facility Siting Act or the Act), § 10-186.5 of the Code of Virginia

§ 1.2. Purpose of regulations.

The Virginia Hazardous Waste Facilities Siting Act contains a detailed description of the process and procedures for a certification of site suitability. Because of the Act's specificity, these regulations are designed to amplify and supplement the statutes where appropriate. These regulations together with the statutes establish administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites.

§ 1.3. Severability.

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

Article II. Definitions.

§ 1.4. Section 10-186.3 of the Act defines several words and terms which are used in this regulation. Unless the context clearly indicates otherwise, those words and terms will have the same meaning when used in these regulations. In addition, the following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

"Affected communities" means those counties, cities or towns contiguous to the host community which may be affected by the siting of a hazardous waste facility in the host community.

"Applicant" means the person applying for a certification of site suitability or submitting a notice of intent to apply therefor. The applicant must be the person who intends to own or operate the proposed facility.

"Application" means an application to the council for a certification of site suitability.

"Board" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4 of the Code of Virginia.

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"Certification of site suitability" or "certification" means the certification issued by the Hazardous Waste Facility Siting Council pursuant to this chapter.

"Construct or construction" means that -

A. After July 1, 1984, no person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" shall mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than 50% of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the board, result in a substantially different type of facility. It does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the board may allow, without going through the procedures of this chapter, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;
2. Comply with federal or state laws and regulations promulgated after July 1, 1984; or
3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person who violates this section shall be compelled by injunction, in a proceeding instituted in the circuit court for a locality where the facility or proposed facility is to be located, to cease the violation.

D. Such an action may be instituted by the board or by the Attorney General, or by the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section.

E. No action may be brought under this section after a certification of site approval has been issued by the board, notwithstanding the pendency of any appeals or other challenges to the board's action.

F. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially

prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

"Council" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4 of the Code of Virginia.

"Criteria" means the criteria adopted by the council, pursuant to § 10-186.7 of the Code of Virginia.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Fund" means the technical assistance fund created pursuant to § 10-186.21 of the Code of Virginia.

"Hazardous waste facility" or "facility" means any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this chapter, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; and (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly-owned sewage treatment works.

"Hazardous waste management facility permit" means the permit for a hazardous waste management facility issued by the State Health Commissioner of the U.S. Environmental Protection Agency.

"Host community" means any county, city or town within whose jurisdictional boundaries construction of a hazardous waste facility is proposed.

"On-site" means facilities that are located on the same or geographically contiguous property which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties are at a crossroads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

"Operating characteristics": These include, but are not limited to:

1. Brief description of the nature of the business of the facility, including an estimate of the size of the business (number of employees, etc.);

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2. Specification of each hazardous waste involved in the operation of the facility and an estimate of the annual quantity of each;

3. Description of the physical facility (number and size of buildings, tanks and other structures);

4. General description of the process to be used in the treatment, storage, and/or disposal of each hazardous waste;

5. Description of the anticipated traffic to and from the facility (number, type, and capacity of those vehicles transporting hazardous waste as well as other types of vehicles);

6. Short and long term projections for the facility, including its projected life expectancy;

7. Any other relevant information which will assist the council and other persons to gain a clear understanding of the nature and operation of the facility.

"Operator" means a person who is responsible for the overall operation of a facility.

"Owner" means a person who owns a facility or a part of a facility.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, interstate body or federal government agency.

"Preliminary site plan" means a draft design of the proposed facility. The preliminary site plan need not be a completed engineering design, but it must accurately represent all structures of the proposed facility. If the site has existing structures, the preliminary site plan must designate these and specify the alterations to be made to each.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities but does not include (i) solid or dissolved material in domestic sewage; (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

"Storage" means the containment or holding of hazardous wastes pending treatment, recycling, reuse, recovery or disposal.

"Treatment" means any method, technique or process,

including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste less hazardous or nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of a hazardous waste so as to render it less hazardous or nonhazardous. (1985, c. 513.)

PART II. INITIATION OF CERTIFICATION PROCESS.

§ 2.1. Requirement of certification and waiver.

Section 10-186.6 of the Act states that Certification of site approval required; "construction" defined; remedies.

A. After July 1, 1984, no person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" shall mean (i) with respect to new facilities, the significant alteration of site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than 50% of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the board, result in a substantially different type of facility. It does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the board may allow, without going through the procedures of this chapter, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;
2. Comply with federal or state laws and regulations promulgated after July 1, 1984; or
3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person who violates this section shall be compelled by injunction, in a proceeding instituted in the circuit court for a locality where the facility or proposed facility is to be located, to cease the violation.

D. Such an action may be instituted by the board or by the Attorney General, or by the political subdivision in which the violation occurs. In any such action, it shall not

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be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section.

E. No action may be brought under this section after a certification of site approval has been issued by the board, notwithstanding the pendency of any appeals or other challenges to the board's action.

F. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably. (1984, c. 513.)

G. With respect to a new facility: the significant alteration of site to install permanent equipment or structures; or

1. With respect to existing facilities:

a. The alteration or expansion of existing structures or facilities to initially accommodate hazardous waste; or

b. Any expansion of more than 50% of the area or capacity of an existing hazardous waste facility; or

c. Any change in the design or process of an hazardous waste facility that will result in a substantially different type of facility. If the change in the design or process would cause the facility to be reclassified as a higher numbered category, or would necessitate application for a new or additional hazardous waste management permit, that change would result in a substantially different type of facility.

H. Does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

I. Emergency situation.

1. Scope of waiver: The owner or operator of a facility may be permitted to make changes which are designed to prevent a threat to human health or the environment because of an emergency situation.

2. Applying for waiver: The owner or operator of the facility may obtain verbal approval from the executive director effective for a period up to 30 days, unless revised by the council at its next regular meeting, and, in addition, must follow-up the request for waiver in writing to the executive director of the council. The request at a minimum must contain the following information:

a. The name and address of the owner and/or operator of the facility;

b. Location of the facility and a description of its operation;

c. Description of the circumstances creating the emergency situation;

d. Description of the resulting threat to human health and/or the environment; and

e. Description of the changes to be made in the facility.

3. The waiver: Upon receipt of the request, the executive director will grant or deny the request for waiver. In the event the executive director grants the request for waiver, such waiver is subject to the approval of the council at its next regularly scheduled meeting. If the executive director denies the request, the applicant may renew the request at the next regularly scheduled meeting of the council.

J. State or federal laws; more acceptable process.

1. Scope of waiver: The owner or operator of a facility may be permitted to make changes which are designed to comply with state or federal laws enacted or regulations promulgated after July 1, 1984, or changes which demonstrably result in safer or environmentally more acceptable processes.

2. Applying for waiver: The owner or operator of the facility must make the request in writing to the council. At a minimum the request must contain the following information:

a. Name and address of the owner and/or operator of the facility;

b. Location of the facility and a description of its operation; and

c. Either:

(1) A copy of the state or federal law or regulation necessitating the change, if applicable, and a description of the changes to be made in the facility to effect compliance with the law or regulation; or

(2) A description of the changes the owner or operator wishes to make and an analysis demonstrating the improved safety or environmental soundness resulting from the changes.

3. The waiver: At its next regularly scheduled meeting, the council will consider the request for waiver. The owner or operator or his representative should attend the meeting. At the meeting the council may:

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- a. Grant the request for waiver;
- b. Deny the request for waiver;
- c. Determine that additional information is needed from the owner or operator;
- d. Decide that a public hearing is needed; or
- e. Take any other action the council deems appropriate.

4. Should the council decide to hold a public hearing, it will also determine from among the following who will conduct the hearing: a member or members of the council, the executive director, and/or a hearing officer appointed from outside the council. The council will give notice of the hearing to the same parties and in the same manner as described in § 2.4 of these regulations, regarding distribution of the notice of intent. The owner or operator shall provide the council with a list of the names and addresses of all owners of property adjoining the facility. The notice of the hearing shall specify the date, time, and location of the hearing and include a copy of the request for waiver.

§ 2.2. Contents the notice of intent.

Section 10-186.8 of the Code of Virginia states Notice of intent to file application for certification of site approval.

A. After December 31, 1984, any person may submit to the board a notice of intent to file an application for a certification of site approval. The notice shall be in such form as the board may prescribe by regulation. Knowingly falsifying information, or knowingly withholding any material information, shall void the notice and shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months, a fine of not more than \$10,000, or both.

Any state agency filing a notice of intent shall include as a part thereof a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest will be served thereby.

B. Within 45 days of receipt of such a notice, the board shall determine whether it is complete. The board shall reject any incomplete notice, advising the applicant of the information required to complete it, and allow reasonable time to correct any deficiencies.

C. Upon receipt of the notice, the board, at the applicant's expense, shall:

1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this chapter to the governing body of each host community and to

each person owning property immediately adjoining the site of the proposed facility; and

2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the board or other state agency from which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice."

D. Notice.

1. Name and address of the applicant;
2. A copy of the property deed, option, or other document giving right, title, or interest to the proposed site;
3. A description of the proposed facility including its operating characteristics;
4. A USGS map showing the location of the property at a scale of 1 inch = 2000 feet;
5. Names and addresses of all owners of property adjacent to the proposed site; and
6. Any state agency filing a notice of intent shall include a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest will be served thereby.

E. Determination of completion of notice of intent.

1. The executive director will review the notice of intent and determine within 45 days of its receipt whether the notice of intent is complete. If the executive director determines that the notice of intent is incomplete, he shall so advise the applicant, specifying the information needed to complete the notice and designating a deadline for the correction of any deficiencies.

F. Distribution of notice of intent.

Upon the determination that a notice of intent is complete, the council, at the applicant's expense, shall promptly:

1. Deliver by certified, return receipt mail a copy of the notice of intent with a copy of the Act, a copy of these regulations, and notice of the date, time, location and purpose of the briefing meeting to:

- a. The governing body of each host community;

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- b. The governing body of each affected community;
- c. State legislators elected from the area(s) in which the host community and affected communities are located;
- d. The regional planning district commission(s) of the host community and the affected communities; and
- e. Each person owning property immediately adjoining the site of the proposed facility.

2. Copies of the notice of intent will be mailed to any person who has specifically requested such notice.

§ 2.3. Waiver of participation by host community.

Section 10-186.9 of the Code of Virginia states Powers of governing body of host community; technical assistance.

A. The governing body of a host community shall have the following powers:

- 1. To hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;
- 2. To receive and disburse monies from the fund, and any other monies as may be available;
- 3. To enter into a contract, which may be assignable at the parties' option, binding upon the governing body of the host community and enforceable against it and future governing bodies of the host community in any court of competent jurisdiction, with an applicant by signing a siting agreement pursuant to § 10-186.13 of the Code of Virginia.

B. Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia), a governing body may:

- 1. Hold executive sessions to discuss strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions and provisions of a siting agreement if the governing body in open meetings find that an open meeting will have a detrimental effect upon the negotiating position of the governing body and/or the establishment of the terms, conditions and provisions of the siting agreement. All negotiations with the applicant or his representatives may be conducted in a closed meeting or executive session.
- 2. May hold confidential, except as otherwise provided in § 10-186.12 A 3 of the Code of Virginia, any documents so long as disclosure of them would have a detrimental effect upon the negotiating position of a governing body or the establishment of the terms, conditions and provisions of the siting agreement.

C. The board shall make available to the governing body from the fund a reasonable sum of money to be determined by the board. This shall be used by the governing body to hire consultants to provide it with technical assistance and information necessary to aid the governing body in its review of the siting proposal, negotiations with the applicant and the development of a siting agreement.

Unused monies from the fund shall be returned to the board. The governing body shall provide the board with a certified accounting statement of any monies expended from the fund.

D. The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information between the local government, the community, the applicant and the siting board.

E. Notwithstanding the foregoing provisions of this chapter, the governing body of a host community may notify the board, within 45 days after receiving a notice of intent pursuant to § 10-186.8 C 1 of the Code of Virginia, that it has elected to waive further participation under the provisions of this chapter. After receiving notification from the host community, the board may issue certification of site approval without further participation by the host community. (1984, c. 513.)

1. Section 10-186.9 E of the Act permits the governing body of the host community to waive further participation in the certification process. Should the governing body elect to waive participation it must notify the council in writing with a copy of its adopted resolution within 45 days of receiving the notice of intent. Although this waiver permits the council to issue a certification of site approval without further participation by the governing body of the host community, such waiver in no way restricts the rights of any other person or organization to participate in the certification process.

§ 2.4. Briefing meeting.

Section 10-186.10 of the Code of Virginia states Briefing meetings.

A. Not more than 75 nor less than 60 days after the delivery of the notice of intent to the host community, the board shall conduct a briefing meeting in or in reasonable proximity to the host community. Notice of the date, time, place and purpose of the briefing session shall be prepared by the board and shall accompany the notice of intent delivered pursuant to § 10-186.8 C 1 of the Code of Virginia, and be included in the notice published pursuant to § 10-186.8 C 2 of the Code of Virginia.

At least one representative of the applicant shall be present at the briefing meeting.

The board shall adopt procedures for the conduct of briefing meetings. The primary purpose of the briefing meeting will be to provide information on the proposed site and facility and to receive comments, suggestions and questions thereon.

B. The board may conduct additional briefing meetings at any time in or near a host community, provided that at least 15 days in advance of a meeting, notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body, and to all owners of property adjoining the proposed site.

C. A stenographic or electronic record shall be made of all briefing meetings. The record shall be available for inspection during normal business hours. (1984, c. 513.)

D. The council shall select from among its membership a briefing officer who will be responsible for conducting the meeting as follows:

1. The briefing officer will call the meeting to order and explain the purpose of the briefing;
2. The applicant shall be allowed to give a presentation describing the proposal and to respond to questions;
3. Persons asking questions shall be requested to state their names, addresses, and interests in the project;
4. The briefing officer shall conduct the meeting in an orderly manner while ensuring that all interested parties present are as fully briefed as possible on the proposal;
5. A stenographic or electronic record shall be made of all briefing meetings. A transcript of the meeting, together with copies of any documents submitted at the briefing, shall be made available for inspection at the office of the council during normal working hours.

E. If the council conducts additional briefing meetings, notice of such meetings shall be provided as follows:

1. Notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body of the host community, and to all owners of property adjoining the proposed site at least 15 days in advance of the meeting;
2. Such notice is publiced once each week for at least two successive weeks in a newspaper of general circulation in the host community;
3. Such notice is broadcast over one or more radio stations within the area to be affected by the subject of the notice;
4. Such notice is mailed to each person who has

asked to receive notice; and

5. Such notice is disseminated by any additional means the board deems appropriate.

§ 2.5. Impact analysis.

Section 10-186.11 of the Code of Virginia states Impact analysis.

A. The applicant shall submit a draft impact analysis for the proposed facility to the board within 90 days after the initial briefing meeting. At the applicant's expense, copies of the draft impact analysis shall be furnished as follows: five to the host community, and one to each person owning property adjoining the site of the proposed facility. At least one copy shall be made available for public inspection and copying at a convenient location in the host community during normal business hours.

B. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to the criteria and other information as the board may require by regulation.

C. The board at the applicant's expense, shall cause notice of the filing of the draft impact analysis to be made in the manner provided in § 10-186.20 of the Code of Virginia, within 10 days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of recipients, (iii) a description of the places and times that the analysis will be available for inspection, (iv) a description of the board's procedures for receiving comments on the analysis, and (v) the addresses and telephone numbers for obtaining information from the board.

D. The board shall allow 45 days after publication of notice for comment on the draft impact analysis. No sooner than 30 and no more than 40 days after publication of notice of the draft impact analysis, the board shall conduct a public meeting on the draft impact analysis in or near the host community. The meeting shall be for the purpose of explaining, answering questions and receiving comments on the draft impact analysis. A representative of the governing body and a representative of the applicant shall be present at the meeting.

E. Within 10 days after the close of the comment period, the board shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

F. The applicant shall prepare and submit a final impact analysis to the board after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the items listed in subsection B of this section. A copy of the final impact analysis shall be provided by the applicant upon request to each of the persons who received the draft impact analysis. (1984, c. 513.)

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G. The applicant shall submit a draft impact analysis in accordance with § 10-186.11 of the Act and, in addition, shall furnish a copy of the draft impact analysis to each person designated in that section and to each affected community.

H. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to the criteria and the additional following requirements:

- 1. A cover letter signed by the applicant;*
- 2. An executive summary providing a brief description of the applicant's proposal, the impacts, and mitigating actions;*
- 3. A preliminary site plan;*
- 4. A full report addressing each of the following:*
 - a. Effects on botanical resources;*
 - b. Energy and water consumption;*
 - c. Discharge of any substance, or of heat, in surface or ground waters;*
 - d. A description of any necessary clearing, excavating, dredging, filling;*
 - e. The types and amounts of wastes which will be accepted;*
 - f. The process or processes to be employed including its basic characteristics and principal limitations;*
 - g. Planned operational safeguards and monitoring of the facility following cessation of operations;*
 - h. Emission of radiation;*
 - i. Solid waste disposal;*
- 5. An ownership report containing:*
 - a. A legal description of the applicant, including identification of all principal participants;*
 - b. A current audited financial statement or statements prepared by a certified public accountant including the accountant's opinions;*
 - c. A description of all liability insurance the applicant has, or plans to obtain for the proposed site and facility, and a description of the financial and managerial arrangements for closure and post-closure care of the site;*
 - d. A description of the applicant's experience in the field, including any other hazardous waste facilities*

operated or owned currently or in the past by the applicant, and details of their compliance record; and

e. A description of how the applicant intends to finance the project.

6. An appendix providing any supporting documentation.

I. The council will receive comments on the draft impact analysis pursuant to the following procedures:

1. Comments on the draft analysis may be in writing and mailed to the council within 45 days of publication of the notice for comment;

2. Comments may be submitted in writing or by presentation before the council at the public meeting conducted pursuant to § 10-186.11 D of the Act. The meeting will be conducted in the same manner as the briefing meeting in § 2.4D of these regulations.

J. Preparation and submission of the final impact analysis will be in accordance with § 10-186.11 F of the Act.

PART III. APPLICATION FOR CERTIFICATION OF SITE APPROVAL.

§ 3.1. Application.

Section 10-186.12 of the Code of Virginia states, Application for certification of site approval.

A. At any time within six months after submission of the final impact analysis, the applicant may submit to the board an application for certification of site approval. The application shall contain:

1. Conceptual engineering designs for the proposed facility;

2. A detailed description of the facility's suitability to meet the criteria promulgated by the board, including any design and operation means that will be necessary or otherwise undertaken to meet the criteria;

3. A siting agreement, if one has been executed pursuant to § 10-186.13 C of the Code of Virginia, or, if none has been executed, a statement to that effect.

B. The application shall be accompanied by whatever fee the board, by regulation, prescribes pursuant to subdivision 11 of § 10-186.5 of this Act.

C. The board shall review the application for completeness and notify the applicant within 15 days of receipt that the application is incomplete or complete.

If the application is incomplete, the board shall so advise the applicant and shall identify the information necessary to make the application complete. The board shall take no further action until the application is complete.

If the application is complete, the board shall so advise the applicant and shall direct the applicant to furnish copies of the application to the following: five to the host community, one to the State Health Commissioner, and one to each person owning property adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in a host community during normal business hours.

D. The board shall cause notice of the application to be made in the manner provided in § 10-186.20 of the Code of Virginia, and shall notify each governing body that upon publication of the notice the governing body must conclude all negotiations with the applicant within 30 days. The applicant and the governing body may, by agreement, extend the time for negotiation to a fixed date but shall forthwith notify the board of this date. The board may also extend the time to a fixed date for good cause shown.

E. At the end of the period specified in subsection D of this section, a governing body shall submit to the board and to the applicant a report containing:

1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and
2. Any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

F. If the report is not submitted within the time required, the board may proceed as specified in § 10-186.14 A of this Act.

G. The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval. (1984, c. 513.)

H. Any application for certification of site approval submitted to the council shall contain:

1. A summary of the proposal including a general description of the facility and the nature of the business;
2. Conceptual engineering designs for the proposed facility and a final site plan;
3. A copy of the final impact analysis;
4. A siting agreement, if one has been executed pursuant to § 10-186.13 of the Act, or, if none has been executed, a statement to that effect;

I. Fees.

The application shall be accompanied by the fee established by the fee schedule regulation.

J. Form of the application.

1. The application should be contained in one or more three-ring loose leaf binders preferably on 8 1/2 x 11 inch paper.

2. All maps required by this regulation shall be detachable, but may be fold outs.

3. The summary shall be capable of separate reproduction and distribution.

K. The executive director shall review the application for completeness and notify the applicant within 15 days of receipt that the application is incomplete or complete. The applicant shall furnish copies of the completed application to the parties specified in § 10-186.12 C of the Code of Virginia, and in addition, one copy shall be furnished to each affected community.

§ 3.2. Negotiations; Role of Board; Good Faith Required.

Section 10-186.13 states, Negotiations; siting agreement.

A. The governing body or its designated representatives and the applicant, after submission of notice of intent to file an application for certification of site approval, may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any meeting shall be set by agreement, but at least a 48-hour notice shall be given to members of the governing body and the applicant.

B. The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility. In the event that a provision of a siting agreement conflicts with state or federal law, the state or federal law shall prevail.

C. The siting agreement shall be executed by the signatures of (i) the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and (ii) the applicant or authorized agent.

D. The board shall assist in facilitating negotiations between the local governing body and the applicant.

E. No injunction, stay, prohibition, mandamus or other order or writ shall lie against the conduct of negotiations or discussions concerning a siting agreement or against the agreement itself, except as they may be conducted in violation of the provisions of this chapter. (1984, c. 513)

F. The council shall assist in facilitating negotiations

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between the local governing body and the applicant to the extent of recommending a mediator or other conflict resolution mechanism, but shall not become integrally involved in the siting agreement negotiations.

G. If the report submitted by the governing body pursuant to § 10-186.12 E of the Code of Virginia indicates that no siting agreement has been reached and there is any indication that the applicant has failed or refused to negotiate in good faith, the executive director shall issue notice to the applicant and host community of the council's intention to hold an informal conference pursuant to § 9-6.14:11 of the Virginia Administrative Process Act. The notice shall state the time, place and date of such conference. The purpose shall be to determine the sole issue of whether or not the applicant has failed or refused to negotiate in good faith with the governing body in developing a siting agreement.

H. If the council finds that the governing body has shown by a preponderance of the evidence that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement, the council may deny the application for certification of site approval. Such a finding shall constitute final action by the council.

I. If the council finds that the governing body has not shown by a preponderance of the evidence that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement, the council may issue the draft certification of site approval pursuant to § 10-186.14 of the Code of Virginia. Such finding shall not be considered final action by the council.

J. For purposes of this section, evidence of good faith may include, but is not limited to, a showing that the applicant has obtained agreements for such things as a site completion bond, safety assurances, additional monitoring or operation review privileges.

§ 4.3. Draft certification of site approval.

Section 10-186.14 states, Draft certification of site approval.

A. Within 30 days after receipt of the governing body's report or as otherwise provided in § 10-186.12 G of this Act, the board shall issue or deny a draft certification of site approval.

B. The board may deny the application for certification of site approval if it finds that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement.

C. The draft certification of site approval shall specify the terms, conditions and requirements that the board deems necessary to protect health, safety, welfare, the

environment and natural resources.

D. Copies of the draft certification of site approval, together with notice of the date, time and place of public hearing required under § 10-186.15 of the Code of Virginia, shall be delivered by the board to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available for inspection and copying at a convenient place in the host community during normal business hours. (1984, c. 513.)

E. The draft certification of site approval shall specify the terms, conditions and requirements that the council, on a case-by case basis, deems necessary to protect the health, safety, welfare, environment and natural resources.

F. Copies of the draft certification of site approval shall be delivered by the council to the governing body of the host community, to persons owning property adjoining the proposed facility site, and to the governing body of any affected communities.

§ 3.4. Public hearing on draft certification of site approval.

Section 10-186.15 states, Public hearing on draft certification of site approval.

A. The board shall conduct a public hearing on the draft certification not less than 15 nor more than 30 days after first publication of notice. The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and in the manner provided in § 10-186.20 of the Code of Virginia. It shall include:

1. A brief description of the terms and conditions of the draft certification;
2. Information describing the date, time, place and purpose of the hearing;
3. The name, address and telephone number of an official designated by the board from whom interested persons may obtain access to documents and information concerning the proposed facility and the draft application;
4. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and
5. The name, address and telephone number of an official designated by the board to receive written comments on the draft certification.

C. The board shall designate a person to act as hearing officer for the receipt of comments and testimony at the public hearing. The hearing officer shall conduct the hearing in an expeditious and orderly fashion, according to

such rules and procedures as the board shall prescribe.

D. A transcript of the hearing shall be made and shall be incorporated into the hearing record.

E. Within 15 days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the board. The hearing officer may prepare a summary to accompany the record, and this summary shall become part of the record. (1984, c. 513.)

F. The council shall conduct a public hearing on the draft certification not less than 15 nor more than 30 days after the first publication of notice. The hearing shall be conducted in the host community.

G. Notice of the hearing shall be made at the applicant's expense and shall:

1. Provide for public participation by sending a copy of the notice by certified, return receipt mail to the following:

- a. The governing body of the host community;
- b. The governing body of the affected communities;
- c. Legislators elected from the areas in which the host community is located and the affected communities are located;
- d. The regional planning district commissions of the host community and affected communities;
- e. Persons owning property adjoining the site of the proposed facility.

2. In addition, a copy of the notice will be sent by mail to those parties on the board's information dissemination list and media list.

3. In addition to the requirements imposed by paragraph 1, in accordance with § 10-186.20 of the Act, be disseminated:

- a. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;
- b. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;
- c. By mailing to each person who has asked to receive notice;
- d. By such additional means as the council deems appropriate.

Every notice shall provide a description of the subject for which notice is made and shall include the name and

telephone number of a person from whom additional information may be obtained.

4. Provide that the contents of such notice include:

- a. A brief description of the terms and conditions of the draft certification;
- b. Information describing the date, time, place and purpose of the hearing;
- c. The location where the draft certification may be reviewed;
- d. The name, address and telephone number of an official designated by the council to receive written comments of the draft certification;
- e. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments;
- f. Any such information as the council deems appropriate.

H. Designation and powers of hearing officer.

1. The public hearing held pursuant to these procedures will be conducted by a hearing officer designated by the council.

2. The hearing officer shall conduct the hearing in an orderly and expeditious manner, and shall hold all powers necessary to those ends, including, but not limited to, the power to do the following:

- a. Prescribe the methods and procedures to be used in the development of evidentiary facts and the presentation of evidence by the parties, including the issuance of prehearing orders setting forth the issues for hearing and establishing deadlines for the filing of written testimony and exhibits;
- b. Impose reasonable limitations on the time permitted for oral testimony;
- c. Consolidate the presentation of factual data, arguments and proof to avoid repetitive presentation thereof;
- d. Administer oaths and affirmations;
- e. Receive probative evidence, rule upon offers of proof and, upon his own motion or the objection of any party, exclude irrelevant, immaterial, insubstantial or repetitive proofs, rebuttal or cross-examination;
- f. Examine witnesses;
- g. Hold prehearing conferences for the settlement,

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simplification or stipulation of issues and facts by consent;

h. Rule on procedural matters; and

i. Issue subpoenas and subpoenas duces tecum in accordance with § 9-6.14:13 of the Code of Virginia.

3. Rulings of the hearing officer on the admissibility of evidence or testimony, on the propriety or conduct of cross-examination, and on any and all procedural matters shall appear in the hearing record and shall control further proceedings in the hearing. Parties shall be presumed to have taken objection to any adverse ruling, and no objection shall be considered waived by further participation on the hearing.

I. Parties; rights of parties; petition to become a party.

1. The following persons are entitled to become parties to the public hearing conducted pursuant to this section:

a. The applicant;

b. The host community; acting through its governing body;

c. Any person owning land adjoining the site of the proposed facility.

2. In addition to the above named parties, any person whose significant interest will be adversely affected by the decision of the council may file a petition to become a party to the hearing. The following procedures apply to such petitions:

a. The petition to become a party must be received by the council at least 10 days prior to the scheduled hearing date.

b. The petition shall contain the following:

(1) The names and addresses of the petitioner, the petitioner's counsel (if any) and all persons for whom the petitioner is acting as a representative;

(2) A statement setting forth the interest of the petitioner in the matter;

(3) A statement by the petitioner that, should its petition be granted, the petitioner and all persons represented by the petitioner will be available, without cost to any other party, to appear at the hearing;

(4) A statement by the petitioner explaining how its interests would not be adequately represented by existing parties to the hearing.

c. The executive director shall acknowledge the

receipt of all petitions to become a party.

d. The executive director shall consider all petitions filed in accordance herewith, and shall grant those petitions that both:

(1) Raise one or more genuine substantial issues in the petition which, if resolved adversely to the petitioner, would result in an injury to a significant interest of the petitioner; and

(2) Adequately describe how the petitioner's interest is not represented by an existing party to the hearing.

e. The executive director shall notify the petitioner, and all other parties, of his decision to grant or deny petition to become a party by mail at least five days prior to the scheduled hearing date. The decision of the executive director in no way limits the rights of judicial review granted under § 10-186.18 of the Code of Virginia.

3. The rights of the parties to the hearing shall be limited to those enumerated in these regulations and the Act.

J. Evidence at the hearing.

1. Parties to the hearing may present direct and rebuttal evidence in written and oral form, as the hearing officer may direct. Oral cross-examination will not be permitted, but any party may submit written questions to the hearing officer, who subject to his ruling as to their relevance and propriety, will propound them to the witness.

2. The hearing officer shall admit all relevant, competent and material evidence offered by the parties but shall exclude evidence which he determines to be repetitive, irrelevant, immaterial or otherwise inadmissible.

3. Whenever any evidence or testimony is excluded by the hearing officer as inadmissible, so much of the excluded material as is in written form shall remain in the record as an offer of proof, and shall be marked "excluded" by the hearing officer. Where oral testimony is excluded, the party seeking to introduce it may make an offer of proof in the form of a brief descriptive statement for the record.

4. Any other interested person may be given an opportunity to testify during the hearing. The hearing officer shall allow such testimony to be heard as is not irrelevant, immaterial, insubstantial or repetitive. Any interested person who so testifies shall be sworn and subject to cross-examination as prescribed in this section.

K. Hearing record.

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1. The hearing officer shall assemble a hearing record after the close of the hearing.

The hearing record shall consist of:

- a. A transcript of the hearing, and any exhibits admitted in evidence;
 - b. A copy of the final impact statement;
 - c. A copy of the application for certification of site approval;
 - d. Reports of any consultants hired by the council that have been made available to the parties prior to the hearing;
 - e. A copy of the draft certification of site approval; and
 - f. A summary of the record, if the hearing officer so desires.
2. Within 15 days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the council.

PART IV.

§ 4.1. Final decision on certification of site approval.

Section 10-186.16 of the Code of Virginia states, Final decision on certification of site approval.

A. Within 45 days after the close of the public hearing, the board shall meet within or in close proximity to the host community and shall vote to issue or deny the certification of site approval. The board may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days' notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10-186.20 of the Code of Virginia. No testimony or evidence will be received at the meeting.

B. The board shall grant the certification of site approval if it finds:

1. That the terms and conditions thereof will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;
2. That the facility will comply and be consistent with the criteria promulgated by the board; and
3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to,

efforts to mitigate or compensate the host community and its residents for adverse economic effects, if any, of the facility.

C. The board's decision to grant or deny certification shall be based on the hearing record and shall be accompanied by the written findings of fact and conclusions upon which the decision was based. The board shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail.

D. The grant or denial of certification shall constitute final action by the board. (1984, c. 513.)

E. The final decision on certification of site approval shall be made by the council in accordance with § 10-186.16 of the Act. The council shall grant the certification of site approval if it finds:

1. That the terms and conditions of certification will protect human health and environment and prevent foreseeable injury so as to minimize any adverse risk to health, safety, welfare, the environment, and natural resources;
2. That the facility will comply and be consistent with the Hazardous Waste Facility Siting regulations;
3. That the applicant has made good faith efforts to reach a siting agreement with the host community, including, though not limited to, efforts to compensate the host community and its residents for any adverse economic effects caused by the facility site.

§ 4.2. Amendment of certification of site approval.

Section 10-186.17 of the Code of Virginia states, Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under other state and federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause upon such procedures and regulations as shall be prescribed by the board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the board that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon

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termination of the hazardous waste facility permit by the State Health Commissioner or EPA Administrator; or (iv) upon a finding by the board that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the board of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall preclude the right of any individual or constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time at which certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions or § 25-232.1 of the Code of Virginia. (1984, c. 513.)

G. Certification may be amended at the request of any interested party as defined in § 3.4 (I) of these regulations or upon the council's initiative, but only for the causes listed in this section. All requests shall be in writing and shall contain facts or reasons supporting the request. The council shall make its determination within 45 days of receiving notice. If, in the opinion of the council, the amendment is of major public interest, the council may schedule a public hearing according to the requirements outlined in § 3.4 of this regulation.

H. If the council decides the request is not justified, it shall send the requestor a brief response giving a reason for the decision.

I. The following are causes for amendment of certification of site approval:

1. There are material or substantial alterations or additions to the approved site which occurred after certification which justify the application of conditions that are different or absent in the existing certification.

2. The council has received information pertaining to circumstances or conditions existing at the time the certification of the site was approved that was not included in the administrative record and would have justified the application of different condition, if, in the judgment of the council, such modification is necessary to prevent significant adverse effects on public health or the environment.

3. The standards or regulations on which the certification was based have been changed by promulgation of amended standards or regulations or by judicial decision after the certification was approved. Certification may be amended for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The certification condition requested to be modified was based on a promulgated Hazardous Waste Facility Siting regulation;

(2) The Commonwealth has revised, withdrawn, or modified that portion of the regulation on which the certification condition was based; or

(3) Amendment is requested within 90 days after notice of the action on which the request is based.

b. For judicial decision, a court of competent jurisdiction has remanded and stayed Commonwealth regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed within 90 days of judicial remand.

J. Certification of site approval shall be terminated in accordance with § 10-186.17 (C) of the Act.

* * * * *

Title of Regulations: VR 352-01-5. Hazardous Waste Facility Siting Criteria.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Public Hearing Dates: (See Calendar of Events Section)

Summary:

The proposed regulations establish the criteria, both prohibitions and limitations, for assessing applications for site certification under the provisions of the Virginia Hazardous Waste Facility Siting Act. The proposed regulations avoid, to the maximum extent feasible, any duplication with other existing state agency regulations.

The proposed regulations generally ban hazardous waste facilities from environmentally sensitive areas, consistent with existing regulatory controls, and place tighter restrictions on land disposal methods than on methods for storage or treatment.

The limitation criteria ensure that environmental factors are assessed: surface water, ground water, air quality, endangered species, land in public trust; that geologic factors are assessed: subsurface mining, slope, faults, karst topography (caves and sinkholes); and that social and economic factors are assessed: impact on local government, risk to population, transport accident risk, risk of fire and explosion.

The criteria are designed to facilitate the siting of

hazardous waste facilities which are consistent with the environmental quality of the Commonwealth and provide for facilities for the storage, treatment and disposal of hazardous wastes which are essential to the economic growth and well-being of Virginia industries.

VR 352-01-5. Hazardous Waste Facility Siting Criteria.

PART I.

Article 1.

Purpose and Authority.

§ 1.1. Authority for regulation.

These regulations are issued under the Authority of the Code of Virginia, Title 10, Article 17.1 (the Virginia Hazardous Waste Facilities Siting Act or the Act).

§ 1.2. Purpose of regulations.

These regulations establish the criteria which will be used by the Virginia Hazardous Waste Facility Siting Council to evaluate and approve or disapprove applications for hazardous waste facility site certification.

§ 1.3. Severability.

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

ARTICLE II. DEFINITIONS.

Words and Terms.

§ 1.4. Section 10-186.2 of the Act defines several words and terms also used in this regulation. Unless the context clearly indicates otherwise, these words and terms will have the same meaning when used in these regulations. In addition, the following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise.

"Active portion" means that portion of a facility where treatment, storage or disposal operations are being conducted. It includes the treated area of a land farm and the active face of a landfill, but does not include those portions of a facility which have been closed in accordance with all applicable closure requirements of the Virginia Department of Health.

"Anti-degradation policy for ground water" means if the concentration of any constituent in ground water is less than the limit set forth by ground water standards, the

natural quality for the constituent shall be maintained; natural quality shall also be maintained for all constituents, including temperature, not set forth in ground water standards. If the concentration of any constituent in ground water exceeds the standards for that constituent, no addition of that constituent to the naturally occurring concentration shall be made. Variance to this policy will not be made unless it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development, that the necessary degree of waste treatment cannot be economically or socially justified, and that the present and anticipated uses of such water will be preserved and protected. (State Water Control Board, Water Quality Standards, Publication Number RB-1-80, Revised Edition, April 1982).

"Applicant" means the person applying for certification of site suitability or submitting a notice of intent to apply therefor.

"Aquifer" means water-bearing geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of ground water to wells or springs. An aquifer is unconfined (water table) or confined (artesian) according to whether the upper surface of the water is at atmospheric pressure or at greater than atmospheric pressure.

"Attenuation" means any decrease in the maximum concentration or total quantity of a chemical or biological constituent during a fixed time or distance traveled.

"Board" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4 of the Code of Virginia.

"Buffering capacity" means the capacity of a soil to take up contaminants through a variety of attenuation processes such as biological activity, dilution, volatilization, mechanical filtration, precipitation, buffering, neutralization and ion exchange. Some attenuation processes result in permanent removal and degradation of pollutants, which others act to store pollutants and thereby delay pollution problems but do not eliminate them.

"Cation exchange capacity (C.E.C.)" means the excess of counter ions in the zone adjacent to the charged surface or layer which can be exchanged for other cations. The C.E.C. of geological materials is normally expressed as the number of milliequivalents of cations that can be exchanged in a sample with a dry mass of 100g.

"Closure" means the act of securing a hazardous waste management facility pursuant to the requirements of Virginia Hazardous Waste Management Regulations promulgated by the Board of Health.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

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"Construction" means that after July 1, 1984, no person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" shall mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment and structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than 50% of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the board, result in a substantially different type of facility. It does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident hereto.

A. Upon receiving a written request from the owner or operator of the facility, the board may allow, without going through the procedures of the chapter, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;
2. Comply with federal or state laws and regulations promulgated after July 1, 1984; or
3. Demonstrably result in safer or environmentally more acceptable processes.

B. Any person who violates this section shall be compelled by injunction, in a proceeding instituted in the circuit court for a locality where the facility or proposed facility is to be located, to cease the violation.

C. Such an action may be instituted by the board or by the Attorney General, or by the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section.

D. No action may be brought under this section after a certification of site approval has been issued by the board, notwithstanding the pendency of any appeals or other challenges to the board's action.

E. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

"Council" means the Hazardous Waste Facility Siting Council established pursuant to Title 10, Chapter 17.1, of

the Code of Virginia.

"Criterion" means a test, rule, measure or model by which judgment will be made.

"Dam-related flood hazard areas" means areas identified as being dam-related flood hazard areas which fall into one of two categories: areas of dynamic flooding below the dam, or the inundation zone, and areas of static flooding above the dam, or the flood pool. The inundation zone is the area that would be inundated in excess of storm water by the water released by the impoundment in the event of a dam breach. It is that area which would be inundated immediately downstream from the site of the impounding structure extending to that point on the stream where the calculated water surface profile resulting from the design flood, determined absent the impounding structure, converges with that calculated water surface profile which would result from failure of the impounding structure and impoundment at impounding capacity, with the time of such failure to be considered coincident with the time of occurrence of maximum inflow to the impoundment resulting from the design flood. The flood pool is defined as the land area above the dam which is prone to flooding during abnormally high runoff or precipitation.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which the waste will remain after closure.

"Endangered or threatened species habitat" means areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official federal or state lists of endangered or threatened species, or under active consideration for state or federal listing. The definition also includes a sufficient buffer area to ensure continued survival of the species.

"Floodplain" means an area adjoining a river, stream or water course which has been or hereafter is likely to be covered by floodwaters.

Included in this category are coastal flood hazards which are defined as land areas adjacent to open coast, coastal sounds and their upstream estuaries which are prone to flooding from hurricanes and storm surges with an annual probability of one percent.

Also included in this definition are riverine flood hazard areas defined as the valley areas adjacent to any size waterway which can be covered by flood waters resulting

from excessive rainfall or other factors. The riverine flood hazard areas also fall under the Federal Emergency Management Administration definition of a "Regulatory Floodway" under the National Flood Program. A regulatory floodway includes the channel of the river and the adjacent floodplain that must be reserved in order to discharge the base flood (the flood level anticipated in the 100-year flood plain). The regulatory floodway cannot cause a cumulative increase in the water surge elevation of the base flood of greater than one foot at any point.

"Ground water" means any water, except capillary moisture beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water quality" means the natural quality of ground water as measured against drinking water criteria and standards established by the U. S. EPA and the State Department of Health and adopted by the Virginia State Water Control Board.

"Hazardous waste facility" means any facility, including land and structures, appurtenances, improvements and equipment for treatment, storage, or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. This definition does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; and (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works and storage/treatment facilities.

"Hundred-year flood" means a flood of that level which on the average will have a 1% chance of being equaled or exceeded in any given year at designated locations.

"Hydraulic conductivity" means the rate of flow of water in gallons per day through a cross section of one square foot under a unit hydraulic gradient, at the prevailing temperature. (Permeability coefficient)

"Hydraulic gradient" means the change in hydraulic pressure per unit of distance in a given direction.

"Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste.

"Inundation zone (below a dam)" means the area that would be inundated in the event of a dam failure.

"Karst topography" means a type of topography or surface covered by alluvial or colluvial sediments that may form over limestone, dolomite, or gypsum formations

by dissolving or solution, and that is characterized by closed depressions or sinkholes, caves, and underground drainage.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means a disposal facility or part of a facility where waste is placed in or on land and which is not a treatment facility, a surface impoundment or an injection well.

"Leachate" means a liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the the quality of the air, ground water, surface water or soils.

"Monitoring well" means a well used to obtain water samples for water quality analysis or to measure depth to ground water table.

"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Principal drinking water source aquifer" means an aquifer which serves as the sole or principal source of drinking water to a large population.

"Proximity to a fault" means located such that potential vibration of a known active fault as defined under "seismic risk zones" in this regulation may adversely affect the physical integrity of the facility, or such that ground and surface waters associated with such fault may be degraded.

"Proximity to a principal drinking water source aquifer" means a site which is located such that the geologic features or characteristics of the site will lead to degradation of the aquifer as a result of operations or in the event of an accident or spill.

"Proximity to a public drinking water surface supply" means within one-half mile of either side of a stream or impoundment for a distance of five stream miles upstream including tributaries, and one-tenth of a mile downstream of any surface water intake for a public water supply.

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"Publicly designated areas" means publicly owned lands designated as seashore areas, wilderness or scenic areas, scenic rivers, wildlife or bird sanctuaries, game lands, state parks and recreation areas and other natural areas. Also included are lands on or proposed for inclusion on the National Register of Historic Places and scenic easements held by the Virginia Outdoors Foundation. These lands must have been designated or be pursuant to an on going program as of the date of the notice of intent.

"Recharge" means natural or artificial replenishment or storage of nondegrading (quality) water in an aquifer.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saprolite" means a soft, earthy, clay-rich, thoroughly decomposed rock formed in place by chemical weathering of igneous and metamorphic rocks.

"Saturated zone (zone of saturation)" means that part of the earth's crust in which all voids are filled with water under pressure greater than that of the atmosphere.

"Scenic rivers" means rivers designated by the Virginia General Assembly under the Scenic Rivers Act as worthy of preservation based on their unique environmental and aesthetic characteristics.

"Seismic risk zones" means an area where a fault which has had displacement in Holocene time is present or which has had historical earthquake activity in Modified Mercalli VII or Richter Scale 4, or greater.

"Shellfish beds and natural trout waters" means an area in close proximity to waters which support shellfish beds or a naturally occurring trout population.

"Site" means the land or water area upon which a facility or activity is physically located or conducted including but not limited to adjacent land used for utility systems such as repair, storage, whipping or processing areas, or other areas incident to the hazardous waste facility or activity.

"Siting Council" means the Hazardous Waste Facility Siting Council established pursuant to § 10-186.4 of the Code of Virginia.

"Soil pH" means the numerical expression to indicate acidity and alkalinity with neutrality represented by the value of 7.

"Soil/saprolite layer" means the unconsolidated materials derived primarily from the in-place weathering of underlying geologic deposits. Saprolite is specifically the unconsolidated weathering product of crystalline bedrock which retains relic bedrock structure. Thickness of the

soil/saprolite layer is the depth from the surface to bedrock.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the state or within its jurisdiction. For the purpose of these regulations, adjacent wetlands are included in this definition.

"Static water level" means the level at which water stands in a well when no water is being taken from the aquifer either by pumping or by free flow.

"Storage" means the containment or holding of hazardous waste pending treatment, recycling, reuse, recovery or disposal.

"Storage facility" means any facility which stores hazardous waste, except for generators who store their own waste on-site for short periods of time for subsequent transport off-site.

"Subsurface mining areas" means areas where deep mining or removal by drilling of minerals or mineral fuels has resulted in a potential for land subsidence. Subsidence is the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure; removal of underlying supporting materials by mining or solution of solids, either artificially or from material causes; compaction due to wetting (hydrocompaction); or from material causes; oxidation of organic matter in soils; or added load on the land surface.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an interjection well or a seepage facility.

"Thermal treatment" means treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of the hazardous waste.

"Transfer facility" means any transportation related to facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

"Treatment" means any method, technique, or process, including neutralization, designed to change chemical, physical or biological character or composition of any hazardous waste so as to neutralize such waste; so as to recover energy or material resources from such wastes; so as to render such waste nonhazardous or less hazardous, or safe for transport or disposal, amenable for recovery, amenable for storage or reduced in volume.

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"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, jetted, driven, or dug well, where the depth of the well is greater than the largest surface dimension. (See also injection well.)

"Underground seepage" means underground emplacement of fluids at atmospheric pressure through an uncased well, dug hole, or a disposal facility constructed in a dug hole or an earth material fill.

"Unsaturated zone (zone of aeration)" means the zone between the topographic surface and water table.

"Uppermost aquifer" means the aquifer nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Water table" means the upper surface of the zone of saturation in ground waters in which the hydrostatic pressure is equal to atmospheric pressure. (See uppermost aquifer.)

"Water well" means an excavation with associated casing, which is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, artificial recharge, or storage of ground water, the depth of which is greater than the diameter or width.

"Well" means for the purpose of these regulations any shaft or pit dug, drilled, jetted, driven, or bored into the earth, generally of a cylindrical form, and often cased with bricks or tubing to prevent the earth from caving in, whose depth is greater than the largest surface dimension.

"Well yield" means average water yield in gallons per minute obtained from wells trapping the uppermost aquifer below a specific site or site vicinity.

"Wetlands" means areas inundated by surface or ground water with a frequency sufficient to support, under normal circumstances, a prevalence of vegetated or aquatic life requiring saturated or seasonally saturated soil conditions for growth or reproduction.

PART II. SITING CRITERIA.

Article 1. Scope of Review.

§ 2.1. The council shall consider the degree of hazard involved in any proposed operation in making a siting decision.

Article 2. Categories of Facilities.

§2.2. For the purposes of this document, hazardous waste

management facilities are broken down into five basic categories: (I) containerized or enclosed storage (a group of tanks); (II) closed treatment process - with spill containment (treatment in tanks); (III) open treatment process - with spill containment (incinerator); (IV) any above ground treatment - no spill containment (wastepiles and land treatment); and (V) disposal without complete treatment and all other treatment/disposal methods (land disposal).

A. Category I - Containerized or enclosed storage.

1. Description.

A facility which is designed to store waste in above ground tanks, or portable containers as defined in §§ 10.09 and 10.10 of the Virginia Hazardous Waste Management Regulations (see Appendix E), provided that the area where the waste is stored meets the "containment" requirements specified in § 10.09.06. In general, this section requires that the base under the storage area be free of cracks or gaps and is sufficiently impermeable to contain leaks, spills or accumulated precipitation. It also must have sufficient containment capability to hold 10% of the volume of the containers stored, or the whole volume of the largest container, whichever is greater, and must be able to contain any run-off which might be involved. Although § 10.09.06 in the Virginia regulations applies only to containers, for the purpose of siting criteria, a facility which uses tanks must also conform to these requirements in order to be classified in Category I.

Examples include such facilities as:

- a. A warehouse for storing 55 gallon drums.
- b. A tank to store materials for loading into an incineration ocean-going vessel.
- c. A storage tank associated with a land based treatment facility.

2. Consequences of loss of control.

Because of the fairly simple operations involved and the extensive spill containment requirements, the consequences of loss control, for the purposes of siting, would be:

-Fire and/or explosion.

B. Category II - Closed treatment process - with spill containment.

1. Description.

A facility which is designed to treat hazardous waste by any method which did not involve venting, evaporating or exhausting potentially toxic concentrations of materials to the atmosphere, as

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measured at the active portion of the facility, under any normal or abnormal operating conditions. This could include chemical processes, such as acid neutralization, where the hazardous constituents in the waste are converted to nonhazardous materials or are precipitated out for disposal as a solid. It might also involve a process which separates the liquid portion of the waste from the solids, such as a centrifuging, mechanical or carbon filtration, settling or flotation, encapsulation, absorption, etc. If improper mixing or misoperation of the unit could cause a pressure build-up which could vent potentially toxic concentration of material to the atmosphere through a relief valve or similar device, this unit would not qualify as Category II. Systems which vent internally into a flash tank or similar device, however, would not necessitate a Category II classification since in that situation they would not be venting into the atmosphere. Furthermore, in order to qualify for this category, all processes must be in an area that meets the "containment" requirements specified for Category I such that a leak or rupture anywhere in the system would be contained for controlled disposition in accordance with all appropriate regulations.

2. Consequences of loss of control.

These types of facilities are similar to those in Category I with respect to the health or environmental impact of loss of control except that there are likely to be more operations involving handling, movement, mixing, pumping or otherwise processing the waste. This, combined with the probability that more complex systems, different kinds of equipment, piping and controls are involved in Category II, makes the probability of loss of control somewhat greater than in Category I. However, because of the extensive spill containment requirements necessary to be classified as Category II, the consequences of loss of control are minimized. For the purpose of siting they would be:

-Fire and/or explosion.

C. Category III - Open treatment process - with spill containment.

1. Description.

A facility which is designed to treat waste by heating or burning, distillation, or any other reaction of process which involves a need to vent or exhaust any material to the atmosphere under normal operating conditions and which could, with a reasonable degree of probability, if misoperated or through malfunction of any loss of control, discharge a potentially toxic concentration of material, as measured at the active portion of the facility.

Facilities which have the potential for discharging only steam, air, nitrogen, or other nontoxic materials could be classified as Category I or II, providing they meet

all other requirements for those categories. Heated storage tanks or rail cars which use steam in an outer shell or coils, for example, could be classified as Category I, even if it was periodically necessary to vent steam to the atmosphere.

In order to qualify for Category III, all tanks, containers or ancillary storage devices associated with processes must be in an area which meets the "containment" requirements specified for Categories I and II above.

2. Consequences of loss of control.

The major difference between processes in this category and those in Category II is the possibility of (i) air quality degradation of sufficient magnitude to have the potential for causing health hazards or (ii) environmental problems outside the facility from uncontrolled process discharges. Because it is so unlikely that any such discharge could be concentrated enough or last long enough to cause significant surface or ground water degradation, this is not considered a consequence which would occur from loss of control. If, for some reason, there was a reasonable possibility that an airborne discharge from a facility could cause off-site surface or ground water degradation such that the degradation caused drinking water standards for the material discharged to be exceeded, the facility would have to be classified in Category IV or V. For the purpose of determining water degradation, the term "off-site" shall assume that the water in question is at the active portion of the facility.

For the purposes of siting, the consequences of loss of control in Category III are:

-Fire and/or explosion.

-Air quality degradation from process exhaust or venting as a result of loss of control.

D. Category IV - Above ground treatment - no spill containment.

1. Description.

A facility which is designed to treat or store waste by any process or method which, with a reasonable degree of probability, through misoperation or any loss of control, could cause off-site surface or ground water degradation such that this degradation caused drinking water standards for the material discharged to be exceeded. For the purposes of determining water degradation, the term "off-site" shall be based on the assumption that the water in question is at the active portion of the facility.

These facilities need not meet the "containment" requirements specified for facilities in the three categories above in order to be classified in this

category.

"Above ground" in this category means that the hazardous waste is all contained at or above the level of the ground where it is located. This qualification is based on providing a reasonable opportunity to see or become aware of a leak without depending on ground water analysis. For example, this category could include a metal tank which rested directly on a cement pad (i.e., without support legs) even though part or all of the cement pad was actually below the ground, so long as the bottom of the tank was above ground level. If the bottom of the tank were below ground level resting directly on a man-made or earthen support such that the bottom of the tank could not be routinely inspected externally for leaks, the unit would not qualify for Category IV. In this latter example, if the tank were in a pit but it was elevated from the base of the pit in such a manner as to allow routine inspection of the bottom to detect leaks it could be classified in Category IV. The use of underground piping would not cause a facility to be classified in Category IV.

2. Consequences of loss of control.

In this category, there is no requirement for containment under treatment or storage units in the facility which might contain hazardous waste, and therefore, a spill or rupture could cause ground or surface water degradation. The restrictions included in this category would, however, minimize the possibility for leaks to go undetected for a significant length of time.

For the purpose of siting criteria, the consequences of loss of control are:

- Fire and/or explosion.
- Airborne contamination, in the case of facilities which have the potential as described under Category III above.
- Ground or surface water contamination.

E. Category V - Disposal without complete treatment and all other treatment/disposal methods.

1. Description.

This category includes any disposal of hazardous waste by placing it in a facility where it will receive no further treatment or any treatment or storage method which does not meet the intent of one of the four categories above.

Facilities in this category would include all land disposal methods which did not involve destroying the waste or otherwise eliminating its hazardous characteristics before disposal. For example, this

would include such methods as landfilling, spray irrigation, and above-ground placement in earthen mounds or vaults.

This category would also include the use of such facilities as impoundments, lagoons, evaporating ponds, underground tanks, or other underground units as part of a treatment, storage or disposal process, providing that they are intended to contain hazardous waste. For this purpose, the term "underground" means that all or part of a unit is buried such that it cannot be routinely inspected for leaks or defects.

2. Consequences of loss of control.

These facilities have the highest degree of risk or surface or ground water degradation because of the possibility for a leak to go undetected for a significant period of time. For disposal of units in this category there is also the added consideration of the risks associated with perpetual care of material which might be hazardous for many years. Facilities in this category could also be most prone to loss of control caused by floods.

For the purposes of siting criteria, the consequences of loss of control are:

- Fire and/or explosion.
- Airborne contamination from evaporation or from sources described in Category III above.
- Ground or surface water contamination.

F. General.

Most facilities include several types of operation. For the purposes of classifying a proposed facility, the operation within the facility which is characterized by the highest category number shall determine which category shall characterize the facility. For example, if a facility had an operation which included both drum storage of waste under conditions that would meet Category I requirements and subsequently had on-site waste incineration step, the facility would fall in Category III because incineration is in a higher category than container storage. Another example might be a waste treatment facility with a completely enclosed neutralization process in which sulfuric acid contaminated water was mixed with lime. In this process, venting is not a significant part of the process. The result would be gypsum and water, neither of which would necessarily be hazardous material. If this process were fed from enclosed storage tanks the facility would be classified in Category II, assuming it met all the other requirements, because the enclosed neutralization process is in a higher category than enclosed storage. This would be true even if the gypsum were dried and piled on the ground and the water, after the acid was neutralized, was put in a pond prior to discharge into a river through a permitted waste water

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treatment facility, assuming that neither the gypsum nor the water would be classified as hazardous because of some other contaminant. If, however, in this latter example, the process generated a gas which needed to be vented to the atmosphere or which could be vented by a relief valve in an overpressure situation, the facility would have to be classified as Category III. Additionally, if the acid contaminated water was fed into this neutralization process from a pond (surface impoundment), the facility would be classified in Category V.

In making its determination of which category is appropriate for a proposed hazardous waste facility, the Siting Council shall consider the intent of each category as well as the specific descriptions above.

Article 3. Prohibition on Siting.

§ 2.3. The goal of the council and these criteria is to protect the health and environment of the Commonwealth of Virginia from the improper siting of hazardous waste treatment, storage or disposal facilities. In achieving this goal, the council has determined that hazardous waste treatment, storage and disposal facilities should not be placed in certain specific locations of the state because of the environmentally sensitive nature of such locations and increased risk to health and environment by the placement of a hazardous waste facility in such location.

A. No hazardous waste facility shall be sited in tidal or freshwater wetlands, except as provided at commercial port facilities as provided in § 2.4(5).

B. No hazardous waste facility shall be sited in a 100-year floodplain.

C. Underground injection of hazardous waste is not allowed.

D. No hazardous waste facility shall be sited in an area vulnerable to flooding resulting from dam failure.

E. No hazardous waste facility shall be sited over a sinkhole or 100 feet above a solution cavern associated with karst topography.

F. Facilities shall not be sited within areas designated by the National Park Service as National Natural Landmarks or sites listed on the National Register of Historic Places, unless the statute under which the designation of listing has been made authorizes the operation of such facilities in such areas.

G. Facilities shall not be sited within lands in public trust including state, county and municipal parks, units of the National Park System, national recreation areas, state forests, the George Washington and Jefferson National Forests, state game lands, national wildlife refuges or national fish hatcheries unless the agency administering such lands has been given authority by statute or

ordinance to allow the operation of such facilities on such lands.

Article 4. Siting Limitations.

§ 2.4. The council, in making its determination to site a facility, conditionally or otherwise, or to deny an application to site a hazardous waste facility, will consider the criteria listed below in relation to the type of hazardous waste facility to be sited.

A. Limitations.

1. Public surface water supply protection.

a. Public water supplies should be afforded the maximum protection reasonably possible. A major accident at a hazardous waste facility could lead to degradation of ground and surface water supplies in the vicinity of the facility. The contamination of a public water supply watershed could create a significant hazard to public health. A hazardous waste facility should not be sited such that a public water supply would be jeopardized by the construction and operation of the facility.

b. Category limits.

(1) A Category I, II, or III hazardous waste facility may be sited in proximity to a surface water supply if the construction, operation and close-out of the proposed facility do not pose an unacceptable risk to public water supply and the applicant demonstrates that the facility is designed and will be constructed, operated and maintained in a manner which will protect the public water supply from contamination by spills at the facility and demonstrates that spill containment at the facility is adequate to contain all spills.

(2) A Category IV or V facility shall not be sited in proximity to a public surface water supply. (See definition: "Proximity to a public surface water supply.")

2. Ground water supply protection.

a. Public and private ground water should be afforded the maximum protection reasonably possible. A major accident at a hazardous waste facility could lead to contamination of ground water in the vicinity of the facility. The contamination of the ground water supply could create a significant hazard to public health.

b. Existing ground water quality should be protected from degradation. (See definition: "Anti-degradation policy for groundwater.") In considering protection of ground water quality, the council will evaluate the following characteristics and other factors

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determined appropriate for the type of facility:

- (1) Site geology/geohydrology,
- (2) Depth to aquifer(s),
- (3) Fractures and faults,
- (4) Thickness of soil/saprolite layer,
- (5) Well yields,
- (6) Hydraulic conductivity,

(Permeability) of soil saprolite and of aquifers (including flow directions and velocity.)

3. Principal drinking water source aquifer.

a. The contamination of principal drinking water source aquifers may create a significant hazard to public health. These aquifers should be protected from the threat of contamination from a hazardous waste facility.

b. Category limits.

(1) Category I, II, and III facilities may be sited over a principal drinking water source aquifer if the construction, operation and close-out of the proposed facility do not pose an unacceptable risk to a public water supply and the applicant demonstrates that the facility is designed and will be constructed, operated and maintained in a manner which will protect the public water supply from contamination by spills at the facility and demonstrates that spill containment at the facility is adequate.

(2) Category IV and V hazardous waste facilities shall not be sited in proximity to a sole source or principal drinking water source aquifer.

4. Air quality.

a. Siting of a facility must take into account air quality problems which may result from the operation of the facility or accidental fires and explosions which may occur. The council shall consider potential air quality problems which may occur as the result of historical or estimated meteorological conditions and to what extent such respective problems and conditions will affect neighboring communities. In considering air quality the council will consider the following characteristics and other factors determined appropriate for the type of facility:

- (1) The characteristics (stability) of the atmosphere which affect the site;
- (2) The population, present and projected, in relation to the facility and prevailing wind;
- (3) Characteristics of the wind.

b. Category I-V facilities may be sited if the construction and operation of the proposed facility

do not pose an unacceptable risk to public health and the applicant demonstrates that the facility is designed and will be constructed, operated and maintained in a manner which will protect the public health during normal operation or in the event of accidental releases.

5. Commercial port facilities.

a. An accident at a hazardous waste storage facility at a commercial port facility could result in immediate contamination of surface water and create a significant risk to public health and safety. Additional consideration should be given to storage facilities for hazardous waste at commercial port facilities based on the special risks posed.

b. Category I facilities for the temporary storage of hazardous wastes destined for import, export or ocean incineration, which are sited at port facilities specifically designed for commercial shipping, may be allowed if those facilities are designed for the storage of hazardous wastes and have been designed and will be constructed to withstand the 100-year flood and the flood of record at the port facility.

6. Endangered and threatened species habitat.

a. The council shall focus on adverse impacts of the facility on endangered and threatened species or critical habitat for wildlife generally and the extent to which mitigation measures can be effectively implemented.

b. A hazardous waste facility shall not be sited in locations where the siting, construction and operation of the proposed facility would occupy or threaten the known habitat or an endangered or threatened plant, insect, fish or wildlife species to the extent that the continued existence of the species is threatened.

7. Proximity to publicly designated areas.

a. Areas which are designated by federal, state and local governments for their exceptional characteristics are of special importance. These areas should be protected from unwarranted intrusion by the siting of hazardous waste facilities which could destroy the character, and thus the objective, or their designation. The following categories are listed for their natural, scenic, historic, cultural and aesthetic values:

- (1) Historic, cultural and natural sites and landmarks;
- (2) The corridors of outstanding resource waters (wild, scenic and recreational);
- (3) Publicly owned forest areas;

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- (4) Dedicated or designated open space;
- (5) Public recreational areas;
- (6) Important farm lands as defined by the Virginia Department of Agriculture and Consumer Services;
- (7) The Appalachian Trail or other federal and state designated trails;
- (8) Wildlife refuges, fish hatcheries and game lands; and
- (9) Scenic views.

b. Potential impacts of the proposed facility on the natural, scenic, historic, cultural and aesthetic values of the environment will be evaluated. The applicant must demonstrate that the construction and operation of the proposed facility will not impair the environmental and aesthetic qualities of the area. Distance from the publicly designated area to the facility will be taken into consideration.

8. Subsurface mining areas.

a. Areas where mineral resources of a solid, gaseous or liquid form have been removed by underground mining or drilling procedures or are planned for removal are susceptible to subsidence. Strong consideration should be given to the potential threat to the integrity of a proposed facility as a consequence of mining-related subsidence.

b. Category limits.

(1) Category I, II, and III facilities may be allowed in subsurface mining areas as defined in this regulation provided the applicant demonstrates that the facility is designed and will be constructed and operated such that the integrity of the facility will not be jeopardized by mine-related subsidence.

(2) Category IV and V facilities are not allowed in subsurface mining areas as defined in this regulation.

9. Slope.

a. Consideration should be given to the effect of the slope of the proposed site and adjacent lands with respect to waste management facilities including the speed at which uncontrolled releases may run off a site, site preparation techniques and costs, site design, operating procedures, site stability, potential for erosion, and visibility.

b. Category limits.

(1) Category I, II and III facilities may be allowed on slopes in excess of 15% if the applicant

demonstrates that the facility is designed and will be constructed and operated such that the integrity of the facility will not be jeopardized.

(2) Category IV and V facilities are prohibited on slopes 15% or greater.

10. Faults and seismic risk zones.

a. Major fault zone features which are mapped by the U. S. Geological Survey, the Division of Mineral Resources, Commonwealth of Virginia, or other agency with the responsibility for such matters, or as discovered by site investigation, may pose a potential for (i) seismic-related accidents, and (ii) associated rapid degradation of ground and surface waters should a facility's containment measures be breached and leakage occur.

b. Category limits.

(1) Since Virginia ranks relatively low in seismic activity, Category I, II, and III facilities may be sited in proximity to a fault if the construction and operation of the proposed facilities do not pose a risk to a water supply and the applicant demonstrates that the facility is designed and will be constructed, operated and maintained in a manner which will protect the water supply from contamination by spills at the facility and demonstrates that spill containment at the facility is adequate to contain all spills.

(2) No Category IV or V facility will be sited within 61 meters (200 feet) of a fault as mapped by the U. S. Geological Survey, the Division of Mineral Resources, Commonwealth of Virginia, or other agency with the responsibility for such matters or as discovered by site investigation. No Category IV or V facility will be sited in proximity to a fault unless the applicant demonstrates that the facility is designed and will be constructed, operated and maintained in a manner which will protect the physical integrity of the facility and protect the quality of ground and surface waters.

11. Risk of accident in transportation.

a. The council shall evaluate the risk associated with the transportation of hazardous waste to the proposed site. Accident risk is a function of the probability of an accident and the consequences of an accident, should one occur. The transport route(s) over which the wastes will be delivered to the site shall be considered by the council.

b. In considering risk of accident in transportation the council will assess:

(1) Mode of transport;

- (2) Proposed highway/roadway system to be used;
- (3) Accident rate of mode and route;
- (4) Characteristics of structures within 0.5 mile of the route, i.e., schools, hospitals;
- (5) Nature of transportation restrictions, i.e., traffic intersections, highway geometrics, traffic/railroad intersections, tunnels, bridges, toll booths, level of congestion;
- (6) Schedule and frequency of deliveries;
- (7) Potential adverse environmental or health effects in the event of an accident;
- (8) Characteristics of the residential and nonresidential population within 0.5 of a mile of the transport route; and
- (9) Projected population and the rate of growth for areas within 0.5 of a mile of the transport routes during the 20-year period following initial site operation.

12. Proximity to major structures.

a. The linear distance from the site boundary to major structures must be considered (e.g., residence, airport, school, hospital, church, commercial centers, nursing home). Acceptable buffer zones separating residences and certain other types of sensitive populated structures from the types of operations conducted at hazardous waste sites are needed.

b. In reviewing the proposal, the council will assess:

- (1) Proximity of airports, utilities and other major structures; and
- (2) Characteristics of buffer zones.

13. Local government.

a. The site shall be considered for consistency with the local master land use plan or the pattern of already existing land uses or zoning ordinance of the host community where no comprehensive plan has been adopted. Consistency with local laws, ordinances, rules and regulations which have been adopted pursuant to a master land use plan will also be considered.

Further, the short and long term financial effects of the addition of the proposed facility to the locality shall be considered. Both the increased tax revenues and the added burden of providing services to the facility are important factors.

b. The council will assess both short and long term

(20 years) effects:

- (1) Consistency of site with the master land use plan, compatibility with existing land uses;
- (2) Consistency with local laws, ordinances, rules and regulations;
- (3) Local tax revenue generated;
- (4) Public services required;
- (5) Impact on property values; and
- (6) Economic development impacts.

14. Fire and explosions.

a. Due to the nature of the wastes, special consideration must be given by the council to the potential for fires and explosions at the site. Because of the inherent quality of the wastes, the chief focus shall be on proposed safety measures and emergency response techniques.

b. In assessing the risk of fire and explosion, the council will evaluate:

- (1) Distances from site to residential, commercial and industrial buildings, public highways, railroads.
- (2) Minimum distances established by the Virginia Department of Health.
- (3) Level of service for fire, police protection and emergency medical services.
- (4) Proximity to fire department and fire fighting water supply.
- (5) Measures to contain fire fighting water or other substance used in the event of accidents.
- (6) Characteristics of the residential and nonresidential population within 0.5 of a mile of the site boundary.
- (7) Projected population and the rate of growth for the area within 0.5 of a mile of the site boundary.

15. Other factors.

The council shall consider any other factor(s) identified during the course of the certification process which is (are) determined by the council to be relevant and impact the environment, quality of life, and public health, welfare or safety.

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PART III. REQUIRED FINDINGS.

§ 3.1. In addition to an applicant meeting the requirements of Part II of these criteria, the council shall, in writing, find that:

A. The terms and conditions of the application will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources, and the reasons to support such finding;

B. The facility is consistent with its criteria;

C. The applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community, including, though not limited to, efforts to mitigate or compensate the host community and its residents for adverse economic effects, if any, of the facility.

PART IV. RELATED PERMITS AND REVIEWS.

§ 4.1. To avoid duplication to the maximum extent feasible with existing agencies and their areas of responsibility, related agency approvals are listed below as notification to the applicant that these permits and reviews may apply in accordance with the type of facility proposed.

A. Permits.

1. Hazardous waste facility management.

a. Regulatory agency:

Virginia Department of Health.

b. State permit required:

Facility management transportation.

c. Statutory authority:

(1) Chapter 6, Title 32.1 of the Code of Virginia.

(2) State Board of Health, in accordance with the provisions of Title 9, Chapter 1.1:1, of the Code of Virginia.

(3) "Hazardous Waste Management Regulations With Amendments."

d. Contact:

Division of Solid & Hazardous Waste Management
Virginia State Department of Health
101 N. Fourteenth Street
Eleventh Floor
James Monroe Building
Richmond, VA 23219
(804) 225-2667

2. Air emissions.

a. Regulatory agency:

State Air Pollution Control Board.

b. State permit required:

Stationary sources
Hazardous pollutants
Open burning

c. Statutory authority, rules and regulations:

(1) Virginia Air Pollution Control Law (Chapter 1.2 of Title 10 of the Code of Virginia.)

(2) Federal Clean Air Act (42 USC et seq. 84 stat. 1676) and amendments.

(3) "Regulations for the Control and Abatement of Air Pollution".

d. Contact:

State Air Pollution Control Board
801 Ninth Street Office Building
Richmond, VA 23219
(804) 786-4867

3. Discharges into state waters.

a. Regulatory agency:

State Water Control Board.

b. State discharge permit required:

(1) National Pollutant Discharge Elimination System (NPDES).

(2) No discharge certificate.

c. Statutory authority, rules and regulations:

(1) Federal Water Pollution Control Act Amendments of 1972

(2) State Water Control Law, (§ 62.1-44.2 et seq. of the Code of Virginia.)

d. Contact:

Commonwealth of Virginia
State Water Control Board
2111 North Hamilton Street
P. O. Box 11143
Richmond, Virginia 23230
(804) 257-0056

4. Land disturbance.

a. Regulatory agency:

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Virginia Soil and Water Conservation Commission and/or local government.

b. State requirement:

Erosion and sediment control plan.

c. Statutory authority, rules and regulations:

(1) Erosion and sediment control law (§§ 21-89.1 through 21-89.15, of the Code of Virginia.)

(2) Virginia Erosion and Sediment Control Handbook.

d. Contact:

Virginia Soil and Water Commission
830 East Main Street, Suite 800
Richmond, Virginia 23219
(804) 786-2064

5. Encroachment on wetlands - state.

a. Regulatory agency:

Virginia Marine Resources Commission/local wetlands boards

b. State permit required:

Use or development of any wetland within Tidewater Virginia

c. Statutory authority, rules and regulations:

(1) Virginia Wetlands Act (§§ 62.1-13.1 through 62.1-13.20, of the Code of Virginia.)

(2) Local wetland zoning ordinances.

d. Contact:

Assistance Commissioner for Habitat Management
P. O. Box 756
Newport News, Virginia 23607
(804) 247-2200

6. Encroachment on wetlands - federal.

a. Regulatory agency:

U.S. Army Corps of Engineers

b. Federal permit required:

Wetlands.

c. Statutory authority, rules and regulations:

(1) Section 10, Rivers and Harbors Act of 1899.

(2) Section 404, Federal Water Pollution Control Act Amendments of 1972.

d. Contact:

District Engineer
U. S. Army Corps of Engineers
Norfolk District
803 Front Street
Norfolk, Virginia 23510
(804) 446-3601

7. Encroachment on subaqueous lands - state.

a. Regulatory agency:

Virginia Marine Resources Commission.

b. State permit required:

Subaqueous permit.

c. Statutory authority, rules and regulations:

Section 62.1-3 of the Code of Virginia.

d. Contact:

(1) Assistant Commissioner for Habitat Management
P. O. Box 756
Newport News, Virginia 23607
(804) 247-2200

(2) State Water Control Board
2111 North Hamilton Street
P. O. Box 11143
Richmond, Virginia 23230
(804) 256-0056

8. Encroachment on subaqueous lands - federal.

a. Regulatory agency:

U. S. Army Corps of Engineers.

b. Federal permit required:

(1) Activities in the navigable waters of the United States.

(2) Degradation of the quality of water.

(3) Transportation and dumping of dredged material.

c. Statutory authority, rules and regulations:

(1) Rivers and Harbors Act of 1894 (U.S.C.)

(2) Federal Water Pollution Control Act Amendments of 1972.

Proposed Regulations

(3) *Marine Protection Research and Sanctuary Act.*

d. *Contact:*

*District Engineers
U. S. Army Corps of Engineers
Norfolk District
803 Front Street
Norfolk, Virginia 23510*

B. *Reviews.*

Applications for permits may result in a review and comment process by state agencies to include the Council on the Environment. Such reviews may include comments concerning historic landmarks, archaeological sites, caves, best management practices, fisheries, and parks and recreation. Further information on review procedures can be obtained by contacting: Administrator, Council on the Environment, 903 Ninth Street Office Building, Richmond, Virginia, 23219 (804) 786-4500.

DEPARTMENT OF SOCIAL SERVICES

Title of Regulations: VR 230-40-002 - Department of Corrections. VR 270-01-0005 - Department of Education. VR 615-52-11 - Department of Social Services. Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Corrections, the Board of Education and the Board of Social Services.

Statutory Authority: § 2.1-703 of the Code of Virginia.

Public Hearing Dates: (See Calendar of Events Section)

Summary:

These regulations formalize a rate-setting process that has been followed through an informal agreement by the three departments since 1978. All day or residential special education schools for the handicapped, residential providers of child care or regional public special education programs for the handicapped for which a unit cost for publicly paid participant fees must be established are subject to this rate-setting process. All school boards, court service units, and social service departments placing children in these facilities will be required to pay the fees established through this rate-setting process.

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PART I. INTRODUCTION.

Article 1. Definitions.

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

"Licensed capacity" means the maximum number of service recipients a facility may serve which is set by the Interdepartmental Licensure and Certification of Residential Facilities for Children. For out-of-state facilities, the licensed capacity is set by the appropriate agency in the home state.

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"Nonfee revenue" means revenue generated through contributions, bequests, endowment funds, fund raising, grants, etc., not fees.

"Nonpersonnel costs factor" means the average operational nonpersonnel portion of the facility budgets for children's facilities from a statewide survey which equals 30%.

"Personnel costs factor" means the average portion of total salary costs which is the combination of instructional and child care personnel factors which equals 70%.

"Planned capacity" means the maximum number of service recipients a facility's program is designed to serve.

"Predetermined maximum" means the percentage of maximum allowable rate increase for a facility that does not require a rate exception request.

"Program" means a set of basic services for a defined population group.

"Rate negotiator" means responsible staff in the departments who process the applications.

"Service providers" means providers of day or residential special education schools for the handicapped, residential providers of child care or regional special education programs for the handicapped for which a unit cost for publicly paid participant fees must be established.

"Teacher compensation" means the average increase in the teacher salary scales for the current year.

"Term agreement" means the conditions and rates set by the departments under the provisions of the Interdepartmental Committee on Rate-Setting for Children's Facilities.

"Utilization rates" means the percentage determined by dividing a level of enrollment by the licensed or planned capacity.

Article 2. Legal Base.

§ 1.2. The departments are required by the Code of Virginia § 2.1-703 to establish rates for certain residential facilities and day schools for the handicapped.

Article 3. General Information.

§ 1.3. Each service provider shall be required to submit a full Service Provider Application during the first two years of participation in the rate-setting process. Thereafter, the full application shall be required biennially. In years in which the full application is not required, the service provider shall submit the Alternate Year Service Provider Application (short form). Whenever the service provider is

requesting a rate in excess of the predetermined maximum allowable increase, a full Service Provider Application must be submitted. Rate exceptions are allowed only for categories described in Part I, Article 5.

§ 1.4. Applications for initial approvals and rate exceptions shall be submitted to the Interdepartmental Rate Review Panel. The panel shall provide recommendations to the departments concerning the appropriateness of the request.

§ 1.5. Service Provider Applications and Alternate Year Applications are due November 1 of each year for providers whose rates are negotiated by the Department of Education. Providers who negotiate with the Department of Social Services shall submit the appropriate application four months prior to the expiration of the current contract.

§ 1.6. Rates shall be effective for a 12-month period (July 1 through June 30) for special education providers. Rates for nonspecial education residential facilities shall be effective for a period of 12 months from date of renewal or initial approval.

Article 4. Initial and Subsequent Approvals.

§ 1.7. The following are the requirements for initial approval:

1. Information to be submitted.

Applicants seeking initial approval as a service provider shall submit the following information:

- a. Service Provider Application;
- b. Statement of Compliance certifying that the service provider complies with the Obligations of Service Providers (see Part I, Article 7);
- c. Program Narrative (not in excess of one typewritten page per program); and
- d. Organization chart.

2. Types of initial approvals.

Initial approval shall be considered under two categories as follows:

- a. An applicant shall be considered a newly opened program if no service recipients have been in the program for more than 12 months prior to the date of application.
- b. An applicant shall be considered an existing program new to the rate-setting process if the program has had service recipients enrolled for more than 12 months prior to the date of application.

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3. Date of application.

The date of application shall be the date on which required items are complete and received by the appropriate department.

4. Review process.

The rate negotiator shall review the required items to assure that all items have been completed. Should any required items be missing, the rate negotiator shall advise the applicant in writing. Initial applications shall be submitted to the Interdepartmental Rate Review Panel.

A service provider shall be classified as a newly opened program or as an existing program new to rate setting.

5. Newly opened program.

To qualify as a newly opened program the following conditions shall be met:

- a. Substantially new and different staff positions and substantially different individuals occupying those positions.
- b. Substantially different classes of service recipients.
- c. A distinct budget and distinct record keeping which demonstrates separation of the program.

6. Rate approval.

The applicant shall receive approval as a service provider under one of the following:

- a. If the applicant is a newly opened program:
 - (1) The agreement and rate shall be executed under a contract expiring on June 30 for special education service providers, or at the end of the quarter nearest a 12-month period of time from the "effective date" of the initial contract for nonspecial education service providers. The rates shall be determined using utilization rates as specified under Part I, Article 9, for initial approval.
 - (2) For the second year of operation the service provider shall submit a full application package as outlined in Part I, Article 4.
 - (3) Thereafter, the service provider shall follow the procedures outlined in Part I, Article 4.
- b. If the applicant is an existing program new to rate setting:
 - (1) The agreement and rate shall be executed under

a contract expiring on June 30 for special education service providers, or at the end of the quarter nearest a 12-month period of time from the "effective date" of the initial contract for nonspecial education service providers. The rate shall be determined using utilization rates as specified in Part I, Article 9.

(2) For the second year of operation, the service provider shall submit an Alternate Year Service Provider Application unless a rate exception is requested, in which case the service provider shall follow the procedures outlined in Part I, Article 5.

(3) Thereafter, the service provider shall follow the procedures outlined in Part I, Article 4.

§ 1.8. The rate negotiator shall review the items below, notify the service provider upon receipt of completed items, and a rate shall be negotiated up to the predetermined maximum percent increase allowed. The appropriate agencies as well as the service provider shall be notified of the approved rate.

The following are the requirements for subsequent approvals.

1. Full negotiation.

Rates for service providers shall be fully negotiated every two years at which time the service provider shall be required to submit the following items.

- a. A completed Service Provider Application.
- b. A program narrative whenever a change in the program has occurred or is proposed.
- c. A detailed audited financial statement audited by an independent certified public accountant for the program.
- d. A Statement of Compliance certifying that the service provider complies with the Obligations of Service Providers.
- e. A daily census for basic services. Also to include an explanation of changes in planned or licensed capacity which have occurred since the last negotiation or other appropriate data that accurately reflect services provided by the facility.
- f. The average length of stay for service recipients enrolled during the most recently completed year.

2. Alternate Year Service Provider Application.

For the year when the full Service Provider Application is not required, the Alternate Year Service Provider Application must be submitted.

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§ 1.9. An out-of-state facility applying to a department for approval as a service provider shall be required to submit the name, address, and telephone number of the home state negotiator, a copy of the letter of acceptance or approval of the rate from the home state, and an independent certified audit, if available. In the absence of an approved rate from the home state, a copy of the contract between a public agency which purchases service and the service provider shall be acceptable as documentation of the state.

Out-of-state facilities that do not have an approved rate with a public agency in their state shall be required to comply with the requirements of in-state providers. Fees charged may not exceed the Virginia approved rates.

§ 1.10. Mid-contract period rate change requests.

A. A service provider may request a mid-contract period rate change under the following circumstances.

1. If the program undergoes a complete reorganization of its administration, budget, and services, a modification of rates may be requested. In this case, a complete Service Provider Application shall be completed and submitted.

2. If the service provider has added services or staff, a modification of rates may be requested. This request shall be documented and is subject to later audit. The service provider shall submit written information from the Service Provider Application to the appropriate department. The request shall be considered in the same manner as other rate setting applications.

3. Routine or general program improvement costs and general cost of living increases that do not meet the above specifications shall not result in interim rate changes.

4. All materials justifying the requested interim rate change shall be submitted to the department 90 calendar days prior to the planned effective date of the rate increase.

B. The departments may initiate an interim rate change under the following conditions.

1. If it is determined that the service provider's current operations are significantly different than those described within the rate setting application.

2. If it is determined that the service provider exceeds the previously declared planned capacity.

Article 5.

Predetermined Maximum Percentage Rate Increase and Exceptions.

§ 1.11. A different predetermined maximum percentage rate increase is calculated annually by the departments for

residential special education schools or day special education schools and residential providers of child care. The departments shall issue a memorandum advising service providers of the increase as soon as possible.

A. The components and guidelines for calculating the predetermined maximum percentage increase follow:

1. Components.

a. Nonpersonnel costs factor is determined by multiplying 85% times the average annual change in the Consumer Price Index (All Urban Consumer Price Index, U.S. City Average, all items) issued by the U.S. Department of Labor times the average operational nonpersonnel portions of the facilities' budget (30%). The state fiscal year immediately preceding the rate application deadline is the period used to determine the annual change in the Consumer Price Index.

b. Personnel costs factors are:

(1) Instructional personnel factor is the Commonwealth of Virginia average increase in teacher salary scale for the current year multiplied by the "average" portion of total salary costs assigned to certified teachers in children's facilities.

(2) Child care personnel factor is the actual prior year salary percentage increase for state employees multiplied by the "average" portion of total salary costs assigned to child care staffing in children's facilities. The actual prior year's percentage increase for state employees shall be based on any cost of living adjustment granted to all state employees. It shall be exclusive of state employees' salary increases related to proficiency, performance or other forms of incentive compensation.

2. Calculation.

a. The sum of the instructional personnel factor and child care personnel factor is multiplied by the "average" nonoperational, personnel portion of the budget (70%).

For purposes of this calculation the percentage of instructional personnel is:

- (1) 20% - residential school;
- (2) 55% - day school;
- (3) 0% - residential providers of child care.

For the purposes of this calculation the percentage of child care personnel is:

- (1) 80% - residential schools;

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(2) 45% - day school; and

(3) 100% - residential providers of child care.

b. The sum of the percentage nonpersonnel costs and the percentage personnel costs (as described above) yields the predetermined maximum percentage increase in a given year.

B. Exceptions shall be considered for rate increases greater than the predetermined maximum in the following cases:

1. Program changes.

a. The applicant's statement of philosophy/mission shall change. This change shall be recorded and approved in the minutes of a regular meeting of the facility's governing body. A copy of the minutes for this meeting shall be submitted as documentation.

b. The identification of the recipients of the facility's services must change in at least one of the following ways:

(1) The characteristics of the service recipients.

(2) Characteristics unacceptable in service recipients.

(3) The ages of the service recipients.

c. The quality, quantity, or ratio of executive, professional, and/or instructional staff shall change:

(1) In those cases in which the total number of the combined staff positions does not change, (i) there shall be a change in the professional classifications and in the corresponding hiring qualifications for at least 20% of combined staff positions, and (ii) there shall be a change in the ratio of professional staff to service recipients.

(2) In those cases in which the total number of combined staff positions change, the ratio of the combined staff positions per service recipient shall remain the same or increase.

(3) Regardless of which of the above two options is selected, the changes in the staff positions and/or classifications shall be directly related to changes in the statement of philosophy/mission and to changes in the identification of acceptable service recipients.

2. Facility relocation.

To qualify as a facility relocation and be considered for a rate exception increase above the predetermined maximum, and/or the inclusion of interest expense above the applicable limits, the following shall occur:

a. Relocation of the facility to a new site.

b. Relocation within the currently leased or owned boundaries of the present site.

c. Purchase of the currently leased facility occupied by the program.

d. Documentation of the impact of relocation on the budget by providing at least the following information:

(1) The reason for the relocation.

(2) The total cost of the relocation.

(3) The identification of all revenue sources and the amount of each revenue source to be used to pay the relocation costs.

(4) The identification of all expenses by line item that will change as a direct result of the relocation.

(5) The amount of increase by line item attributed to relocation.

(6) The date by which the relocation will be accomplished and a schedule reflecting the approximate dates of payment of the relocation costs.

3. Licensing/approval change.

To qualify for a licensing/approval change and be considered for a rate increase above the predetermined maximum, all of the following shall occur:

a. The licensing/approval change and/or requirements shall be the direct result of deficiencies in the program, personnel, facilities, or operations as identified by a duly authorized licensing/approval agency.

b. The service provider shall comply with the licensing/approval change and/or requirements in order to keep and maintain the license.

c. The service provider shall document the necessity of the licensing/approval change by providing the following information:

(1) The total cost attributable to the licensing/approval change.

(2) The identification of all expenses by line item that will increase as a direct result of the licensing/approval change.

(3) The amount of change by line item attributed to the licensing change.

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4. Nonfee revenue loss.

To qualify for a nonfee revenue loss and be considered for a rate increase above the predetermined maximum, the following shall occur:

a. A copy of the notice from the agency/individual controlling the funds that a reduction will be made, when it will be made, and how much reduction will be made shall be provided to the appropriate department.

b. The service provider shall document the impact of the nonfee revenue loss on the budget and program by providing the following information.

(1) The source of the revenue loss and whether the source is internal (revenue from a related organization) or external.

(2) The total cost attributed to the nonfee revenue loss.

(3) The identification of all expenses by line item that will increase as a direct result of the nonfee revenue loss.

(4) The amount of change by line item attributed to the nonfee revenue loss.

5. Newly opened programs, second year.

Newly opened programs beginning their second year of operation may qualify for a rate increase above the predetermined maximum percentage increase when it can be demonstrated that rates established for the initial year of operation are insufficient to meet approved allowable costs.

6. Addition of programs for compensation benefits.

To qualify for additional programs for compensation benefits and be considered for a rate increase above the predetermined maximum, all of the following shall occur:

a. It shall be demonstrated that the claimed expense is a compensation feature not previously budgeted in other cost categories or is a compensation feature that upgrades a current benefit.

b. The expense shall conform to Part IV, Article 2.

c. The need for the change shall be clearly documented.

7. State, local and federal mandates.

State, local and federal mandates (legislation/regulation) that would increase costs, over which the program has no control, are considered a

legitimate basis for an exception request. The request shall be clearly documented.

8. Salary restructuring.

To qualify for a salary restructuring exception and to be considered for a rate increase above the predetermined maximum increase, all of the following shall occur:

a. It shall be demonstrated that the applying facility's salary scale is below the salary scale for public employees with comparable credentials, experience, duties and responsibilities in the city or county where the facility is located or in regional public institutions serving that locality. For purposes of this exception, the salary scale is subject to any maximum allowable experience credit provision of the city or county where the facility is located or regional public institutions serving that locality.

b. The exception request shall occur during the regular rate negotiation period (not mid-year).

c. The program shall have been in existence at least two years prior to the implementation of this regulation.

d. Facilities granted exceptions under this provision shall reflect, in their next audit, the use of these funds for salary increases at the approved level. Failure in this regard shall result in an appropriate downward adjustment in the facility rate for the next rate year.

C. In addition to the requirements outlined in Part I, Article 5 the following apply to rate exception requests:

1. Service providers are encouraged to notify local agencies of proposed rate exceptions prior to submission of the Service Provider Application.

2. Substantial increases in line items that are not associated with the rate exception request shall be examined closely and may not be allowed.

3. Full documentation required for consideration of one or more of the rate exceptions listed above shall be submitted to the appropriate department along with the Service Provider Application.

4. For a program change rate exception request, a full Program Narrative shall be provided detailing the difference between the old and new program.

5. Requests for rate exceptions shall be presented to the Interdepartmental Rate Review Panel. The panel shall review the proposal and other available information and make recommendations to the appropriate department.

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6. The service provider shall be notified in writing of the decision of the department.

7. For a program change rate exception request, organization charts for both the existing and proposed program shall be submitted.

Article 6. Interdepartmental Rate Review Panel.

§ 1.12. The Interdepartmental Rate Review Panel shall be involved in the rate setting process for new programs, rate exception requests, interim rate increases or other applications a department wishes to present to the Interdepartmental Rate Review Panel. The guidelines for it are:

1. Membership.

a. Service provider representatives on the panel should be full-time employees of a currently approved facility.

b. The Interdepartmental Rate Review Panel shall consist of at least four representatives from the private sector.

2. Schedule.

Meetings of the panel shall be held at least quarterly.

3. Notification.

The department bringing an issue to the Interdepartmental Rate Review Panel shall be responsible for notifying the service provider of the date of the panel meeting.

4. Function.

The Interdepartmental Rate Review Panel shall be an advisory body whose functions are to:

a. Review Service Provider Applications for all rate exception requests and initial approvals.

b. Review other services and fiscal materials as requested in writing by service providers. (Requests by special education service providers shall be sent to the Director of Special Education Administration and Finance of the Department of Education. Requests by nonspecial education service providers shall be sent to the Supervisor, Purchase of Services Unit, of the Department of Social Services.)

c. Review service and fiscal year materials as requested by department negotiators.

d. Make recommendations to the department of the appropriate action to be taken.

e. Make recommendations to the department concerning future appointments of service providers to serve on the panel.

Article 7. Obligations of Service Providers.

§ 1.13. In order to establish and maintain an approved rate, service providers must comply with the following provisions:

A. Service Provider Application and deadline requirements are as follows:

1. Application requirements.

A full Service Provider Application shall be submitted to the appropriate department biennially. In alternate years, the Alternate Year Application (short form) is required.

2. Deadlines.

Service providers negotiating rates with the Department of Education shall submit their rate applications by November 1 of each year. Applications of service providers negotiating rates with the Department of Social Services are due at least four months prior to the expiration date of the current contract.

B. Audit report requirements are as follows:

1. Independent audit.

Detailed financial statements audited by an independent certified public accountant are required annually to obtain an approved rate. For public agencies, an annual audit by a governmental unit not under the direct control of the agency being audited shall meet the "independent" criterion as long as sufficient data are provided to reflect clearly the activity of revenue and expense.

2. Accrual basis accounting.

All audited financial statements shall be reported on the accrual basis of accounting. This accounting method is in keeping with generally accepted accounting principles and will alleviate many of the distortions in revenue and expense that occur due to differing accounting methodologies.

A waiver of the accrual basis reporting requirements may be requested if a service provider feels the requirement will place undue burden on the organization because of reporting requirements to other funding agencies, for example, a city, county, or state agency. If a waiver is requested, it shall be made in writing to the department responsible for the rate negotiations before the audit is actually begun.

The request shall include the following:

- a. A statement from the funding agency setting forth the audit reporting required.
- b. A statement from the service provider describing the type (fee-for-service vs. grant) and the amount of that funding provided.

The request for a waiver shall be evaluated by the department responsible for negotiations to determine if the waiver request is acceptable. The service provider shall be notified of the findings in writing.

3. Segregation of fee-for-service and nonfee-for-service revenue.

All service providers shall report revenue in a minimum of two categories. These categories are fee-for-service and nonfee revenue. Fee-for-service revenue is that revenue received on behalf of a specific client for services provided to that client from a government agency or other party.

4. Functionalized reporting of expenditures and revenue by multiple program service providers and service providers with optional services. (See Appendix II for example). All audited financial statements submitted by service providers who operate multiple programs or offer optional services shall contain a reporting of expenditures and revenue on a functional basis by program and optional service.

A program is a set of basic services for a defined population group. For example, a service provider sells services for two distinct populations, for clients who are classified as mentally retarded and a second population identified as seriously emotionally disturbed. The services provided to the mentally retarded population are special education, counseling, room and board, and transportation. The services provided to the seriously emotionally disturbed population are socialization and recreation, counseling and treatment, and room and board.

For functional reporting purposes, the four services provided to the mentally retarded population compose a program and the cost of providing these services may be combined and reported as one program. The three services provided to the seriously emotionally disturbed population would be combined and reported as a separate program. Services that are considered optional shall be reported as a separate program.

In order to minimize misinterpretations regarding functional reporting by program and optional services, the service provider is requested to contact the department responsible for the negotiations to discuss the appropriate program reporting format for that organization. This should be done prior to the auditor beginning the audit work.

The functional reporting required of all optional service and/or multiple program service providers may be accomplished by one of the following:

- a. A service provider whose accounting records are maintained so the auditor can render an opinion on a program functionalized statement of revenue and expense may elect to fulfill the functional reporting required within the full audit.

- b. Those service providers who do not maintain their accounting records on a functional program basis can meet the requirements by including this information as "other financial information" for which the auditor renders an opinion as appropriate. Furthermore, service providers who do maintain functional accounting records may also elect to report revenue and expenses in a supplemental format.

This presentation is intended to be a less costly alternative to having a full scope audit performed on a program basis. In this type of reporting the auditor would express his opinion on the basic statements including a nonfunctionalized statement of revenue and expense.

Attached to these basic statements would be a functionalized statement of revenue and expense. This statement would not have been subjected to the same level of auditing procedures as the basis statements, and therefore, no opinion would be expressed on this supplemental statement. The auditor would prepare the supplemental statement in a manner consistent with previous reportings and note any variations. He would not examine in great detail the allocation of revenue and expense items to the various programs to determine their validity.

Finally, as an alternative to having the auditor prepare the supplemental statement, the service provider may perform the allocations to the various programs using the audited revenue and expenses and have the auditor review the work including the general allocation methodology for consistency and reasonableness.

Under either method of supplemental reporting, auditor-prepared or service provider-prepared, the basic audit shall include this supplemental reporting and state that it is a supplemental report not subjected to the same level of auditing procedures.

C. Accountability requirements are as follows:

1. General.

- a. The facility shall maintain written documentation of service actually provided to each service recipient.

Proposed Regulations

b. The service provider shall comply with applicable state and federal requirements.

2. Fiscal accountability.

a. The service provider shall maintain an accounting system and supporting records adequate to assure that claims for funds are in accordance with applicable state and federal requirements.

b. The service provider records shall reflect all direct and indirect costs and income from all sources.

c. The service provider shall retain all financial books, records, and other documents pertaining to finances for five years after final payment, unless necessary for purposes of an unresolved audit and/or if there is any litigation, claim, negotiation, or other action involving the records which had been started during the five year period. In this event, the records shall be maintained until the issues are resolved.

d. The service provider shall maintain records on any donations or agreements with governmental agencies, departments, etc., for the transfer of possession and/or title to property, plant, and equipment to the facility.

e. The service provider shall maintain an internal budget.

f. The service provider shall have an independent audit made annually and the report shall be submitted to the appropriate department annually.

g. If the service provider is organized as a nonprofit entity, it shall provide the authorization number issued by the Internal Revenue Service and the most recent copy of the Form 990 tax return which has been filed, unless an exemption for filing Form 990 has been granted.

h. Bank accounts shall be reconciled monthly and maintained on file for review.

i. The service provider shall have written policies and procedures regarding reimbursement for mileage and travel expenditures and money out of pocket.

j. If a petty cash account is maintained, then reimbursement to the petty cash account shall be accompanied by issuance of a check, not from cash receipts on hand.

k. Security of cash shall be verified by:

(1) Recording receipts as soon as received.

(2) Making intact deposits of receipts of cash as soon as possible following receipt.

1. Security of disbursement of funds shall be verified by:

(1) Using only prenumbered checks.

(2) Establishing and adhering to a limit on the amount of a petty cash account.

(3) Establishing and adhering to a limit on the amount of individual disbursements of petty cash.

m. All rental agreements shall be maintained in a current status as to the period of the agreement and the rate and amount of payment. They shall include a list of major provisions of the agreement to include responsibilities of the landlord and the tenant.

n. In the event depreciation is claimed as an expense, an itemized listing of depreciable assets shall be maintained reflecting date of purchase, description of asset, purchase price, salvage value, and the expected life of asset in years.

Article 8.

Employee Compensation.

§ 1.14. Salaries and fringe benefits shall be examined in relation to employee compensation currently being paid in comparable settings in Virginia. Employee compensation that appears excessive shall be questioned and additional documentation may be required.

Article 9.

Utilization Rates.

§ 1.15. Utilization rates are used as one factor in calculating the unit cost for a service. The utilization rate is determined by dividing the level of enrollment by the license or planned capacity. This is a key element in calculating a rate.

A. Rates shall be set on a percent of licensed capacity (planned capacity for day school).

1. If a facility does not have a licensed capacity established, it shall determine its planned capacity for the year for which rates are being established.

2. If a facility has a licensed capacity which is inappropriate, given the intent of the program, it may request the use of a planned capacity for rate-setting purposes.

3. Variations in planned capacity from historical enrollment data shall be explained in writing and included in the Service Provider Application.

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B. Utilization rates for service providers shall be based on licensed or planned capacity as follows:

1. Initial approval.

Utilization rates for service providers requesting initial approval as a newly opened program shall be standard, based on licensed or planned capacity as follows:

Capacity	Utilization Rates for Negotiations
16 and under	75% of Capacity
17 and over	80% of Capacity

These rates shall be for the first contract period for a newly opened facility. At the end of this period, the service provider shall be required to comply with the utilization rates that follow.

2. Subsequent approval.

After the first year of operation or contract period, the service provider's service rates shall be based on the previous year's actual utilization rate or the expected utilization for the upcoming year, whichever is greater, minus 5%, down to the following minimums:

Capacity	Utilization Rates for Negotiations
16 and under	81% of Capacity
17 and over	85% of Capacity

C. A service provider may exceed its previously declared planned capacity only in accordance with the following conditions:

1. The service provider shall give the appropriate department 30 administrative work days advance notice of the intent to exceed planned capacity. This notice shall be given by certified mail to the rate negotiator.

2. The departments reserve the right to renegotiate the approved rate on the basis of the increased capacity.

Documentation of conditions one and two is required and should be submitted in writing with the application. The departments reserve the right to present any variations that they question to the Interdepartmental Rate Review Panel.

D. Exceptions to the above utilization rates:

1. The utilization rate requirement shall be reduced 5% if the facility's program intent is geared toward a turnover of placements that is 30 days or less, for

example, an emergency shelter facility. In this case, rates shall be negotiated as follows:

Capacity of 1-16	76% of Capacity
Capacity of 17 and over	80% of Capacity

2. The utilization rate requirement shall be reduced by 3% if the facility's program intent is geared toward a turnover of placements that is one to six months (applies to education programs in psychiatric facilities). In this case, minimum utilization rates will be as follows:

Capacity of 16	78% of Capacity
Capacity of 17 and over	82% of Capacity

3. Public facilities.

The 5% allowance for utilization does not apply to public facilities.

Article 10.

Interdepartmental Rate Review Appeals Panel and Formal Due Process Hearing Procedures.

§ 1.16. The following section describes the appeals procedure available to aggrieved parties.

A. The procedures for selecting the Interdepartmental Rate Review Appeals Panel are as follows:

1. The Interdepartmental Rate Review Appeals Panel is composed of three members who are not members of the Interdepartmental Committee on Rate-Setting for Children's Facilities. Nominations for membership on this panel are received from:

a. Service providers of in-state licensed children's facilities.

b. State agencies (Corrections, Education, and Social Services).

c. Local public education agencies, local social services agencies and local court service units.

2. The actual representatives in each of the three categories are chosen at random by the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities according to administratively established procedures as follows:

a. Service provider.

Names are drawn at random from a list of in-state children's facilities. A service provider may not serve on both the Interdepartmental Rate Review Panel and the Interdepartmental Rate Review Appeals Panel.

b. State agency representative.

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(1) A specific state agency is selected at random (Corrections, Education, and Social Services).

(2) The state representative cannot be selected from those who are actively participating in the rate-setting process.

c. Local agency representative.

A specific local school district, a local social services agency or a court service unit to be selected at random. The chairman negotiates with the specific local agency for a representative.

d. One alternate is available.

This is a disinterested private citizen.

e. Membership is rotated and staggered.

f. One member is appointed initially for a two-year term, the other two members for one-year terms.

A member shall serve for only one term regardless of whether that term is a one-year or a two-year term.

g. The Interdepartmental Rate Review Appeals Panel selects its own chairman.

B. The procedures followed in conducting interdepartmental rate review appeals and formal due process hearing are as follows:

1. Initiating appeals.

A request from any party to appeal a decision pertaining to the Interdepartmental Committee on Rate-Setting for Children's Facilities shall be in writing and addressed to the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities.

2. Reasons for appeals.

The appellant shall define the reason for the appeal as follows.

- a. Allowable rates.
- b. Allowable costs.
- c. Denial of waivers or exceptions to maximum percentage increase.

3. Interdepartmental Rate Review Appeals Panel time frames are as follows. Parties wishing to appeal a decision in the rate-setting process shall register the request for a review with the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities.

a. No later than 15 working days after the date of

the letter in which the agency notifies the service provider of the rate;

b. The Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities shall notify the Chairman of the Interdepartmental Rate Review Appeals Panel within three days of the receipt of the request that a review has been requested;

c. No later than four working days after the notification of a request for a review, the Chairman of the Interdepartmental Rate Review Appeals Panel shall notify the parties of the date, time and site of the review;

d. No later than 20 working days after the notification of the request for the Interdepartmental Rate Review Appeals Panel the hearing shall take place; and

e. No later than 25 working days after the notification of the request for the review, a written decision from the Interdepartmental Rate Review Appeals Panel shall be rendered. The decision of the Interdepartmental Rate Review Appeals Panel is final unless appealed for a formal due process hearing.

4. Formal due process hearing time frames.

a. No later than 15 working days after the date of the Interdepartmental Rate Review Appeals Panel decision, any requests for a formal due process hearing shall be received by the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities.

b. No later than three working days after the receipt of the request for a formal due process hearing, the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities shall notify the parties of the name of the hearing officer.

c. No later than four working days after the appointment as hearing officer, the hearing officer shall notify all parties of the date, time and site of the hearing.

d. No later than 20 working days after the receipt of the request by the Chairman of the Interdepartmental Committee on Rate-Setting for Children's Facilities for a formal due process hearing, the formal due process hearing shall have taken place.

e. The format, procedure and guidelines to be followed in the formal hearing shall conform to § 9-6.14:12 of the Code of Virginia.

f. No later than 25 working days after the receipt of the request by the chairman for a formal due process hearing, a written decision shall have been rendered by the hearing officer.

5. Expenses out-of-pocket.

a. Travel, lodging, meals and other necessary expenses associated with the Interdepartmental Rate Review Appeals Panel are shared by the Departments of Corrections, Education and Social Services.

b. The costs of the formal due process hearing, for example, hearing officer billable time, secretary or transcriber, and travel are shared by the appellant and the three state agencies affected, 50% appellant/50% three agencies.

c. Failure of a service provider to pay its legitimate share of the cost of the hearing shall result in a delay in approval of rates for the subsequent year.

6. Hearing officers.

a. Hearing officers shall be appointed from the Supreme Court list;

b. Hearing officers shall only be eligible after having received appropriate training; and

c. Hearing officers shall be disinterested.

**PART II.
PURCHASABLE SERVICES.**

**Article 1.
Basic Services.**

§ 2.1. Basic services are those services which define the essence of the general program offered by the facility. These services shall be available to all individuals enrolled in the general program and shall be delivered directly or indirectly to all of those service recipients.

Most facilities have a single basic services rate. However, some service providers may establish multiple rates for basic services offered to discrete populations of children served. A basic rate may be established for a vocational educational program.

**Article 2.
Optional Services Available.**

§ 2.2. A facility may offer services in addition to those included in the basic service to meet the specific needs of certain children. A portion of the optional services available, which impact all children, may be assigned by the service provider to the basic program. An example for counseling services follows:

1. Basic services.

Included in basic services costs:

a. Services by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel when provided routinely as an integral part of the program. (NOTE: Medically prescribed counseling or psychotherapy is specifically excluded from consideration as a service for which a rate shall be established).

b. Crisis consultation is available to all service recipients on an individual basis as needed.

2. Optional service.

Include as an optional service regularly scheduled counseling provided differentially to specifically identified service recipients on a continuing basis.

**Article 3.
Service Requirements.**

§ 2.3. Basic and optional services provided to a service recipient shall be specified in the Individualized Education Program and/or Individualized Service Plan as determined by the placing agency.

**Article 4.
Services.**

§ 2.4. Unless otherwise noted, the following services are available for purchase (reimbursement) by the Departments of Social Services, Education, and Corrections (see key at the end of this section for which department purchases the service):

1. Adoption services (2) (3).

These services include the combined social and legal processes which enable children for whom the goal is adoption and for whom all parental rights should be or have been terminated to become permanent members of a new family unit. Purchasable components include preplacement, placement, and post placement services for children in the custody of a local social services agency.

2. Audiology services.

These services include: (i) identifying and evaluating children with hearing loss; (ii) determining the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; (iii) selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification; and (iv) counseling and guidance of pupils and parents regarding hearing loss.

3. Case management services.

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These services include the planning, management, monitoring, and evaluation of services that are integral but subordinate services necessary for the effective delivery of primary services. Components of case management include: foster parent recruitment, training, and follow-up; behavioral assessment and testing; and case planning for independence and/or emancipation.

4. Counseling services (1).

These are services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel to children whose Individualized Education Program specifies the need for special education.

5. Counseling and treatment services (3).

These include the provision of adequate and appropriate therapeutic services to individuals and/or families suffering from emotional or psychiatric problems. These services include evaluation and diagnosis of problems and development of treatment goals and strategies which are designed to ameliorate the identified problems. The service may include only psychological and psychiatric counseling which is not allowable under Title XIX (Medicaid).

6. Diagnostic and evaluative services (1).

These services include evaluation and diagnosis of problems of handicapping conditions related to the determination of eligibility for special education.

7. Drug services (3).

These services include medical/remedial services, pharmacological intervention, social, education, and rehabilitative services as well as the utilization of psychological techniques.

8. Education and training services (3).

These services include arranging for and the provision of formal or functional education and training directed toward improving individual knowledge and skills. These services exclude education and training related to employment for the handicapped child and special education.

9. Emergency shelter services (2) (3).

These services include immediate placement and supervision provided in an emergency shelter when removal of a child from a hazardous situation is necessary. The placement decision shall be made by an agency authorized by state law to place children.

10. Employment services (3).

These include the provision of services to individuals who assist in retaining, regaining, or securing full or partial employment, training, or education leading to employment appropriately related to the individual's potential. Components include vocational evaluation and training, counseling, job placement, and work adjustment.

11. Medical/remedial services.

These services include medical and remedial care (other than family planning), not available under Title XIX (Medicaid), that is deemed to be an integral but subordinate service of a program and is not provided merely to correct a medical condition.

12. Occupational therapy.

This service includes therapy which:

- a. Improves, develops, or restores functions impaired or lost through illness, injury, or deprivation;
- b. Improves ability to perform tasks for independent functioning when functions are impaired or lost; and
- c. Prevents, through early intervention, initial or future impairment or loss of function.

13. Parent counseling.

This service assists parents in understanding the special needs of their child, providing parents with information about child development, crisis counseling for parents, and interpretive conferences.

14. Personal adjustment counseling.

This service includes professional guidance, consultation, and problem solving for the child related to family and personal adjustment problems, values clarification and personal effectiveness.

15. Physical therapy.

This service includes physical therapy provided by a qualified physical therapist upon medical referral and direction; and the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical, or electronic measures and procedures to individuals who because of trauma, disease or birth defect present physical and/or emotional disorders. The term "physical therapy" does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization.

16. Psychological services.

These services include:

a. Administering psychological and educational tests and other assessment procedures;

b. Interpreting assessment results;

c. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

d. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews and behavioral evaluations; and

e. Planning and managing a program or psychological counseling for children and parents.

17. Recreation services.

These services include activities which provide active participation in constructive social experiences and in leisure-time opportunities.

18. Respite care (2) (3).

This service includes substitute parental care for the mentally retarded, cerebral palsied, epileptic and autistic individuals for temporary periods when care is needed because of the absence of the parent/guardian.

19. Room and board.

This service includes (exclusive of emergency shelter) the provision of shelter (including related cleaning and household expenses), a full nutritional regimen (usually three meals a day), basic supervision, clothing, personal care items, school supplies, and spending allowance. In residential treatment programs offering special education for handicapped children, clothing and spending allowances shall be separately identified from other room and board costs and are not reimbursable to the local education agencies by the state.

20. Services to specified disabled individuals (3).

These are coordinated and comprehensive services which address the problems of the autistic, cerebral palsied, epileptic, mentally retarded, deaf or blind individual. Components of this service are training to maximize independence, evaluation, instruction, social/emotional support and training of the handicapped child.

21. Special education (1).

These services include specifically designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

a. The term includes speech pathology, if the service consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child.

b. The term also includes vocational education if it consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child.

22. Special foster family home services.

These services are provided to an individual living in a foster family home. These shall relate to a specific need and shall be distinct from the basic responsibilities of providing board and care including parenting for children. The foster family shall be qualified by virtue of training and experience to provide the special service.

23. Speech therapy.

This service includes:

a. Diagnosis and appraisal of specific speech or language disorders;

b. Provision of speech and language habilitation services or prevention of communicative disorders; and

c. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

24. Transportation

This service includes transporting the service recipient to and from needed community resources and facilities other than travel to and from work, school, or for travel to medical care payable under Title XIX (Medicaid).

KEY:

(1) Not for purchase by Department of Social Services.

(2) Not for purchase by Department of Corrections.

(3) Not for purchase by Department of Education.

PART III. REVENUES AND EXPENSES.

Article 1. General.

§ 3.1. Total cost is the sum of the allowable direct and indirect costs assignable to the service/contract less any applicable revenues. Any generally accepted accounting method of determining or estimating cost that is equitable

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under the circumstances may be used if it is applied consistently and appropriate supportive documentation is maintained.

The forms in the application package contain reporting categories such as employee services, contract personnel services, building occupancy, travel and supplies. Allowable and unallowable costs are to be reported within each category. Unallowable costs are not considered in determining total costs in calculating the rate.

Particular items of cost not mentioned above may be determined allowable or unallowable based on the treatment provided for similar or related items of cost.

§ 3.2. Individual expenditure items are examined for allowability according to the following criteria:

1. Reasonableness.

Costs not exceeding that which would be incurred by an ordinarily prudent person in the conduct of competitive business may be considered reasonable as follows:

- a. The cost is generally recognized as ordinary and necessary for operation.
- b. Restraints and requirements imposed by generally accepted sound business practices, arms-length bargaining, and federal and state laws and regulations are used.
- c. The action is in line with those which a prudent service provider would take concerning its responsibility to the organization, the public, the government, its employees, its clients, etc.
- d. There are no significant deviations from the established practices of the service provider.

2. Allocability.

Costs are assignable or chargeable to a particular cost objective in accordance with the relative benefits received as follows:

- a. The cost is incurred specifically for the contract service.
- b. Any combined costs can be distributed in reasonable proportion to the benefits received.
- c. The cost is necessary to the overall operation of the service provider.

Article 2. Allowable Expenses.

§ 3.3. The following provides examples of particular expenses that are allowable provided they meet the

criteria set forth in Part III, Article 1.

1. Bidding costs.

These costs are for the preparation of the bids and applications including scientific, engineering and cost data necessary to support the bid or application if they are incurred within the contract period. Any prior costs are unallowable.

2. Bonding costs.

These costs are assurances against financial loss due to theft, default, etc., and include such bonds as performance, bid, fidelity, etc. Allowable bonding costs are those which are required by the service provider in the general conduct of operations, providing the rates and premiums are reasonable under the circumstances.

3. Civil defense costs.

These costs are undertaken for improvements on the service provider's premises in response to suggestions or requirements of civil defense authorities when they are allocated to all the work of the service provider. Capital assets obtained through civil defense costs shall be charged with depreciation or use charges along with other fixed assets.

4. Compensation for personnel services.

These costs are allowed to the extent that they are:

- a. Related to the program work;
- b. Reasonable for the services rendered; and
- c. Comparable to that paid for similar work in the labor market. Comparisons include salaries, wages, employees' insurance, vacations, holidays, sick leave, unemployment insurance, etc.

5. Capital expenditures.

These are the costs of equipment, buildings and building equipment repairs which materially increase the useful life or value of the buildings or equipment but only when the repairs are necessary to support the program. These costs shall be accounted for only through depreciation or use allowance as explained below.

6. Depreciation and use allowances.

This compensates the service provider for the use of buildings, capital improvements, and usable equipment on hand by either depreciation or use allowance, as follows:

- a. Depreciation is a charge to current operations

which distributes the cost of fixed assets less a residual value over the estimated useful life of the asset, provided adequate records are maintained to account for fixed assets.

Where depreciation is used, adequate property records must be maintained reflecting acquisition costs, salvage value, estimated useful life and acquisition data. Assets acquired in prior years must be depreciated from their acquisition date.

b. The use allowance method can be used by service providers that do not have adequate records to use depreciation but have a reasonable and justifiable estimate of acquisition cost. Use allowance for buildings and improvements is to be computed with an annual rate not to exceed 2% of acquisition cost. Use allowances for equipment are to be computed with an annual rate not to exceed 6.667% of acquisition cost.

7. Dues and subscriptions.

Costs related to trade, professional, business and technical organizations and publications are allowable provided the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

8. Employee morale, health and welfare costs.

The costs of providing benefits to a service provider's employees to improve working conditions, employer-employee relations and/or employee morale and performance such as vending machines, canteens, dormitory services, etc., are allowable after deduction of any revenue received from these activities and provided the net cost is reasonable.

9. Fund raising expenses.

Costs which are directly attributable to contributions are allowable up to the amount of the related contributions.

10. Insurance.

Costs of insurance maintained by the service provider in connection with the general conduct of business are allowable provided the extent of coverage, rates and premiums are reasonable under the circumstances.

11. Interest costs.

Costs of interest are allowable to the extent that they are consistent with the provisions that follow:

a. General.

Necessary and proper interest on both current and capital indebtedness is an allowable cost. Reasonable

finance charges and service charges on indebtedness are includable in determining these costs. To be allowable, interest shall be:

(1) Supported by evidence that funds were borrowed and that payment of interest and repayment of the funds were required.

(2) Identifiable in the service provider's accounting records and reported in audited financial statements.

(3) Related to the reporting period in which the costs are incurred.

(4) Necessary and proper for the operation, maintenance, or acquisition of the service provider's program and/or facilities.

(a) Necessary means that the interest be incurred on a loan made to satisfy a financial need of the service provider and for a purpose directly related to the provision of the services for which rates are established.

(b) Proper means that the interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in an arms-length transaction in capital markets when the loan was made.

b. Finance and service charges are those charges incurred by the lender related to the maintenance of records, collection of delinquent accounts, administration, etc., in addition to the charges for interest which a lending institution may include in the cost of a loan.

c. Determination of allowability.

(1) Working capital financing (current indebtedness) is allowable to the extent that it supports assets other than cash or cash-like items. Justification of interest rates on current indebtedness shall be provided.

The basis of allowable working capital financing is the average working capital for operating funds of the most recent audited year. Cash, bank deposits and marketable securities in excess of current liabilities is subtracted from average working capital in calculating the base amount for which interest on current indebtedness is allowed. The formula for determining the extent of allowable interest on current indebtedness is described in Appendix III.

(2) Capital asset financing interest expense is allowed on plant, property and equipment that is reasonably related to the operation of the service-providing facility. For assets acquired in the current year and thereafter, interest expense is allowable from the time the asset is placed into service. Disclosure of information related to capital

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financing arrangements is to be made on the form provided.

(3) Prior approval of the allowable interest costs related to new capital asset financing is required when the related total annual interest expense for the purchase exceeds \$3,000.

(4) Interest expense related to facility relocation is allowable to the extent the proceeds from the disposition of the facility being replaced are matched against the cost of the new facility. Fair value of unused and unsold facilities being replaced is considered as proceeds in determining allowable relocation interest expense. Interest expense related to financing facility expansions is allowable when reasonably related to the program's growth and the obsolescence of existing facilities.

(5) Interest expenses associated with the purchase by a service provider of an existing leased facility which the service provider currently occupies is allowable providing that a long-term financial benefit can be demonstrated.

(6) The department reserves the right to disallow costs related to transactions which result in increased costs for facilities with no effect on the services and facilities involved, for example, refinancing.

(7) Lease agreements meeting the criteria for capitalization are treated as financed capital asset transactions and related interest expense is allowed provided other provisions related to interest expense and capital asset financing are met.

(8) Rent for lease agreements with related party lessors is allowable to the extent rent expenses does not exceed cost of ownership. These costs include depreciation, interest expense, property taxes, maintenance and insurance related to the facilities but excluding unused space.

(9) Any prior revenue restrictions for interest expense are revoked or appropriate adjustments made such that revenue restrictions are not in place for allowable expenses included in the costs used to compute rates.

d. Related party interest expense.

Interest expense incurred on purchases of property from, and capital financing agreements with, related parties are allowable provided:

(1) There are no prior revenue restrictions for funds earmarked for capital expansion. If so, appropriate adjustments are required.

(2) Loan terms and purchase prices reflect those of

comparable arms-length transactions.

(3) The service provider, if requested, provides a notarized statement from a licensed appraiser, in the community where the facility is located, attesting to the fair market value of the property, at the service provider's expense. The department reserves the right to obtain an independent appraisal of the market value of the property at its own expense.

(4) The transaction meets other criteria for allowance of interest expense and capital asset financing, as described previously.

e. Allowable interest expense limits and inclusion in rates.

Interest expense shall be allocated to all services, excluding room and board, in an equitable manner.

f. Limit on interest.

Interest expense is allowable to the extent it does not exceed 3% of the total allowable operating costs (excluding interest) budgeted for the proposed rate year. To be allowable, interest expense shall meet the criteria for interest expense and capital asset financing described previously.

12. Labor relations costs.

Costs incurred in maintaining satisfactory relations between a service provider and its employees, such as management committees, employee publications, etc., are allowable when distributed over all activities of the service provider.

13. Maintenance and repair costs.

Costs necessary for the upkeep of property are allowable provided they do not add to the permanent value of the property or extend its useful life.

14. Material costs.

Costs of consumable supplies to carry out the programs are allowable. Any refunds, rebates, discounts, etc., shall be deducted from the cost. Net costs are allowable.

15. Meetings and conference costs.

Costs which include meals, transportation and facility rental incidental to meeting and conferences with the primary purpose of dissemination of technical information pertaining to the program services are allowable.

16. Overtime pay.

Costs of overtime necessary to cope with emergencies, accidents, natural disasters or equipment breakdowns are allowable.

17. Patent and copyright costs.

Costs of preparing disclosures, reports and other documents required by the term agreement are allowable. Costs incurred in filing a patent application or copyright where title is not conveyed to the government are unallowable.

18. Professional service costs.

Costs of legal, accounting, scientific, and social work etc., not provided by employees of the service provider when the costs are reasonable in light of the services rendered, and when the services rendered are required and are outside the ability of the service provider personnel to perform, are allowable.

19. Public information costs.

Costs of publications used to describe the program to prospective patrons are allowable when reasonable and necessary.

20. Publication and printing costs.

Costs for reports to members and trustees and for taxing and regulatory bodies are allowable when allocated on an equitable basis over all service provider activities.

21. Rearrangement and alteration costs.

Costs which are ordinary and normal are allowable when they are allocated on an equitable basis over all service provider activities.

22. Recruitment costs.

Costs in excess of standard commercial employment agency rates are allowable when a service provider maintains its own recruitment program. Operation of an employment office, operation of aptitude and educational testing programs, travel costs of employees engaged in recruitment, help wanted advertising and reasonable travel costs of applications are allowable.

23. Relocation costs.

Relocation costs are allowable provided they are in accordance with established service provider policy, do not exceed the employee's actual expenses, and do not apply to a move for less than 12 months and provided that the following criteria are met:

- a. Transportation of the new employee, the immediate family, and household and personal effects to the new location is included.

- b. Incidental costs incurred by the employee and spouse in connection with acquiring a new home and lodging during the transition period do not extend to a period of more than 30 days.

- c. Closing costs, brokerage fees, legal fees, appraisal fees, etc., incidental to disposition of housing, which do not exceed 8% of the sale price of the property, or cancellation of unexpired lease and disconnecting or reinstating household appliances and insurance against personal property damages in connection with relocation are allowable for existent employees but unallowable for newly recruited employees. Such items as loss on sale of a home, brokerage fees, etc., incidental to the acquisition of new housing, are not allowable.

24. Rental costs and related party transactions.

- a. Rental costs of land, building and equipment and other personal property are allowable if the rates are reasonable in light of these factors; rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and the value of the facilities leased, options available, and other provisions of the rental agreement. In addition, 8 to 10% of the assessed value is the maximum allowance.

- b. Rental costs specified in sale and leaseback agreements incurred by service providers through selling facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that these rentals do not exceed the amount which the service provider would have received had it retained title to the facilities.

- c. Lease agreements meeting the criteria for capitalization are treated as financed capital asset transactions and related interest expense are allowed provided all other provisions related to interest expense and capital asset financing are met.

Related party rentals for land, building and equipment and other personal property are allowable only to the extent that these rentals do not exceed the amount the facility would have received and legal title to the facilities been vested in it. These charges shall not exceed the normal costs of ownership, such as depreciation, interest, taxes, insurance, and maintenance, provided that no part of these costs shall duplicate any other costs. Related parties are affiliated organizations including corporations, stockholders, board members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest.

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e. The service provider is required to justify rent expenses in the application, documenting the following:

- (1) To whom the property is titled;
- (2) To whom the rent is paid;
- (3) The relationship between the service provider and the parties identified above;
- (4) The appraised value of the property;
- (5) The total square footage of the buildings used for program and nonprogram purposes, including vacant buildings, rented buildings, and/or all portions on which expenses are claimed; and
- (6) A copy of the lease agreement.

25. Severance pay cost.

Severance pay cost is allowable when required by law, employee/employer agreement or established service provider policy constituting an implied agreement.

26. Taxes.

Taxes directly associated with the contract activities are allowable excluding any fines or penalties with the exception of federal and state income taxes.

27. Training and educational costs.

Costs including on-the-job training and part-time undergraduate or post graduate college level education, are allowable when they are related to the job requirements of the employee. Allowable costs are those for training materials, textbooks, fees and tuition charged by the institution, and compensation of employees for time spent attending classes during working hours (not to exceed 156 hours per year) if classes are not taught after working hours.

28. Transportation costs.

Costs for freight, express, cartage and postage relating to purchased goods are allowable.

29. Travel costs.

Costs including transportation, lodging, subsistence and incidental expenses of travel incurred by service provider personnel while on official business are allowable except that the difference between regular and first class air accommodations is unallowable. The maximum allowance for mileage is the current state-approved rate.

Article 3. Unallowable Expenses.

§ 3.4. The following are unallowable expenses:

1. Bad debts.

Uncollectible amounts, claims, and related legal expenses are unallowable.

2. Civil defense costs.

Donations to civil defense projects and funds are unallowable.

3. Contingencies.

Costs related to any possible future event or condition as yet indeterminable in amount are unallowable.

4. Excess facility costs.

Costs for completely unused facilities in excess of the service provider's current need are unallowable.

5. Cost of losses.

Losses on any other government contracts are unallowable costs for this term agreement.

6. Organization costs.

Incorporation fees, attorney fees, brokers' fees, organizer fees and promoters' fees in connection with organization or reorganization are unallowable.

7. Other costs.

Costs listed in the allowable column with conditional requirements which are not met are unallowable.

8. Losses on disposition of fixed assets.

Losses on disposition of fixed assets are unallowable.

9. Public information service costs.

Costs of composition, printing, presswork binding, promotion, mailing and handling are unallowable except for reports to members, trustees, taxing and regulatory bodies.

Article 4. Excluded and Included Revenue.

§ 3.5. The applicant shall identify revenue from all sources and this revenue shall be deducted from costs to establish a reasonable and competitive rate unless the revenue bears certain restrictions supported by documentation. The categories of restrictions allowed are as follows:

1. Donations to local welfare education corrections agencies.

This revenue is restricted by donor agreement to be used in supporting publicly funded service recipients;

2. Unallowable or excluded revenue.

This revenue is restricted for use in meeting costs which are excluded or unallowable in the rate setting process.

3. Endowment contributions.

Contributions which are restricted to placement into an endowment or trust fund, the principal of which is invested and not available to fund the application's operations. This is not to be confused with the income earned by investing and endowed principal which is not restricted unless the applicant has a well documented policy of restricting this income.

4. Fees for service.

This revenue is restricted to pay fees for specified clients or specified client groups. Revenue which is restricted to pay fees for a specified group of clients shall be traceable through the applicant's fiscal records to each individual client for whom a fee is paid. Funds used to pay a fee higher than that paid for the service through purchase of service shall be used to defray unit cost for the services provided. It may not be shown as "excluded and/or unallowable" on the application unless the service provider utilizes a fee scale and documents the fact that the amount in excess paid by some recipients is used to pay the balance due on lower scale recipients.

§ 3.6. All other revenue is considered general operating revenue and is used to defray the costs of providing services. This revenue is distributed over services in the ratio that each service's costs bear to the total costs of all service programs.

PART IV. BUDGET AND REPORTING CATEGORIES.

Article 1. General.

§ 4.1. The reference to forms and categories in this part are for the application package. The application package and instructions should be requested from the applicable department.

Article 2. Revenue and Expense Categories.

§ 4.2. Revenue categories for use on Form B-1.

1. Contributions.

a. Contributions include only cash amounts for which the donor receives no direct private benefits.

They are to be carefully distinguished from membership dues and program service fees, which represent payments made in return for direct, private benefits. All contributions received directly from individual donors and organizations and not resulting from a federated fund raising campaign are to be included in this classification. Amounts paid ostensibly as memberships, but which are in fact contributions, should be included here.

b. The following are examples of sources of contributions to be reported in this category:

(1) Individuals, including service provider's own board members, employees and their acquaintances;

(2) Corporations and other businesses;

(3) Foundations and trusts;

(4) Contributions in response to door-to-door, mail, and other solicitations conducted by service provider itself;

(5) Fraternal, civic, social and other unrelated groups, for example, direct contributions excluding contributions raised through organized campaigns; and

(6) Legacies and bequests.

c. In those cases where cash amounts received from one or more sources are significant in relation to the service provider's total direct support, these amounts should be reported by source. Not to be included is support provided by governmental agencies or other support discussed in the remainder of § 4.2.

d. Expenses incurred directly in soliciting contributions included here are to be shown in the appropriate expense categories, for example, compensation, supplies, and communications. Allowable fund raising expenses may not exceed the related contributions.

2. Special events.

The special events classification is provided to reflect support and incidental revenue derived from all of an organization's special fund raising events during the period of the report. These are affairs in which something of value is offered directly to participants for (or in anticipation of) a payment and a contribution adequate to yield revenue for the sponsoring service provider over and above direct cost and expenses. Dinners, dances, bazaars, card parties, fashion shows, and cookie, candy and greeting card sales are examples of special fund-raising events. With the exception of special situations noted below, telethons and other forms of TV and radio

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entertainment are not considered special events for public reporting purposes. Contributions received in response to appeals of these types are to be reported as ordinary contributions; and expenses attributable to the appeals as fund-raising expense.

3. Allocated by federated fund-raising organizations.

All allocations, appropriations and forms of financial support received or receivable from federated fund-raising organizations are to be reported in this classification, for example, United Way of America.

4. Allocated by unassociated and nonfederated fund-raising organizations.

This category is provided for reporting support derived from fund-raising campaigns that is received from specialized fund-raising organizations that are not associated with federated fund-raising organizations. It is to be used to report allocations to a service provider which result from independent nonfederated campaigns for multiple service provider support, for example, those conducted by some large plants, by charity-support organizations with trade associations, by the Easter Seal Society, or by the March of Dimes.

5. Grants from governmental agencies.

All support and revenue that a service provider receives from governmental, federal, state, or local grants is to be reported in this classification. Governmental payments of service fees (third party payments) on behalf of individual clients should not be included here. Fees for service from governmental agencies should be reported as service fee revenue. The source and kinds of governmental support should be identified.

6. Membership dues - individuals.

This category is for amounts received by an organization for personal memberships that procure directly for the member, substantial private benefits commensurate in value with the amount of the dues. Substantial direct, private benefits include the use of service provider recreational, consulting and other facilities and services, the right to directly receive useful publications, or the enjoyment of a professional standing or other honor. Voting rights alone are not sufficient to qualify a payment as a membership payment. Newsletters shall, in many instances, also be rejected as an insufficient benefit to qualify as a payment as a membership. If a newsletter-type publication has no other function than to keep a member informed of general activities of an organization, its direct usefulness to the recipient is highly questionable. Contributing and sustaining memberships implicitly require scrutiny for proper reporting. Their distinguishing titles require that there be an alternative, regular membership and imply a

difference in rates charged. If the regular membership qualifies as a time membership, as just defined, and if the benefits offered for contributing or sustaining membership are not greater, corresponding to the difference in charge, then the difference between the charge collected and the rate for a regular membership properly belongs in contributions. This caption is intended to include payments for bona fide membership benefits only. When the benefits are not of a value reasonably related to the fee charged, the payment should be reported as contributions.

7. Total sales to public.

This includes sales of any goods to the general public, for example, manufactured products, vending machine profits, copying machine profits, etc.

8. Total investment income.

An organization may earn income from a variety of investments, both long and short term. All this income shall be reported.

9. Gain or loss on investment transactions.

This caption includes realized gains and losses on investment transactions.

10. Gain or loss on disposition of fixed assets.

This reporting category includes proceeds above the book value of assets sold and any losses on asset disposition transactions.

11. Other revenue.

This category is for revenue that is not otherwise classified. If the revenue of the service provider has been properly classified, very little should usually remain to be shown as other revenue.

12. Service fee revenue.

This category includes all fees paid by a governmental agency (third party payment on behalf of a specific individual recipient for service provided to that recipient). Grants expected from governmental agencies should not be included here but in the reporting category grants from governmental agencies. Also included in this category is revenue received from participants in a service provider's program, for example, from the public at large. This classification includes fee payment received for services furnished by the organization, for example, special education and related services, medical and psychiatric therapy, services to unwed mothers, adoption services, foster care of children. Whether a service provider uses schedules of fees for different services or merely requests recipients to pay what they feel they can afford, any payments solicited or suggested or

accepted as a contribution in return for a service provider's professional services, as in the case of many church-related service providers, belong in this classification. Some service providers account for fees by recording them at established standard rates for services rendered, then apply an allowance to reduce the standard to the amount actually charged in each case. These service providers should report as service fee revenue only the net actually charged.

§ 4.3. Expense categories for use on Form C-1.

1. Gross salaries.

This category is for salaries and wages earned by a service provider's regular full and part-time employees and by temporary employees, including office temporaries, other than contract personnel services. Salaries are compensation paid periodically for managerial, administrative, professional, clerical and other supportive services. Wages are compensation paid periodically on a piecework, hourly, daily, or weekly basis for manual labor, skilled or unskilled, or a fixed sum for a certain amount of labor. Specific salary and wage categories are made available for the insertion of those major salaries and wage categories peculiar to any service provider. The following classifications are to be used in the completion of Form C-1:

a. Executive.

This category is for salaries earned by executives of a service provider. Most executives are professionals of some kind and assignment should be made according to what the person does rather than his or her profession. For example, if an executive staff member of a service provider is a lawyer, his salary would be classified under executive salaries despite the fact that the individual is a lawyer by profession.

b. Professional staff.

This category is for salaries earned by full or part-time professional members of a service provider's staff (excluding teachers), for example, campaign director, registered nurse, social worker, counselor, psychologist, and accountant.

c. Support staff.

This category is for salaries earned by full or part-time members of a service provider's clerical staff, maintenance staff and other support staff.

d. Instructional staff.

This category is for salaries earned by full or part-time members of the service provider's teaching staff and includes teachers of special education and

teachers aides.

2. Total employee fringe benefits and employer's share of taxes.

This expense category is the total of employee benefits and employer-paid taxes as disclosed on Form C-3.

§ 4.4. Expense categories for use on Form C-2.

Professional fees.

This expense category group is for fees and charges of professional practitioners, technical consultants, or semi-professional technicians, who are not employees of the service provider and are engaged as independent contractors for specified services on a fee or other individual contract basis. However, amounts paid to mechanics, artisans, repairmen and others engaged in maintenance and repair services to the service provider should not be included in this account. Also, fees for a recipient for direct personal services, other than those offered as part of the regular program services of the service provider, should not be included in this category. These should be included in the appropriate account within the category, Specific assistance to individuals, in § 4.8, 1. of these regulations.

a. Medical and dental services.

This category is for fees to medical and/or dental specialists for consultation with, or instruction of, service provider personnel on special cases among its clients, for example, physical medicine, orthopedics, pediatrics, internal medicine, neurology, dentistry, orthodontics. For Department of Education service providers, medical fees are allowable only if they are related to diagnostics and evaluation in the determination of eligibility of students for special education. This category should be distinguished from the amount for specific assistance to individuals. Fees charged to this category are for assistance to the service provider itself, whereas fees charged on behalf of a particular recipient or patient of a service provider should be charged to specific assistance to individuals.

b. Psychological services.

This category is for fees to qualified specialists for consultation with, or instruction of, service provider personnel on specific cases among its service recipients.

c. Legal services.

This category is intended for fees to attorneys for consultation with, or instruction of, service provider personnel on specific cases among its clients. Also, fees for services rendered to the service provider

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for interpretation and defense of its own legal rights and corporate entity.

d. Rehabilitation and education services.

This category is for fees to professional or licensed specialists in the various disciplines comprising the fields of rehabilitation and education for consultation with, or instruction of, service provider personnel on specific cases among its clients, for example, physical therapy, speech therapy, vocational counseling and training, basic education, tutorial programs, special education, tuition, etc.

e. Audit services.

This category is for fees to certified public accountants for examining the service provider's financial statements for the purpose of rendering an opinion. Fees for services provided that are outside the scope of the audit examination should not be included in this account. These peripheral services, which could include tax and general management consulting, should be reported in the next category.

f. Accounting and bookkeeping services.

This category is for fees to accountants for consultation with, or instruction of, service provider personnel on specific matters related to service provider accounting and financial reporting procedures. Included are fees for services rendered to the service provider for supervision or maintenance of the service provider's financial records.

g. Other purchased services.

This category is for fees to specialists in the development of a service provider's financial resources and the interpretation and/or promotion of a service provider's programs and/or services to its public, for example, fund-raising, bequests, campaigns, community relations, etc. This category is also for fees to specialists rendering services to a service provider in the areas of investment, real estate, and collection; and for fees to employment agencies incurred by a service provider in the employment of service provider staff. This category is also for fees to banks and service bureaus for processing records and transactions of a service provider and for fees to other independent professional consultants under contract, such as architects and engineers. Specify the nature of the consultants and consultation shown in this category.

§ 4.5. Expenses categories for use on Form C-3.

Employee fringe benefits.

This expense category group is used to report the costs

of employee benefits and applicable taxes which are used in determining total compensation. Total employee benefits amounts shown in this category group should equal the total amount of fringe benefits shown on Form C-1.

a. Medical, hospitalization and dental insurance.

This category is for amounts paid and accrued by the service provider to insure employees for costs of medical and dental care and hospitalization. Documentation of the extent of coverage and how the costs of these benefits are computed shall be available upon request.

b. Accident disability insurance.

This category is for the cost of premiums paid or accrued by the service provider to insure employees for accidents and disabilities. The cost of this coverage is normally based on eligible employees' salaries and wages. Documentation of the extent of coverage and how the cost is computed shall be available upon request.

c. Group life insurance.

This category is for the cost of premiums paid or accrued by the service provider for life insurance policies offered under a group plan. Documentation of the extent of coverage and how the cost is computed shall be available upon request.

d. Pension and retirement benefits.

This category is for the cost of pension and retirement benefits paid or accrued by the service provider, including premiums for annuity insurance or contributions under a private funding plan. Documentation of the nature of the pension and retirement benefits and funding shall be available upon request.

e. Unemployment taxes and termination benefits.

This category is for the cost of federal or state unemployment insurance premiums or unemployment taxes and for other termination benefits. Documentation of the extent of coverage and funding requirements must be available upon request.

f. Workers' compensation.

This category is for the service provider's cost of workers' compensation insurance premiums based on eligible employee's salaries and wages.

g. Meals and housing.

This category is for the cost of meals and housing benefits provided to specific employees. The cost of

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meals and housing for employees should not be confused with meals and housing costs that relate to service recipients, which are reported on Forms E-1 and E-2.

h. Professional affiliations of employees.

This category is for membership dues paid by the service provider on behalf of employees for affiliation with organizations that are related to the functions of the service provider. These costs are normally paid or reimbursed as they are incurred.

i. F.I.C.A. (Employer's share and employees' share, if applicable).

F.I.C.A. taxes are based on the employee's salary or wages according to the percentage established by federal law. If the employer has agreed to pay all or part of an employee's share of F.I.C.A., this is reported here along with the employer's share.

j. Other benefits.

This category is to disclose any additional fringe benefit costs that are not appropriately classified elsewhere.

§ 4.6. Expense categories for use on Form E-1.

1. Building occupancy.

This expense category group is for all costs arising from a service provider's occupancy and use of owned or leased land, buildings and offices and is used to complete Form E-1. This would exclude costs reportable elsewhere such as janitor's salaries and depreciation of nonbuilding assets, acquisition of equipment and other assets.

a. Rent.

This category is for the rental of buildings and grounds space used by a service provider in conducting its program and support functions and for the cost of compensation for the use of parking facilities.

b. Building and building equipment insurance (general and liability).

This category is for the cost of premiums for insurance contracts to reimburse the service provider for revenue or property loss. Examples of insurance coverage include fire, theft, boiler, and elevator.

c. Mortgage interest.

This category is for the cost of interest paid for the use of money through a lien on land and/or

buildings (see interest cost provisions in Part III).

d. Utilities.

This category is for the cost of occupancy related to electric power, gas, heating oil, coal, water, and sewage used in the operation of the service provider and its services.

e. Janitorial and other maintenance services.

This category is for the cost of maintenance services provided by nonemployees, for example, plumbers, electricians, roofers, masons, typewriter repairmen, appliance repairmen, lawn mowers, etc. Salaries of janitors and maintenance staff would not be reported here but in the salaries category. These types of contractual services should not be reported on Form C-2.

f. Real estate taxes.

This category is for the cost of real estate taxes assessed against a service provider for real estate used in the operation of the service provider or real estate held by a service provider for investment or rental income.

g. Buildings and grounds maintenance and supplies.

This category is for the cost of buildings and grounds maintenance supplies used by the service provider in its day-to-day operation of the facilities for its program and support functions such as paint, plaster, and fertilizer.

h. Building depreciation.

This category is for the depreciation expense or use charges of buildings used by the service provider for conducting activities during the reporting period.

i. Amortization of leasehold improvement.

This category is for amortization expense for improvements made to leaseholds used in the operation of the service provider.

2. Rental and maintenance of equipment.

This expense category group is for costs arising from a service provider's use of owned or leased equipment. Excluded are costs associated with building occupancy and costs of maintaining and operating transportation equipment.

a. Equipment rental.

This category is for costs to the service provider arising from rental of equipment used by the service provider in conducting programs and/or

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support functions.

b. Equipment maintenance.

This category is for all costs to the service provider arising from maintenance of equipment used by the service provider in conducting programs and/or support functions.

c. Equipment depreciation (excluding automobiles).

This category is for depreciation expense or use charges for all equipment except automotive used by the service provider in conducting programs and/or support functions with an expected useful life of at least two years.

d. Personal property tax (excluding automobiles).

This category is for the cost of personal property taxes assessed against eligible assets of a service provider.

3. Membership dues.

These categories are reserved for expenses relating to bona fide memberships in other organizations which provide benefits for regular services, publications, materials, etc. The cost of dues for individual staff members in professional organizations or other relevant entities is reported in the category for professional affiliations of employees.

4. Staff development expenses.

This category is for the cost of conferences, conventions, and meetings sponsored and paid for by the service provider which may include the cost of rent or fees charged for use of meeting rooms, equipment and other related expenses.

§ 4.7. Expense categories for use on Form E-2.

1. Travel.

These categories are for expenses of travel and transportation of staff, service recipients and volunteers of the reporting service provider.

a. Depreciation expense on vehicles.

This category is for the cost of depreciation expense or use charges of automotive equipment used by the service provider.

b. Maintenance and repairs.

This category is for the cost of the operation, maintenance and repair of a service provider's owned or leased vehicles.

c. Insurance - vehicles.

This category is for the cost of premiums for comprehensive insurance contracts, providing coverage for all phases of automotive insurance, for service provider owned or leased vehicles used in the operation of a program.

d. Auto allowances - employees and volunteers.

This category is for the cost of reimbursements for mileage allowances, actual expenditures, parking fees, and other related expenses to employees and volunteers for the use of their private vehicles in the operation of the program. The maximum allowable mileage reimbursement rate is the current state-approved rate.

e. Lodging, meals, and commercial fares.

This category is for the cost of hotels, meals and other expenses incidental to, and directly connected with, the travel and transportation of the service provider's staff and volunteers and for the cost of fares charged by licensed public transportation companies including taxis.

f. Leasing costs - vehicles.

This category is for the cost of hourly, daily, weekly, monthly or annual lease fees for vehicles used in the operation of the program.

g. Property taxes - vehicles.

This category is for the cost of personal property taxes assessed against automotive transportation equipment used to transport staff or service recipients.

h. Other travel.

This category is for the cost of all licenses or permits, local, state or federal, required for the operation of service provider's vehicles used in the operation of the program and for the cost of travel which does not fit into other categories. Specify the nature of other travel expenses.

2. Supplies.

These categories are for the cost of materials, appliances and other supplies used by a service provider to provide programs and services.

a. Education and training.

This category is for the cost of materials and supplies purchased for educational and vocational training programs for service recipients.

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b. Food and beverages.

This category is for the cost of food and beverages purchased for use in the food service function.

c. Laundry, linen and housekeeping.

This category is for the cost of linen, uniforms or other hygienic supplies and the cost of their cleaning and maintenance, as well as cooking and cleaning supplies. This is not to be confused with § 4.6, g; Buildings and grounds maintenance, in which category would be listed painting, repairs and supplies.

d. Office.

This category is for the cost of various paper and other supplies used in the operation of the program or supporting services and for the cost of materials and supplies used in the publication, printing, or duplicating activities.

e. Raw materials and manufacturing.

This category is for the cost of materials or goods purchased for use as an ingredient or component part of a finished product. These materials may be in their natural state and require further processing before becoming a part of the finished part which may be directly incorporated in the finished product. This category is also for the cost of supplies that can be directly identified with the manufacturing process.

f. Recreational and craft.

This category is for the cost of materials and supplies purchased for recreational programs and for the cost of materials and supplies purchased for craft programs for service recipients.

g. Other supplies.

This category is for the cost of medicines and drugs purchased generally for the use by service recipients to maintain an infirmary, health or first aid clinic. This category is also for the cost of prosthetic appliances and devices purchased for use in service recipient training and instruction in clinic functions. The cost of prosthetic appliances, devices or prescription drugs purchased for specific service recipients should not be included in this category. This category is also for the cost of new merchandise in a completed condition acquired for resale to the public in the furtherance of programs and/or services and for the cost of supplies which do not fit into prior categories. Specify the nature of all supplies included.

3. Communications.

These categories are for the cost of business communications related to the provision of services.

a. Telephone and telegraph.

This category is for the cost of all telephone, telegraph, mailgram, teleprocessing, and similar communication expenses.

b. Postage and shipping.

This category is for the cost of postage, parcel post, commercial trucking and other delivery expenses for shipping and shipping materials, incurred in the operation of the program.

c. Printing for internal reporting.

This category is for the cost of printing charges of commercial artists and supplies for paints, artwork, proofs, photographs, and other costs associated with reports to management, directors, government and regulatory reporting. This includes descriptive material by recipient and service providers. It is not to be used for printing for promotional purposes.

d. Printing for promotional purposes.

This category is for the cost of contract artwork, contract photograph and charges made by recording or film studios. It also includes the cost of advertising in newspapers, magazines, radio, television or other public media, and for the cost of printing, and publications which are done for promotional or advertising purposes.

e. Subscriptions and publications.

This category is for the cost of subscriptions, reference and resource publications for service providers' staff use, or for loan use by others, but not for distribution.

§ 4.8. Expense categories for use on Form E-3.

1. Specific assistance to individuals.

These categories are reserved for the cost to the service provider of specific materials, appliances, services and other assistance rendered by individuals or organizations other than the service provider for a recipient.

a. Medical and dental fees, medicines, etc.

This category is for the cost of medical fees and other related payments on behalf of a service recipient. Professional services fees paid by the service provider on a retainer fee or contract service basis are reported under professional fees. This category is also for the cost of dental fees and

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other related payments for the cost of nonprescription or prescription medicines or drugs, purchased in whole or in part on behalf of a service recipient. This category is also for the cost of the purchase, fitting, repair and maintenance of prosthetic appliances, purchased in whole or in part, for a service recipient's use. This category is also for the cost of hospital charges, for example, room, treatment, X-ray, food, and other services, purchased in whole or in part, for a service recipient.

b. Clothing allowance.

This category is for the cost of all items of apparel for a service recipient's personal use.

c. Transportation service.

This category is for the cost of transporting a service recipient from one place to another.

d. Personal allowances.

This category is for personal allowances to service recipients.

e. Service recipient wages (not allowances).

This category is for the cost of wages paid for sheltered employment. Wages or recipients employed by the service provider in nonsheltered situations should be shown in employee services. Sheltered employment is that which is approved for a modified pay scale by the U. S. Department of Labor.

f. Testing fees.

This category is for the cost associated with administering and analyzing tests.

g. Personal supplies.

This category is for the cost of personal hygiene supplies.

h. Public school supplies.

This category is for the cost of educational supplies necessary for the recipient who attends public school. Examples are pencils, paper, notebooks, erasers and rulers.

i. Other specific assistance.

This category is for the cost of recreational and cultural activities for a service recipient. This category is also for the cost of materials, for example, furniture, tools, craft supplies, production materials, etc., purchased for a recipient's individual use. This category is also for the cost of specific

assistance to individuals which does not fit into the above categories. Specify the nature of the other specific assistance included.

2. Interest (other than mortgage).

This category is for the cost of all nonmortgage interest paid during the reporting period. Mortgage interest is not reported in this category (see interest provision in Part III).

The following forms to Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Corrections, the Board of Education and the Board of Social Services have not been published but are available for public inspection at the office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, Virginia, or the Department of Social Services, 8007 Discovery Drive, Blair Building, Richmond, Virginia.

FORMS:

Alternate Year Service Provider Application (short form)
Applicant Certification and Checklist Program Narrative
A-1 General Applicant Information
A-2 Service Information
B-1 Revenues
B-2 Restricted Funds and Documentation
C-1 Employee Compensation - Assignment to Services - Proposed Budget Year
C-2 Contractual Service Fees Assignment to Services
C-3 Disclosure of Employee Fringe Benefits
D-1 Real Property Information
D-2 Fixed Asset Schedule
E-1 Other Operating Expenses
E-2 Other Operating Expenses - Continued
E-3 Other Operating Expenses - Continued
E-4 Analysis of Interest Expense
F-1 Expense Summary
F-2 Rate Computation Schedule
Instructions for Completion of Forms

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.

STATE BOARD FOR CONTRACTORS

Title of Regulations: VR 220-01-2. Rules and Regulations of the Board of Contractors.

Statutory Authority: §§ 54-1.28(4) and 54-119, of the Code of Virginia.

Effective Date: September 19, 1985

Summary:

These regulations increase application fees for an initial Class A and Class B license and recodify existing regulations to conform to new form and style requirements for regulations.

VR 220-01-2. Rules and Regulations of the Board of Contractors.

Section One PART I. GENERAL.

§ 1.1. Class A license specialty classifications – (§§ 54-1.28 and 54-129.1 of the Code of Virginia).

~~1-1-1~~ A. "Building contractors" are those whose contracts include construction for others of commercial, industrial, and institutional buildings and single or multiple-family residential buildings, including accessory use structures and the remodeling, repair or improvement of any size building. (§ 54-129.1)

~~1-1-2~~ B. "Highway/heavy contractors" are those whose contracts include construction of roads, streets, bridges, railroads, public transit systems, runways, dams, parking lots, demolition, clearing, grading, excavating, paving, pile driving, foundations and miscellaneous drainage structures. Also included are those whose contracts include the installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter; the installation or maintenance of telephone, telegraph or signal systems for public utilities; and the installation of water, gas, and sewer lines, pumping stations, and treatment plants. (§ 54-129.1)

~~1-1-3~~ C. "Services contractors" are those whose contracts are for specialty services which do not substantially fall within the scope of any other classification within these regulations. (§ 54-129.1)

~~1-1-4~~ D. "Special services - electrical contractors" are those whose contracts include construction which falls

within the provisions of the National Electrical Code. (§ 54-129.1)

~~1-1-5~~ E. "Special services - plumbing contractors" are those whose contracts include the installation, maintenance, extension, or alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following: sanitary or storm drainage facilities; the venting system and the public or private water supply systems within or adjacent to any building, structure or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of storm-water, liquid waste, or sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptable terminal. (§ 54-129.1)

~~1-1-6~~ F. "Special services - HVAC contractors" are those whose work includes the installation of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, and mechanical refrigeration systems. (§ 54-129.1)

~~1-1-7~~ G. "Special services - HVAC (refrigeration) contractors" are those whose work includes the installation, alteration, or repair of mechanical refrigeration systems. (§ 54-129.1)

§ 1.2. Renewal of license – (§§ 54-1.28, 54-119, and 54-131 of the Code of Virginia).

~~1-2-1~~ A. All licenses expiring on January 31, 1985, for individuals licensed as a Class A Contractor, and all licenses expiring on December 31, 1985, for individuals licensed as a Class B Contractor, will be renewed in a manner to implement a staggered renewal system whereby approximately an equal number of licenses will be renewed each month during a biennium. (§ 54-131)

~~1-2-1-1~~ 1. Licenses expiring on these dates will be renewed for a period of time ranging from 6 to 30 months based on a random selection. (§ 54-131)

~~1-2-1-2~~ 2. Renewal notices will be mailed approximately 45 days prior to the expiration of these licenses and these notices will indicate the amount of fee due and the next expiration date. The amount of fees charged to each licensee will be determined based on the following schedule. (This fee schedule is to be used on a one-time basis only.) (§ 54-131)

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Expiration Date	Amount of Fee	Expiration Date	Amount of Fee
Class A		Class B	
July 31, 1985	\$ 23	July 31, 1986	\$ 6
August 31, 1985	26	August 31, 1986	7
September 30, 1985	30	September 30, 1986	8
October 31, 1985	34	October 31, 1986	9
November 30, 1985	38	November 30, 1986	10
December 31, 1985	41	December 31, 1986	11
January 31, 1986	45	January 31, 1987	12
February 28, 1986	49	February 28, 1987	13
March 31, 1986	53	March 31, 1987	14
April 30, 1986	56	April 30, 1987	15
May 31, 1986	60	May 31, 1987	16
June 30, 1986	64	June 30, 1987	17
July 31, 1986	68	July 31, 1987	18
August 31, 1986	71	August 31, 1987	19
September 30, 1986	75	September 30, 1987	20
October 31, 1986	79	October 31, 1987	21
November 30, 1986	83	November 30, 1987	22
December 31, 1986	86	December 31, 1987	23
January 31, 1987	90	January 31, 1988	24
February 28, 1987	94	February 28, 1988	25
March 31, 1987	98	March 31, 1988	26
April 30, 1987	101	April 30, 1988	27
May 31, 1987	105	May 31, 1988	28
June 30, 1987	109	June 30, 1988	29

~~1-2-1-3~~ 3. Thereafter, all Class A licenses expiring on or after July 31, 1985, and all Class B licenses expiring on or after July 31, 1986, will be renewed for a two-year period. The amount of renewal fee will be \$90 for a Class A license and \$20 for a Class B license. (§ 54-131)

~~1-2-1-4~~ 4. Beginning on July 1, 1984, all new licenses will be issued in a manner to expire two years from the last day of the month in which they were issued. (§ 54-131)

~~1-2-2~~ B. The Department of Commerce will mail a renewal notice to the licensee outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee. (§ 54-131)

~~1-2-3~~ C. For any licensee failing to renew the license within one month following the date it expires, a penalty fee of \$90 for Class A Contractors and \$20 for Class B Contractors will be required in addition to the regular renewal fee. Any licensee failing to renew their license within six months after it expires must apply for reinstatement for the license, as no renewals will be accepted. (§ 54-131)

~~1-2-4~~ D. The date a fee is received by the Department of Commerce, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a license is applicable for each fee received. (§ 54-131)

§ 1.3. Fee payments.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees are nonrefundable. (§§ 54-129.1 and 54-129.3 of the Code of Virginia)

§ 1.4. Class A fee.

The fee for a Class A license (initial license) shall be

~~\$60~~ \$100. (§ 54-129.1)

§ 1.5. Class B fee.

The fee for a Class B license (initial license) shall be ~~\$20~~ \$100. (§ 54-129.3)

§ 1.6. Examination fee.

The examination fee shall be \$25 per examinee for each examination. (§ 54-129.1)

Section Two PART II. ENTRY.

§ 2.1. Class A license - (§§ 54-28, 54-1.119 and 54-129.1 of the Code of Virginia)

Applicants for licensure must submit an application completed in accordance with the application instructions, and meet or exceed the following criteria prior to licensure:

~~2-1-1~~ 1. Attainment of a passing grade on the appropriate examination when an examination is required by these regulations. (§ 54-129.1)

~~2-1-2~~ 2. Three current satisfactory credit references from suppliers of building materials on a form prescribed by the board. (§ 54-129.1)

~~2-1-3~~ 3. Three current satisfactory experience references from persons familiar with the knowledge, skills and abilities of the applicant, relating to the performance of contracting services to the public, on a form prescribed by the board. (§ 54-129.1)

~~2-1-4~~ 4. One current satisfactory reference from the bank which maintains the applicant's depository account, on a form prescribed by the board. (§ 54-129.1)

~~2-1-5~~ 5. A financial statement dated not more than 15 months prior to application evidencing a net worth of at least \$25,000 for an individual or partnership, excluding any jointly owned residence, or a net equity of at least \$25,000 for a corporation. (§ 54-129.1)

~~2-1-5-1~~ a. Financial statements dated more than 90 days prior to application must be accompanied by an affidavit certifying that the current financial condition is substantially as good as or better than that shown on the financial statement furnished. (§ 54-129.1)

§ 2.2. Temporary Class A license.

The board may issue a temporary license for a specific project if the project's owner requests such action in writing and the application demonstrates to the board's satisfaction that the applicant is able to complete satisfactorily the contract to be undertaken under authority

of the temporary license. (§ 54-129.2 of the Code of Virginia)

§ 2.3. Class B license.

Applicants for licensure must submit an application stating the name, place of business, place of residence, name of the registered agent, and evidence of holding a current local license pursuant to local ordinances adopted under authority of § 54-145.2 of the Code of Virginia. (§ 54-129.3 of the Code of Virginia)

§ 2.4. Examinations required for Class A "Special services" classifications - (§§ 54-28, 54-119 and 54-129.1 of the Code of Virginia).

~~2-4-1~~ A. The electrical examination shall be administered by the board; shall be open book and based upon the pertinent provisions of the National Electrical Code. (§ 54-129.1)

~~2-4-2~~ B. The plumbing examination shall be administered by the board; shall be closed book and based upon the pertinent provisions of the BOCA Basic Plumbing Code, BOCA Mechanical Code, National Level Gas Code and NFPA No. 54, 1974, and includes five questions on gas fitting. (§ 54-129.1)

~~2-4-3~~ C. The HVAC examination shall be administered by the board; shall be open book and based upon the pertinent provisions of the BOCA Basic Mechanical Code. (§ 54-129.1)

~~2-4-4~~ D. The refrigeration examination shall be administered by the board; shall be open book and based upon the pertinent provisions of the BOCA Basic Mechanical Code. (§ 54-129.1)

§ 2.5. Waiver of examination by reciprocity.

The board may waive examination by reciprocity to any person holding a license in good standing in any jurisdiction of the United States, or any foreign country, provided, that the applicant satisfactorily demonstrates to the board that the examination passed in the other licensing jurisdiction is at least equal to the examination required to obtain licensure from this board. (§ 54-129.1 of the Code of Virginia)

Section Three PART III. STANDARDS OF PRACTICE.

§ 3.1. Change in management personnel.

When there has been a change in the management personnel of a licensed business, the licensee shall report the change in writing to the board within ~~thirty~~ 30 days. The report shall designate in resume' form the qualifications and experience of the replacement management personnel. The board shall promptly notify the licensee in writing that continuation of the license has

been granted, or it shall set forth reasons for disapproval. For the purpose of this regulation, "Management personnel" means the responsible managing employee, qualifying plumbing, electrical, HVAC or refrigeration examinee or officer of any corporation. (§ 54-119 of the Code of Virginia)

§ 3.2. Transfer of license prohibited.

No license issued by the board shall be assigned or otherwise transferred. Licenses are issued to legal business entities whether they be individuals, proprietorships, partnerships, corporations, joint ventures or other legal entities. Whenever there is any change in the ownership of the legal entity licensed, whether in a proprietorship or change of partner in partnership or the creation of a corporation, a new license is required. (§ 54-119 of the Code of Virginia)

§ 3.3. Name changes.

A licensee must do business under the name in which the license is issued. As long as there is no change in the legal entity, a licensee may secure a name change by submitting a written request to the board for such a change. The request must show the name as it then appears on the license and the new name, and must be accompanied by a copy of a name change authorization from the State Corporation Commission if the licensee is a corporation, or by authorization from the appropriate local court, if the licensee is not a corporation. (§ 54-119 of the Code of Virginia)

§ 3.4. Classification change.

A licensee may obtain additional classifications by filing a written request with appropriate fee, a detailed resume' of qualifications and experience in the classifications requested, and three letters of recommendation attesting to those qualifications. An examination fee is required when the additional classifications requested are "Special services - HVAC" or "Special services - refrigeration." (§ 54-129.1 of the Code of Virginia)

§ 3.5. Classification change fee.

The fee for classification change shall be \$10. (§ 54-119 of the Code of Virginia)

§ 3.6. Change of address.

Licenses shall report any change of address to the board in writing within 30 days of the change. (§ 54-119 of the Code of Virginia)

§ 3.7. Prohibited acts. - (§§ 54-1.28, 54-119 and 54-132.1 of the Code of Virginia). The following acts constitute cause for disciplinary action:

~~3-7-1~~ 1. Furnishing substantially inaccurate or incomplete financial information to the board in

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obtaining or renewing a license. (§ 54-132.1)

~~2-7-2~~ 2. Disciplinary action by any county, city, town, or any state or federal governing body, which action shall be reviewed by the board before it takes any disciplinary action of its own. (§ 54-132.1)

~~2-7-3~~ 3. Failure in any material way to comply with the provisions of the rules and regulations of the board. (§ 54-132.1)

~~2-7-4~~ 4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading. (§ 54-132.1)

~~2-7-5~~ 5. Gross negligence, or continued incompetence, or misconduct in the practice of his profession. (§ 54-132.1)

~~2-7-6~~ 6. Failure to comply with the Virginia Uniform Statewide Building Code; which is administered by the Board of Housing and Community Development. (§ 54-132.1)

~~2-7-7~~ 7. Willful violation or cooperation with others to violate any provisions of Chapters 1.1 or 7 of Title 54, of the Code of Virginia, or these regulations. (§ 54-132.1)

~~2-7-8~~ 8. Abandonment without legal excuse of a contract or construction project engaged in or undertaken by the licensee. (§ 54-132.1)

~~2-7-9~~ 9. Diversion of funds or property received for prosecution or completion of a specified construction project or operation, or for a specific purpose in the prosecution, or for the completion of a construction project or operation. (§ 54-132.1)

~~2-7-10~~ 10. Failure to honor, within 10 days of receiving formal notice from the board, any bad checks submitted in payment of a fee required by these regulations. (§ 54-1.2:1)

~~2-7-11~~ 11. Making a substantial misrepresentation or making a false promise of a character likely to influence, persuade, or induce. (§ 54-132.1)

~~2-7-12~~ 12. Failure to notify the board in writing within 30 days after the change of the address of record of the licensee. (§ 54-132.1)

~~2-7-13~~ 13. Failure of a licensee to notify the board in writing within 30 days after a change in the control or direction of the business of the licensee resulting from a change in the licensee's partners, directors, officers, management personnel, responsible managing employee or examinee, or after a change in the control or direction of the business of the licensee resulting from another occurrence or event (§

54-132.1)

~~2-7-14~~ 14. Aiding or abetting an unlicensed person to violate any provision of Chapters 1.1 or 7 of Title 54, of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed person; or allowing one's license to be used by an unlicensed person; or acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business. (§ 54-132.1)

~~2-7-15~~ 15. Failure to comply with the provisions of the Virginia Fair Housing Law §§ 36-86 through 36-96, of the Code of Virginia. (§ 54-132.1)

~~2-7-16~~ 16. Offering, giving or promising anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry. (§ 54-132.1)

BOARD OF EDUCATION

Title of Regulation: VR 270-01-0004. Regulations Governing the Approval of Correspondence Courses for Home Instruction.

Statutory Authority: §§ 22.1-16 and 22.1-254.1 of the Code of Virginia.

Effective Date: September 30, 1985

Summary:

In accordance with the provisions of §§ 22.1-16 and 22.1-254.1 of the Code of Virginia, the Board of Education has adopted regulations for the approval of correspondence courses for use by parents who elect to provide home instruction as an alternative to compulsory attendance at a regular public or private school. These regulations will replace emergency regulations which expired June 30, 1985. They are consistent with those emergency regulations and state and federal statutes.

As a result of comments made at a public hearing held on June 6, 1985 and board discussion at its meeting on June 20, 1985, some minor editorial changes were made. These changes did not alter the content of the regulations as submitted in proposed form. In addition, there have been no changes in the basis, purpose or impact of these regulations as originally proposed.

The regulations will enable the board to comply with the provisions of Option (iii) of § 22.1-254.1 of the

Code of Virginia relating to home instruction.

VR 270-01-0004. Regulations Governing the Approval of Correspondence Courses for Home Instruction.

PART I. DEFINITIONS.

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

"Board" means the Virginia Board of Education.

"Correspondence school" means a school, organization, or other entity, no matter how titled, that teaches nonresident students by mailing them lessons and exercises which, upon completion, are returned to the school for grading. The lessons or exercises may also be transmitted and graded through electronic means.

"Course" means presentation of an orderly sequence of material dealing with an individual subject area such as mathematics, biology, etc.

"Department" means the Department of Education.

"Home instruction" means the teaching of a child or children in the home as an alternative to compulsory attendance as defined in § 22.1-254 of the Code of Virginia.

"School" means a correspondence school.

[PART II. EXEMPTIONS.

§ 2.1. The following instructional programs or institutions shall be exempt from these regulations:

1. Any public or private elementary or secondary school accredited or recognized as such by the Board;

2. Courses or materials offered for sale by organizations for use in instruction by teachers, parents or other individuals;

3. Any course offered by a school which is vocational, recreational, or otherwise not considered to be academic in nature;

4. Any school approved under other laws or agencies of this Commonwealth.

PART III. APPROVAL CRITERIA.

§ 3.1. Schools seeking approval of the academic courses offered shall annually on or before June 1 submit the following:

1. An affidavit, on forms provided by the Department, certifying that (i) the courses offered by the school are not in conflict with federal or state laws or regulations; (ii) the school is, in fact, a correspondence school as defined in these regulations; and (iii) the school evaluates the students' work periodically and maintains a permanent record of that work.

2. Verification of approval or exemption from regulation from the appropriate government agency in its state of domicile.

3. A schedule of tuition and fees.

4. A catalog or documents containing the following information:

a. Ownership or control of the institution;

b. A description of the evaluative method used; and

c. Narrative descriptions of courses offered by the institution.

5. Such additional information as the Board or Department may deem necessary.

PART II. APPROVAL PROCESS.

§ 2.1. Schools seeking approval of the academic courses offered shall submit the following:

1. A catalog or other documents containing the following information:

a. A statement of ownership or control of the institution;

b. Descriptions of courses offered by the institution;

c. A description of the evaluative method(s) used; and

d. A schedule of tuition and fees.

2. Verification of approval or exemption from regulation from the appropriate government agency in its state of domicile.

3. Such additional information as the board or department may deem necessary.

§ 2.2. Approval of the academic courses shall be renewed annually on or before August 1, provided the school verifies that it continues to meet the requirements of § 3.1. Forms for this purpose shall be provided by the department.

§ 2.3. Each school meeting the criteria listed in § 3.1 is required to submit the material in § 2.1 for review every five years concurrent with the renewal affidavit.

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PART III. APPROVAL CRITERIA.

§ 3.1. Academic courses offered by schools submitting the information required by § 2.1 of these regulations shall be approved if the following criteria have been met:

1. The school is, in fact, a correspondence school as defined in these regulations;
2. The courses offered are not in conflict with state or federal laws or regulations;
3. The school evaluates the students' work on a periodic basis and maintains a permanent record of that work.]

PART IV. DISCLAIMER.

§ 4.1. [~~The~~] Board of Education's approval of correspondence courses [~~does not mean~~ is not] an endorsement of the program as a substitute for public school programs nor is it an endorsement of the educational or operational philosophy of the school. Additionally, the approval of courses is not [~~a determination~~ intended as an endorsement] of the quality of the courses nor is it a [~~determination~~ conclusion] that they are appropriate to meet the educational needs of the student or the assessment required by § 22.1-254.1 of the Code of Virginia.

It is manifest that parents who choose to educate their children at home through a correspondence course are directly responsible for the educational progress of their children and the adequacy of instruction. The General Assembly has provided a mechanism to ensure that a child is receiving adequate instruction at home by requiring annual competency testing or evaluation. This testing program or evaluation is a measure of educational adequacy and the determining factor in the decision regarding the continuation of home study.

The approval of the board does not guarantee that a school has a refund policy for uncompleted courses. The Board of Education assumes no liability for damages or financial loss to parents using any course to meet Option iii of § 22.1-254.1 of the Code of Virginia relating to home [~~study~~ instruction].

PART V. LISTING OF APPROVED COURSES.

§ 5.1. The department shall maintain a list of schools whose courses are approved under the provisions of these regulations for dissemination to the public upon request.

PART VI. RESTRICTIONS.

§ 6.1. No school whose courses are approved for home

instruction shall advertise in any way that the courses have the endorsement, recommendation, accreditation, recognition, or any other similar term, of the board, the department, or the Commonwealth of Virginia.

PART VII. REVOCATION OR SUSPENSION OF APPROVAL.

§ 7.1. Approval of courses offered by a school may be revoked or suspended [for cause] by action of the board [~~which~~ ; such action] shall be reported and preserved in writing [: ~~The action~~ and] shall not take place prior to a hearing as provided for in § XVII of Regulations Governing Operation of Proprietary Schools and Issuing of Agent Permits.

PART VIII. TRANSMITTING DOCUMENTS AND OTHER MATERIALS.

§ 8.1. The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered or certified mail, return receipt requested. Such materials should be sent to the Associate Director of Proprietary School Service, Department of Education, P. O. Box 6-Q, Richmond, VA 23216.

QL.020 4/85

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION
P.O. BOX 6-Q
RICHMOND, VIRGINIA 23216

CORRESPONDENCE COURSES FOR HOME INSTRUCTION

AFFIDAVIT

School Name _____

School Address _____

City, State and Zip Code _____

Telephone _____

Chief Operating Officer _____

GENERAL INFORMATION (CHECK THE APPROPRIATE BLANKS)

1. The school indicated above is is not a correspondence school meeting the definition outlined in Section 1.1 of Regulations Governing the Approval of Correspondence Courses for Home Instructions.
2. The school is is not accredited by a regional or national accrediting body recognized by the United States Department of Education.
3. The school is is not approved, licensed, certified (or other applicable term) by the appropriate governmental agency in its state of domicile.
4. The school has has not changed ownership or control, course outlines, evaluative methods or operation during the past twelve months or since the last renewal. (NOTE: If there is no change, submission of the material listed below is optional.)

ATTACHMENTS(*)

A catalog or other documents listing the following information must be attached to this document:

1. Verification of approval or exemption from regulation from the appropriate government agency in the school's state of domicile.
2. A schedule of tuition and fees.

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3. Ownership or control of the school.
4. A description of the evaluative method(s) used.
5. Narrative descriptions of academic courses offered by the school.

CERTIFICATION

I certify the the information contained in this affidavit and/or attachments is true and correct and conforms to the provisions of Regulations Governing the Approval of Correspondence Courses for Home Instruction. If changes occur in any of these areas, I further certify that I will notify the Department of Education prior to or immediately after said changes occur.

(I understand that providing false or misleading information or failing to notify the Department of Education of changes as they occur may result in my school being removed from the approved list as provided for in the above referenced regulations.)

Date _____

Signature of Authorized Official

Title of Authorized Official

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

My commission expires:

Notary Public

(* This information is required every five years beginning June 1, 1986. The Department will notify schools of the need to submit the required information.)

Title of Regulations: [~~VR 271-01-1~~ VR 271-01-0000]
Certification Regulations for Teachers.

Statutory Authority: §§ 22.1-298 and 22.1-299 of the Code of Virginia.

Effective Date:

Summary:

In summary, the changes in the Certification Regulations are: (i) clarifying and broadening the requirements for supervisory personnel, (ii) eliminating reading as an area of concentration in the middle school endorsement, (iii) allowing for additional endorsements in speech, journalism and/or theater arts, (iv) eliminating data processing as a separate subject endorsement, and (v) specifying the number of graduate hours required for an endorsement as a reading specialist.

[~~VR 271-01-1~~ VR 271-01-0000]. Certification Regulations for Teachers.

(NOTE: Only those sections of the Certification Regulations for Teachers, which are being amended, are set out below.)

PART I. INTRODUCTION. – (No Change)

PART II. CERTIFICATION.

§ 2.1. Purpose of and responsibility for certification. – (No Change)

§ 2.2. Procedure for application. – (No Change)

§ 2.3. Types of certificates.

A. Provisional Certificate. – (No Change)

B. Collegiate Professional Certificate. – (No Change)

C. Vocational Education Certificate. – (No Change)

D. Pupil Personnel Services Certificate. – (No Change)

E. Postgraduate Professional Certificate.

The Postgraduate Professional Certificate is a five-year renewable certificate. It is granted to an applicant who has qualified for the Collegiate Professional Certificate, *has taught successfully for at least three years in an elementary, middle, or secondary school*, and holds an appropriate graduate degree from an accredited institution. The Postgraduate Professional Certificate, when issued to replace the Collegiate Professional Certificate, will be

issued for the same period of validity if not expired. If the certificate has expired, it will be issued from the date of the last college study.

§ 2.4. Requirements for renewing a certificate.

The Postgraduate Professional, Collegiate Professional, Vocational Education and Pupil Personnel Services Certificates may be renewed upon the completion of 90 clock hours of professional development work. A minimum of 45 clock hours (3 semester hours) shall be taken from an accredited college or university. *The remaining work may be taken through an accredited college or university or through noncollege credit courses which must have prior approval by the Department of Education.* Recertification work is intended to provide certified personnel with opportunities for professional development relative to the grade level(s) or teaching field(s) to which they are assigned or for which they wish to seek an added endorsement. Such professional development encompasses both (a) responsible remediation of any area of an individual's knowledge or skills that fail to meet the standards of competency as set forth in this document and (b) responsible efforts to increase one's knowledge of new developments in one's field, to respond to new curricular demands within one's current position, and/or to extend one's professional competencies to new areas. All proposed work toward renewal must be approved by the *chief executive officer of the employing educational agency* prior to the taking of the recertification work. Persons who are not actively engaged in teaching may renew or reinstate their certificates by having their official transcripts sent to the Division of Teacher Certification by an accredited four-year college or university.

Persons who have completed an earned doctorate degree in the area in which they are employed may submit to the Department of Education, with the approval of the *chief executive officer* of the employing educational agency, a program for renewal of their certificate in lieu of formal course work.

§ 2.5. Administering the certification regulations. – (No Change)

PART III. BASIC PREPARATION PROGRAMS.

§ 3.1. General studies. – (No Change)

§ 3.2. Professional studies. – (No Change)

A. Purposes and objectives. – (No Change)

B. Certification requirements.

1. An applicant for certification shall have developed competencies needed for the subject area or grade level and must take a minimum of 12 semester hours, with at least the equivalent of 3 semester hours in each, distributed among the three areas which follow:

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Area I – Human Growth and Development

Competencies in this area shall contribute to an understanding of the development of physical traits, learning and intelligence, social and emotional behavior and personality, and group behavior of children. The differences in children and youth, including identification techniques and referral procedures and the implications which these differences have for guiding learning experiences, shall be emphasized.

Area II – Curriculum and instructional procedures.

Competencies in this area shall contribute to an understanding of the principles of learning; the application of skills in methodology; classroom management; selection and use of materials, *computer*, including media and other resources; principles of teaching reading in the content areas; and evaluation of pupil performance appropriate for the grade level and subject area for which certification is sought. In addition, mainstreaming techniques and an overview of teaching methods appropriate for exceptional students, including gifted and talented and those with handicapping conditions shall be included.

Area III – Foundations of education.

Competencies in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development and organization of public education in the United States. Attention should be given to the legal status of teachers, including federal and state laws and regulations.

2. Supervised classroom experience.

A student must take a minimum of 6 semester hours in student teaching. Prospective teachers shall be in classrooms for 200 clock hours, at least 60 percent of which shall be in direct teaching activities (providing direct instruction). A portion of this classroom experience shall be acquired prior to the senior student teaching experience. Experience in two or more settings shall be provided.

C. Teaching specialty. – (No Change)

D. Teaching levels.

1. Early education (NK-4).

a. The program shall provide basic knowledge and understanding of the growth and development of the child from birth to preadolescence. The curriculum shall include early childhood psychology, subject matter preparation, techniques of instruction, and career exploration. It shall provide for competencies which will enable the prospective teacher to guide children in developing:

- (1) growth in communication skills (reading, writing,

listening, speaking, and thinking);

- (2) knowledge and understanding of basic computation skills;

- (3) initial skills needed in the basic process of learning, inquiring, observing, generalizing, experimenting, classifying, verifying, and quantifying;

- (4) knowledge, understanding, and appreciation of the physical, natural, and aesthetic world;

- (5) positive self-concepts;

- (6) favorable attitudes toward school and learning;

- (7) emotional control and the beginning of self-discipline;

- (8) physical skill, motor coordination, and knowledge of sound health and safety practices;

- (9) citizenship and social competency.

b. The faculty shall have had educational and teaching experiences in early education, with knowledge in related disciplines.

c. Endorsement requirements are as follows:

An applicant seeking endorsement in Early Education shall have the equivalent of 60 semester hours of specialized course experiences appropriate for children at this age level, distributed among the following subject areas:

- (1) Reading, including work in each of the following areas – 6 semester hours

- a. Developmental reading;

- b. Diagnostic reading with practicum experience.

- (2) Language arts, including experiences in children's literature, English grammar, written composition and speech – 12 semester hours

- (3) Social science, including instruction in the fundamental concepts of social science relevant to early education. Experiences shall include American history, with emphasis upon Virginia, basic economics, and geography – 12 semester hours

- (4) Mathematics, including instruction in the fundamental concepts of mathematics relevant to early education. Laboratory and discovery techniques should be emphasized for the practical application and reinforcement of these concepts at each grade level – 6 semester hours

- (5) Science, including instruction in life, physical, and environmental science for early education and a course requiring laboratory experiences – 6

semester hours

(6) Art and Music, including work in art and in music suitable for children enrolled in early education programs – 6 semester hours

(7) Health and Physical education, including instruction in school health education (health services, safety, and health instruction), as well as instruction in physical education and activities appropriate to the grade levels involved – 6 semester hours

(8) Elective to be chosen from areas 4 and/or 5 – 6 semester hours

2. Middle education (4-8)

a. The program shall provide basic knowledge and understanding of the growth and development of youth from preadolescence through early adolescence. The basic responsibility of the teacher for nurturing and guiding the individual within a social and academic framework should be emphasized. The program should provide experiences in observing, evaluating, and prescribing the behaviors and skills which allow the individual to attain an awareness of self and to participate as a contributing member of society. The curriculum for middle education teachers shall provide for preadolescent psychology, subject-matter preparation, techniques for individualized instruction, and vocational exploration. The program shall provide for competencies which will enable the prospective teacher to guide youth in developing:

(1) Growth in communication skills in reading, writing, listening, speaking, and thinking;

(2) Knowledge and understanding of basic computation skills;

(3) Extension and reinforcement of skills in the basic process of learning, such as inquiring, observing, generalizing, experimenting, classifying, verifying, and quantifying;

(4) Knowledge, understanding, and appreciation of the physical, natural and aesthetic worlds;

(5) Positive self-concepts;

(6) Favorable attitudes toward school and learning;

(7) Emotional control and development of self-discipline;

(8) Physical skill, motor coordination, and knowledge of sound health and safety practices;

(9) Citizenship and social competency.

b. The faculty shall have had educational and teaching experiences in middle school education, with knowledge in related disciplines.

c. Endorsement requirements.

For the Middle Education (4-8) endorsement, the student must have the equivalent of 60 semester hours of specialized courses. A minimum of 6 hours is required in each of the 7 areas listed below:

(1) Reading – 6 semester hours

(a) Developmental Reading, including reading in the content areas;

(b) Diagnostic Reading, including practicum experience.

(2) Language Arts, including experiences designed to facilitate the teaching of children's literature, English grammar, written composition, and speech – 6 semester hours

(3) Social Science, including experiences designed to facilitate the teaching of American history, basic economics, geography, and world history – 6 semester hours

(4) Mathematics, including instruction in teaching the fundamental concepts of mathematics relevant to middle school education (algebra and geometry) – 6 semester hours

(5) Science, including instruction in life, physical, and environmental science, appropriate for middle school education – 6 semester hours

(6) Art and Music, including work in art and in music suitable for youth at the middle school level – 6 semester hours

(7) Health and Physical education, including instruction in school health education (health services, safety, and health instruction), as well as instruction in physical education and activities appropriate to the grade levels involved – 6 semester hours

The prospective teacher shall select two areas from the first five areas 2, 3, 4 and 5 listed above as areas of concentration, in each of which he or she will complete a total of 15 hours. A middle school endorsement is applicable to those individuals teaching core areas Language Arts, Social Science, Mathematics and Science.

3. Secondary education (8-12).

a. The program shall provide basic knowledge and understanding of the growth and development of the student from early adolescence to young adulthood. Secondary education shall provide for indepth preparation in subject matter. The program shall provide for competencies which will enable the

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prospective teacher to guide youth in developing:

- (1) Growth in communication skills in reading, writing, listening, speaking, and thinking;
- (2) Knowledge and understanding of basic computation skills;
- (3) Refinement of skills in the basic process of learning, such as inquiring, observing, generalizing, experimenting, classifying, verifying, and quantifying;
- (4) Knowledge, understanding, and appreciation of the physical, natural, and aesthetic world;
- (5) Positive self-concepts;
- (6) Favorable attitudes toward school and learning;
- (7) Emotional control and self-discipline;
- (8) Physical skill, motor coordination, and knowledge of sound health (safe living and personal health) and safety practices;
- (9) Citizenship and social competency.

b. The faculty shall have had educational and teaching experience in secondary education, with knowledge in related disciplines.

c. Endorsement requirements for a specific subject field may be inclusive of any requirements specified in that field under general studies stipulated for all teachers.

d. Endorsements authorizing an applicant to teach specific subjects will be recorded on the certificate issued.

§ 3.3. Specialized studies: Teaching endorsement areas.

A. Art education. – (No Change)

B. Driver education. – (No Change)

C. English education.

1. Content – the program shall:

- a. Develop an understanding of and expertise in the various means of communication (speaking, listening, reading, and writing);
- b. Develop the skills necessary to teach the various means of communication to diverse student populations;
- c. Provide an understanding of the nature and development of language;

d. Provide background in major works from English, American, world and ethnic literature appropriate for adolescent instruction;

e. Provide opportunities for experiences in communication arts, such as reading, journalism, dramatics, debate, forensics, radio, television, and films.

2. Endorsement requirements.

a. The applicant seeking endorsement in English shall present a record of course experiences equivalent to a minimum of 36 semester hours, including at least one course from each of the four areas listed below:

(1) Language—study of the history and nature of the english language, of comparative english grammar, and of standard written English;

(2) Literature—study of english, american, world, and ethnic literature;

(3) Composition—study of the teaching of writing, with emphasis upon advanced composition;

(4) Speech—study of oral expression and related listening skills.

b. Added endorsements:

An endorsement in speech, journalism or theater arts may be added to an English endorsement with the completion of 6 semester hours in the endorsement area sought. An endorsement in speech, theater arts, or journalism may be added to another endorsement with the completion of 12 semester hours in the endorsement area sought. *A separate endorsement in any one of these areas may be attained with the completion of 24 semester hours in the area.*

D. Foreign languages (modern). – (No Change)

E. Foreign languages (latin). – (No Change)

F. English as a second language. – (No Change)

G. Health education (NK-12).

1. Content – the program shall:

a. Provide knowledge and understanding of the aims and objectives of health education in the schools;

b. Provide basic knowledge needed to understand the structure and function of the human body, including principles of human physiology and anatomy, basic body chemistry, bacteriology, genetics, and ecology;

c. Include basic background studies in the

behavioral and social sciences pertinent to the study of health;

d. Provide knowledge of the school health program (health instruction, health services, and healthy school environment);

e. Develop competencies in organizing, planning, administering, and evaluating a school health program;

f. Provide prospective teachers with understanding and awareness of:

- (1) Personal health and physical fitness;
- (2) Community and environmental health, including sanitation and pollution;
- (3) Nutrition, including weight control, food fads, and diet supplements;
- (4) Emotional and mental health;
- (5) Health hazards of drugs, alcohol, and tobacco;
- (6) Family relationships and sex education;
- (7) Communicable diseases, body defenses, immunization programs, and noncommunicable diseases, including degenerative diseases;
- (8) Common physical and mental exceptionalities;
- (9) Consumer health, including selection of health products and professional services, and evaluation of advertising, and health careers;
- (10) First aid and emergency cases;
- (11) Safety, including outdoor, water, home, industrial, traffic, school, pedestrian, and bicycle;
- (12) Personal and family survival.

g. Provide prospective teachers with competency in developing the school health environment and cooperative relationships with voluntary, community, and other official health agencies.

2. Endorsement requirements.

a. An applicant seeking endorsement in health education for elementary, middle, and secondary schools shall present 36 semester hours of course work, at least a third of which must represent scientific background. The program shall include:

(1) Scientific background – human anatomy and physiology, biology, chemistry, and microbiology;

(2) Behavioral or social sciences – child and adolescent psychology and sociology/philosophy of man;

(3) Health education – administration of the school health program (including health instruction, health services, healthy school environment, evaluation and health counseling), and school and community relationships related to health;

(4) Basic health content – courses involving personal and community problems, including drugs, smoking, nutrition, fitness, consumer health, environmental health, health careers, disease prevention, safety, first aid, and mental and emotional health, including family living and sex education.

b. An applicant seeking an additional endorsement in general science shall present 15 semester hours distributed in each of the following: chemistry, physics, earth and space science.

An applicant seeking an additional endorsement in physical education shall present 12 *additional* semester hours of course work in areas "b" and "d" below, respectively entitled the "General Theory in Physical Education" and "Physical Education Activities".

H. Physical education (NK-12).

1. Content – the program shall:

a. Provide basic knowledge for understanding the structure and function of the human body, with emphasis upon an understanding of the principles of movement;

b. Develop competencies for teaching fundamental skills and exercises, gymnastics, individual and dual sports, team sports and mass games and activities, rhythms and dance, camping and other forms of outdoor recreation;

c. Develop competencies in safety, first aid, and emergency care;

d. Provide knowledge of the objectives of physical education in the schools;

e. Develop competencies in organizing, planning, administering, and evaluating a program of physical education.

2. Endorsement requirements.

An applicant seeking endorsement in physical education for elementary, middle, and secondary schools shall present 36 semester hours of course work, including a minimum of 9 semester hours in areas "a", "b", and "d" listed below:

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- a. Scientific background – human anatomy, physiology, and kinesiology;
- b. General theory in physical education – history and principles of physical education, administration of physical education, motor learning, adapted physical education, and measurement and evaluation in physical education;
- c. Health and safety – first aid and safety;
- d. Physical education activities – physical education for the elementary school, including movement education, aquatics, gymnastics, individual and dual sports, team sports and games, rhythms and dance, and outdoor education.

An applicant with a physical education endorsement seeking an endorsement in health education shall present at least 9 *additional* semester hours of course work in basic health content courses and at least 3 semester hours of work in a health methods course.

- I. Library-media (NK-12). – (No Change)
- J. Mathematics. – (No Change)
- K. General mathematics. – (No Change)
- L. Music education (vocal/choral). – (No Change)
- M. Music education (instrumental). – (No Change)
- N. Developmental reading. – (No Change)
- O. Biology. – (No Change)
- P. Chemistry. – (No Change)
- Q. Earth and space science. – (No Change)
- R. General science. – (No Change)
- S. Physics. – (No Change)
- T. Social studies. – (No Change)

U. Vocational education (agriculture education). – (No Change)

V. Vocational education (business education).

1. Content – the program shall include studies and provide experiences which develop the following competencies:

- a. Understanding our economic system and the principles of business organization;
- b. Planning, organizing, and administering a business education program, including actual and simulated

work experiences;

c. Understanding office technology and procedures;

d. Planning for laboratory facilities and equipment;

e. Being aware of job requirements, of opportunities in business and allied fields, and of job-placement techniques;

f. Operating and maintaining the more common types of office equipment;

g. Conducting survey activities: i.e., needs assessments, surveys of business offices, and follow-up studies of secondary school graduates;

h. Understanding effective procedures for teaching in comprehensive high schools and area vocational-technical schools, including instruction of the exceptional child;

i. Acquiring occupational skills through actual or simulated experiences.

2. Endorsement requirements for general office procedures, for stenography, and for data processing.

Program I. Business education – general office procedures (36 semester hours).

a. Accounting (6 semester hours).

Courses such as secretarial accounting or recordkeeping are not acceptable.

b. Business principles and management (12 semester hours).

- (1) Business law;
- (2) Business principles;
- (3) Management;
- (4) Marketing;
- (5) Finance or business math;
- (6) Insurance;
- (7) Policy;
- (8) Production.

c. Office Technology (9 semester hours).

A student must have instruction in the following areas: word processing, reprographics, computing and accounting equipment, records management, office communications, office systems and procedures, and an introductory course in data processing.

d. Typewriting (9 semester hours).

The credit requirement will be reduced for students with previous experience who pass the most advanced course.

(The General Office Procedures endorsement permits one to teach all business education courses except those offering instruction in shorthand and in occupational business data processing.)

Program II. Business education – stenography (42 semester hours).

a. Accounting (6 semester hours).

Courses such as secretarial accounting or recordkeeping are not acceptable.

b. Business principles and management (12 semester hours).

A student must take one course in at least four of the following areas for a minimum of 12 semester hours:

- (1) Business law;
- (2) Business principles;
- (3) Management;
- (4) Marketing;
- (5) Finance or business math;
- (6) Insurance;
- (7) Policy;
- (8) Production.

c. Office technology (9 semester hours).

A student must have instruction in the following areas: word processing, reprographics, computing and accounting equipment, records management, office communications, office systems and procedures, and an introductory course in data processing.

d. Typewriting and shorthand (15 semester hours).

A student must take a minimum of six semester hours in typewriting and nine semester hours in shorthand/transcription. For students admitted to advance courses, the credit requirement will be reduced if the most advanced courses are passed.

(The Stenography endorsement permits one to teach all business education courses except those in occupational business data processing.)

Program III. Business education – data processing (42 semester hours).

a. Accounting (6 semester hours).

Courses such as secretarial accounting or recordkeeping are not acceptable.

b. Business principles and management (12 semester hours).

A student must take one course in at least four of the following areas for a minimum of 12 semester hours:

- (1) Business law;
- (2) Business principles;
- (3) Management;
- (4) Marketing;
- (5) Finance or business math;
- (6) Insurance;
- (7) Policy;
- (8) Production.

c. Office technology (9 semester hours).

A student must have instruction in the following areas: word processing, reprographics, computing, and accounting equipment, records management, office communications, office systems and procedures, and an introductory course in data processing.

d. Data processing (12 semester hours).

A student must have twelve semester hours in data processing in addition to an introductory course listed under office technology.

e. Typewriting (3 semester hours).

A student must have a minimum of three semester hours in typewriting or demonstrate proficiency from previous training.

(The data processing endorsement permits one to teach all business education courses except those that include instruction in typewriting and in shorthand.)

(Applicants may be eligible for the vocational education certificate for the teaching of business data processing.)

Separate subject endorsements.

Separate subject endorsements may be granted in accounting, basic business, *typewriting* and shorthand to individuals who do not meet the qualifications for a comprehensive business education endorsement, provided the course experiences are equivalent to a minimum of 12 semester hours in each subject, with the exception of shorthand in which the equivalent of 9 semester hours is required.*

Applicants who qualify for the endorsement in one or more of above subjects may also be endorsed to teach typewriting upon the completion of experiences equivalent to nine semester hours of coursework.

W. Vocational education (marketing and distributive education). – (No Change)

X. Vocational education (health occupations education). – (No Change)

Y. Vocational education (home economics education). – (No Change)

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Z. Vocational education (industrial arts education). – (No Change)

AA. Vocational education (trade and industrial education). – (No Change)

PART IV. QUALIFICATIONS FOR ADMINISTRATING.

Supervisory and related instructions and noninstructional position

§ 4.1. Administrative personnel.

A. Division superintendent. - (No Change)

B. School principals (elementary, middle, secondary).

1. Content – the program shall:

a. Provide knowledge of a broad range of learning experiences and an understanding of the interrelationships involved;

b. Develop administrative and supervisory knowledge and skills;

c. Provide knowledge and skills relevant to sound evaluation of classroom instruction; *involving both practicing and student teachers;*

d. Provide knowledge and skills related to group dynamics and curricular improvements;

e. Develop understandings of the rights, responsibilities, and ethics inherent in professional service;

f. Develop knowledge of and skills in school-community relations;

g. Develop ability to understand the relationships among the various disciplines;

h. Provide knowledge of school law;

i. Develop competence in research and development, with specific application to school programs and administration;

j. Provide supervised off-campus experience which aids in integrating theory and effective school practices;

k. Develop increased understanding of the crucial and dynamic role of the school in our culture and the knowledge and skills needed to focus the resources of the school on recognized social concerns;

l. Provide knowledge of and competency in

planning, developing, administering, and evaluating programs for exceptional individuals, including the gifted and talented and those with handicapping conditions;

m. Provide knowledge of vocational education.

2. Endorsement requirements*

a. The applicant shall hold a Postgraduate Professional Certificate;

b. The applicant shall possess leadership qualities and personal characteristics necessary to work effectively with students, teachers, and parents as attested to by a division superintendent of schools, by the chief administrative officer of a private school, or by an official in an institution of higher learning who is in a position to evaluate the applicant's qualifications;

c. The applicant shall have completed graduate-level work in each of the following areas, ~~to include not less than the equivalent of thirty (30) semester hours in e and e:~~

(1) School administration;

(2) ~~Supervision of instruction; and evaluation of Instruction and Instructional Programs;~~

(3) School curriculum (appropriate for endorsement desired);

(4) School law;

(5) School-community relations;

(6) Personnel administration;

(7) School finance.

d. The applicant shall have had ~~three years~~ *one year* of successful, full-time *teaching* experience as a ~~teacher, administrator or supervisor, one year of which must have been in the area or at the level to be supervised;~~

e. The applicant's course of study shall include, at the graduate or undergraduate level, training in substance-abuse education. Such training may constitute a separate course or may be included in one or more of the areas listed under Item "c" above.

*These requirements also apply to assistant principals. Principals of separate vocational education facilities shall hold an endorsement to teach in a vocational program area and have experience as a teacher in the endorsed area.

§ 4.2. Instructional and supervisory personnel.

A. Instructional supervisory personnel.

1. Content – the program shall:

a. Provide an advanced level of preparation with emphasis on recent research and new developments in the subject area(s) to be supervised;

b. Develop competence in understanding the principles and practices of curriculum development and its interpretation;

c. Provide competence in understanding the theories of learning as they apply to the improvement of teaching;

d. Develop competence in school supervision, with emphasis on individual and group processes;

e. Facilitate the acquisition of competencies for effective supervision, including supervised experiences in schools designed to provide an opportunity for the applicant to:

(1) Observe how supervisors discharge their duties;

(2) Understand the basic requirements of successful school supervision;

(3) Understand the principles of successful supervisory practices;

(4) Learn about the organization of the school and the importance of coordinating various aspects of the school program;

(5) Acquire supervisory competence through practice assessed by administrative or supervisory personnel.

f. Provide knowledge of and competency in planning, developing, administering, and evaluating programs for exceptional individuals, including gifted and talented and those with handicapping conditions.

2. Endorsement requirements.

a. Applicants must hold a Postgraduate Professional Certificate;

b. Applicants must have demonstrated leadership qualities and personal characteristics necessary for working effectively with students, teachers, and parents as attested to by a division superintendent of schools, by the chief administrative officer of a private school, or by an official in an institution of higher learning who is in a position to evaluate the applicant's qualifications;

c. Applicants for endorsement as supervisors in a

specialized area (e.g., mathematics, reading, business education, etc.) or level (e.g., elementary, middle or secondary) must be endorsed in the specialization or in a teaching area within that level; ~~Additionally, applicants shall~~ *must* have had at least three years ~~one year of recent~~ successful full-time experience as a teacher *in the area of specialization or teaching area and must have had recent successful experience as a teacher, administrator, or supervisor in the area or at the level to be supervised.* ~~administrator, or supervisor, one year of which must have been in the area or at the level to be supervised;~~

d. Applicants for endorsement as supervisors or directors of special education or vocational education must be endorsed in a teaching area within their area of supervision. The experience requirements in "c" above apply;

e. Applicants for endorsements as a district supervisor with general instructional supervisory responsibilities (e.g., general supervisor, director of instruction, assistant superintendent for instruction, etc.) shall have had a minimum of five years of recent successful experience as a teacher, administrator or supervisor. Additionally, they shall have had formal graduate work in curriculum in at least two of three levels (elementary, middle, and secondary);

f. The applicant must complete graduate-level work in the following areas:

(1) Supervision of instruction; and evaluation of instruction and instructional programs;

~~(2) Evaluation of instruction;~~

~~(3) (2) Social psychology of organizations;~~

~~(4) (3) Curriculum development;~~

~~(5) (4) School administration;~~

~~(6) (5) Learning theory.~~

g. The applicant also shall have completed work in the education of exceptional individuals, including the gifted and talented and those with handicapping conditions, and in educational technology at the graduate or undergraduate level. Supervisory experience at the appropriate grade level(s) is recommended.

B. Reading specialist (NK-12).

1. Content – the program for the reading specialist shall include a planned sequence of experiences allowing for differences in the educational background of the candidate. The reading specialist may be designated as a person (1) who works directly with pupils or (2) who works with teachers, administrators and other professionals to improve and coordinate the total reading program of the school. A person endorsed as a reading specialist may be a classroom

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teacher of reading (developmental or remedial), a resource teacher, a reading consultant, a reading diagnostician or a reading clinician. The program shall:

- a. Provide an advanced level of preparation with emphasis on recent developments in ~~mind~~ research as it relates to language development and reading;
- b. Provide experiences to develop competencies in clinical diagnosis of reading problems and in the interpretation of findings;
- c. Provide supervised practica and/or internships in clinical/remedial instruction and supervision in at least two of the three levels (elementary, middle, secondary);
- d. Extend knowledge of techniques and materials used in reading instruction;
- e. Provide knowledge of and competency in planning, developing, administering, and evaluating the reading program;
- f. Develop an understanding of school organization, essentials of coordination of various aspects of the school program, and the role of the reading specialist;
- g. Develop competence in both the performance and interpretation of research and in the application of relevant findings to reading problems;
- h. Extend knowledge in materials and techniques for teaching the related communicative arts: spelling, writing, and speaking.

2. Endorsement requirements.

The applicant for this endorsement shall hold or be eligible for the Postgraduate Professional Certificate and shall have had at least three years of successful classroom teaching experience in which the teaching of reading was an important responsibility *and shall have successfully completed a planned program in reading beyond the undergraduate level.*

a. The program shall include no less than the equivalent of 18 semester hours in *graduate level* courses that address the following areas:

- (1) Foundations or survey of reading instruction;
- (2) Language development;
- (3) Reading in the content areas;
- (4) Organization and supervision of reading program development;

- (5) Diagnosis and remediation of reading difficulties;
- (6) Practicum in the diagnosis and remediation of reading difficulties.

b. The applicant shall have completed, at the graduate or undergraduate level, 12 semester hours selected from the following:

- (1) Measurement and/or evaluation;
- (2) Child and/or adolescent psychology;
- (3) Psychology including personality and learning behaviors;
- (4) Literature for children, adolescents, and adults with limited reading ability;
- (5) Language arts instruction;
- (6) Learning disabilities;
- (7) Study of contemporary issues in the teaching of reading.

§ 4.3. Pupil personnel services positions.

A. Guidance counselors (elementary, middle, and secondary).

1. Content – the program shall:

- a. Provide an understanding of the philosophy, organization, and professional activities related to the practice of school counseling;
- b. Provide supervised practicum with students and teachers at the grade levels for which endorsement is sought;
- c. Provide an understanding of individual differences, including those of exceptional students;
- d. Extend the knowledge of basic educational philosophies and school curriculum patterns;
- e. Provide experiences which insure an understanding of societal and cultural changes to include a study of socioeconomic, racial, and ethnic groups;
- f. Provide for competence in the following:
 - (1) Psychological and educational assessments;
 - (2) Counseling theory and practice, as they relate to the personal, social, educational, and career domains;
 - (3) Individual and group counseling and group

guidance processes;

(4) Career planning and career education techniques to include self-understanding and the use of occupational and educational information;

(5) Development, implementation, and evaluation of guidance and counseling programs, including faculty and public relations;

(6) Performance, interpretation, and utilization of education research.

2. Endorsement requirements.

a. The applicant shall hold a master's degree in guidance and counseling;

b. The applicant shall have a minimum of two successful academic years of full-time experience in teaching, one year of which could be satisfied by full-time work experience in a nonschool setting;

c. The applicant shall have completed *graduate-level work which includes the following:*

(1) Philosophy and principles underlying guidance and other pupil personnel services;

(2) The theory and practice of counseling, including work with exceptional and culturally diverse students;

(3) Educational and psychological measurement;

(4) Career development theory including career planning and decision-making techniques and the use of occupational and educational information;

(5) Understanding the individual – the nature and range of human characteristics;

(6) Group counseling and group guidance processes;

(7) Research and evaluation;

(8) Elementary, middle, or secondary school guidance (course must be congruent with chosen area of certification);

(9) Supervised practicum experience discharging the duties of a counselor with a minimum of 180 clock hours at the level at which the candidate seeks endorsement. To be endorsed at another level requires additional supervised experience of 120 clock hours.

B. School psychologist. – (No Change)

C. Visiting teacher/school social worker. – (No Change)

GOVERNOR'S EMPLOYMENT AND TRAINING DIVISION

Title of Regulation: VR 350-01-2. Management Requirements for Job Training Partnership Act Programs and Activities.

Statutory Authority: § 2.1 - 708 (3) of Code of Virginia.

Effective Date: October 1, 1985

Summary:

These regulations set forth criteria for use in the management of Job Training Partnership Act activities. The regulations are applicable to Service Delivery Areas and their contractors.

The regulations are being revised in order to restructure and to clarify and simplify the requirements. The regulations are divided into eight parts. Parts I - III present general information; no substantive changes have been made to existing material. The definitions were expanded to allow classification of older worker as a family of one. Parts IV - V present information on EEO/Affirmative Action and Grievances. Language has been simplified; information on appeals to the Department of Labor has been added. In Part VI, Fraud and Abuse, the nepotism provisions have been rewritten to more clearly delineate requirements. Additions were made to Part VII, Eligibility Requirements, to more accurately reflect federal requirements. Part VIII, Contract Management, was restructured. Expanded information was included on property management, fixed cost contracts, administrative cost pool and modifications to job training plans. This additional information was based on previously existing federal or state guidance.

Several changes were made to the regulations during the public comment period. The language in the definition of family-adult handicapped was changed from the permissive "may" to the mandatory "shall" so that it would be in agreement with federal regulations. An article directed to state agencies was added to Part V, Grievance and Complaint Procedures; this addition formalizes present practices and requirements. Changes were also made in Part VIII, Contract Management. Requirements on bonding and audits were restructured as a result of public comment. The language on disposal of certain property was changed to require competitive sale; this change formalizes present practice.

VR 350-01-2. Management Requirements for Job Training Partnership Act Programs and Activities.

PART I. PURPOSE AND AUTHORITY.

Final Regulations

PREAMBLE AND TITLE:

§ 1.1. Preamble: These regulations are promulgated by the Governor's Employment and Training ~~Division~~ *Department* pursuant to ~~Chapter 622, Section 1 100, Acts of Assembly 1983 and Chapter 728, Acts of Assembly 1984. § 2.1-708 (3) of the Code of Virginia.~~ These regulations supplement regulations of the United States Department of Labor entitled ~~Implementing Regulations~~ for programs under the Job Training Partnership Act ~~published on March 15, 1983 in 48 Federal Register beginning at page 11076.~~ Further, these regulations are in force together with the requirements of the Job Training Partnership Act (PL 97-300) and the regulations of the United States Department of Labor. Hence, these regulations, (20 CFR Parts 626 through 629). They must be read with the Job Training Partnership Act (PL 97-300) and the regulations of the Department of Labor.

Title: These regulations may be cited as *Management Requirements for Job Training Partnership Act Programs and Activities* and are effective July 1, 1984.

PART I II. DEFINITIONS.

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

1-1 "Contractor" For the purpose of these regulations, "Contractor" means a person or entity under contract to the SDA to provide a service or training to participants. The term shall also include those persons or organizations of whatsoever nature who receive funds from an SDA and are deemed to be employers of participants, or who provide customized training to participants who, upon successful completion of that training, are employed by the provider in accordance with an agreement with the SDA.

1-2 "DOL" means United States Department of Labor.

1-3 For the purpose of participant eligibility, and pursuant to 20 CFR Section 626.4, the term "Family" shall mean: means for the purpose of determining participant eligibility:

1. One Two or more persons living in a single residence related by blood, marriage, or adoption. A step-child or a step-parent may be considered to be related by marriage.

2. An adult handicapped individual [~~may shall~~] be considered a family of one when applying for programs under the act. A handicapped youth (age [~~16 14~~] -21) shall be considered a family of one when applying for programs under the act.

3. An individual, 18 or older, except as provided in 1. above, who receives less than 50% of support from the family, and who is not the principal earner nor

the spouse of the principal earner, is not considered a member of the family. Such an individual is considered a family of one.

4. An individual, 14 years of age or older, living in a single residence/household and not related to the family by blood, marriage, or adoption shall be considered a family of one when applying for programs under the act.

5. An individual released from an institution or facility within six months of the date of applying for programs under the act may be considered a family of one, provided that such confinement status presents a significant barrier to employment and the person is not claimed as a dependent on a family member's income tax return.

6. *An older worker, aged 55 or older, whether living in the residence or not, may be considered a family of one when applying for programs under the act.*

13-2 Pursuant to 20 CFR Section 626.4, "Family income" shall mean means income received from all sources for the six-month period prior to eligibility determination by persons who are family members at the time of eligibility determination and who have been family members for the six-month period prior to eligibility determination.

"Family size" shall be means the maximum number of family members at time of eligibility determination who have been family members for six months prior to eligibility determination.

"Food stamp recipient" means any person listed on the certified or approved food stamp application as a member of the household

1-3 "GETD" means Governor's Employment and Training ~~Division~~ Department.

1-4 "JTPA" means Job Training Partnership Act, Public Law 97-300.

1-5 "Participant" means any person who has been determined eligible for participation and receives services funded under the JTPA, other than outreach, intake and assessment and post-termination services.

1-6 "SDA" For the purpose of these regulations, the term "SDA" means collectively, the administrative entity, the grant recipient and the Private Industry Council that cooperatively manage the Job Training Partnership programs and activities in a geographic area designated as a JTPA Service Delivery Area. Where a provision of these regulations places a duty or imposes a requirement upon SDAs, the same shall be read by each SDA to mean the JTPA component stated above upon which the duty or requirement would fall by the terms of the JTPA or by virtue of local agreement.

1.7 sda For the purpose of these regulations, the term "sda" means geographic area designated as a JTPA service delivery area.

1.8 "State agency" For the purpose of these regulations, the term State agency means any agency of state government (1) under contract to the GETD to operate JTPA programs; and, (2) any agency of state government which receives JTPA funds through the GETD and has responsibility for operation of JTPA programs by virtue of an executive order. Reference to state agencies in these regulations is made for the purpose of delineating rules applicable to the two classes of agencies specified above in common. Other requirements are supplied by contract in the case of agencies first above specified and, by contract and the internal authority of agencies in the second instance.

PART III. GENERAL PROVISIONS.

PART 14 § 3.1. Right to review and require compliance.

GETD reserves the right to review all actions, procedures and materials submitted, implemented or utilized in response to these regulations and to require modifications and/or amendment to bring those actions, procedures, and materials into compliance with these regulations and applicable laws.

PART 15 § 3.2. Failure to comply.

Failure to comply with the provisions of these regulations may result in loss of funding.

PART 16 § 3.3. Evaluations.

At least every two years following the adoption of these regulations, the GETD will provide for and publicly announce a procedure to be used to evaluate their effectiveness. The evaluation will include a process by which the public will be invited to comment on the regulations in writing and through a public hearing.

PART 17 § 3.4. Clarification of JTPA and related regulations.

Pursuant to the agreement between the Governor and the U. S. Secretary of Labor regarding the implementation of JTPA, the GETD from time to time, at its discretion, shall issue interpretations of the Job Training Partnership Act and related regulations issued by DOL. These interpretations shall be issued by the GETD and "JTPA Interpretations," and compliance with the "JTPA Interpretations" is required of SDAs and their contractors.

PART 18 § 3.5. Conflicts and severability; application

16.1 A. Any conflict between these regulations and the Forms Preparation Handbook shall be resolved in favor of these regulations. Any provision contained herein in these

regulations which is found to be unlawful shall be severable from the remaining provisions.

16.2 B. These regulations in all of their foregoing parts are of prospective application only and are of no application shall not be applicable prior to the effective date.

PART 3 IV. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION.

2.1 § 4.1. In accordance with the Job Training Partnership Act, § 167, Nondiscrimination, all recipients of federal funds under the Act must comply with the laws prohibiting discrimination as follows:

1. Age Discrimination Act of 1975 - Age,
2. Rehabilitation Act, § 504 - Handicap,
3. Education Amendments of 1972, Title IX - Sex,
4. Civil Rights Act of 1964, Title VI and Title VII as amended - Race, Color, National Origin;

Each SDA shall include assurances of compliance with these laws in any contracts developed for funding under the JTPA.

2.2 § 4.2. Each SDA and State agency operating JTPA programs must formulate personnel policies and procedures [and an EEO/Affirmative Action Plan] to serve the requirements of § 167 of the JTPA [and an EEO/Affirmative Action Plan]. Copies of these documents and information on staff characteristics must shall be filed with the Governor's Employment and Training Division Department and updated as changes are made .

§ 4.3. SDAs shall monitor program operations to ensure that the processes for hiring staff and selecting participants are in compliance with nondiscrimination provisions.

2.3 § 4.4. Each SDA must maintain and shall require their contractors to maintain a procedure conforming to the requirements of 29 CFR § 32.45 " Investigations " , as the same presently exists or may hereafter be amended, for the prompt and equitable resolution of complaints alleging any action prohibited by 29 CFR Part 32 " Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance " , implementing § 504 of the Rehabilitation Act.

PART 9 V. GRIEVANCE AND COMPLAINT PROCEDURES.

Article 1.
SDA Procedure and Review.

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~~0-1~~ § 5.1. A grievance and complaint procedure shall be established by SDAs for the resolution of grievances or complaints [about JTPA programs and activities]. This procedure shall be approved by the Private Industry Council . and shall ~~(1)~~ Be available to:

§ 5.2. The procedure shall be available to:

1. Any person in interest alleging a violation by either the SDA or its contractors of the JTPA, the implementing regulations of the DOL and the GETD, the terms of any agreement between an SDA and a contractor, the procedures of an SDA or any contractor adopted in response to the requirements of the JTPA and said regulations or agreements by the SDA or its contractors , including any such violation alleged to have arisen in connection with their JTPA programs and activities. The violation may be alleged against either the SDA or its contractors. For the purpose of this provision, a "person in interest" means any person or organization of whatsoever nature denied a right or benefit by virtue of the alleged violation.

~~(2)~~ Be available, in addition, to

2. Any participant engaged in an activity which constitutes employment of that participant for the purpose of resolving grievances of such participants concerning the application of the employer's terms and conditions of employment to them. This provision shall not be deemed to require abrogation or abridgement of the customary prerogatives of management. e. Notwithstanding the foregoing subsections a and b;

3. A contractor, person or entity deemed to be an employer of participants shall receive grievances of such participants relating solely to terms and conditions of employment. The employer shall may utilize either the SDA procedure or a the employer's procedure. of the employer's choosing All such participants shall be advised of the procedure to be followed and shall be afforded recourse to the SDA procedure in the event that the employer's decision is unsatisfactory to the participant or a decision is not forthcoming in accordance with the procedure utilized by the employer and shall thereafter have review by the GETD in accordance with Section 0-1-2 .

~~(3)~~ § 5.3. The procedure shall also be available for the resolution of issues arising from audit disallowances and findings, investigations, monitoring reports or the imposition of any sanction made, conducted, or imposed by an SDA.

~~(4)~~ § 5.4. This procedure shall not be available for:

1. Not be available for The resolution of complaints alleging irregularities in the procurement of goods and services.

2. Not be available for The resolution of grievances of SDA or contractor employees, other than participants, relating solely to terms and conditions of their employment.

~~0-1-1~~ § 5.5. The procedure required by Section 0-1-6 shall:

~~(1)~~ 1. Provide for a hearing within 30 days of the filing of a complaint or grievance.

~~(2)~~ 2. Provide for adequate written notice of the date, time, and place of hearing.

~~(3)~~ 3. Provide for an opportunity to present evidence. which Any evidence presented shall be preserved in a form suitable for subsequent review by the GETD ad the GETD may from time to time prescribe .

~~(4)~~ 4. Provide for a written decision by the SDA. to The decision must include a statement of the issues, the relief sought by the grievant or complainant, and findings of fact which shall be received by furnished to the grievant or complainant within 60 days after the grievance or complaint is was filed.

~~0-1-5a~~ § 5.6.

A. All hearings pursuant to the procedure adopted by the SDA shall be conducted by the PIC, the administrative entity, or by an outside hearing officer appointed as the procedure may prescribe.

b B. All grievances and complaints shall be filed with the SDA in the manner, form, and at an office of the SDA prescribed in the SDA's procedure, regardless of whether the subject of the grievance or complaint is a contractor, a unit of the SDA, or an officer or employee thereof.

~~0-1-2~~ § 5.7.

A. Grievants or complainants desiring review of decisions unsatisfactory to them, or who do not receive a written decision within the period prescribed in ~~0-1-1~~ ~~(4)~~, § 5.5 may file a request for review with the GETD. A request for review shall be filed within ten 10 days of receipt by the grievant or complainant of the written decision or within ten 10 days from the date on which the grievant or complainant should have received the decision. The grievant or complainant shall also simultaneously file a copy of the request for review within the same period of time with an individual designated for this purpose by the SDA.

B. The request for review shall be addressed to the Personnel Director, GETD, P.O. Box 12083, Richmond, Virginia, 23241, or delivered to the office of the GETD, 417 East Grace Street, Richmond, Virginia, and shall contain the following information:

a 1. The full name, address and telephone number of the grievant or complainant.

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b 2. The name and address of the employer or the name of the SDA with which the grievance or complaint was *originally* filled.

e 3. The name and address of the party or organization responsible for issuing the written decision.

d 4. The date the grievance was filed and the date that the written decision was or should have been received by the grievant or complainant.

e 5. The relief or outcome sought by the grievant or complainant ~~on review of the matter~~.

3. A statement on the provisions of the act, regulations, grant or other agreements under the act believed to have been violated.

4. A statement of the date the complaint was filed with the GETD, the date on which the GETD should have issued a decision and an attestation that no decision was issued.

C. The request will be considered to have been filed when the Secretary of Labor receives from the complainant a written statement sufficiently precise to evaluate the complaint and grievance procedures used by the state and the SDA.

~~0-1-3~~ C. The SDAs shall designate an individual to receive copies of requests for review by the GETD ~~filed as required by Section 0-1-2. Upon such receipt, or otherwise as may be directed by the Personnel Director of the GETD.~~ This individual shall ~~forthwith~~ ~~cause~~ transmit the evidence introduced at the hearing and any other papers forming a part of the *hearing* record thereof to be transmitted to the personnel director of the GETD as directed by the personnel director.

~~0-1-4~~ D. The executive director of the GETD shall issue a written decision within ~~thirty~~ 30 days from the date of receipt of the request for review. This decision shall be based on the record before the GETD; ~~provided, however, that the GETD reserves the discretion in unusual cases to receive argument within the period of time established for review by the GETD. A prior written decision which meets the requirements of Section 0-1-1~~ (4) shall be set aside if erroneous as a matter of law, if unsupported by the evidence, or if plainly wrong as a matter of fact. The GETD disposition of the matter may include remand of the same to the SDA with direction for further proceedings. The decision of the GETD ~~however~~ shall be final and shall not ~~thereafter~~ be reopened unless the ~~same~~ be shown to have been procured by fraud, or for the purpose of correcting clerical errors. ~~therein~~.

§ 5.8.

A. Grievants or complainants who do not receive a written decision from the GETD within the period prescribed may request from the Secretary of Labor a determination whether reasonable cause exists to believe that the act or its regulations have been violated.

B. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision. The request should contain the following information:

1. A copy of information filed with the GETD.
2. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violations.

Article 2. Subpart B GETD Procedure.

~~0-2~~ § 5.9. The procedure of the GETD set forth in the succeeding sections of this [subpart] shall ~~a~~ (1) be by the GETD available to any person in interest alleging a violation of the JTPA, the implementing regulations of the DOL and the GETD, the terms of any agreement between the GETD and an SDA, procedures adopted by the GETD in response to the requirements of the JTPA, and ~~said~~ regulations or agreements, including any ~~such~~ violation alleged to have arisen in connection with JTPA programs and activities of the GETD. For the purpose of this provision, a "person in interest" means any person or organization of whatsoever nature who or which is denied a right or benefit by virtue of the alleged violation.

§ 5.10. The procedure of the GETD shall be by the GETD available to:

1. Resolve issues ~~existing~~ arising from audit disallowances and findings, investigations, monitoring reports or the imposition of any sanction made, conducted, or imposed by the GETD.

~~(3)~~ 2. Be available to Resolve complaints alleging that any action of the GETD is prohibited by the provisions of 20 CFR Part 32, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance." Any such complaint shall be filed with GETD within 180 days from the date of the alleged discrimination. Sections ~~0-2-3, 0-3-1, and 0-3-2~~ 5.14 and 5.15 of these regulations shall have no application to such complaints. Any appeals on these complaints shall be made to the Secretary of Labor.

§ 5.11. ~~b~~. This procedure shall not be available for :

(1) 1. Not be available for The resolution of complaints alleging irregularities in procurement of goods and services.

(2) 2. Not be available for The resolution of grievances of GETD employees relating solely to terms and conditions of their employment.

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~~9-2.1~~ § 5.12. Grievances and complaints falling within the purview of this ~~Subpart B Article~~ shall be filed with the personnel director of the GETD and shall state (i) the grievant's full name, address and telephone number, (ii) the full particulars of the grievance or complaint, (iii) the date when the same arose or is believed to have arisen, (iv) the interest of the grievant or complainant in the matter, and (v) the specific relief or outcome sought.

~~9-2.2~~ § 5.13. The GETD shall ~~thereafter~~ furnish written notice of the date, time and place of the hearing on the matter to which shall be held within ~~thirty~~ 30 days following the filing of the grievance or complaint. The hearing shall be conducted in accordance with the provisions of § 9-6.14:12 of the Code of Virginia and the grievant or complainant shall receive the written decision of the GETD within ~~sixty~~ 60 days after the grievance or complaint is filed.

~~9-2.3~~ § 5.14. In the event that the Grievant complainant desires Grievants or complainants desiring further review, or ~~no~~ who do not receive a written decision has been received from the GETD within ~~sixty~~ 60 days then within ~~ten~~ 10 days of receipt of the written decision or within ~~ten~~ 10 days of the date when the written decision was due, the grievant or complainant may file a request for review by the executive director of the GETD with the personnel director of the GETD, who shall forthwith transmit the request and record of the proceeding to the Executive Director. A request for review shall be filed within 10 days of receipt of the written decision or within 10 days of the date the decision was due. The executive director shall review the record and issue a final decision within ~~thirty~~ 30 days following receipt of the request by the personnel director. ~~9-1.4~~ Section 5.7 D shall govern review by the executive director.

§ 5.15.

A. Grievants or complainants who do not receive a written decision within the period prescribed may request from the Secretary of Labor a determination as to whether reasonable cause exists to believe that the act or its regulations have been violated.

B. The request for determination shall be filed in accordance with procedures outlined in § 5.8.

[Article 3. State Agency Procedures.

§ 5.16. Appropriate state agencies shall establish grievance procedures which parallel the requirements of Articles one and two. The procedures and any subsequent changes shall be submitted to the GETD.

§ 5.17. The GETD shall be immediately notified of appeals made under the procedures. A summary of the grievance and decision shall be furnished to the personnel director of the GETD upon disposition.]

Article [3 4] .

Subpart C. Limitations; Posting of Procedures.

~~9.3~~ [~~§ 5-16.~~ § 5.18.] SDAs [and state agencies] shall post and shall ensure that their contractors post their applicable grievance and complaint procedures, together with those of the GETD and this Part 9 V for the benefit of participants, employees and other interested persons.

~~9.3.1~~ [~~§ 5-17.~~ § 5.19.] Grievances and complaints shall be filed within one year of the occurrence of the event giving rise thereto ; except under ~~9-2(a)~~ (3) § 5.10 B, relating to discrimination on the basis of handicap. provided, however, that notice of the potential filing of a grievance or complaint within the prescribed period shall be filed with the person with whom the grievance or complaint must be filed within ~~thirty~~ (30) days following the said event, unless the grievance or complaint itself be sooner filed.

~~9.3.2~~ Notwithstanding the provisions of Section ~~9.3.1~~, any grievance or complaint which has as its basis an audit disallowance or finding, an investigation, monitoring report or the imposition of a sanction shall be filed with the SDA or GETD, as the case may be, within ~~thirty~~ (30) days after the action complained of becomes final.

PART H VI. FRAUD AND ABUSE.

~~H-1~~ § 6.1. Duty to report instances for fraud and abuse.

To ensure the integrity of JTPA programs, efforts are necessary to prevent fraud and other program abuses. Fraud includes deceitful practices and intentional misconduct, such as willful misrepresentation in accounting for the use of program funds. Abuse is a general term which encompasses improper conduct which may or may not be fraudulent in nature. All instances of fraud and of abuse, to include violations of §§ 141 (f) and (j), 142(a), 143(b) and (c)(1), 165(a) (1), 167 and 182, amending Title 18, United States Code, § 665 contained in § 182 of the JTPA, shall be promptly reported within one work day to the executive director of the GETD by the administrative entity SDA or the state agency cognizant of the occurrence or by the Private Industry Council if it performs as an administrative entity .

~~H-2~~ § 6.2. Political activities.

The following provisions pertaining to political activities shall be enforced:

a 1. No person may engage in partisan or nonpartisan political activities during hours for which that person is paid with, or receives training supported by, JTPA funds.

b 2. No person may engage, at any time, in partisan political activities in which such participant represents himself as a spokesperson of a JTPA program, activity or organization.

e 3. No participant may be employed in a position involving political activities in the office of an elected official.

11-3 § 6.3. Sectarian activities.

Participants shall not be employed in the construction, operation, or maintenance of any facility that is used, or is to be used, for sectarian instruction or as a place for religious worship, nor trained in any sectarian activity.

11-4 § 6.4. Unionization and antiunionization activities.

A. JTPA funds shall not be used in any way to promote or oppose union activities.

B. No individual shall be required to join a union as a condition for enrollment in a JTPA program.

C. No participant may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs, participants in affected positions ~~must~~ shall :

1. Be relocated to positions not affected by the dispute; or
2. Be placed on leave.

D. If participants belong to the labor union involved in a work stoppage, they must be treated in the same manner as any union member. Such members must not remain working in the affected position. The contractor shall make every effort to relocate participants who wish to remain working into suitable positions unaffected by the work stoppage.

11-5 § 6.5. Nepotism.

A. The following words and terms, for the purpose of this section; shall have the following meaning:

1. The term "Employ" means to hire, or place by transfer or any other means of whatsoever nature.
2. The term "Immediate family" means a person's spouse and any other relative, by blood, marriage (including step-children and step-parents) or adoption, who resides in the person's household.
3. The term "Person in an administrative capacity" means ~~the members~~ a member of a public or private governing board or council. ~~It also includes a persons~~ person having overall administrative responsibility, and ~~persons a person in subordinate positions thereto~~ having selection, hiring, placement or supervisory responsibilities ~~regarding or over a person to be employed at the time of, or subsequent to, employment~~ .

4. The term "Staff position" means any position filled by a person other than a person in an administrative capacity.

[B.] Neither The GETD ~~nor any private industry council, administrative entity or grant recipient,~~ shall not employ a person in an administrative capacity or staff position funded in whole or in part under the FTPA if a member of that person's immediate family is engaged in an administrative capacity for the GETD ~~or in a component of the SDA~~ .

C. An SDA shall not employ a person in an administrative capacity or staff position funded in whole or part under JTPA if a member of that person's immediate family is engaged in an administrative capacity for that SDA.

D. ~~No~~ An SDA contractor shall not employ a person in an administrative capacity or staff position funded in whole or part under the JTPA if a member of that person's immediate family is engaged in an administrative capacity for the contractor ~~or any component of the contracting SDA~~ .

PART VII. ELIGIBILITY FOR SERVICES.

§ 7.1. When computing family income, include all income for each family member at the time of eligibility determination ~~and who have been family members for the entire six months. determination will be included in the family income computation.~~

§ 7.2.

(a) A. For the purposes of determining eligibility, family income ~~includes shall include~~ :

1. Gross wages and salaries (before deductions).
2. Net self-employment income (gross receipts minus operating expenses).
3. Other money income received from sources such as net rents, old age and survivors insurance, social security benefits, pensions, alimony, periodic income from insurance policy annuities, and other sources of income.

(b) B. Family income ~~does shall~~ not include:

1. Noncash income such as food stamps, or compensation received in the form of food or housing.
2. Rental value of owner-occupied property.
3. Public assistance payments.
4. Cash payments received pursuant to a state plan approved under Titles I, IV, X or XVI of the Social

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Security Act, or disability insurance payment received under Title II of the Social Security Act.

5. Federal, state or local unemployment benefits.

6. Payments made to participants in employment and training programs.

7. Capital gains and losses.

8. One-time unearned income, such as, but not limited to:

~~(i)~~ a. Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans.

~~(ii)~~ b. One-time or fixed-term scholarship and fellowship grants.

~~(iii)~~ c. Accident, health, and casualty insurance proceeds.

~~(iv)~~ d. Disability payments.

~~(v)~~ e. One-time awards and gifts.

~~(vi)~~ f. Inheritance, including fixed term annuities.

~~(vii)~~ g. Fixed term workers' compensation awards.

~~(viii)~~ h. Terminal leave pay.

~~(ix)~~ i. Soil bank payments.

~~(x)~~ j. Agriculture crop stabilization payments.

9. Pay or allowances received by any veteran while serving on active duty in the Armed Forces.

10. Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

11. Payments received under the Trade Act of 1974 as amended.

12. Black Lung payments received under the Benefits Reform Act of 1977, Public Law 95-239 20 USC 901.

13. Child support payments.

§ 7.3. Each SDA has the responsibility for establishing criteria for enrolling those "most in need" within the parameters established by the act and federal and state regulations. Applicants shall be enrolled in accordance with these criteria.

§ 7.4. Any eligible individual who maintains a bona fide residence within the geographic boundaries of a Service

Delivery Area is eligible for the services and programs of the SDA.

§ 7.5. Applicants required to register under § 3 of the Military Selective Service Act must comply with registration requirements prior to enrollment in the JTPA programs. Verification of registration must be a part of the official file of all participants subject to these requirements.

§ 7.6. The entrance requirements for any activity funded in whole or in part by JTPA shall be in writing. Competency levels rather than formal education diplomas or other such criteria shall be used. In no instance is high school graduation or possession of a GED to be cited as a prerequisite for participation. In each instance where a competency or skill level is a prerequisite and method(s) used to assess the competency must be included in the written eligibility requirements.

PART VIII. CONTRACT MANAGEMENT.

Article 1.

§ 8.1. Expiration.

Part VIII Contract Management in its entirety will expire on July 1, 1986.

Article 2. Financial Management.

§ 8.2. Accounting standards.

~~12.3 A. SDAs administrative entities and State agencies shall maintain a written accounting system that will (a) present fairly and with full disclosure the financial position and results of the financial operation of the funds and account groups of the SDA and State agency in conformity with generally accepted accounting principles and (b) enable the users of financial reports to determine the compliance with financial related legal and contractual provisions.~~

~~12.3.1 B. Written fiscal controls and accounting procedures shall be developed by SDA administrative entities, State agencies, and their contractors to:~~

~~1. Permit the preparation and timely submission of reports required by the GETD .~~

~~2. Permit the tracing of funds to a level of detail adequate to establish that funds have not been expended in violation of the restrictions imposed by federal, state and local laws, regulations and procedural requirements.~~

~~e. Demonstrate compliance with program cost matching requirements.~~

3. Provide reports and records that are:

- a. Uniform in definition.
- b. Accessible to authorized federal and state officials.
- c. Verifiable for monitoring, auditing and evaluation purposes.

12.3.2 C. Development of Standards of Internal Administrative Control At a minimum, SDAs, State agencies, and contractors must develop standards of *internal control* which assure the following:

1. Competent key personnel.
2. Qualified supervision with clear lines of responsibility and accountability.
3. Properly recorded and executed transactions.
4. Clear documentation and accountability for resources and financial transactions.
5. Separation of duties.
6. Limitation in access to resources.

SDAs, State agencies, and contractors shall also include as part of their standards for administrative control the provisions of Subpart C - "Administrative Standards and Procedures," 48 Federal Register 11082, of March 15, 1983 to the extent practical given staff size.

§ 8.3. Subpart A Administrative requirements.

12.1. A. Signature Authorization The GETD shall be advised of the identity of any officer(s) or official(s) of any SDA component or state agency operating a JTPA program who is authorized to bind that SDA component or state agency to agreements with the GETD, or request funds pursuant to such agreement. Such advice shall be in the form of *The GETD may require an SDA to provide a duly authenticated copy of the resolution or other instrument conferring that authority mailed or delivered to the Finance Director of the GETD*. Thereafter, it shall be the responsibility of the SDA component or state agency to promptly notify the Finance Director GETD of any subsequent change in, or withdrawal of, such authority.

12.1.2 B. Fiscal Agent The SDAs administrative entities and state agencies operating JTPA programs shall designate an individual responsible for their accounting and fiscal operations and notify the GETD in writing of the name, title, and phone number of the individual. This person will be the contact person utilized by the GETD fiscal staff in the event fiscal questions arise.

12.1.3 C. Contractor Responsibilities The Administrative Entity SDA and state agencies must ensure that their

contractors adhere to all applicable federal and state laws and regulations, as well as SDA or state agency procedures, for operation of JTPA programs. To implement the above policy, each SDA and state agency shall train contractors in all relevant technical matters. The SDAs and state agencies shall also ensure that each contractor has timely access to all written materials bearing on its administration and performance under the contract.

12.1.4 § 8.4. Bonding and insurance.

a. A. The GETD assumes no liability with respect to for bodily injury, illness or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA contract or agreement whether concerning persons or property in the SDA's, state agency's, or contractor's organizations or any third party.

b. B. SDAs and contractors shall secure reasonable insurance coverage for injuries suffered by participants who are not covered by existing worker's compensation.

e. C. A blanket fidelity bond shall be secured for all officers, directors, agents and employees of the SDA with authority over and accessibility to JTPA funds. Coverage [Limits] shall be in the sum of \$100,000 or [20% of the total funds allocated to the SDA over the period for which the Job Training Plan is in effect, whichever is greater an amount equal to the highest request for funds from the GETD during the immediately preceding program year]. and shall ~~The GETD may require an SDA to furnish evidence thereof at the request of the GETD,~~ of bonding.

d. D. General liability insurance, unemployment insurance monies and securities coverage and other insurance may must be secured by the SDA.

Subpart B § 8.5. Accounting requirements.

12.2 Books of Accounts and Records A. The SDAs Administrative Entity and state agencies shall maintain accounting records and other necessary supporting documents and ledgers in sufficient detail to provide the following information in an accurate and timely fashion:

- a 1. Budgetary control and analysis.
- b 2. Cash forecasting and reporting.
- e 3. Proper matching of cost categories and expenditures.
- d 4. Accurate report preparation, based on accrual accounting concepts.
- e 5. Proper reconciliation of account balances.
- f 6. Determination of allowable costs.

12.2.2 § 8.6. Cash.

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The SDAs and state agencies shall forecast cash needs to enable the disbursement of JTPA funds within a time limit established in writing by the GETD three days of receipt. Failure to develop and adhere to this procedure will result in the SDAs and state agencies being funded on a reimbursement method. All JTPA cash provided to the SDAs Administrative Entities and state agencies must be deposited into an FDIC insured bank within one working day of receipt of the check. The SDAs or state agencies shall ensure that its contractors adhere to the GETD's cash management policies.

12.2.4 § 8.7. Program income.

a. Income generated in a program operated by a SDA administrative entity or state agency shall may be retained by the SDA [administrative entity], state agency, or contractor at the direction of the SDA administrative entity and shall be utilized to further program objectives. Program income may be used to satisfy the matching requirements of § 123(b) and 304 of the act. Program income returned to the GETD shall be used to provide technical assistance.

12.1.6 § 8.8. Property management standards.

Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purpose authorized by the JTPA. The SDA shall maintain accountability for property. All property records are to be maintained on the GETD's Automated Property Management System.

The JTPA program shall be reimbursed the fair market value of any unneeded property retained by local governments or other entities for use in a non JTPA program. The proceeds from the sale of any property or transfer of property to a not JTPA program shall be used for purposes authorized under the JTPA.

Lease/purchases of non expendable property with a unit acquisition cost of \$1000 or more shall be submitted to the GETD for approval before the transaction is closed by the SDA, State agency, or contractor.

A. Property acquired by the Service Delivery Area shall be classified as the following:

1. Real property: Land, land improvements, structures and appurtenances thereto, excluding moveable machinery and equipment.
2. Personal property: Property of any kind, except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents and copyright.
3. Nonexpendable personal property: Tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

4. Expendable personal property: Anything less than nonexpendable personal property.

5. Excess property: Property no longer needed for the purpose for which it was purchased.

6. Federally-owned property: Government furnished property or property acquired with federal funds to which the government holds title.

B. Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act (CETA) must be used for purposes authorized by the JTPA.

C. CETA property with an acquisition cost of \$1,000 or more must be transferred to JTPA in accordance with § 181(g) of the Act. The Secretary of Labor reserves the right to take title of this property at disposition time. Permission to dispose of this property shall be granted by DOL. All proceeds shall revert to JTPA.

D. All property purchased with CETA or JTPA funds with an acquisition cost of \$300-\$999 shall become the property of the Service Delivery Area and be used in the administration of JTPA. If the SDA does not have a need for such property in the JTPA programs, then the property shall be used in other federally [or nonfederally] funded programs. If no need exists, the property may be disposed. Disposal shall be [at the discretion of through competitive sale by] the SDA. All proceeds shall revert to JTPA.

E. All property purchases with CETA or JTPA funds with an acquisition cost of less than \$300 shall become the property of the Service Delivery Area. Disposal of this property shall be at the discretion of the SDA. All proceeds shall revert to JTPA.

F. The SDA shall maintain accountability for all property. Property with an acquisition cost of \$300 or more must be maintained on the GETD's Automated Property Management System, all property inventory may be maintained on the automated system for management purposes.

G. The request to purchase or dispose of nonexpendable property having an acquisition cost of \$1,000 per unit, including lease/purchase and/or lease agreements with aggregate payments exceeding \$1,000, shall be submitted to the GETD for prior approval before the purchase or disposal of such property is entered into by the SDA or any subcontractor of the SDA.

H. The SDA shall ensure that the Virginia Procurement Act has been adhered to for all aspects of the purchase and/or lease of nonexpendable property. The GETD approval to purchase and/or lease property costing \$1,000 shall not ensure that the SDA and/or the subcontractor has complied with the Virginia Procurement Act.

I. All acquired property shall be approved by authorized

personnel through some type of qualified purchasing procedure or system.

J. The SDA shall conduct an annual physical inventory to reconcile property records, verify existence, current utilization, and continued need. A copy of the updated master list shall be submitted to the GETD at the close of each fiscal year.

K. The SDA shall maintain a control system which ensures adequate safeguards to prevent property damage, loss, or theft, and shall investigate and document any loss or theft to local and state authorities. The GETD shall be notified in writing as to any loss, damages or theft of property.

~~12.2.2~~ § 8.9. Allowable costs.

a A. ~~General~~. To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program; be allocable thereto under these principles, and, except as provided herein, not be a general expense required to carry out non-JTPA activities of the SDA or subrecipient. Costs charged to the program shall be consistent with those normally allowed in like circumstances in nonfederally sponsored activities.

b B. Direct and indirect costs shall be charged in accordance with 41 CFR 29-70.102.

c C. Office of Management and Budget Circular A-87 dated January 15, 1981, details those costs which are allowable or unallowable charges to grant recipients of federal funds. SDA Administrative Entities shall comply with OMB-A-87 when determining the allowability of charges to the grant. Additional direction to OMB-A-87 are provided as follows:

1. Costs resulting from violations of, or failure to comply with, federal, state or local laws and regulations are not allowable.
2. Entertainment costs are not allowable.
3. Insurance policies offering protection against debts established by the federal government are not allowable JTPA costs.
4. Interest cost, explicit or implicit, associated with lease-purchase and other capital lease arrangements are not allowable except for interest costs associated with certain buildings as noted in OMB Circular A-87, Attachment B, paragraph C 2a.
- 4 5. Personal liability insurance for PIC members is allowable.

d D. The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a state or local government or staff solely for the purpose of

discharging general responsibilities as a legal officer are unallowable. Legal expenses for the prosecution of claims against the federal government are unallowable.

~~12.1.5~~ § 8.10. Needs-based payments.

a A. Subject to the provisions of §§ 106 and 142(a) (1) of the act and in accordance with an SDA or state agency developed formula or procedure, payments based on need may be provided to individual participants in cases where such payments are necessary to enable individuals to participate in a training program funded under the JTPA.

b B. Documentation supporting the SDA or State agency developed The formula or procedure for needs-based payments shall be detailed in the SDA Job Training Plan or in the state agency's plan for JTPA services.

c C. The formula or procedure shall provide for the maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

~~12.2.3~~ § 8.11. Classification of costs.

a A. To comply with the limitations on certain costs contained in § 108 of the act, allowable costs shall be charged against the following cost categories: training; administration; and participant support. SDAs, state agencies, and their contractors shall plan, control, and charge expenditures against the aforementioned these cost categories.

b B. Costs are [allowable allocable] to a particular cost category to the extent that benefits are received by such category. Refer to 20 CFR, §§ 629.37 through 629.39, (48 Federal Register 11081 - 11084, March 15, 1983), and to the "Classification of Costs" table which follows (Appendix A) for additional guidance on charging costs to particular JTPA categories.

c C. Training costs shall not include the direct or indirect costs associated with the supervision and management of the program.

f D. Training costs shall not include supportive service costs as defined in § 4 of the JTPA or other participant support costs which are determined to be necessary by the SDA.

g E. All costs of employment generating activities to increase job opportunities for eligible individuals in the area and the remaining 50% of the costs of a limited work experience program, as well as 100% of the costs of other work experience programs, are not allowable training costs (Sec. 108(b) (2)(A), JTPA).

h F. The salaries and fringe benefits of project directors, program analysts, labor market analysts, supervisors and other administrative positions shall not be charged to training. The compensation of individuals who

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both instruct and supervise other instructors shall be prorated among the training and administration cost categories based on time records or other verifiable means.

† G. Construction costs may be allowable training or participant support costs only when funds are used to:

(H) 1. Purchase equipment, materials and supplies for use by participants while on the job and for use in the training of ~~such~~ the participants. Examples of such equipment, materials and supplies are handtools, workclothes and other low cost item ; and .

(H) 2. Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

‡ H. Any single cost which is properly chargeable to training and to one or more other cost categories shall be prorated among training, and the other appropriate cost categories according to a method which is both documented and verifiable.

§ 8.12. Fixed unit cost contracts.

¶ A. Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories, but may be charged entirely to training when the agreement:

(H) 1. Is for training.

(H) 2. Is a fixed unit price.

(H) 3. Stipulates that full payment for the full unit price will be made only upon completion of training by a participant; and placement of the participant into unsubsidized employment in the occupation trained for, and at not less than a wage specified in the agreement.

B. In the case of youth activities, payment for training packages purchased competitively, pursuant to § 141 (d) (3) of the JTPA, shall include payment for the full unit price if the training results in either placement in unsubsidized employment, or the attainment of an outcome specified in § 106 (b) of the JTPA.

C. Fixed unit cost contracts should, at a minimum:

1. Specify the exact price to be paid for a specific amount of work, or for the attainment of desired outcomes. Such a contract may not be advisable if reliable pricing information is unavailable, or if the fixed unit cost exceeds usual and customary charges for similar services.

2. Contain language which clearly and explicitly spells

out the terms of the agreement and defines the terms used in the agreement.

3. Define the specific occupation for which training is to be provided.

4. Define training-related placement.

5. Define for youth activities the successful attainment of specified outcomes.

§ 8.13. Administrative cost pool.

¶ A. Administrative funds within a Service Delivery Area may be pooled and used for all administrative costs of JTPA programs within the service delivery area.

B. Each SDA using an administrative cost pool shall submit information on the use of the pool as a part of its job training plan. SDA shall report expenditures from the administrative cost pool according to instructions issued by the GETD.

212-1-7 § 8.14. Record retention.

¶ A. All SDAs and state agencies operating JTPA programs shall retain financial, statistical, and participant records and supporting documentation for a period of three years following the date of the grant closing report.

¶ B. Records for nonexpendable property shall be retained for three years after final disposition of the property.

¶ C. ~~The aforementioned~~ All records will be retained beyond the three years if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records will be retained until the litigation, audit or claim has been finally resolved.

¶ D. In the event of the termination of the relationship between the SDA or state agency and a contractor, the SDA or state agency shall be responsible for the maintenance and retention of all of the contractor's relevant records.

¶ E. The GETD may request the transfer of records to its custody from [the administrative entities and grant recipients SDAs and state agencies] when it determines that the requested records possess long-time retention value.

Article 3.

PART 8 Procurement of property and services; contracts.

8-1 § 8.15. All procurement of property and services with JTPA funds shall be in accordance with the provisions of the Virginia Public Procurement Act (§§ 11-36 through 11-71, of the Code of Virginia), except as hereinafter

provided.

8.2 A. For the purposes of Section 8.1 *this article*, "services" shall not be deemed to include on-the-job training or any participant employment authorized by the JTPA, nor shall the term include or contracts for customized training, the successful completion of which results in employment of the participant by the contractor as a term of the contract.

8.3 B. For the purposes of this Part 8 *article*, the board of directors of a Private Industry Council shall be the "governing body," and the administrative entity, if separate from the Private Industry Council, shall be the "public body" as these terms are used in the provisions of the Virginia Public Procurement Act.

8.5 C. Sections 8.2 and 8.3 Subsections A and B shall have no application where the administrative entity is an agency of a city or county which is otherwise subject to the provision of the Virginia Public Procurement Act.

8.4 § 8.16. Every entity responsible for procurement under this Part 8 *article* shall adopt and enforce a code of procurement ethics which embodies the principles articulated in §§ 11-73 through 11-79 of the Code of Virginia.

§ 8.17. All procurement activity shall avoid conflict of interest and be conducted in a manner that provides for free and open competition.

8.8 § 8.18. All procurement activity shall comply with each SDA's written procedures, as approved by the appropriate Private Industry Council, for assessing potential effectiveness based on demonstrated performance and for assuring that duplication of effort does not occur.

8.6 § 8.19.

A. All agreements between SDAs and contractors, as defined in Part 1 including those described in Section 8.5 which require expenditure of JTPA funds shall contain standards for ensuring accountability and establish clear goals and obligations in unambiguous terms.

8.7 B. All contracts or agreements of whatsoever nature to which an SDA or State agency is a party and which require the expenditure of JTPA funds, directly or indirectly, shall contain a term whereby the contract or agreement may be terminated without penalty at the discretion of the SDA or State agency in the event that JTPA funds become unavailable to the SDA or state agency for performance under the contract.

Article 3.

PART 2 Audit Requirements for JTPA Programs.

2.2 § 8.20.

A. Annual audits will be conducted based on the

availability of administrative funds. Should funds not be available for annual audits, audits will be performed at least once every two years [*as directed by the GETD*]. The GETD reserves the right to audit any or all of the SDAs as the need is determined. 2.1 Subject to Section 2.2, financial and compliance Audits of the SDAs will be conducted annually by [*either one*] of the following [*two*] methods:

a 1. For those SDAs processing financial transactions through a unit of local government, at the option of the SDAs and local governments, audits of JTPA programs [*with may*] be conducted in conformance with OMB Circular A-102, Attachment P audit to satisfy the cognizant agency as to the sufficiency of the review. [*Attachment P audits will be affected by the requirements of the single Audit Act of 1984, P.L. 98-502.*]

b 2. For those SDAs not included in an Attachment P audit, unified audits [*with may*] be performed [*by the GETD*]. Unified audit requires that one audit firm conduct the entire audit for all SDAs, not included in an "Attachment P" audit, that The audit coverage shall be for a uniform time period for all entities covered in the audit; a proper sampling of contractors shall be audited, and one audit report shall be issued for each SDA including all entities audited thereunder.

[3. For those SDAs not included in an Attachment P audit, individual audits may be performed by the SDAs. Individual audits must be approved in advance by the GETD. The SDA must assure adequate and complete audit coverage that is consistent with § 164 of the JTPA and with audit guides developed by the GETD.]

2.3 B. The GETD will bear the audit fees associated with auditing expenditures of funds by the SDA. [*The GETD will not bear the fees associated with JTPA expenditures by SDA contractors.*] The SDA will bear the audit fees associated with auditing expenditures of funds by contractors within the SDA. This cost is an allowable charge to SDA administrative grant funds.

2.4 § 8.21.

Neither the GETD nor the SDAs shall audit state agencies receiving JTPA funds which are audited through the normal state auditing process, if these normal state audit processes specifically include financial and compliance testing that meet JTPA standards. Should normal state audit processes not include JTPA funds, the state agencies' JTPA programs shall be included in the unified audit. The state agencies shall be responsible for all audit fees, whether associated with state or unified audits.

2.6 All audits shall be conducted by certified public accountants licensed by the Virginia Board of Accountancy, Virginia Department of Commerce.

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2.7 § 8.22.

Each audit shall be conducted in accordance with applicable auditing standards set forth in § 164(a) of the JTPA. Copies of Attachment P audit reports will be submitted to the cognizant federal audit agency and to the GETD by the unit of local government involved.

2.5 § 8.23.

Unified audits will be arranged by the GETD on a statewide basis. SDAs, and applicable state agencies will be notified who the auditors are and when the audit for each SDA and state agency is scheduled to begin. A draft audit report will be issued and the SDA [*and, as applicable, state agencies*] will be given 30 days to respond to the draft report. The final report will incorporate the SDA's ~~or and state agency's paraphrased~~ comments. ~~(paraphrased)~~ into the final audit report.

2.8 § 8.24.

The SDAs and state agencies operating JTPA programs shall be responsible for the following:

a 1. The GETD shall be immediately notified ~~Notifying, immediately, the GETD~~ in writing of possible acts of fraud discovered during the performance of an audit.

b 2. Upon their availability, the GETD shall be provided ~~Providing, upon availability, the GETD~~ with audit report(s) covering all JTPA funded programs. The Auditor of Public Accounts will determine the acceptability of the audit reports.

e 3. Disposition must be made ~~Disposing of~~ all questioned costs and administrative findings in the audit. The disposition must show the action (i.e. either allowance or disallowance). If costs are allowed, appropriate supportive documentation must be provided. ~~or disallowed on all costs questioned in audits~~ All administrative findings must be addressed to the satisfaction of the GETD

2.9 § 8.25.

The audit resolution process shall be as follows:

a 1. The SDA or state agency shall provide to each contractor the ~~with~~ appropriate sections of the final audit report dealing with administrative findings and questioned costs.

2. b Within 30 days from the date of the final audit report, the SDA or state agency shall issue to each contractor an initial determination on the administrative findings and questioned costs to each contractor .

e 3. Within 60 days from the date of the final audit

report, the SDA or state agency shall issue to each contractor a final determination on the administrative findings and questioned costs to each contractor . The SDA or state agency shall include in the final determination issued to the contractor notice of the right to appeal the determination using the GETD Grievance Procedures as specified in Part V . ~~afforded contractors for the review and resolution of disputes concerning audit matters~~ Included in the notice of the right to appeal shall be instructions on initiation of the appeal.

d 4. Within 90 days from the date of the final audit report, the SDA or state agency will provide the GETD written responses to all administrative findings and questioned costs contained in the audit report . A 30-day informal resolution process will allow the SDA or state agency and GETD to attempt to resolve informally any differences at this point.

e 5. Within 120 days from the date of the final audit report, the GETD will issue a final determination to the SDA or state agency on the entire audit report. A copy of the final determination will be provided to the Secretary of the DOL with support documentation and, if appropriate, a request for waiver of liability under § 164(e) (2) of the act.

f 6. The determination, by the GETD, SDA, or state agency, to allow questioned costs, does not preclude the Secretary of the DOL from making a determination that the costs are unallowable and demanding a refund from nonfederal funds at a later date. Consequently, a determination of allowability of costs shall not be final until final favorable disposition by DOL occurs .

Article 5.

PART 4 Monitoring and Evaluation Responsibilities of the Service Delivery Areas and State Agencies.

4.1 § 8.26.

A. The administrative entity for the SDAs and state agencies operating JTPA programs shall be responsible for eliminating abuses in programs and preventing misuse of funds. Each SDA and state agency shall establish and adhere to an appropriate system for the monitoring of contracts. Appropriate monitoring activities shall be carried out at reasonable interval. 4.2a. An effective monitoring system is required for the proper administration of contracts and for ensuring that abuses and poor management of specific programs are promptly detected and corrected. Administrative entities and State agencies shall maintain a monitoring capability that is objective and free from the appearance of conflict of interest. Administrative entities SDAs and state agencies shall regularly monitor contractors and shall require immediate remediation of deficiencies.

b B. The GETD shall from time to time monitor SDAs

and, as appropriate, state agencies and may monitor their contractors with or without notice. Monitoring by the GETD shall not relieve private industry councils and administrative entities SDAs of their duties under the JTPA and implementing regulations. Financial agreements between the SDAs, state agencies, and their contractors, shall make specific provision for entry by GETD monitors upon contractor premises for the purpose of inspecting JTPA records and activities. To the extent possible, the GETD will coordinate its monitoring visits to contractors with those of the SDA and, as appropriate, will provide advance notice of the monitoring schedule.

4.4 § 8.27.

Erroneous determination of program participant eligibility under JTPA may result in substantial liability. To minimize such liability, the administrative entity SDAs and state agencies shall maintain on-going monitoring/verification of participant eligibility. The system shall provide for a 100%, 30-day review of participant records after intake by someone other than the verification official. The system shall be detailed in the Job Training Plan as provided for in the JTPA, § 104(b) (3). Eligibility verification shall include a review of supporting documentation of all eligibility data given by the participant at the time of application. Ineligible participants shall be terminated immediately following discovery, as shall participants who are proven knowingly to have provided false information at the time of application. Any liability incurred as a result of an ineligible participant shall be the responsibility of the SDA or state agency.

4.3 § 8.28.

Evaluation of programs funded under the JTPA shall be an integral part of the operation of each [administrative entity SDA] and state agency operating JTPA programs. Program evaluation efforts must be designed and conducted so as to accomplish the following:

a 1. To assist in future planning by providing information on the outcome of programs, including the degree to which planning objectives are being accomplished and the identification of programs that are particularly successful in aiding participants in obtaining established goals.

b 2. To assist in selecting capable service providers. § 107(a) of the Job Training Partnership Act requires "effectiveness . . . based on demonstrated performance" to be considered when selecting service providers within an SDA.

e 3. To measure an SDA's progress in meeting established performance standards. See Section 106 of the JTPA.

Article 6.

PART 5 Submission of Job Training Plans.

5.1 Due Date § 8.29.

Job Training Plans will be submitted to the GETD no later than 5:00 p.m. on April 12th of each year or the next working day thereafter if the same falls on a weekend or holiday 80 days before the first of the two program years covered by the plan. Each plan shall be submitted in four copies, three one of which shall bear original signatures. Plans shall be addressed to Technical Assistance Section Program Services Unit, GETD, P.O. Box 12083, Richmond, Virginia 23241, or delivered to the office of the GETD, 417 E. Grace Street, Richmond, Virginia.

5.2 § 8.30. Plan Content and Format The Job Training Plan shall be prepared and submitted in the proper format, and in accordance with the instructions for preparation contained in the Forms Preparation Handbook promulgated issued by the GETD.

5.3 § 8.31. Review of SDA plans.

The GETD has the primary responsibility for reviewing each SDA's Job Training Plan, and each state agency's plan, for JTPA programs to ensure compliance with the JTPA and all other applicable rules and regulations.

Upon completion of the review by the GETD staff, the plans will be forwarded to the Governor's Job Training Coordinating Council for review. The GJTCC then will forward its recommendations to the Governor through the Secretary of Human Resources for final action which shall occur within 30 days after the date the plans are submitted.

In the event that disapproval of a plan is recommended, the plan will be returned to the SDA or state agency for correction. The SDA or state agency shall have twenty 20 days to correct its plan and return it for further consideration. As provided in Section 105 of the JTPA The SDA will be notified in writing within 15 days after resubmittal of final action. In the event of a final disapproval, the SDA may appeal the final decision to the DOL within thirty 30 days of receipt of notice of final disapproval. The appeal must be submitted by both the Private Industry Council and appropriate chief elected official(s) for the SDA. Simultaneously, a copy of the appeal must be provided to the Governor. No JPTA funds will be allotted to an SDA or state agency without an approved job training plan.

Article 7.

PART 6 SUBMISSION OF Modifications to Job Training Plans.

6.1 § 8.32.

Purpose If changes in labor market conditions, funding, or other factors require substantial deviation as defined in the Governor's Coordination and Special Services Plan, In the event of substantial deviation from an approved Job Training Plan, modification to the plan must be submitted

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to the GETD for approval. The following circumstances will be deemed to be substantial deviation :

1. A change in designation of either the grant recipient and/or the administrative entity.
2. An increase or decrease of 15% or more in the number of participants planned to be served, in estimated training cost per participant, or in the approved budget.
3. Increases or decreases in the unemployment rate during the base period for establishing the JTPA funding formula factors which, during the first year of the two program years covered by the plan, changes the SDA's status as a designated "Area of Substantial Unemployment".
4. Increases or decreases of 15% or more in the SDA's JTPA allocation.
5. An increase or decrease of five percentage points or more in an SDA's unemployment rate during the first year of the two program years covered by the plan.
6. Failure to meet three or more of the seven required performance standards during the first of the two program years covered by the approved plan.
7. The guidelines for submitting modifications to Job Training Plan shall be specified in instructions issued annually by the GETD on or before July 15 of each year. Each modification shall be submitted in four copies, one of which shall bear original signatures. Modifications shall be addressed to Technical Assistance Section Program Services Unit, GETD, P. O. Box 12083, Richmond, Virginia, 23241, or delivered to the office of the GETD, 417 E. Grace Street, Richmond, Virginia.

§ 8.33.

The GETD reserves the right, in its sole discretion, to waive the criteria of § 8.32 on a case by case basis for good cause shown.

6-2 § 8.34.

Format of Plan Modification. The modified plan will be submitted to the GETD as specified in annual instructions issued pursuant to the Coordination and Special Services Plan. ~~6-3~~ **Content of Plan Modification .** The first substantive item of the a modification shall be the reason, or reasons, for the modification. Elements of the Job Training Plan which are modified shall be clearly identified and explained in detail. Modifications may only be made for reasons specified in the Coordination and Special Services Plan.

6-4 § 8.35.

Review of Modifications: The GETD has the primary responsibility for reviewing all modifications to Job Training Plans to ensure compliance with the JTPA and all other applicable rules and regulations.

Upon completion of the review by the GETD staff, the modification will be forwarded to the Governor's Job Training Coordinating Council for review. The GJTCC then will forward its recommendations to the governor through the Secretary of Human Resources for final action which shall occur within 30 days after the date the modification is submitted.

In the event that disapproval of the modification is recommended, the modification will be returned to the SDA or state agency for correction. The SDA or state agency shall have ~~twenty~~ 20 days to correct its modification and return it for further consideration. The SDA will be notified in writing within 15 days after resubmittal of final action. In the event of a final disapproval, the SDA may appeal the decision to the DOL within ~~thirty~~ 30 days of receipt of notice of final disapproval. The appeal must be submitted by both the Private Industry Council and appropriate chief elected official(s) for the SDA. Simultaneously, a copy of the appeal must be provided to the Governor.

6-5 § 8.36.

Modifications shall become effective on the date they are approved by the Governor.

§ 8.37.

The GETD may require SDAs and state agencies to submit annual revisions to the job training plans. Revised plans will be submitted as specified in instructions issued by the GETD.

Article 8.

PART 10 JTPA Management Information System ; REPORTS; FORMS PREPARATION HANDBOOK

10-1 The SDA or State agency operating a JTPA program is responsible for collecting and maintaining financial, property and participant information for JTPA programs and activities. This information shall be collected as acquired in the computerized JTPA Management Information System, the constituent parts of which are stated in sub section (a); (b) and (c) hereof, subject, however, to the caveat of sub section (e).

(a) § 8.38.

As directed by the GETD, All SDAs and State agencies shall use the GETD's Participant Information System to enter and to maintain data on JTPA participants.

(b) § 8.39.

As directed by the GETD, All SDAs and State agencies

shall use the GETD's Property Inventory System to enter and to maintain information on JTPA property.

(e) § 8.40.

At their option, SDAs and State agencies may participate in the GETD's Financial Information System. SDAs and State agencies using the FIS may be charged a reasonable fee established by the GETD to offset the costs associated with operating the system. SDAs and State agencies electing not to participate therein shall, nevertheless, report expenditures of JTPA funds in accordance with the format prescribed by the GETD with the approval of the Virginia Department of Accounts.

10.2 Each SDA and State agency operating a JTPA program shall submit an Annual Report to the Governor in a format and according to a schedule prescribed by the Executive Director of the GETD.

10.3 All forms and formats required by the foregoing Sections 10.2, and 10.2 and any other provision of these regulations are collected in a GETD *Forms Preparation Handbook* of even date herewith, which said Handbook is incorporated in these regulations as such as if fully set forth in its entirety herein.

§ 8.41.

Each SDA shall establish procedures to ensure that the information is entered into the Management Information System accurately, completely, and in a timely manner.

§ 8.42.

The GETD will provide offsite storage for data collected on the Management Information System. Monthly, each SDA shall submit data cartridges to the GETD as instructed.

Article 9.
Required Reports.

§ 8.43.

The following reports shall be submitted to the GETD:

- 1. Cash Forecast Report-submitted monthly according to the schedule developed by the GETD.*
- 2. Quarterly Expenditure Report-submitted the last day of the month immediately following the end of each quarter.*
- 3. Quarterly Status Report-submitted the last day of the month immediately following the end of each quarter.*
- 4. Annual Status Report-submitted 30 days following the close of the contract.*

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Appendix A

CLASSIFICATION OF COSTS

Administration

Activity	Reference to JTPA Section	Reference to 29 CFR
Labor Market Info. Surveys PIC Incorporation	204(a)	629.38e(6)
Participant Eligibility Determination		629.37(a)
Participant Eligibility Verification		629.37(a)

Training

Activity	Reference	Justification
Job Search Assistance	204(1)	629.38e(1)
Job Counseling	204(2)	629.38e(1)
Remedial Education	204(3)	629.38e(1)
Basic Skills Training	204(3)	629.38b
Institutional Skills Training	204(4)	629.38b
On-The-Job-Training	204(5)	629.38e(1)
Advanced Career Training	204(6)	629.38b
Private Sector Training	204(7)	629.38b
Work Readiness Training	204(10)	629.38e(1)
Upgrading & Retraining	204(12)	629.38b
Education to Work		
Transition Training	204(13)	629.38b
Literacy and Bilingual Training	204(14)	629.38b
Vocational Exploration		
GED Training	204(17)	629.38b
Job Development	204(18) & (23)	629.38e(1)
Employer Outreach	204(21)	629.38e(1)
Advanced Learning Techniques For Education, Job Preparation & Skills Training	204(22)	629.38b

Appendix B

Training

Activity	Reference to JTPA Section	Reference to 29 CFR
<u>On-site Industry Specific</u>		
Training	204(24)	629.38b
Customized Training	204(28)	629.38b
Assessment		629.38e(1)
Follow-up	204(25)	629.38b
<u>Work Experience/Related Skills</u>		
Training (50% for 6 months)		629.38e(1)
Cost of Trainers	629.38e(1)	629.38e(1)
Training Equipment & Supplies	629.38e(1)	629.38e(1)
Classroom Space & Utility Costs	629.38e(1)	629.38e(1)
Tuition	629.38e(1)	629.38e(1)
Instruction Costs	629.38e(1)	629.38e(1)
Single Unit Fixed Priced Training	629.38e(1)	629.38e(2)
Evaluation of Training		

Participant Support

Activity	Reference to JTPA Section	Reference to 29 CFR
Supportive Services	204(11), 108(iii)	
Work Experience	204(15), 108(ii)	108(ii)
Needs Based Payments	204(27), 108(iv)	108(iv)
Work Experience/Related Skills Training (50% for 6 months)	108(i)	
Employment Generating Activities	204(19)	629.38(5)
Outreach	204(8), 108(b)(2)(A)	

NOTE: Care shall also be taken to consider the applicability of such provisions of the JTPA as, for example, Sections 141 and 143.

Final Regulations

INDUSTRIAL COMMISSION OF VIRGINIA Department of Workmen's Compensation

Title of Regulations: Rules of the Industrial Commission of Virginia - 405.

Statutory Authority: § 65.1-18 of the Code of Virginia.

Effective Date: September 1, 1985.

Rules of the Industrial Commission of Virginia - 405.

Rule 1.

A. Hearing. An evidentiary hearing by the Commission shall be conducted as a judicial proceeding in that all witnesses shall testify under oath, and a record of the proceedings shall be made. The Commission is not bound by statutory or common law rules of pleading or evidence, nor by technical rules of practice, but will conduct such hearings and make such investigations into the questions at issue in such manner as in its judgment are held adapted to ascertain and determine expeditiously and accurately the substantial rights of the parties and to carry out the spirit of the Workers' Compensation Act; and to that end, hearsay evidence may be received.

The party having the burden of proof shall have the right to open and close, and each party shall be allowed twenty (20) minutes in which to present evidence unless other prior arrangement is made through the Commission.

B. Subpoenas. Subpoenas requested by the parties will be issued by the Commission and sent to the party requesting the same for execution according to law. The party requesting a subpoena shall be liable for the service fee.

C. Depositions. The costs of producing witnesses to be deposed shall be borne by the party giving notice of deposition unless the parties reach another agreement in this respect.

D. Venue. The place of hearing shall be governed by Section 65.1-94 of the Act. However, venue may be changed by agreement of the parties and concurrence of the Commission.

E. Continuances. Motions to continue or postpone hearings will be granted only when it appears to the Commission that, without the fault of the party asking for same, material and irreparable harm may result from requiring the scheduled appearance. Parties should, therefore, prepare to present evidence at the time and place scheduled for hearing.

F. Evidence. (1) Stipulations to agreed facts are to be stated for the record. (2) Medical reports and records may be submitted in lieu of testimony by physicians or medical care providers. A party shall have the right to cross-examine the source of any document offered in evidence by an adverse party upon timely motion.

G. Costs. The whole cost of a proceeding may be assessed against an employer if it is determined by the Commission that such proceeding has been brought, prosecuted or defended without reasonable grounds. Costs may include a reasonable attorney's fee, in an amount fixed by the Commission. (§ 65.1-101, Code of Virginia)

Rule 2. Review by the Full Commission.

A. Request for Review. Within twenty (20) days from the date of the decision or award by a hearing Commissioner or Deputy Commissioner or award by the Claims Division, a party may file a request for review by the Full Commission of such decision or award. A request for review must be in writing and must be filed with the Clerk of the Commission. (§ 65.1-97 and § 65.1-2.1, Code of Virginia) A request for review should specify each determination of fact or law to which exception is taken. A copy of the request for review must be furnished to the opposing party.

B. Oral Argument. Unless a party requests oral argument at the time of application for review, the review shall proceed on the record. Oral argument may be presented by personal appearance or by telephone conference call. Any party may request telephone conference by giving notice to the Clerk of the Commission and to opposing counsel. Each side will be limited to fifteen (15) minutes for presentation of oral argument.

C. Additional Testimony. No new evidence may be introduced by a party at the time of review except upon agreement of the parties. Any petition for reopening of the case and taking of additional testimony will only be favorably acted upon by the Full Commission when it appears to the Commission that such course is absolutely necessary and advisable and also when the party requesting the same is able to conform to the rules prevailing in the courts of this State for the introduction of after-discovered evidence. A petition to reopen a case or to receive after-discovered evidence may be considered only upon request for review.

Rule 3. Repealed [Included in Rule 2C]

Rule 4. Willful Misconduct.

If the employer or insurance carrier intends to rely upon a defense under Section 65.1-38 of the Act, it shall file with the Commission no less than 10 days prior to the hearing, furnishing a copy of the same to the employee or his attorney, a statement of its intent to make such defense together with a statement of the particular act or acts relied upon as showing willful misconduct.

Rule 5. Posting Notices.

Every employer within the operation of the Virginia Workers' Compensation Act shall post and keep posted, conspicuously in his plant, shop, or place of business usually frequented by employees, notice of his compliance

with the provisions of the Act. Such notice may be in writing or in print and shall follow substantially the form prescribed by the Industrial Commission. The failure to post such notice, as required by this rule, may preclude the employer or its insurance carrier from defending a claim brought pursuant to the Act.

Rule 6. Evidence of Insurance to be Filed with the Commission.

Every employer within the operation of the Act shall file with the Industrial Commission proof of his compliance with the insurance provisions (Section 65.1-103 and Section 65.1-104) of the Act. A notice from the insurer (Form No. 45-F) certifying this fact will be received as acceptable proof.

Rule 7. Self-Insurance by the State, its Municipalities and Political Subdivisions.

Permission for self-insurance by the State and its political subdivisions, as well as the municipalities of the State, will be granted, upon application therefor, without submission of proof of financial ability and without deposit of bond or other security. However, provision must be made for the premium tax provided for in Section 65.1-135 of the Act.

Rule 8. Information Concerning Financial Condition of Self-Insurer.

No record of any information concerning the solvency and financial ability of any employer acquired by a Commissioner or his agent by virtue of his powers under the Virginia Workers' Compensation Act shall be subject to inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a Commissioner or his agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from him, in accordance with the provisions of the Act, shall continue to be paid.

Rule 9. Repealed.

Rule 10. Repealed.

Rule 11. Waiting Period.

If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

Rule 12. Must Pay Awards Direct.

All compensation due an injured employee or compensation awarded on account of death under the Virginia Workers' Compensation Act must be paid direct to the beneficiary or beneficiaries. This ruling applies in cases in which the employee is represented by counsel, as well as in cases in which he has no representation.

Compensation awarded must be paid promptly and in strict accordance with the award issued by the Commission. Awards will provide for the attorney's fee in all cases in which the claimant is represented, and the employer or his insurance carrier will be directed to pay the attorney's fee to the attorney direct and to deduct same from the compensation awarded the claimant.

Rule 13. Applications for Review upon the Ground of a Change in Condition.

A. Applications for review upon the ground of a change in condition filed by the employer or carrier shall be in writing, under oath, and state the following:

1. The ground relied upon for relief;
2. The date through which compensation has been paid. Compensation must be paid through the date on which the application is received in the Industrial Commission offices, or posted by certified mail, except:
 - a. If the employee has refused employment (§ 65.1-63), or
 - b. If the employee has refused medical attention (§ 65.1-88) or examination (§ 65.1-91), compensation may be suspended as of the date of such refusal or fourteen days prior to the filing of the application, whichever is later.
 - c. If the employee had returned to work, compensation must be paid to the date of return, as evidenced by supporting data filed with the application.
3. That a copy of the application for hearing and copies of all medical reports and other supporting documentary evidence were furnished to the employee at the same time.

B. In the case of employees, the application must state the change in condition relied upon. No additional compensation may be awarded more than ninety days prior to the filing of the application. Applications for cost of living supplements are not subject to this limitation.

C. Upon receipt of the application from the employer or carrier, together with the supporting documents, in the offices of the Industrial Commission, it shall be examined for compliance with this and any other provisions of the Workers' Compensation Act or rules, and, if accepted, no further action shall be taken for a period of fifteen days

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to permit the opposing party to submit any preliminary evidence it so desires.

At the expiration of such fifteen-day period, the Commission shall determine if the preliminary evidence filed by both parties justifies suspension of compensation pending a hearing on the merits of the claim. If so, the Commission will place the claim on the hearing docket and authorize the suspension of compensation as of the date for which compensation was last paid. If the preliminary evidence does not warrant placing the claim on the hearing docket, the parties will be so advised and the employer or its insurance carrier will be advised to continue compensation payments.

Rule 14. Compromise Settlements; Lump Sum Payments.

All compromise settlement agreements shall be submitted to the Commission in writing in the form of a petition setting forth the matters in controversy; the proposed terms of settlement; the proposed method of payment, together with such other facts as will enable the Commission to determine if the best interests of the claimant or his dependents will be served by approval thereof.

If the proposed settlement contemplates payment in a lump sum, the petition shall set forth in detail the facts relied upon to show that the best interests of the employee or his dependents will be served thereby.

The petition, prepared by the parties, shall be signed by the claimant and his attorney, if represented, and by the other parties, or their attorneys, and shall be accompanied by an original draft of the proposed order, properly endorsed.

Rule 15. Filing of Agreements.

All written agreements pertaining to the payment or termination of compensation shall be filed with the Commission immediately upon their execution.

Rule 16. Advisory Committee.

An advisory committee to the Industrial Commission is hereby established. The committee shall consist of six members, appointed by the Commission, for terms of three years each. The membership of the committee shall be composed of a representative of employees, employers, the medical profession, the legal profession, the insurance industry, and the public. The committee shall elect its chairman, and it shall meet at least once each calendar year. A quorum of the committee shall be four members.

Rule 17. Required Filing of Medical Reports.

All medical reports received by any party in any proceeding in the Industrial Commission shall, as soon as received, be forthwith filed with the Commission. In any contested pending claim, copies of such medical reports

shall be simultaneously forwarded to the opposing party. In any claim, copies of medical reports herein named shall be provided the opposing party without cost upon request:

1. Industrial Commission Form 6 or equivalent
2. Hospital Emergency Room reports
3. Narrative reports of doctors and consultants
4. Doctors' cumulative progress notes
5. Return to work or disability slips
6. Hospital admission summaries
7. Operative notes
8. Hospital discharge summaries

The required filing of such medical report with the Commission shall constitute a required report and is subject to provisions of § 65.1-127, Code of Virginia.

Rule 18. Attorney's Fees.

An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.1-102, Code of Virginia, only upon (1) evidence that such insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made and (2) evidence of the sum due such carrier or health care provider.

VIRGINIA MARINE RESOURCES COMMISSION

NOTE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purposes of promulgating regulations. The regulation printed below is voluntarily published by the Marine Resources Commission for the public's benefit and for informational purposes only.

Title of Regulations: VR 450-01-0034. "Pertaining to the Taking of Striped Bass."

Statutory Authority: §§ 28.1-23, and 28.1-25 of the Code of Virginia.

Effective Date: June 11, 1985

Preamble:

This regulation repeals existing regulations [VR] 450-01-0029 and [VR] 450-01-0032, and establishes an extended closed season, and increases minimum size

Final Regulations

limits and gear restrictions for the taking of striped bass in Virginia waters. This is an emergency regulation which responds to the request of the Atlantic States Marine Fisheries Commission, that Virginia and all other Atlantic Coast states reduce striped bass fishing effort by at least 55 [percent %].

The Marine Resource Commission, recognizing the need for immediate protection of Virginia's striped bass stocks and, in particular, the 1982 year class, and acting under the authority of §§ 28.1-23, 28.1-25 and [28.1-50] of the Code of Virginia, does hereby promulgate this emergency regulation.

§ 1. Authority, prior regulations, effective date:

A. This emergency regulation is promulgated pursuant to the authority contained in §§ 28.1-23, 28.1-25 and [28.1-50] of the Code of Virginia.

B. This emergency regulation repeals regulation [VR] 450-01-0029, Pertaining to the Taking of Striped Bass, and regulation [VR] 450-01-0032, Pertaining to the Potomac River Tributaries.

C. The effective date of this emergency regulation is June 11, 1985.

§ 2. Purpose:

The purpose of this regulation is to provide for the immediate protection of Virginia's striped bass stocks and to reduce harvest pressure on the 1982 year class and subsequent year classes of striped bass, while maintaining a viable commercial and recreational fishery for striped bass. This regulation responds to the request of the Atlantic States Marine Fisheries Commission Interstate Striped Bass Plan and the Atlantic Striped Bass Conservation Act by reducing striped bass fishing effort by at least 55 [percent %].

§ 3. Definitions:

A. Striped bass - any fish of the species *Morone saxatilis* including any hybrid striped bass.

B. Spawning rivers - the James, Pamunkey, Mattaponi and Rappahannock Rivers including all their tributaries.

C. Spawning reaches - sections within the spawning rivers as follows:

1. James River: From a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point;

2. Pamunkey River: From the Route 33 bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore;

3. Mattaponi River: From the Route 33 bridge at West

Point upstream to the Route 360 bridge at Aylett;

4. Rappahannock River: From the Route 360 bridge at Tappahannock upstream to the Route 3 bridge at Fredericksburg.

§ 4. Closed areas, seasons, and gear limitations:

A. During the period December 1 to May 31, inclusive, a person may not take, catch, possess, transport, process, sell or offer for sale any striped bass.

B. During the period April 1 to May 31, inclusive, a person may not set or fish any anchored or staked gill net within the spawning reaches. Drift (float) gill nets may be set or fished within the spawning reaches during the closed season, but the fisherman must remain with such net while that net is in the fishing position.

§ 5. Minimum size limits:

A. During the open season, June 1 to November 30, inclusive, it shall be unlawful for any person to take, catch, and/or have in possession more than [five percent 5%] or two by count, whichever is greater, of any striped bass less than [eighteen 18] inches [(18")] in length, except as provided in paragraph B, below.

B. During the open season, June 1 to November 30, inclusive, it shall be unlawful for any person to take, catch, and/or retain possession of any striped bass from the Territorial Sea that is less than [twenty-four 24] inches [(24")] in length.

C. Length is measured in a straight line from tip of nose to tip of tail.

§ 6. Creel limit:

A possession limit of five [(5)] striped bass per person per day is imposed on all hook-and-line fishermen taking striped bass from the tidal waters of Virginia during the open season, June 1 to November 30, inclusive.

§ 7. Penalty:

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class I misdemeanor.

/s/ William A. Pruitt, Commissioner

Date: July 9, 1985

* * * * *

NOTE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purposes of promulgating regulations. The regulations printed below are

Final Regulations

voluntarily published by the Marine Resources Commission for the public's benefit and for informational purposes only.

Title of Regulations: VR 450-01-8505. Extension of Public Relaying Season.

Statutory Authority: § 28.1-179 (4c) of the Code of Virginia.

Effective Date: August 1, 1985.

VR 450-01-8505. Extension of Public Relaying Season.

PREAMBLE:

The following order of the Virginia Marine Resources Commission extends the season for relaying shellfish from condemned public shellfish grounds for cleansing. The season is extended through August 30, 1985.

§ 1. Authority and effective date.

A. This order is promulgated pursuant to authority contained in § 28.1-179 (4c) of the Code of Virginia.

B. The effective date of this order is August 1, 1985.

§ 2. Purpose.

The purpose of this order is to extend the season for the relaying of shellfish from the condemned public grounds for cleansing.

§ 3. Season extension.

The season for the relaying of shellfish from condemned public grounds shall be extended through Friday, August 30, 1985.

§ 4. Expiration date.

This order shall terminate August 31, 1985.

/s/ William A. Pruitt, Commissioner

Date: July 23, 1985

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.14:9.1 of the Code of Virginia)

Title of Regulation: Rules and Regulations of the Board for Contractors (VR 220-01-2).

Agency: State Board for Contractors

Comments:

No objections to the proposed regulations as presented.

/s/ Charles S. Robb
Date: July 16, 1985

* * * * *

Title of Regulation: Management Requirements for Job Training Partnership Act Programs and Activities (VR 350-01-2).

Agency: Governor's Employment and Training Department

Comments:

I have no objections to the proposed regulations as presented.

/s/ Charles S. Robb
Date: July 24, 1985

* * * * *

Title of Regulation: Earned Income Disregards/Student Earnings in the Aid to Dependent Children (ADC) Program (VR 615-01-1).

Agency: Department of Social Services, Division of Benefit Programs

Comments:

I have no objections to the proposed regulations. I approve the proposed changed cost factor pursuant to § 4-5.05, Chapter 619, Acts of Assembly, which will result from its adoption.

/s/ Charles S. Robb
Date: July 29, 1985

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

NOTICES OF INTENDED REGULATORY ACTION

BOARD OF EDUCATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **"Physical Qualifications For School Bus Drivers.** The purposes of the proposed amendments are to update and expand the current regulations to prescribe the scope of the physical examinations as required in the Code of Virginia; responding to requests from several school divisions and a recent recommendation of the National Transportation Safety Board.

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

Written comments may be submitted until August 30, 1985.

CONTACT: R. A. Bynum, Associate Director, Pupil Transportation Service, Department of Education, P. O. Box 6Q, Richmond, Va. 23216, telephone (804) 225-2037.

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DEPARTMENT OF GENERAL SERVICES

Division of Consolidated Laboratory Services

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of General Services, Division of Consolidated Laboratory Services intends to consider amending regulations entitled: **Regulations for Breath Alcohol Testing.** The proposed amendments will prescribe methods for the determination of alcohol content in the blood by chemical analyses of the breath of a person arrested or detained for suspicion of driving a motor vehicle while under the influence of alcohol; to establish procedures for licensing of persons to perform such analyses; and, to establish criteria for approval of breath test instruments.

Statutory Authority: §§ 18.2-267 and 18.2-268 of the Code

of Virginia.

Written comments may be submitted until September 3, 1985, to Dr. Paul Ferrara, Department of General Services, Division of Consolidated Laboratory Services, 1 North 14th Street, Richmond, Virginia 23219.

CONTACT: Peter Marone, Breath Alcohol Test Coordinator, Department of General Services, Division of Consolidated Laboratory Services, 1 N. 14th St., Richmond, Va. 23219, telephone (804) 225-3192.

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DEPARTMENT OF HEALTH

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need.** The purpose of the proposed amendment is to amend the capital expenditure limits for COPN projects, not to include expenditures for major medical equipment.

Statutory Authority: § 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until September 2, 1985.

CONTACT: Marilyn West, Director, Resources Development, James Madison Bldg., Room 1005, Richmond, Va. 23219, telephone (804) 786-7463.

* * * * *

DEPARTMENT OF HEALTH REGULATORY BOARDS

Virginia Board of Dentistry

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Health Regulatory Boards, Virginia Board of Dentistry, intends to consider amending regulations entitled: **Rules and Regulations Governing the Practice of Dentistry and**

Dental Hygiene. The purposes of the proposed amendments are to regulate the practice of dentistry and dental hygiene.

Statutory Authority: § 54-163 of the Code of Virginia.

Written comments may be submitted until September 11, 1985.

CONTACT: Nancy T. Feldman, Executive Director, 517 W. Grace St., Richmond, Va. 23220, telephone (804) 786-0311.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **Uniform Statewide Building Code.** The proposed regulations will prohibit the use of 50/50 lead solder or lead-containing fluxes in plumbing that supplies drinking water in buildings, as proposed by the state health commissioner based on a study that showed a significant number of instances of lead levels exceeding the present standard. The state health commissioner's report is available for inspection at the address below.

Statutory Authority: § 36-98 of the Code of Virginia.

Written comments may be submitted until September 16, 1985.

CONTACT: C. S. Mullen, Deputy Director, Department of Housing and Community Development, 205 N. 4th St., 4th Floor, Richmond, Va. 23219, telephone (804) 786-4751.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **Urban Enterprise Zone Program Regulations.** The purpose of the proposed regulations is to bring the Urban Enterprise Zone Program Regulations in line with the 1985 amendments to the Code of Virginia.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Written comments may be submitted until September 16, 1985, to Neal J. Barber, Acting Director, Department of Housing and Community Development, 205 N. 4th St., Richmond, Virginia 23219.

CONTACT: Stanley S. Kidwell, Jr., Associate Director,

Virginia Department of Housing and Community Development, 205 N. 4th St., Richmond, Va. 23219, telephone (804) 786-4966.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Medical Assistance Services intends to consider amending regulations entitled: **Inpatient Hospital Reimbursement Rates.** The purpose of the proposed amendments is to establish the methods by which the agency determines reimbursement rates for inpatient hospitals.

Statutory Authority: §§ 32.1 - 32.5 of the Code of Virginia.

Written comments may be submitted until August 30, 1985.

CONTACT: Ray T. Sorrell, Director, Department of Medical Assistance Services, 109 Governor St., 8th Floor, Richmond, Va. 23219, telephone (804) 786-7933.

DEPARTMENT OF TAXATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **Virginia Individual Income Tax - VR 630-2-325: Taxable Income of Nonresidents; VR 630-2-332: Credit for Income Taxes Paid Another State.** The purpose of the proposed amendments is to conform to the change made by the 1985 General Assembly to § 58.1-332 of the Code of Virginia (Chapter 466, Senate Bill 651). This code section was amended to provide an individual income tax credit to individual shareholders of a S corporation which has paid corporation income tax to a state which does not recognize the federal S election.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until September 9, 1985.

CONTACT: Danny M. Payne, Director, Tax Policy Division, Virginia Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 257-8010.

General Notices/Errata

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-10-3, Virginia Retail Sales and Use Tax Regulations: Advertising.** The purpose of the proposed regulations is to reflect the 1985 legislative changes concerning the application of the Virginia Retail Sales and Use Tax to advertising, and any other changes necessary to clarify the regulations. An informal meeting with interested persons will be held on August 28, 1985.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 26, 1985.

CONTACT: Danny M. Payne, Director, Tax Policy Division, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 257-8011.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-10-86, Virginia Retail Sales and Use Tax Regulations: Printing.** The purpose of the revised regulations will be to incorporate a 1985 legislative change relating to the printing of certain materials for use outside the state and to make other changes as needed to clarify or improve the existing regulation. See meeting notice in the Calendar of Events section in this edition of The Virginia Register.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 27, 1985.

CONTACT: Danny M. Payne, Director, Tax Policy Division, Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 257-8010.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to promulgate regulations entitled: **VR 630-28-796.25, Virginia Cattle Tax.** The purpose of the proposed regulations is to reflect the 1985 legislative changes concerning the transfer of authority for collecting and recording the Virginia Cattle Tax from the Virginia Cattle Industry Commission to the Department of Taxation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 23, 1985.

CONTACT: Danny M. Payne, Director, Tax Policy Division,

Department of Taxation, P. O. Box 6-L, Richmond, Va. 23282, telephone (804) 257-8010.

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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: **Water Quality Standards, § 1.10 B2 - Mercury in Freshwater.** The purpose of the proposed amendments is to amend the agency's water quality standard for mercury to require reporting levels of mercury in edible fish tissue in freshwater as methyl rather than total mercury in order to comply with the Food and Drug Administration changes in the basis of mercury action level.

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

Written comments may be submitted until September 4, 1985.

CONTACT: Jean W. Gregory, Water Resource Ecology Supervisor, State Water Control Board, P. O. Box 11143, Richmond, Va. 23230, telephone (804) 257-6985.

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GENERAL NOTICES

NOTICE TO THE PUBLIC

Third Annual Conference on Ethics and Health Care

ACCESS TO HEALTH CARE IN THE 1980's:
ETHICAL AND LEGISLATIVE DIMENSIONS

Friday, October 18, 1985
John Marshall Hotel
Richmond, Virginia

FEES: Conference and Coffee Breaks - \$30.
Conference, Coffee Breaks and Luncheon - \$45.

- 8:00-8:45 Registration
8:45-9:00 Welcome and Introductions
9:00-9:30 Access, Indigent Care and Reimbursement Today
Gail R. Wilensky
Vice President
Domestic Affairs
Project HOPE
9:30-10:15 The Ethical Considerations of Marketplace
Health Care
Tom Beauchamp
Professor of Philosophy
Georgetown University
10:15-10:30 Break
10:30-11:15 Provider Behavior in the Past and the Future
Alain C. Enthoven
Professor of Public and Private Management
Stanford University
11:15-12:00 Panel Discussion and Questions
12:00-1:30 Lunch
1:30-2:00 The Federal Role in Access to Care
Stephen Long
Deputy Assistant Director for
Health and Income Security
Congressional Budget Office
U.S. Congress
2:00-2:30 Access, Indigent Care and Reimbursement in
Virginia Today
Joseph Fisher, Secretary
Human Resources, Virginia
2:30-3:15 A Summary of Legislative Approaches in Other
States
Daniel Borque
Executive Director
National Committee for
Quality Health Care
3:15-3:30 Break
3:30-4:15 The South Carolina Approach
South Carolina State Legislator or
State Policy Maker
4:15-5:00 Afternoon Presenters and Reactor Panel of
Nominees From Each Sponsoring Organization

Sponsors:

Department of Health Administration, MCV/VCU;
Health Policy Office, MCV Campus;
Committee on Ethics in Health, MCV Campus;

Participating Organizations:

Virginia Hospital Association;
Richmond Academy of Medicine;
Department of Philosophy and Religious Studies,
VCU Campus;
Virginia Department of Health;
Virginia Health Care Association;
Virginia Nurses Association;
Richmond Business - Medical Coalition on Health;
Blue Cross and Blue Shield of Virginia
Medical Society of Virginia

Contact: Judy Collins, Vice President's Office, MCV/VCU,
Richmond, Va., telephone (804) 786-9770

NOTICE TO STATE AGENCIES

Re: Forms for filing material on dates for publication in
The Virginia Register of Regulations.

All agencies are required to use the appropriate forms
when furnishing material and dates for publication in The
Virginia Register of Regulations. The forms are supplied
by the office of the Registrar of Regulations. If you do not
have any forms or you need additional forms, please
contact: Ann M. Brown, Assistant Registrar of Regulations,
Virginia Code Commission, P. O. Box 3-AG, Richmond, Va.
23208, telephone (804) 786-3591.

FORMS:

Proposed (Transmittal Sheet) RR01
Final (Transmittal Sheet) RR02
Notice of Meeting RR03
Notice of Intended Regulatory Action RR04
Notice of Comment Period RR05
Agency Response to Legislative
or Gubernatorial Objections RR06

NOTICE TO STATE AGENCIES

A list of major meetings of various trade associations and
organizations is maintained in the office of the Registrar
of Regulations. Upon request, this list will be made
available to you in order that you can avoid conflicts
when setting up meetings and hearings.

General Notices/Errata

NOTICE TO TRADE ASSOCIATIONS AND ORGANIZATIONS

The 1985-1986 listing of major meetings of certain organizations and associations is being updated. If you would like your organization's annual or semi-annual meeting listed, please advise the office of the Registrar of Regulations, Virginia Code Commission, P. O. Box 3-AG, Richmond, Virginia 23208, telephone (804) 786-3591.

CALENDAR OF EVENTS

Symbol Key †

† Indicates entries since last publication of the Virginia Register

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.

THE VIRGINIA CODE COMMISSION

EXECUTIVE

VIRGINIA DEPARTMENT FOR THE AGING

September 24, 1985 - 1:30 p.m. – Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Department for the Aging intends to repeal regulations entitled: **Regulations Concerning Area Plans for Aging Services.**

STATEMENT

Description: The regulations (i) set forth methods for designating planning and service areas and area agencies on aging in Virginia, (ii) describes the process of allocating funds among the planning and service areas, and (iii) provides guidance to the area agencies on aging in the development and implementation of their area plans for aging services.

Subject, Substance, Issues, Basis, and Purpose: The Virginia Department for the Aging is taking this action because some sections of the regulations are outdated and other sections duplicate provisions in the State Plan for Aging Services approved by the Governor.

Statutory Authority: § 2.1-373(7) of the Code of Virginia.

Written comment may be submitted until September 27, 1985.

Contact: Betty J. Reams, Assistant Commissioner, Virginia Department for the Aging, 101 N. 14th St., 18th Floor, Richmond, Va. 23219, telephone (804) 225-2271

VIRGINIA AGRICULTURAL FOUNDATION

August 26, 1985 - 9 a.m. – Open Meeting
Holiday Inn - Airport, 5203 Williamsburg Road, Sandston, Virginia

A regular business meeting.

Contact: Henry H. Budd, P. O. Box 1163, Richmond, Va. 23209, telephone (804) 786-3506

STATE AIR POLLUTION CONTROL BOARD

† **August 20, 1985 - 7:30 p.m. – Open Meeting**
Town Hall, Saltville, Virginia. (Location accessible to handicapped; interpreter for deaf provided if requested.)

A meeting to consider an application from the U.S. Gypsum Co., Route 1, Saltville, Virginia 24370, to install produce stucco and land plaster.

Contact: Michael D. Overstreet, Director, South Western Virginia Interstate Air Pollution Control Region, State Air Pollution Control Board, 121 Russell Rd., Abingdon, Va. 24210, telephone (703) 628-7841

October 7, 1985 - 9 a.m. – Open Meeting
Holiday Inn on the Ocean, 39th Street and Oceanfront, Virginia Beach, Virginia

A regular business meeting of the board.

Contact: Dick Stone, State Air Pollution Control Board, Ninth Street Office Bldg., Room 801, Richmond, Va. 23219, telephone (804) 786-5478

ALCOHOLIC BEVERAGE CONTROL COMMISSION

August 27, 1985 - 9:30 a.m. – Open Meeting
September 10, 1985 - 9:30 a.m. – Open Meeting
September 24, 1985 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia. (Location accessible to handicapped.)

The commission will meet to receive and discuss reports on activities from staff members. They will

Calendar of Events

consider other matters not yet determined.

Contact: Larry E. Gilman, 2901 Hermitage Rd., Richmond, Va. 23220, telephone (804) 257-0616

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

† October 22, 1985 - 10 a.m. - Public Hearing
2901 Hermitage Road, 1st Floor Hearing Room, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Department of Alcoholic Beverage Control intends to amend, rescind and adopt rules and regulations concerning the possession, sale, distribution and consumption of alcoholic beverages. For the purpose of clarity, these proposed regulations are being reorganized and renumbered to conform to the Administrative Process Act. The proposed amendments will affect the following seven categories:

Procedural Rules for the Conduct of Hearings Before the Commission and its Hearing Officers and the Adoption or Amendment of Regulations (VR 125-01-1);

Advertising (VR 125-01-2);

Tied-House (VR 125-01-3);

Requirements for Product Approval (VR 125-01-4);

Retail Operators (VR 125-01-5);

Manufacturers and Wholesalers Operations (VR 125-01-6);

Other Provisions (VR 125-01-7).

* * * * *

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.

PART I. Hearings Before Hearing Officers.

Summary: Six sections of these procedural rules are amended by these proposals. The amendment proposed which will add a new § 1-15 entitled Consent Settlement will be addressed separately. The first five amendments in this part clarify some of the procedural provisions.

Basis: These amendments are proposed under the authority contained in §§ 4-7 and 4-11 of the Code of Virginia.

Purpose: The amendment to § 1.1 is the addition of some language to clarify that the hearing officer may proceed in the absence of an appearance by an interested party.

The amendment to § 1.5 clarifies that a person who wishes to complain against the continuation of a license should put the grounds for such complaint in writing. The amendment to § 1.6 is to clarify the language with no substantive change. The amendment to § 1.7 E clarifies the language to make it clear that the hearing officer has authority to immediately implement his decision regarding either the issuance of a license or the surrender of a license. The amendment to § 1.17 adds the word "certified" to ensure a transcript is certified by the hearing reporter.

Issues: These are procedural rules and the only issue was whether clarity was needed.

§ 1-15. Consent Settlement.

Basis: This new rule is proposed under the authority contained in §§ 4-7 and 4-11 of the Code of Virginia.

Purpose: The new rule is proposed to provide another means for the board to expedite the hearing process and to settle cases which are not of such a serious nature that a hearing must be held in order to protect the public interest.

Issues: Does the board need a procedure whereby it initiates a settlement of a case?

Substance: The board is of the opinion that many cases are appropriate for settlement. Such cases are mainly technical ones, for example, a charge that a licensee kept inaccurate records or submitted a bad check in payment for alcoholic beverages. In some of these cases the licensees, through ignorance of our rules, may not make an offer in compromise but may come to a hearing instead which involves considerable time and trouble for both the licensee and the staff of the board. This procedure will allow the board to initiate a consent settlement thereby avoiding the hearing process. This should speed up the overall hearing process by allowing more time for more serious cases to be heard. The offer of consent settlement would be mailed by the chief hearing officer to the licensee along with a notice of the violation. The consent settlement would not be negotiable. The licensee would either accept it or reject it and go to a hearing. The rule also provides that an unaccepted consent settlement would not become part of the record until after completion of the hearing process.

PART II. Hearings Before the Board.

§§ 2-1 and 2-11.

Basis: The amendments are proposed under the authority contained in §§ 4-7 and 4-11 of the Code of Virginia.

Purpose: To amend § 2.1 to clarify that an interested party may waive further hearing proceedings when he submits written exceptions to the hearing officer's decision

and have the board decide on those written exceptions. The other amendment to this section clarifies that if an interested party fails to appear at the hearing the board may proceed in his absence and render a decision. Section 2-11 is amended to clarify that the request for a rehearing or reconsideration should contain a full and clear statement of the facts pertaining to the request, the grounds therefor, and a statement of the relief desired.

Issues: The only issue with these amendments was whether to clarify the rules.

Substance: See Purpose.

PART III.
Wine and Beer Franchise Acts.

Basis: These amendments are proposed under the authority contained in §§ 4-7 and 4-11 of the Code of Virginia.

Purpose: These amendments add provisions for wine to these procedural rules to comply with the enactment of the Wine Franchise Act at the 1985 session of the legislature. Previously, this part applied only to proceedings under the Beer Franchise Act, but technical amendments had to be made to include the Wine Franchise Act.

Issues: These changes are mandated by the statutory enactment.

Substance: See Purpose.

PART IV.
Telephone Hearings.

Basis: This rule is proposed under the authority contained in §§ 4-7 and 4-11 of the Code of Virginia.

Purpose: This new rule is proposed to expedite the hearing processes and to save time and expense to the board, and parties to the hearings.

Issues: Can parties to a hearing by telephone receive a full and fair hearing?

Substance: In its continuing efforts to expedite the hearing process and save time, trouble and expense for itself and the parties to a hearing, the board has experimented with telephone hearings. Of course, the hearings are purely voluntary and parties to the hearings have an option as to whether to conduct their hearing by telephone. There have been no significant problems and the board proposes these rules to explain to all concerned how a telephone hearing can be obtained and would be conducted. The rules are very simple and straightforward.

* * * * *

Title of Regulation: VR 125-01-2. Advertising.

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

Basis: This regulation is proposed under the authority contained in §§ 4-7, 4-11, 4-69, 4-98.10, 4-98.14 and 4-103 of the Code of Virginia.

Purpose: To allow prominent living people to appear in alcoholic beverage advertising.

Impact: The issue is: Does the appearance of prominent living people in advertising influence consumers to purchase an alcoholic beverage they otherwise would not, or influence impressionable young people to drink?

Substance: The answers to the above questions are subjective and some people would answer "yes" and "no". However, many people are of the opinion that Virginia should not prohibit such advertising because the federal government doesn't, and advertising on television and in magazines which is distributed nationwide including Virginia has prominent living people in it. Therefore, the argument is that nothing is accomplished by prohibiting Virginia radio and television stations and Virginia newspapers and magazines from using such advertising.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-60, 4-69, 4-69.2, 4-98.10 and 4-98.14 of the Code of Virginia.

Purpose: The amendment would permit programs regarding responsible drinking or moderation in drinking to be advertised inside retail establishments under certain conditions.

Issues: Does the benefit of advertising responsible drinking, and moderation in drinking programs, outweigh the possible harm of references to manufacturers of alcoholic beverages?

Substance: Several manufacturers of alcoholic beverages have begun to conduct advertising programs with the message being moderation or drinking responsibly. These programs, of course, contain references to the manufacturer and such references are currently prohibited under the provisions of this section inside retail places. This amendment would allow such programs with the primary restriction being that no more than minor references to the name of the alcoholic beverage manufacturer or its logo could be contained on the materials. Further, the materials are limited to posters of reasonable size and table tents and must be approved in advance by the board.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-69, 4-98.10 and 4-98.14 of the Code of Virginia.

Calendar of Events

Purpose: The amendment is to allow the terms "liquor" and "spirits" to be used because there have been numerous requests for such and the board is of the view that those two words are commonly used to refer to distilled spirits and sees no harm to the public in allowing them to be used. The prohibition against the term "happy hour" appearing on the exterior of licensed places is done in conjunction with the adoption of the regulation on happy hours. See VR 125.01-5 § 16 for explanations of that regulation.

Issues: The issue is: Are the two permitted terms similar to those prohibited, i.e., "bar" "saloon" or "speakeasy"?

Substance: See Purpose.

§ 4. Advertising; Newspapers, Magazines, Radio, Telephone; Trade Publications, etc.

Statement: The proposed amendments to VR 125.01-2 § 4, formerly § 63 accomplish the exact same things in this section as were accomplished in VR 125.01-2 § 3. Please see the notice for that section which is applicable to this proposal.

§ 6. Advertising; Novelties and Specialties.

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-69, 4-98.10 and 4-98.14 of the Code of Virginia.

Purpose: The amendment recognizes that \$1 in wholesale value does not allow very many novelty and specialty items to be given away. The \$2 limit is considered to be one which allows a reasonable amount of such items to be given away, but prohibits the expensive ones which may be an inducement to purchase alcoholic beverages.

Issues: The only issue is: Is \$1 a reasonable limit on the value of such items?

Substance: See Purpose.

§ 9. Advertising; Coupons.

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-69, 4-98.10, 4-98.14 and 4-103 of the Code of Virginia.

Purpose: The amendment is proposed to allow wine wholesalers to put coupons on bottles of wine at their premises.

Issues: Should wine wholesalers be permitted to place refund coupons on containers of wine for retailers?

Substance: Currently, the only way that refund coupons may be on a bottle of wine is if the winery put them on at the winery premises. It is considerable trouble for wine wholesalers to open cases and put coupons on bottles of wine at their premises, however, some wholesalers have

expressed a need to do so under certain circumstances. For example, it may be impractical for a winery to put coupons on the part of a particular product designated for a particular state thereby making a coupon promotion impossible in Virginia. However, if wine wholesalers could receive a shipment of coupons and put them on the bottles, then the promotion could be run in Virginia and consumers could benefit from the reduced price.

§ 10. Advertising; Sponsorship of Public Events; Restrictions and Conditions.

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11 and 4-69 of the Code of Virginia.

Purpose: The purpose of the amendments is to make it easier for charitable organizations to provide point-of-sale materials to retail licenses and to prohibit wholesalers from having to pay for events which they may not sponsor or to gain advertising value from the sponsorship of such an event.

Issues: The issues are:

1. Should it be easier for charities to furnish point-of-sale advertising materials to retailers?

2. Should wholesalers have to pay for events they may not sponsor or obtain advertising value from such an event?

Substance: The first amendment simply provides that a wholesale licensee can obtain point-of-sale material relating to charitable events directly from the supplier thereof rather than requiring the charity to obtain the materials from the supplier and deliver them to the wholesaler. This saves the charity considerable trouble. The second amendment will make it clear that wholesalers may not donate money to a charitable organization which will be used to sponsor a public event. The third amendment will make it clear that no wholesaler may obtain advertising value from the sponsorship of a public event. The latter two amendments represent existing interpretations and these amendments clarify the issue.

* * * * *

Title of Regulation: VR 125.01-3. Tied-House.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-22.1, 4-33, 4-37, 4-79, 4-103 and 4-115 of the Code of Virginia.

Purpose: The purpose of the amendment is to allow wholesalers to restock wine and beer for a retailer at any time, except Sunday, not just at the time of sale or delivery; to allow wholesalers to build displays using the wine or beer only and to incorporate the provisions of former § 35 of the regulations concerning exchange of

products into this section with changes which liberalize the rules concerning exchanging beer for retailers.

Issues: The issues are:

1. Should a wholesaler be permitted to restock a retailer's shelves at any time?
2. Should a wholesalers be permitted to build displays for a retailer?
3. Should wholesalers be allowed to exchange beer on an identical quantity, brand and package basis, because it has been on the retailer's shelf too long?

Substance: The amendments in subsection A. simply allow a wholesaler to restock shelves at any time, except Sunday, and to build displays of wine and beer. Currently, wholesalers may only restock at the time a sale or delivery takes place and may not build displays. This is deregulation.

The amendments relating to exchange of product are also deregulation. Currently, a wholesaler may not replace beer because it has been on the shelf too long. Brewers and wholesalers are concerned that beer may develop an "off taste" if it is allowed to stay on the shelf too long. This proposal allows wholesalers to replace beer on an identical quantity, brand and package basis with no time restrictions, if the beer is on the shelves too long.

The other amendments in subsection B. 3 incorporate the provisions of current § 35 which basically set forth the other conditions under which a refund or replacement may be made. The provisions are the same as in § 35 except the time limits of 30 days for erroneous delivery and 90 days for defective merchandise have been removed.

This amendment also makes it clear that wholesalers are not to make a sale with the privilege of return.

The definitions section is deleted because the terms defined are no longer in the regulation.

§ 35. Replacement, Refunds and Adjustments; Exceptions.

Statement: The Board proposes to rescind § 35 in its entirety and transfer its basic provisions to a section which was formerly § 34 and in now VR 125.01-3 § 2. Please see the explanation of the amendments to that section which cover the reasons for the rescission.

§ 9. Inducement to retailers; tapping equipment; bottle or can openers; banquet licensees; cut case cards.

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-69.1, 4-79 and 4-98.14 of the Code of Virginia.

Purpose: To adjust for inflation and to allow a larger

number openers to be given and to inform retailers.

Issues: The issue is: Is the current limitation too restrictive?

Substance: The current limitation is a cumulative value of 50¢ per calendar year for all openers. This amendment would allow an unlimited number of openers as long as each one has a wholesale value less the \$1. The other amendment simply puts in the regulation what is stated in the law to ensure that all retailers know they are just as guilty as the wholesaler if they consent to something being furnished to them which is prohibited by this regulation.

§ 10. Routine Business Entertainment; Definition; Permitted Activities; Conditions.

Basis: This regulation is proposed under the authority contained in §§ 4-7(1), 4-11, 4-79, 4-98.14 and 4-103 of the Code of Virginia.

Purpose: This proposal is made to comply with the statutory mandate to provide guidance to those affected. The regulations will inform them what they may and may not do with respect to entertaining retail licensees.

Issues: The issues are as follows:

1. How is routine business entertainment defined? In other words, what activities are permitted as routine business activities?
2. What limits shall be place on the permitted activities?

Substance: § 4-79 of the Code of Virginia, generally prohibits manufacturers and wholesalers of alcoholic beverages from furnishing anything of value, including services, to retailers. The statute has always been interpreted to prohibit manufacturers and wholesalers from entertaining retailers. The legislature created an exception to the general rule, but intended for the Alcoholic Beverage Control Board to place limits on such entertainment.

This proposal limits entertainment which may be furnished to retailers by wholesalers to five activities:

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

The proposal incorporates the statutory guidance in subsections C. 1, 2 and 3. This guidance is that the entertainment should not engendered an obligation on the part of the retailer; wholesaler personnel must accompany the retailer during the activity and no property or other

Calendar of Events

thing of value may be furnished to a retailer.

Entertainment involving overnight stay is prohibited in subsection C.4 because it would involve greater cost and yield greater inducement.

C.5 makes it clear that manufacturers may not furnish entertainment because the statute only permits wholesalers to do so.

C.6 places a limit of \$100 per 24-hour period which may be spent on the specified person. \$100 was used because all five permitted events could reasonably be engaged in for that figure in the highest cost area of the state.

C.7 places a limit on four entertainment activities per person per year which is deemed to be a reasonable number of times.

C.8 requires records to be kept to allow the agents of the board to monitor this activity. The records are a minor burden and are necessary for enforcement purposes.

C.9 exempts retailers who are personal friends of a wholesaler from the restrictions.

* * * * *

Title of Regulation: VR 125-01-4. Requirements for Product Approval.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, and 4-11 of the Code of Virginia.

Purpose: This amendment is proposed to eliminate a burden and expense for persons who wish to obtain approval of certain wines for sale in Virginia.

Issues: Should all wine be required to be analyzed by the state laboratory or in lieu thereof a certification, acceptable to the board, from an analysis done by another laboratory be required to be furnished? In particular, is the requirement necessary for wine which is rare or expensive?

Substance: The amendment gives the board discretion to exempt a wine from the analysis or certification requirement for good cause shown. Good cause is defined to include, but not be limited to, rare wine. It is envisioned that only a small part of all wine sold in Virginia will be exempt and only when there is no reason to believe the wine is otherwise than what the label says it is.

* * * * *

Title of Regulation: VR 125.01-5. Retail Operators.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-37, 4-62, 4-103 and 4-112 of the Code of Virginia.

Purpose: This amendment incorporates statutory language.

Issues: The issues on the question of a legal drinking age are many, all of which were addressed by the legislature.

Substance: As of July 1, 1985, only those people who attained the age of 19 years by July 1, 1985, and those who are 21 years of age, may legally purchase and consume beer and 3.2 beverages.

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

Basis: This amendment is proposed under the authority contained in §§ 4-7, 4-11, 4-98.2, 4-98.10, 4-98.11 and 4-98.14 of the Code of Virginia.

Purpose: To allow a hotel which holds a mixed beverage license to put miniatures of distilled spirits in bedrooms and sell them to persons in attendance at a private function. A miniature contains 50 milliliters, approximately two ounces, and is not currently permitted to be sold in Virginia except by carrier licensees such as airlines.

Issues: Does the convenience to hotel patrons outweigh the slight risk that distilled spirits will be obtained by intoxicated persons or those below the age of 21?

Substance: Several hotel licensees desire to put miniatures of distilled spirits in the rooms in locked storage facilities as a convenience to guests. This is now permitted for all sizes of distilled containers larger than a miniature, but is prohibited for them because no one is permitted to sell miniatures. The board is of the view that the hotel licensees can control this and prevent those not entitled to consume from obtaining the miniatures.

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

Basis: This regulation is proposed under the authority of §§ 4-7, 4-11, 4-98.14 and 4-103 of the Code of Virginia.

Purpose: The regulation is proposed to restrict practices engaged in on retail premises which may lead to accidents on highways and disturbances of the peace.

Issues: The issues are:

1. Should happy hours be prohibited during late evening hours?

2. Should advertising of happy hours be allowed?

3. Should other practices which tend to encourage consumption, such as, "all you can drink for a set price," be limited?

Substance: The proposed regulation defines "happy hour" and "drink" in subsection A. These definitions are simply the common understanding of those terms. The proposal prohibits happy hours after 9 p.m. each day in subsection B.1 because excessive consumption late at night, beyond the normal meal time, is believed to be more likely to cause intoxication.

Subsection B.2 prohibits a consumer from stacking up inexpensive drinks right before the happy hour period ends.

Subsections B. 3 and 4 prohibit the selling of multiple drinks for one price and also the serving of a "double" drink for the single price, both of which practices are considered to encourage consumption to excess.

Subsection B.5 prohibits the sale of pitchers of mixed beverages which is already prohibited through interpretation and this proposal makes it clear.

Subsections B. 6 and 7 prohibit free drinks and all you drink for a set price which are already prohibited now through interpretation and this makes it clear.

Subsection B.8 prohibits advertising of happy hour in the media and on the exterior of licensed places. This doesn't prevent offering a consumer a reduced price if he wants to consume alcoholic beverages, but helps prevent him from being induced to consume because of the low price.

The regulation exempts private functions on retail premises from these restrictions because it would impose too great a burden on retail licensees to prevent these practices in such a situation.

The ad hoc advisory panel formed pursuant to our Public Participation Guidelines recommended the major restrictions provided for in this proposal.

* * * * *

Title of Regulation: VR 125.01-6. **Manufacturers and Wholesalers Operations.**

§ 2. Wines: Purchase Orders Generally; Wholesale Wine Distributors.

Basis: These amendments are proposed under the authority contained in §§ 4-7, 4-11, 4-22.1 and 4-84 of the Code of Virginia.

Purpose: The purpose of the amendment in subsection B.2 is to put in the regulations a requirement that has long

been complied with by wine wholesalers, but has not been in the regulations. The purpose of the amendment in subsection B.6 is to clarify when a report is due. It is no longer required to be received by the board by the 15th, only postmarked by the 15th, or the next business day.

Issues: The issues are:

- 1. Should the requirement to furnish invoices be added to the regulations?
- 2. Should the time the report is due be clarified?

Substance: Wine wholesalers are required to submit a monthly report showing purchases and sales and the amount of taxes collected and to accompany the report with the payment for such taxes. They are allowed to subtract from the wine taxes due each month, the amount of tax-exempt sales such as to the military or out-of-state. The invoices of such sales are the proof that the sale was exempt and without the invoice the board can't exempt the wholesaler from payment of tax. Therefore, the wholesalers have always furnished the invoices to the board and this amendment simply makes it official.

The second amendment clarifies, for the benefit of the wine wholesaler, when the report is due and should eliminate any confusion.

* * * * *

Title of Regulation: VR 125.01-7. **Other Provisions.**

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

Basis: The amendments are proposed under the authority contained in §§ 4-7, 4-11, 4-25.1 and 4-27 of the Code of Virginia.

Purpose: The amendments are proposed to delete the exemption from markup for cider made by farm winery licensees and to raise the legal age for purchase and consumption of cider to 21.

Issues: None, because the amendments are made pursuant to a U. S. Supreme Court decision and a statutory change.

Substance: The U. S. Supreme Court in the Bacchus case ruled that a statute which gives favorable tax treatment to an in-state alcoholic beverage product is unconstitutional. Accordingly, the board cannot discriminate in favor of cider made in Virginia and this amendment simply deletes the discriminatory language.

The second amendment complies with the recent statutory change and raises the legal age for cider to 21 years. Absent a change to § 4-27 of the Code of Virginia, which deals with cider, the board has no authority to provide for those who attain the age of 19 years by July 1, 1985, to purchase and consume cider.

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§ 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

Basis: These proposals are made under the authority contained in §§ 4-7, 4-11, 4-44, 4-98.6, 4-98.7, 4-98.14, 4-103 and 4-111 of the Code of Virginia.

Purpose: The first proposal is made to conform the regulation to § 58.1-709 of the Code of Virginia, to increase the required time records must be maintained on beer to three years. The second proposal is simply to inform all licensees that microfilm or other modern record keeping methods may be used. The third proposal is to make clear the original intent of the board, that the only exemption from reporting changes in ownership is a change in stock ownership of a company where stock is publicly traded.

Issues: There are no significant issues as the proposals are merely housekeeping.

Substance: See Purpose.

§ 13. Special mixed beverages licenses; locations; special privileges; taxes on licenses.

Basis: This amendment is proposed under the authority contained in §§ 4-98.2, 4-98.14 and 7.1-21.1 of the Code of Virginia.

Purpose: To conform the section to changes made last year in another section. Those changes eliminated the restrictions on table sizes and number of tables making this language unnecessary.

Issues: None - This is housekeeping.

Substance: See Purpose.

§ 15. Wholesale beer and beverage sales; discounts, price-fixing; price increases; price discrimination; retailers.

Basis: These amendments are proposed under the authority contained in §§ 4-7, 4-11, 4-103, 4-118.12, 4-118.12-1, 4-118.15, 4-118.32, 4-118.33 and 4-118.35 of the Code of Virginia.

Purpose: One amendment is required by the Wine Franchise Act and makes the regulation cover wine as well as beer. The other amendment clarifies statutory language which says manufacturers of wine and beer may discriminate in price only on reasonable grounds and defines those grounds as the same ones already provided in the regulation for wholesalers to discriminate among retail licensees.

Issues: The only issue is: Should there be different grounds for discrimination by manufacturers than there are for wholesalers?

Substance: One amendment is required by statute and

there appears to be no rational basis to set up different grounds of discrimination. Thus, this latter amendment only clarifies the current interpretation.

§ 16. Alcoholic Beverage Control Commission.

Summary: To change the name of the Alcoholic Beverage Control Commission to the Alcoholic Beverage Control Board to comply with the legislative enactment of a standard nomenclature system which provides for all permanent collegial bodies such as the governing body of the Department of Alcoholic Beverage Control to be called a "Board."

Basis: This amendment is proposed under the authority contained in §§ 4-3 and 4-6.1 of the Code of Virginia.

Purpose: See Summary.

Issues: None

Substance: See Summary.

§ 17. Farm Wineries; Percentage of Virginia Products; Other Agricultural Products; Remote Outlets.

Basis: This regulation is proposed under the authority contained in §§ 4-2 (10a), 4-7, 4-11 and 4-25.1 of the Code of Virginia.

Purpose: This regulation is proposed to clarify several points in the basic statutes by incorporating several positions previously taken on this subject.

Issues: The issues requiring clarity are:

1. The statute limits grapes or other agricultural products obtained from outside Virginia to 25%, but it doesn't inform those affected whether the limitation applies to each brand of wine produced or to total production.
2. The statute provides that the 25% limitation applies to fruits, fruit juices "or other agricultural products," but doesn't indicate if wine is included in the term. In other words, can wine be obtained from outside Virginia and be blended with the other wine?
3. The statute provides for a retail outlet at the winery and one additional retail outlet within a reasonable distance, but doesn't specify if the additional, remote outlet must be permanent.

Substance: The proposed regulation provides that the 25% limitation applies to the total production of the farm winery because it would be extremely difficult to keep records to determine the percentage of out-of-state products used in each brand. Further, federal law requires 75% of the grapes or other products used in making wine to come from Virginia if the label will state that the wine is Virginia wine and the intent of the farm winery statutes was to encourage the growing of grapes in Virginia which

this interpretation supports.

The term "other agricultural products" would be considered to include wine under this proposal because it would give farm wineries flexibility to blend wines to achieve the kind of wine desired and is consistent with the intent of the basic statutes.

The proposal would allow the remote outlets to be temporary and move from place to place as long as only one such outlet operated at any given time. This is also consistent with the intent of the statute which was to encourage growing grapes and making wine in Virginia. Farm wineries are usually located in rural areas and special events such as festivals are one of the best ways to obtain exposure for their products. Such events are at various locations and thus the need for this provision. All three provisions make compliance with the law easier for farm winery licensees.

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

Written comments may be submitted until October 21, 1985.

Contact: Larry E. Gilman, Secretary to the Board, P. O. Box 27491, Richmond, Va. 23261, telephone (804) 257-0616

VIRGINIA APPRENTICESHIP COUNCIL

September 12, 1985 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. (Location accessible to handicapped.)

A quarterly meeting of the council.

Contact: R. S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, P. O. Box 12064, Richmond, Va. 23241, telephone (804) 786-2381

VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS

Land Surveyors

† August 30, 1985 - 9 a.m. – Open Meeting
Department of Commerce, Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to (i) approve minutes of May 16, 1985, meeting, (ii) review investigative cases, (iii) review applications, and (iv) meet with applicant.

Professional Engineers

† August 27, 1985 - 9 a.m. – Open Meeting
Department of Commerce, Travelers Building, 3600 West Broad Street, 5th Floor, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to (i) approve minutes of July 9, 1985, meeting, and (ii) review applications and investigative cases.

Contact: J. Williams, Assistant Director, Virginia State Board of Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, 3600 W. Broad St., 5th Floor, Richmond, Va. 23230, telephone (804) 257-8512

GOVERNOR'S ADVISORY COMMITTEE ON CHILD ABUSE AND NEGLECT

† September 6, 1985 - 10 a.m. – Open Meeting
City Hall, 605 East Main Street, Basement Conference Room, Charlottesville, Virginia. (Location accessible to handicapped.)

A regular quarterly meeting of the advisory committee.

Contact: Ann Childress, Virginia Department of Social Services, Bureau of Child Welfare Services, Blair Bldg., 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 281-9081

VIRGINIA DEPARTMENT FOR THE CHILDREN

August 21, 1985 - 7 p.m. – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, Brown Library, Top Floor, Roanoke, Virginia. (Location accessible to handicapped.)

August 27, 1985 - 7 p.m. – Public Hearing
Maury School Auditorium, George & Barton Streets, Fredericksburg, Virginia

A series of public hearings to receive comments on the State Plan for Child Day Care to be submitted annually beginning January 1, 1986, in accordance with §§ 2.1-553.2 and 2.1-553.3 of the Code of Virginia. The department is specifically interested in comments on the affordability of services and financial incentives and barriers to services across the Commonwealth. Speakers should limit their presentations to no more than five minutes. Written comments will be accepted at the hearings and may also be sent to the Virginia Department of Children, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Marty Gravett, Coordinator, Virginia Department for Children, 805 E. Broad St., 11th Floor, Richmond, Va. 23219, telephone (804) 786-5507

Calendar of Events

VIRGINIA BOARD OF COMMERCE

† August 22, 1985 - 10 a.m. - Open Meeting
Department of Commerce, Travelers Building, 3600 West
Broad Street, 5th Floor, Conference Room 1, Richmond,
Virginia. (Location accessible to handicapped.)

The board will meet to (i) approve a position statement on the issue of mandatory continuing education, (ii) receive status reports on the study of the need for flea market regulations, (iii) complaint handling procedures, (iv) a study reviewing selected licensing exams, and (v) election of officers.

† August 22, 1985 - 1 p.m. - Open Meeting
Department of Commerce, Travelers Building, 3600 West
Broad Street, 3rd Floor, Room 395, Richmond, Virginia.
(Location accessible to handicapped.)

An informational hearing to receive comments on the need for regulation of flea market operators.

Contact: Thomas A. Dick, Policy Analyst, Virginia
Department of Commerce, 3600 W. Broad St.,
Richmond, Va. 23219

BOARD OF CORRECTIONS

September 11, 1985 - 10 a.m. - Open Meeting
October 16, 1985 - 10 a.m. - Open Meeting
4615 West Broad Street, Richmond, Virginia. (Location
accessible to handicapped.)

A regular monthly meeting to consider such matters as may be presented to the Board of Corrections.

Contact: Vivian Toler, Secretary to the Board, 4615 W.
Broad St., P. O. Box 26963, Richmond, Va. 23261,
telephone (804) 257-6274

VIRGINIA BOARD OF COSMETOLOGY

† September 30, 1985 - 9 a.m. - Open Meeting
Department of Commerce, Travelers Building, 3600 West
Broad Street, Richmond, Virginia. (Location accessible to
handicapped.)

A meeting to (i) review investigative reports of complaints and determine disposition, (ii) consider general correspondence pertinent to the operation of the board, and (iii) review proposals from examination services.

Contact: Gale G. Moyer, Assistant Director, Virginia Board
of Cosmetology, 3600 W. Broad St., Richmond, Va.
23230, telephone (804) 257-8509

CRIMINAL JUSTICE SERVICES BOARD

October 2, 1985 - 9:30 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,
Richmond, Virginia. (Location accessible to handicapped.)

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 amend regulations entitled: **Rules Relating to Compulsory Minimum Training Standards for Courthouse and Courtroom Security Officers.** The proposed amendments will effect existing training standards for deputy sheriffs and other law-enforcement and designated personnel to provide security for the courthouse and courtroom.

STATEMENT

Basis and Purpose: The rules, as proposed, are being considered for amendment pursuant to the provisions of § 9-170(5) of the Code of Virginia. The protection of property and persons during the judicial process is a specialized function requiring certain knowledge, skills and abilities. The purpose of the proposed rules is to provide training necessary for effective protection of the courthouse and courtroom.

Subject and Substance: The proposed amendments to the rules mandate minimum training standards for those criminal justice personnel designated to provide courthouse and courtroom security.

Impact: This proposal is an amendment to existing rules. The review and proposed amendments resulted from the cyclical review process previously established by the department. No fiscal impact is anticipated.

Compliance Cost: Rules pertaining to this subject matter currently exist. No additional compliance costs are anticipated.

Implementation Cost: Implementation cost to the Department of Criminal Justice Services is not expected to exceed those costs associated with compliance with the requirements of the Administrative Process Act, Executive Order No. 51 and the board's Public Participation Guidelines. No additional costs are anticipated.

Statutory Authority: § 9-170(1)(5) of the Code of Virginia.

Written comments may be submitted until September 3, 1985 to Mr. L. T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Mr. J. R. Marshall, Administrative Assistant, 805
E. Broad St., Richmond, Va. 23219, telephone (804)
786-4000

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October 2, 1985 - 9:30 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,
Richmond, Virginia. (Location accessible to handicapped.)

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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: **Rules Relating to Compulsory Minimum Training Standards for Deputy Sheriffs Designated to Serve Process.** This regulation establishes compulsory minimum training standards for deputy sheriff designated to serve process.

STATEMENT

Basis and Purpose: The rules, as proposed, are being considered for adoption pursuant to the provisions of § 9-170(1)(5a) of Code of Virginia. The service of legal process is a specialized function requiring certain knowledge, skills and abilities. The purpose of the proposed rules is to provide training necessary for the safe, efficient and effective service of legal documents.

Subject and Substance: The proposed rules mandate minimum training standards for deputy sheriffs designated to serve process and sets forth requirements and procedures for schools requesting approval to conduct such training.

Impact: These rules will impact those deputies designated by a sheriff to serve legal process. Further, those schools approved to conduct such training will be required by participating localities to schedule and conduct sufficient training offerings to meet their needs.

Compliance Cost: Sheriffs with the legal responsibility to serve process will be required to send designated deputies to approved training sessions. The cost to those departments will vary, dependent upon the number of personnel so designated and the amount of turnover of such personnel annually.

Implementation Cost: Implementation cost to the Department of Criminal Justice Services is not expected to exceed those costs associated with compliance with the requirements of the Administrative Process Act, Executive Order No. 51 and the board's Public Participation Guidelines. Additional responsibilities and duties are expected to be absorbed by existing staff and in concert with existing duties of the same nature.

Statutory Authority: § 9-170(1)(5a) of the Code of Virginia.

Written comments may be submitted until September 3, 1985, to Mr. L. T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Mr. J. R. Marshall, Administrative Assistant, 805 E. Broad St., Richmond, Va. 23219, telephone (804) 786-4000

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October 2, 1985 - 1:30 p.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,

Richmond, Virginia. (Location accessible to handicapped.)

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 amend regulations entitled: **Rules Relating to the Compulsory Minimum Training Standards for Private Security Services Business Personnel.** These regulations mandate and prescribe compulsory minimum training standards and procedures for private security services business personnel.

STATEMENT

Basis and Purpose: The rules, as proposed, are being considered for amendment pursuant to the provisions of § 9-182 of the Code of Virginia. The purpose of these rules is to protect the public safety and welfare against incompetent or unqualified persons performing private security duties.

Subject and Substance: The proposed rules mandate minimum training requirements for private security services business personnel and set forth standards and procedures for schools conducting private security services training.

Impact: These regulations will apply directly to all persons registering with the Department of Commerce as private security services business personnel (approximately 7,000 persons annually), all schools that are approved to provide mandated private security services training (approximately 92), and all private security services business personnel who carry a firearm in the performance of duty (estimated 7,000). Indirectly, these regulations will affect the approximate 300 private security services business licensees, their clients and individuals who may come in contact with licensees or their employees.

Compliance Cost: It is anticipated that there will be no material increase in compliance cost to the public or this agency; however, since private security services is part of an agency that generates operating funds from licensees, any increase in cost would be borne by the licensees.

Implementation Cost: It is anticipated that there will be no substantial increase in cost to the regulated entities for implementation. The implementation cost to this agency should not exceed \$2,000. This amount includes the cost of informational meetings, mailing services, and the publication of notices of intent to promulgate regulations.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until September 3, 1985, to Mr. L. T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Mr. J. R. Marshall, Administrative Assistant, 805 E. Broad St., Richmond, Va. 23219, telephone (804) 786-4000

Calendar of Events

Committee on Criminal Justice Information Systems

† August 28, 1985 - 10 a.m. - Open Meeting
Ninth Street Office Building, Governor's Cabinet
Conference Room, 6th Floor, Richmond, Virginia. (Location
accessible to handicapped.)

The committee will consider matters related to the
development of state and local criminal justice
information systems.

Contact: Joseph R. Marshall, Executive Assistant,
Department of Criminal Justice Services, 805 E. Broad
St., 10th Floor, Richmond, Va. 23219, telephone (804)
786-4000

COMMISSION OF GAME AND INLAND FISHERIES

† August 23, 1985 - 9:30 a.m. - Public Hearing
Game Commission Offices, 4010 West Broad Street,
Richmond, Virginia. (Location accessible to handicapped.)

The Commission will (i) consider and establish the
1985-86 Waterfowl Hunting Seasons for Virginia as
prescribed under the U.S. Fish & Wildlife Service
Framework for hunting migratory waterfowl, (ii) act
on a proposed amendment to VR 325-04-2. § 1,
pertaining to the application for a certificate of
number for a motorboat, and (iii) consider general
administrative matters.

Contact: Norma G. Adams, 4010 W. Broad St., Richmond,
Va. 23230, telephone (804) 257-1000

DEPARTMENT OF GENERAL SERVICES

Art and Architectural Review Board

September 6, 1985 - 10 a.m. - Open Meeting
Virginia Museum of Fine Arts, Boulevard and Grove
Avenue, Main Conference Room, Richmond, Virginia.
(Location accessible to handicapped.)

The board will advise the Director of the Department
of General Services and the Governor on architecture
of state facilities to be constructed and works of art to
be accepted or acquired by the Commonwealth.

Contact: Dorothy D. Ivankoe, Department of General
Services, Ninth Street Office Bldg., Suite 209,
Richmond, Va. 23219, telephone (804) 786-3311

State Insurance Advisory Board

October 11, 1985 - 9:30 a.m. - Open Meeting
Department of General Services, Ninth Street Office
Building, Suite 209, Conference Room of the Director,
Richmond, Virginia. (Location accessible to handicapped.)

A quarterly meeting of the State Insurance Advisory
Board.

Contact: Charles F. Scott, Director, Department of General
Services, Division of Risk Management, 805 E. Broad
St., Room 117, Richmond, Va. 23219, telephone (804)
786-5968

VIRGINIA STATE BOARD OF GEOLOGY

† August 20, 1985 - 9 a.m. - Open Meeting
Department of Commerce, Travelers Building, 3600 West
Broad Street, Richmond, Virginia. (Location accessible to
handicapped.)

A meeting to (i) approve minutes of the May 20, 1985,
meeting, (ii) review applications, (iii) meet with
applicant, and (iv) write and review examination.

Contact: J. Williams, Assistant Director, Geology Board,
Department of Commerce, 3600 W. Broad St., 5th
Floor, Room 507, Richmond, Va. 23230, telephone
(804) 257-8555

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† September 16, 1985 - 10:30 a.m. - Open Meeting
Richmond Marriott, 500 East Broad Street, Richmond,
Virginia. (Location accessible to handicapped; interpreter
for deaf provided if requested.)

A general meeting of the council.

Contact: Gladys Walker, Governor's Employment and
Training Department, 417 E. Grace St., P. O. Box
12083, Richmond, Va., telephone (804) 786-8085

GOVERNOR'S REGULATORY REFORM ADVISORY BOARD

September 10, 1985 - 10 a.m. - Public Hearing
General Assembly Building, Capitol Square, House Room C,
Richmond, Virginia. (Location accessible to handicapped.)

A public hearing on the draft legislation proposed at
the July 25th meeting; and adoption for introduction at
1986 session.

Contact: Philip F. Abraham, State Capitol, Governor's
Office, Richmond, Va. 23219, telephone (804) 786-2211

HAZARDOUS WASTE FACILITY SITING COUNCIL

† September 10, 1985 - 7 p.m. - Public Hearing
Christopher Newport College, 50 Shoe Lane, Administration
Building, Room 105, Newport News, Virginia

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† September 11, 1985 - 7 p.m. - Public Hearing
Fredericksburg City Hall (Tentative), City Council
Chambers, 700 Block of Princess Anne Street,
Fredericksburg, Virginia

† September 12, 1985 - 7 p.m. - Public Hearing
McLean Community Center, 1236 Ingleside Avenue,
McLean, Virginia

† September 24, 1985 - 7 p.m. - Public Hearing
Lord Fairfax Community College, Technical Building,
Conference Room, Middletown, Virginia

† October 1, 1985 - 7 p.m. - Public Hearing
Martha Washington Inn, 150 West Main Street, Grand
Ballroom, Abingdon, Virginia

† October 2, 1985 - 7 p.m. - Public Hearing
Roanoke County Administration Center, 3738 Brambleton
Ave., S.W., Community Room, Roanoke, Virginia

† October 3, 1985 - 7 p.m. - Public Hearing
City Hall, City Council Chambers, 113 East Beverly Street,
2nd Floor, Staunton, Virginia

† October 9, 1985 - 7 p.m. - Public Hearing
Lynchburg Public Library, The Plaza, 2315 Memorial
Avenue, Lynchburg, Virginia

† October 10, 1985 - 7 p.m. - Public Hearing
Westinghouse Electric Corporation, Highway 58 West, South
Boston, Virginia

† October 21, 1985 - 7 p.m. - Public Hearing
Dinwiddie County Administration Building, U.S. Route 1,
Board Meeting Room, Dinwiddie, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Hazardous Waste Facility Siting Council intends to adopt regulations entitled: **Administrative Procedures for Hazardous Waste Facility Site Certification**. The proposed regulations establish the council's administrative procedures for processing applications for site certification.

STATEMENT

The proposed administrative procedures detail the steps in the process of obtaining site certification. The administrative procedures parallel the process established by the Siting Act and describe submission requirements for the applicant's notice of intent, draft impact statement, final impact statement, application for site certification, and the public review and public hearing process for decision-making. The regulations also outline the procedures for the required negotiation process between the applicant and the local government (host community).

Statutory Authority: § 10-186.5 of the Code of Virginia.

Written comments may be submitted until October 25, 1985.

Contact: Harry E. Gregori, Jr., Executive Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, Va. 23219, telephone (804) 225-3235

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Hazardous Waste Facility Siting Council intends to adopt regulations entitled: **Schedule of Fees for Hazardous Waste Facility Site Certification**. The proposed regulations establish fees and the procedures for fee assessment for applicants proposing to site hazardous waste facilities in the Commonwealth of Virginia.

STATEMENT

The proposed regulations establish a fee structure which consists of three parts. The first element requires payment by the applicant of all costs for legal notices, copies of reports and notices, and postage for the notice of intent submission. These costs may range from \$2,000 to approximately \$4,500, depending upon the geographic location of the proposal. The second element, the application fee, which is paid at the time the application is submitted, is set at \$20,000 for major facilities (categories II-V). Smaller storage facilities (category I) will be charged \$10,000, or 10% of the estimated construction cost (whichever is greater), not to exceed \$20,000. The third element is for consultant services required by the council to review applications. This amount, to be paid by the applicant, will be determined at the time the application is made and will vary according to the complexity of the proposed facility.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Written comments may be submitted until October 25, 1985.

Contact: Harry E. Gregori, Jr., Executive Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, Va. 23219, telephone (804) 225-3235

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Hazardous Waste Facility Siting Council intends to adopt regulations entitled: **Hazardous Waste Facility Siting Criteria**. The proposed regulations establish the criteria, both prohibitions and limitations, for assessing applications for site certification.

STATEMENT

The proposed Hazardous Waste Facility Siting Criteria regulations provide the principal decision-making tool for the council. Any person, including the Commonwealth of Virginia, must meet the criteria proposed before a facility can be given certification by the council. The regulations organize hazardous waste facilities into five categories: I. Containerized or enclosed storage (a group of tanks); II. Closed treatment process - with spill containment (treatment in tanks); III. Open treatment process - with spill containment (incinerator); IV. Above-ground treatment - no spill containment (waste piles and land treatment); and V. Disposal without complete treatment, and all other

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treatment/disposal methods (land disposal).

The first set of criteria, the "Prohibitions," indicate areas where no facilities are allowed. Proposed prohibitions include wetlands, 100-year flood plains, dam failure inundation zones, sinkholes (karst topography), locations near active faults and within areas designated as national natural landmarks or lands in public trust.

The second set of criteria, "Siting Limitations," place restrictions which are based on the type of facility proposed. Generally, these limitations control the location based on impacts for categories I, II and III with respect to public and private surface and ground water supplies, subsurface mining activity, steep slopes and faults, and seismic risk areas. Categories IV and V (land treatment/disposal) are prohibited in these areas. The council will also evaluate impacts on air quality, endangered species, risk of accident, proximity to population, impact on local government, and potential for fire and explosion.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Written comments may be submitted until October 25, 1985.

Contact: Harry E. Gregori, Jr., Executive Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, Va. 23219, telephone (804) 225-3235

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Hazardous Waste Facility Siting Council intends to adopt regulations entitled: **Technical Assistance Fund Administrative Procedures**. The proposed regulations specify procedures for application, disbursement and accounting for local technical assistance funds distributed by the Siting Council.

STATEMENT

The Local Technical Assistance Fund proposed regulation provides for the distribution of state general funds to a locality in which a facility is proposed. The purpose of this fund is to financially assist local governments in evaluating a proposal. The proposed regulations provide \$20,000 outright to a local government with an additional \$10,000 available based on a 50/50 state and local match. Any unused funds are to be returned to the council. Funds may not be used for legal services or the services of a negotiator. The total amount of funds available for FY 1985-86 is \$50,000.

Statutory Authority: § 10-186.5 of the Code of Virginia.

Written comments may be submitted until October 25, 1985.

Contact: Harry E. Gregori, Jr., Executive Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond,

Va. 23219, telephone (804) 225-3235

STATE BOARD OF HEALTH

† September 9, 1985 - 10 a.m. - Open Meeting

† September 10, 1985 - 10 a.m. - Open Meeting

The Cavalier Hotel, 42nd Street, Virginia Beach, Virginia. (Location accessible to handicapped.)

A regular business meeting of the board. An agenda for the meeting may be obtained after September 1, 1985.

† November 13, 1985 - 10 a.m. - Open Meeting

† November 14, 1985 - 10 a.m. - Open Meeting

Westpark Hotel, Rosslyn, Virginia. (Location accessible to handicapped.)

A regular business meeting of the board. An agenda for the meeting may be obtained after November 1, 1985.

Contact: Sally Camp, James Madison Bldg., Room 400, Richmond, Va. 23219, telephone (804) 786-3561

DEPARTMENT OF HEALTH

August 23, 1985 - 10 a.m. - Public Hearing

James Madison Building, 109 Governor Street, Main Floor Auditorium, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Health intends to amend regulations entitled: **Virginia Voluntary Formulary**. A list of drugs of accepted therapeutic value, commonly prescribed and available from more than one source of supply.

STATEMENT

Subject, Substance, Issues, Basis and Purpose:

The purpose of the Virginia Formulary is to provide a list of drugs of accepted therapeutic value, commonly prescribed within the state which are available from more than one source of supply, and a list of chemically and therapeutically equivalent drug products which have been determined to be interchangeable. Utilization of the Formulary by practitioners and pharmacists enables citizens of Virginia to obtain safe and effective drug products at a reasonable price consistent with high quality standards.

The proposed revision to the Virginia Voluntary Formulary deletes drug products from the Formulary. These deletions are based upon recommendations of the Virginia Voluntary Formulary Council following its review of scientific data

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submitted by pharmaceutical manufacturers. The council makes its recommendations to the State Board of Health.

The Virginia Voluntary Formulary is needed to enable citizens of Virginia to obtain safe and effective drug products at a reasonable price consistent with high quality standards. Without the Formulary, physicians, dentists, and pharmacists in Virginia would not have the assurance that those generic drug products that may be substituted for brand name products have been evaluated and judged to be interchangeable with the brand name products.

Statutory Authority: §§ 32.1-12 and 32.1-79 et seq. of the Code of Virginia.

Written comments may be submitted no later than 5 p.m., August 23, 1985.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, James Madison Bldg., 109 Governor St., Richmond, Va. 23219, telephone (804) 786-4326

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September 16, 1985 - 7 p.m. - Public Hearing
Roanoke County Administrative Complex, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia

September 17, 1985 - 7 p.m. - Public Hearing
Harrisonburg Electric Commission, 89 West Bruce Street, Community Room, Harrisonburg, Virginia

September 18, 1985 - 7 p.m. - Public Hearing
Mary Washington College, 104 Monroe Hall, Fredericksburg, Virginia

September 19, 1985 - 7 p.m. - Public Hearing
Peninsula Health District, Newport News City, Health Department, 416 J. Clyde Morris Boulevard, (US 17 South), Main Auditorium, Newport News, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Health intends to amend regulations entitled: **Sewage Handling and Disposal Regulations**. The Sewage Handling and Disposal Appeals Review Board adjudicates all appeals of denials of on-site sewage disposal system permits. This regulation establishes an \$800 fee to be charged to applicants in order to cover direct cost of their hearing before the review board.

STATEMENT

Purpose: The purpose of this regulation is to establish an \$800 fee to be charged applicants for each appearance before the review board.

Summary and Analysis: The Sewage Handling and Disposal Advisory Committee, at their April 15, 1985, meeting, passed a motion that the appeals fee should be set at \$800 per appeal (which is based upon average direct cost of hearing) unless the Health Department is willing to absorb some portion of the costs.

Direct costs per appeal are estimated to be as follows:

Travel: 20.5¢/mile/7 members	\$258.30
Meals: \$20/day/person	70.00
Lodging: \$40/night	120.00
Misc: parking, phone calls, etc.	35.00
Court Reporter	327.00
Totaling	\$810.30

Impact: Applicants for formal hearing in the past paid no fee in order to have a formal adjudicatory hearing before an administrative law judge. The adoption of an \$800 fee will financially impact future applicants, however, the cost to taxpayers will be reduced due to the adoption of this fee.

Evaluation: The department will track actual costs for each appeal and evaluate direct costs on an annual basis. If fees are too high or too low, then the department will suggest the appropriate modification.

Statutory Authority: § 32.1-164 of the Code of Virginia.

Written comments may be submitted until September 20, 1985.

Contact: P.M. Brooks, Public Health Engineer C, 109 Governor St., 502 James Madison Bldg., Richmond, Va. 23219, telephone (804) 786-1931

BOARD ON HEALTH REGULATORY BOARDS

Professional Review Committee

† **August 29, 1985 - 10 a.m.** - Open Meeting
Department of Health Regulatory Boards, 517 West Grace Street, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to discuss and approve work plan and timetable for the study of repeal of the statutory exemption from licensure of psychologists, professional counselors, and social workers employed in public and nonprofit organizations.

Contact: Richard D. Morrison, Policy Analyst, Department of Health Regulatory Boards, P. O. Box 27708, Richmond, Va. 23261, telephone (804) 786-0822

† **September 6, 1985 - 10 a.m. to noon** - Public Hearing (Corrective Therapy)

† **September 6, 1985 - 1 p.m.** - Public Hearing (Radiologic Technology)
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. (Location accessible to handicapped; interpreter for deaf provided if requested.)

The Virginia Board on (formerly Commission of) Health Regulatory Boards has received notice of intended proposals for the state regulation of

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corrective therapists and of radiologic technologists. These professions are not presently regulated in Virginia.

The board's Professional Review Committee is charged with the responsibility of evaluating proposals for new health professional regulatory programs under the statutory authority of the board, § 54-955.1.B of the Code of Virginia:

"Evaluate each health care profession and occupation in the Commonwealth not regulated by other provisions of this title to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the commission determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the commission shall recommend for approval by the General Assembly next convened a regulatory system necessary to conduct the degree of regulation required."

The Professional Review Committee invites comments from the public on proposals to regulate these professions. Written comments are also solicited and must be received by October 17, 1985.

Contact: Richard D. Morrison, Policy Analyst, Department of Health Regulatory Boards, P. O. Box 27708, Richmond, Va. 23261, telephone (804) 786-0822

DEPARTMENT OF HEALTH REGULATORY BOARDS

Virginia Board of Dentistry

† **September 18, 1985 - 1 p.m.** – Open Meeting
† **September 19, 1985 - 10 a.m.** – Open Meeting
Richmond Marriott, 500 East Broad Street, Richmond, Virginia

A meeting to consider the proposed regulations approved on December 8, 1984.

Contact: Nancy T. Feldman, Executive Director, 517 W. Grace St., P. O. Box 27708, Richmond, Va. 23261, telephone (804) 786-0311

VIRGINIA STATEWIDE HEALTH COORDINATING COUNCIL

† **September 16, 1985 - 9 a.m.** – Open Meeting
† **September 17, 1985 - 3:30 p.m.** – Open Meeting
† **September 17, 1985 - 8:30 p.m.** – Open Meeting
† **September 18, 1985 - 8:30 a.m.** – Open Meeting
Abingdon, Virginia. (Location accessible to handicapped.)

Various subcommittees of the Statewide Health

Coordinating Council will be meeting Monday, September 16, beginning at 9 a.m.

The Analysis & Plans Development Committee and the Progress & Evaluation Committee will begin meeting at 3:30 p.m. on September 17.

The Virginia Statewide Health Coordinating Council will hold its regular business meeting at 8:30 p.m. on September 17.

The Executive Committee of the Statewide Health Coordinating Council will begin its meeting at 8:30 a.m. on September 18.

Regular business of the council, other committees, and subcommittees will be conducted.

Contact: Raymond O. Perry, 109 Governor St., Room 1010, Richmond, Va. 23219, telephone (804) 786-6970

VIRGINIA HEALTH SERVICES COST REVIEW COMMISSION

August 28, 1985 - 9:30 a.m. – Open Meeting
Blue Cross and Blue Shield of Virginia, 2015 Staples Mill Road, Virginia Room, Richmond, Virginia. (Location accessible to handicapped.)

A monthly business meeting of the commission for the purpose of addressing financial, policy or technical matters which may have arisen since last meeting.

Contact: Ann Y. McGee, Director, 805 E. Broad St., 9th Floor, Richmond, Va. 23219, telephone (804) 786-6371

COUNCIL OF HIGHER EDUCATION

† **September 4, 1985 - 10 a.m.** – Open Meeting
Williamsburg Inn, Providence Hall Wing, Williamsburg, Virginia

A monthly council meeting.

Contact: Council of Higher Education, 101 N. 14th St., Richmond, Va. 23219, telephone (804) 225-2137

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Board of Commissioners

August 20, 1985 - 10 a.m. – Open Meeting
13 South 13th Street, Richmond, Virginia. (Location accessible to handicapped.)

A regular monthly meeting of the Board of Commissioners of the Virginia Housing Development

Authority to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they 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.

Contact: Judson McKellar, Jr., General Counsel, 13 South 13th St., Richmond, Va. 23219, telephone (804) 782-1986

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

August 19, 1985 - 1 p.m. - Open Meeting
205 North 4th Street, 7th Floor, Richmond, Virginia.
(Location accessible to handicapped; interpreter for deaf provided if requested.)

A formal business meeting of the board to (i) review and approve the minutes from the previous meeting; (ii) provide an opportunity for public comments; (iii) review the report of the director on the operation of the Department of Housing and Community Development since the last board meeting; (iv) hear reports of the committees of the board; and (v) consider other matters as they may deem necessary. The planned agenda of the meeting will be available at the above address of the board meeting one week prior to the date of the meeting.

Contact: Neal J. Barber, 205 N. 4th St., 7th Floor, Richmond, Va. 23219-1747, telephone (804) 786-1575

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September 16, 1985 - 11 a.m. - Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **Virginia Industrialized Building Unit and Mobile Home Safety Regulations/1984.**

STATEMENT

Subject and Substance: Proposed change to the plumbing requirements in the previously proposed adoption of a 1984 edition of the Virginia Industrialized Building Unit and Mobile Home Safety Regulations to amend and replace the 1981 edition thereof. The change will prohibit the use of lead bearing solders and fluxes in water service and distribution piping.

Issues: 1. Estimated impact with respect to number of

persons affected: all citizens of Virginia who use buildings hereafter constructed will be affected.

2. Projected costs for implementation somewhat less expensive than acceptable substitutes. However, the overall increase in costs of plumbing systems for water service and distribution will apparently be small. Discussions with industry sources indicate that the added cost is not a matter of material concern.

Basis: §§ 36-70 and 36-85.1 of the Code of Virginia.

Purpose: To prevent unsafe levels of lead in drinking water in buildings, as recommended by the State Health Commissioner.

Statutory Authority: §§ 36-70 and 36-85.1 of the Code of Virginia.

Written comments may be submitted until September 16, 1985.

Contact: C. S. Mullen, Deputy Director, Department of Housing and Community Development, 205 N. 4th St., Richmond, Va. 23219, telephone (804) 786-4751

* * * * *

September 16, 1985 - 11 a.m. - Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **Virginia Uniform Statewide Building Code - Volume I - New Construction Code/1984.**

STATEMENT

Subject and Substance: Proposed change to the plumbing requirements in the previously proposed adoption of a 1984 edition of the Virginia Uniform Statewide Building Code - Volume I - New Construction Code to amend and replace the 1981 edition thereof. The change will prohibit the use of lead bearing solders and fluxes in water service and distribution piping.

Issues: 1. Estimated impact with respect to number of persons affected: all citizens of Virginia who own buildings hereafter constructed will be affected.

2. Projected costs for implementation and compliance: the lead bearing solders which are in current use are somewhat less expensive than acceptable substitutes. However, the overall increase in costs of the plumbing system for water service and distribution will apparently be very small, and discussions with industry sources indicate that the added cost is not a matter of material concern.

Basis: §§ 36-97 - 36-107 of the Code of Virginia.

Calendar of Events

Purpose: To prevent unsafe levels of lead in drinking water in buildings, as recommended by the State Health Commissioner.

Statutory Authority: §§ 36-97 - 36-107 of the Code of Virginia.

Written comments may be submitted until September 16, 1985.

Contact: C. S. Mullen, Deputy Director, Department of Housing and Community Development, 205 N. 4th St., Richmond, Va. 23219, telephone (804) 786-4751

* * * * *

September 16, 1985 - 10 a.m. - Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **Urban Enterprise Zone Program Regulations**. The proposed regulations set forth the administrative procedures for implementing the Urban Enterprise Zone Act and requirements for business firms in applying for state tax credits.

STATEMENT

Subject: Revision of the Urban Enterprise Zone Program Regulations to follow 1985 amendments to the Urban Enterprise Zone Act.

Substance: The 1985 amendments allow a locality to ask for permission to enlarge the boundaries of its enterprise zone. This proposed amendment establishes procedures for a locality to follow in requesting permission to enlarge its zone.

Issues and Impact: This proposed amendment could impact no more than the 14 localities which have enterprise zones or portions of enterprise zones within their boundaries. The total population within the state's enterprise zone is 130,000. Jurisdictions that seek to enlarge their enterprise zones would incur relatively small staff costs in preparing the application for changing zone boundaries. The state costs which would also be small would result from staff time spent in reviewing applications to enlarge enterprise zones.

Basis: § 59.1-278 of the Code of Virginia.

Purpose: To bring the Urban Enterprise Zone program regulations in line with recent amendments to the Code of Virginia.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Written comments may be submitted until September 16, 1985 to Neal J. Barber, Acting Director, Department of

Housing and Community Development, 205 North Fourth Street, Richmond, Virginia 23219.

Contact: Stanley S. Kidwell, Jr., Associate Director, Virginia Department of Housing and Community Development, 205 N. 4th St., Richmond, Va. 23219, telephone (804) 786-4966

Building Codes and Standards Committee

August 19, 1985 - 10 a.m. - Open Meeting
Department of Housing and Community Development, 205 North 4th Street, 7th Floor Conference Room, Richmond, Virginia. (Location accessible to handicapped; interpreter for deaf provided if requested.)

A meeting to consider comments received pursuant to a public hearing, June 17, 1985, for the purpose of amending and updating the building regulations of the Board of Housing and Community Development.

Contact: C. S. Mullen, Deputy Director, Department of Housing and Community Development, 205 N. 4th St., Richmond, Va. 23219, telephone (804) 786-4751

SECRETARY OF HUMAN RESOURCES

August 20, 1985 - 7:30 p.m. - Public Hearing
George Mason University, 3401 North Fairfax Drive, Metro Campus Professional Center, Room 318, Arlington, Virginia

Public hearings on the Task Force on Roles and Responsibilities for the Health Professional Regulatory System to provide the general public with (i) an opportunity to testify on the current system for regulating the health professions, focusing on the roles and responsibilities of the different entities involved in the process, e.g., (ii) the ten health regulatory boards, (iii) the Department of Health Regulatory Boards, (iv) the Commission of Health Regulatory Boards, and (v) the office of the Attorney General. Testimony should be directed at the impact of current policies on the parties testifying. Written copies of testimony will be requested for submission at the hearing.

Contact: Sybil K. Goldman, Alpha Center, 1100 17th Street, N.W., Suite 901, Washington, D.C. 20036, telephone (202) 296-1818

VIRGINIA STATE LIBRARY BOARD

† **August 20, 1985 - 11 a.m. - Open Meeting**
Virginia State Library, State Librarian's Office, 11th Street at Capitol Square, Richmond, Virginia. (Location accessible to handicapped.)

A regular meeting to discuss administrative matters.

Contact: Jean Reynolds, Virginia State Library, 11th St. at Capitol Square, Richmond, Va. 23219, telephone (804) 786-2332

COMMISSION ON LOCAL GOVERNMENT

† September 24, 1985 - 2 p.m. - Open Meeting
City of Roanoke (site to be determined)

A meeting to discuss pending issues on the commission's agenda including (i) City of Petersburg/City of Hopewell/Prince George County issues, (ii) City of Lexington annexation action and Rockbridge County's partial immunity action; (iii) presentation of financial report, (iv) approval of minutes from last meeting, and (v) establishment of the next commission meeting date.

† October 14, 1985 - 9 a.m. - Open Meeting
† October 15, 1985 - 9 a.m. - Open Meeting
† October 16, 1985 - 9 a.m. - Open Meeting
City of Lexington - Rockbridge County area (site to be determined)

Oral presentations regarding the City of Lexington's proposed annexation action and Rockbridge County's partial immunity action.

† October 15, 1985 - 7:30 p.m. - Public Hearing
City of Lexington - Rockbridge County area (site to be determined)

A public hearing to receive testimony from the public regarding the City of Lexington annexation action and Rockbridge County partial immunity action.

Contact: Barbara Bingham, Ninth Street Office Bldg., Room 901, Richmond, Va. 23219, telephone (804) 786-6508

MARINE RESOURCES COMMISSION

October 22, 1985 - 9:30 a.m. - Open Meeting
2401 West Avenue, Newport News, Virginia

The Marine Resources Commission normally meets on the fourth Tuesday each month, at 9:30 a.m., at the agency office, 24th Street and West Avenue, Newport News, Virginia. It hears and decides cases on fishing licensing; oyster ground leasing, environmental permits in wetlands, bottomlands, coastal sand dunes, and beaches. It hears and decides appeals made on local wetlands board decisions.

Fishery Management and Conservation measures are discussed by the commission. The commission is empowered to exercise general regulatory power within 15 days, and is empowered to take specialized marine life harvesting and conservation measures within five days.

Contact: Virginia S. Chappell, Secretary to the Commission, Marine Resources Commission, P. O. Box 756, Newport News, Va. 23607, telephone (804) 247-2208

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

September 24, 1985 - 9 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **Intermediate Care Criteria for the Mentally Retarded**. This regulation establishes criteria for care provided to eligible mentally retarded persons in intermediated care situations which would then qualify for Medicaid reimbursement.

STATEMENT

Basis and Authority: Section 32.1-325 of the Code of Virginia gives the State Board of Medical Assistance the authority to promulgate regulations subject to the Governor's approval. Section 1902 of the Social Security Act and federal regulations in 42 CFR 456.432 and 456.435 requires that there be written criteria for admission and continued stay in intermediate care facilities for the mentally retarded.

Purpose: The purpose of the proposed regulations is to establish an intermediate care criteria for the mentally retarded that can be applied to all recipients when Medicaid payment has been requested for institutional or noninstitutional services.

Summary and Analysis: In 1972, federal regulations allowed for the inclusion of federal financial payment for care in intermediate care facilities for the mentally retarded. At that time broadly defined criteria were developed and continues in use today.

Estimated Impact: Approximately 3,600 Medicaid recipients in state and private facilities will be affected by these new criteria. No appreciable negative impact is expected as the result of the implementation of this proposed criteria since the criteria redefinition will not result in a change in the number of eligible recipients. No new staff will be required to implement or enforce these regulations. There should be no impact on Medicaid funding.

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

Written comments may be submitted until September 22, 1985.

Contact: Tinnie B. Conover, Manager, Institutional Services Section, Department of Medical Assistance Services, 109 Governor St., Room 817, Richmond, Va. 23219, telephone (804) 786-7986

Calendar of Events

VIRGINIA STATE BOARD OF MEDICINE

September 13, 1985 - 8:30 a.m. – Open Meeting
September 14, 1985 - 8:30 a.m. – Open Meeting
Richmond Hyatt House, I-64 West, 6624 West Broad Street,
Richmond, Virginia. (Location accessible to handicapped.)

A meeting to interview and review credentials of applicants applying for licensure.

Contact: Eugenia K. Dorson, Executive Secretary, 517 W. Grace St., P. O. Box 27708, Richmond, Va. 23261, telephone (804) 786-0575

STATE MENTAL HEALTH AND MENTAL RETARDATION BOARD

August 28, 1985 - 10 a.m. – Open Meeting
Mental Health Services/Roanoke Valley, Roanoke, Virginia.
(Location accessible to handicapped.)

A regular monthly meeting. The agenda will be published on August 21, and may be obtained by calling Jane Helfrich.

Contact: Jane V. Helfrich, State Mental Health and Mental Retardation Board Secretary, Department of Mental Health and Mental Retardation, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3921

DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

September 10, 1985 - 7 p.m. – Public Hearing
Mary Washington College, Fredericksburg, Virginia.
(Location accessible to handicapped.)

September 11, 1985 - 11 a.m. – Public Hearing
Western State Hospital, Staff Development Building, Rooms 86 and 87, Staunton, Virginia. (Location accessible to handicapped.)

September 12, 1985 - 1 p.m. – Public Hearing
Senior Citizen's Center, 307 Park Street, Marion, Virginia.
(Location accessible to handicapped.)

A public hearing on proposed Community Rules and Regulations to invite comment from those interested persons who will be affected by these regulations.

Contact: Elsie D. Little, A.C.S.W., P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3988

September 13, 1985 - 11 a.m. – Public Hearing
Southeastern Virginia Training Center, Building 3, Inservice Training Room, Chesapeake, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mental Health and Mental Retardation intends to adopt regulations entitled: **Rules and Regulations to Assure the Rights of Clients in Community Programs.** (VR

470-03-03) The purpose of the regulations is to delineate the rights of clients of community programs licensed or funded by the Department of Mental Health and Mental Retardation.

STATEMENT

Subject, Basis and Purpose: The Rules and Regulations to Assure the Rights of Clients in Community Programs Licensed or Funded by the Department of Mental Health and Mental Retardation are to delineate the rights of clients of community programs licensed or funded by the Department of Mental Health and Mental Retardation. The Community Rules and Regulations identify those fundamental rights which may not be restricted by a community program. The regulations define those client rights which may be restricted for therapeutic reasons, aid in the assurance of client participation in treatment for therapeutic reasons, aid in the assurance of client participation in treatment decision making, and define client participation in work activities. An administrative review process for review of alleged violations of rights is established. That mechanism delineated the roles and responsibilities of the persons involved. These regulations will be more appropriate to meet the requirements and scope of community programs.

The Community Rules and Regulations are needed in order to comply with § 37.1-84.1, of the Code of Virginia. Since protection of individual rights in funded or licensed programs by the Department of Mental Health and Mental Retardation is a mandate, not providing regulations for clients in community programs was considered an acceptable alternative. Without the Community Rules and Regulations, the Department of Mental Health and Mental Retardation could not offer consistent rights protection of those clients. Rights violations might go undetected or be inadequately handled by the community program staff. Rights violations that could be quickly and fairly handled by means set forth in these rules and regulations might be handled by complicated, costly and time consuming court procedures instead if the rules and regulations are not established.

Substance and Issues: A 16 member task force, established by the Department of Mental Health and Mental Retardation has been working on the Community Rules and Regulations for the past three years. The membership represented a wide variety of public and private professional and consumer interests in all three disability areas. The task force focused its efforts on developing rules and regulations that would present the least burden on regulated programs while still ensuring the protection of client rights.

In May, 1983, October, 1984, and December, 1984, the Department of Mental Health and Mental Retardation mailed out copies of the Community Rules and Regulations to agencies and interested individuals for comments and the rules and regulations were rewritten in response to comments received.

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In considering alternative approaches to meet the need, the proposed regulations address a number of options. One alternative approach to these regulations which was considered was to write separate rules and regulations for each of the disability areas (mental illness, mental retardation, and substance abuse) was considered. This idea was rejected because many programs provided services in two or all three of these areas and would, therefore, have to be familiar with two or three sets of rules and regulations. Writing separate rules and regulations for residential and nonresidential programs was yet another alternative considered. This idea was rejected because many community services boards and agencies have both residential and nonresidential programs and would, therefore, have to operate with two sets of rules and regulations.

Statutory Authority: §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until September 15, 1985.

Contact: Elsie D. Little, A.C.S.W., State Human Rights Director, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-3988

Interagency Committee on the Implementation of the Recommendations of the Task Force on the Mentally Ill in Virginia's Jails

August 29, 1985 - 10 a.m. - Open Meeting
James Monroe Building, 101 North 14th Street, Training Room 4, Mezzanine Level, Richmond, Virginia. (Location accessible to handicapped.)

The Interagency Committee will meet to refine its interim report to the Commissioners of Mental Health and Corrections. The report consists of sets or recommended strategies promulgated to provide effective cost efficient methods for the Implementation of the Recommendations of the Task Force on the Mentally Ill in Virginia's Jails.

Contact: Frank Patterson, Assistant Director/Justice System Services, Department of Mental Health and Mental Retardation, P. O. Box 1797, Richmond, Va. 23214, telephone (804) 786-4837

STATE MILK COMMISSION

† **August 21, 1985 - 10 a.m. - Open Meeting**
Ninth Street Office Building, Room 1015, Richmond, Virginia. (Location accessible to handicapped.)

A routine monthly meeting.

Contact: C. H. Coleman, Administrator, Ninth Street Office Bldg., Room 1015, Richmond, Va. 23219, telephone (804) 786-2013

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mines

September 12, 1985 - 9:30 a.m. - Public Hearing
Mountain Empire Community College, Dalton-Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing the Use of Automated Temporary Roof Support Systems**. The regulation provides for automated temporary roof support systems for the safety of the roof bolters.

STATEMENT

Basis: The regulation has been in effect since April 1, 1983. The regulation was adopted as mandated by the General Assembly in § 45.1-41 (c1) of the Code of Virginia. The regulation was adopted pursuant to the provisions of § 45.1-104 (b1) of the Code of Virginia.

Purpose: The purpose of the regulation is to provide for the protection of "Roof Bolters" who go into the mine, beyond the area where roof support systems are in place, for the purpose of bolting unsupported mine roof.

Issues: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations.

Substance: The regulation was reviewed by the Division of Mines and selected persons in the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. There were no problems identified in the review and there were no changes other than those required by the Virginia Register Form, Style and Procedure Manual.

Statutory Authority: §§ 45.1-41 (c1) and 45.1-104 (b1) of the Code of Virginia.

Written comments may be submitted until September 12, 1985.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

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September 12, 1985 - 9:30 a.m. - Public Hearing
Mountain Empire Community College, Dalton-Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1

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of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing Disruption of Communication in Mines**. The regulation establishes responsibility for periodic checks to determine if the communication system is operational and address steps to be taken during a disruption.

STATEMENT

Basis: The regulation has been in effect since May 1, 1980. The General Assembly recommended that the chief adopt a regulation regarding § 45.1-81(a) concerning communication facilities for underground coal mines. The regulation was adopted pursuant to § 45.1-104 (b1) of the Code of Virginia.

Purpose: The purpose of the regulation is to establish responsibility for periodic checks to determine that the required two-way communications system in underground coal mines is operational and set procedures to address situations when a disruption occurs in the system.

Issue: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations.

Substance: The regulation was reviewed by the Division of Mines and selected persons in the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. Based on review and analysis, it was determined that the regulation is effective as written. Suggestions for changes were not strong enough to justify modification of any of the regulation.

Statutory Authority: § 45.1-104 (b1) of the Code of Virginia.

Written comments may be submitted until September 12, 1985.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

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September 12, 1985 - 9:30 a.m. - Public Hearing
Mountain Empire Community College, Dalton-Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing Advanced First-Aid**. The regulation sets specifications for training individuals to perform first-aid when an emergency medical technician is not available.

STATEMENT

Basis: The regulation has been in effect since March 15, 1980. The regulation was adopted as required by § 45.1-101.2 of the Code of Virginia.

Purpose: The regulation establishes specifications for mine first-aid and refresher training programs designed to train individuals to administer advanced first-aid when an Emergency Medical Technician is not available.

Issue: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations.

Substance: The regulation was reviewed by the Division of Mines and selected persons in the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. There were no problems identified with the regulation in regard to need, clarity, simplicity, or conflict with other regulations. Comments did indicate that the 50% personnel requirement was excessive and thus rendered the regulation ineffective. The regulation was changed to make compliance less burdensome.

Statutory Authority: § 45.1-101.2 of the Code of Virginia.

Written comments may be submitted until September 12, 1985.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

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September 12, 1985 - 9:30 a.m. - Public Hearing
Mountain Empire Community College, Dalton Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing Vertical Mine Ventilation Holes**. The regulation provides for safety in the drilling and use of vertical ventilation holes used to remove methane gas from lower measure coal seams.

STATEMENT

Basis: The regulation has been in effect since October 15, 1975. The regulation was adopted in accordance with § 45.1-104 (b1).

Purpose: The purpose of the regulation is to provide safety in the drilling and use of vertical ventilation holes designed to remove methane gas from lower measure coal seams that would otherwise be in the mine ventilation

system. The regulation provides a better margin of safety for the worker engaged in mining these seams and in addition they provide a safeguard to protect workers in seams of coal being mined above to avoid any accidental penetration of the ventilation holes.

Issues: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations.

Substance: The regulation was reviewed by the Division of Mines and selected persons from the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. Through all the review and the comment period there were no real problems identified with the regulation. The only change was that reference to "Pocohontas No. 3 Seam" be changed to include all coal seams from which methane is to be drained.

Statutory Authority: § 45.1-104 (b1) of the Code of Virginia.

Written comments may submitted until September 12, 1985.
Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

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September 12, 1985 - 9:30 a.m. – Public Hearing
Mountain Empire Community College, Dalton-Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing Blasting in Surface Mining Operations.** The regulation regulates the storage, handling and use of explosives to provide for the health and safety of employees and the public to the extent they are affected by blasting.

STATEMENT

Basis: The regulation has been in effect since September 15, 1975. The regulation was adopted pursuant to § 45.1-104 (b1) of the Code of Virginia.

Purpose: The purpose of the regulation is to regulate the storage, handling and use of explosives at surface mining operations to provide for the safety and health of employees and to the public to the extent they would be affected by blasting.

Issue: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations

Substance: The regulation is being reviewed by the Division of Mines and selected persons in the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. The result of the review procedure indicated that the regulation is needed. Due to advancement in technology in the blasting area, some of the existing standards relating to airblast and vibration need to be modified. Other entities, both state and federal have already modified their regulation based on the U. S. Bureau of Mines' latest recommendations. To come abreast of technology and to be consistent with other regulations, changes in the airblast and vibration standards were made.

Statutory Authority: § 45.1-104 (b1) of the Code of Virginia.

Written comments may be submitted until September 12, 1985.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

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September 12, 1985 - 9:30 a.m. – Public Hearing
Mountain Empire Community College, Dalton Cantrell Building, Big Stone Gap, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy, Division of Mines intends to amend regulations entitled: **Rules and Regulations Governing Installation and Use of Cabs and Canopies.** The regulation addresses the safety criteria where cabs and canopies are used for protection of workers from roof falls and overhead obstructions.

STATEMENT

Basis: The regulation has been in effect since February 15, 1977. The regulation was adopted pursuant to the provisions of § 45.1-104 (b1) of the Code of Virginia.

Purpose: The purpose of the regulation is to provide for the safety of equipment operators in coal mines from roof falls and from overhead obstructions.

Issue: The regulation is being reviewed as part of the Governor's Regulatory Review Process. The regulation is being reviewed for need, clarity, simplicity, effectiveness and conflict with other regulations.

Substance: The regulation was reviewed by the Division of Mines and selected persons in the mining industry were asked for comments through our public participation procedure. A public hearing was also held as part of the public participation procedure. An inconsistency with federal regulations was noted in the requirement in § II for testing for side load capacity. This requirement was deleted. The six inch clearance requirement in § IV was

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considered to be impractical. This requirement was also deleted. The 12 inches of clearance that the inspector may require in § IV was found to be redundant and was deleted. Section VI was deleted due to concerns over the design of cabs and canopies in regard to physical size of persons.

Statutory Authority: § 45.1-104 (b1) of the Code of Virginia.

Written comments may be submitted until September 12, 1985.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, Va. 24219, telephone (703) 523-0335/3401

DEPARTMENT OF MOTOR VEHICLES

August 21, 1985 - 10:30 a.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia

A meeting to discuss the definitions for terms used in the Motor Vehicle Dealer Licensing Act, and to compile a list of statutory concerns.

Contact: Joe Chandler, Hearing Officer, Department of Motor Vehicles, Richmond, Va., telephone (804) 257-0463

STATE BOARD OF OPTICIANS

† **September 13, 1985 - 9:30 a.m. - Open Meeting**
Department of Commerce, Travelers Building, 3600 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to (i) review applications for reinstatement of licenses, (ii) review investigative reports of complaints and determine disposition, and to (iii) consider general correspondence pertinent to the operation of the board.

Contact: Gale G. Moyer, Assistant Director, Virginia State Board of Opticians, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 257-8509

OUTDOOR RECREATION ADVISORY BOARD

† **September 11, 1985 - 9:30 a.m. - Open Meeting**
Douthat State Park Restaurant, Clifton Forge, Virginia

A quarterly business meeting to review statewide recreation and state parks matters. One major issue to be addressed will be proposed state park fees and charges for 1986.

Contact: Art Buehler, Virginia Division of Parks and Recreation, 1201 Washington Bldg., Richmond, Va.

23219, telephone (804) 786-2556

VIRGINIA REAL ESTATE BOARD

† **August 21, 1985 - 10 a.m. - Open Meeting**
City Hall Building, Council Chambers, 810 Union Street, Norfolk, Virginia

The board will meet to conduct a formal fact-finding hearing regarding the Virginia Real Estate Board v. Mary A. Brooks; Norfolk, Virginia.

Contact: Sylvia W. Bryant, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 257-8524

August 28, 1985 - 9 a.m. - Open Meeting
Department of Commerce, Travelers Building, 3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to (i) approve minutes of the July 23, 1985, meeting, (ii) review applications, and determination of cases.

Contact: Lucia Anna Trigiani, Interim Assistant Director, 3600 W. Broad St., 5th Floor, Room 523, Richmond, Va. 23230, telephone (804) 257-8516

† **August 29, 1985 - 10 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. (Location accessible to handicapped.)

The board will meet to conduct a formal fact-finding hearing regarding the Virginia Real Estate Board v. Charles E. Payne; Richmond, Virginia.

Contact: Sylvia W. Bryant, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, Va. 23230, telephone (804) 257-8524

VIRGINIA RESOURCES AUTHORITY

September 24, 1985 - 10 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Authority Board Room, Suite 305, Richmond, Virginia

The board will meet to (i) approve minutes of the July 24, board meeting, (ii) review the authority's operations for the prior month, and (iii) consider other matters and take other actions as they 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.

Contact: Shockley D. Gardner, Jr., Executive Director, P. O. Box 1300, Richmond, Va. 23210, telephone (804) 644-3100

STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

September 11, 1985 - 10 a.m. - Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. (Location accessible to handicapped.)

The board will meet to hear and render a decision on all appeals of denials of On-Site Sewage Disposal System Permits.

Contact: P. M. Brooks, 502 Madison Bldg., Richmond, Va. 23219, telephone (804) 786-1931

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† August 20, 1985 - 9 a.m. - Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Location accessible to handicapped.)

The authority will conduct a public hearing to consider Industrial Development Bond applications received by the authority and for which public notice has appeared in the appropriate newspapers of general circulation. Prior to the public hearing, which starts at 10 a.m., the authority will conduct its regular business meeting.

Contact: Nic Walker, Executive Director, Virginia Small Business Financing Authority, 1000 Washington Bldg., Richmond, Va. 23219, telephone (804) 786-3791

DEPARTMENT OF SOCIAL SERVICES

Departments of Social Services, Education and Corrections

† October 29, 1985 - 10 a.m. - Public Hearing
State Capitol, Capitol Square, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Departments of Social Services, Education and Corrections intends to adopt regulations entitled: **Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.** These rules of the interdepartmental committee describe the method for implementing a consistent rate-setting and appeals process through the three state departments.

STATEMENT

Basis: These regulations are issued under authority granted by § 2.1-703 of the Code of Virginia which requires the

development and adoption of these rules.

Subject: These regulations establish a uniform process to approve rates for all day or special education schools for the handicapped, residential providers of child care or regional public special education programs for the handicapped that accept publicly funded children. The rates established through this process will be paid by all school boards, court service units, and social service departments.

Substance: The current process is similar to the process proposed in these regulations. The process sets unit costs for each service provider depending on the proposed cost of each service provider. The process lists allowable costs and unallowable costs and prescribes minimum utilization rates to be used in determining unit costs.

Issues: These regulations formalize a uniform rate-setting process among the three departments. The process establishes uniform rates to be paid for any publicly funded child. In the absence of these regulations each department could have a different rate-setting process and determine different rates for the same service provider. This would cause duplication of effort for the service providers and the possibility that different rates would be set for the same service provider.

Purpose: The purpose of these regulations is to approve uniform rates for any service provider in the state that accepts publicly funded children.

Statutory Authority: § 2.1-703 of the Code of Virginia.

Written comments may be submitted until October 19, 1985, to Patricia Tuck, Department of Education, 101 North 14th Street, James Monroe Building, 23rd Floor, Richmond, Virginia 23219.

Contact: James D. Donohue, State Welfare Supervisor, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23288, telephone (804) 281-9037 (toll-free number 1-800-552-7091)

Division of Benefit Programs

August 20, 1985 - 2 p.m. - Public Hearing
August 20, 1985 - 7 p.m. - Public Hearing
Wytheville Community College, Bland Hall, Room 104, Wytheville, Virginia
August 22, 1985 - 2 p.m. - Public Hearing
August 22, 1985 - 7 p.m. - Public Hearing
James Madison University, Duke Fine Arts Center, Lattimer-Shaeffer Theater, Main and Grace Streets, Harrisonburg, Virginia
August 29, 1985 - 2 p.m. - Public Hearing
August 29, 1985 - 7 p.m. - Public Hearing
George Mason University, Rivanne Lane, Ballroom Student Union 2, Fairfax, Virginia
September 4, 1985 - 2 p.m. - Public Hearing
September 4, 1985 - 7 p.m. - Public Hearing

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City Hall Building, 810 Union Street, Council Chambers, 11th Floor, Norfolk, Virginia

September 11, 1985 - 2 p.m. - Public Hearing

September 11, 1985 - 7 p.m. - Public Hearing

State Capitol, Capitol Square, Senate Room B, Richmond, Virginia. (Location accessible to handicapped.)

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services, Division of Benefit Programs intends to amend regulations entitled: **Standards of Assistance and Grouping of Localities in the Aid to Dependent Children (ADC) Program**. The proposed regulation is intended to establish (i) new Standards of Assistance (i.e. Standards of Need) to reflect current cost of living in Virginia, and (ii) a new group of localities into four payment groups, to reflect current differences in shelter cost from locality to locality across Virginia.

STATEMENT

Subject: Proposed amendments to the following regulations:

The Standard of Assistance (i.e. Standards of Need) in the Aid to Dependent Children (ADC) Program; and

The Grouping of Localities in the Aid to Dependent Children (ADC) Program.

Substance: The proposed regulations, as set forth in the accompanying Standards of Need and Locality Grouping tables, have been established to represent reasonable approximations of the current cost of living in Virginia in housing defined as "safe, decent and sanitary" by the Department of Housing and Urban Development. The standards are stratified into four different cost groups to reflect variations in the amount Aid to Dependent Children (ADC) recipients must pay for shelter in the locality in which they reside.

The first step of the Aid to Dependent Children Program eligibility determination process relates directly to these Aid to Dependent Children (ADC) Standards of Need. This step consists of screening total gross family income against 185% of the state's standard of need. (It should be noted that subsequent steps in the eligibility determination screening process are performed—and the actual payment to an eligible recipient is made—with respect to the payment levels established as a ratable reduction of the Standards of Need. No change to the payment levels is being proposed here, as state appropriations from the General Assembly drive the level of Aid to Dependent Children (ADC) payments that can be met (i.e. the ratable reduction from the Standards of Need) for the program.) Other effects of this change in the Standards of Need include a change in income deemed available from a step-parent to meet maintenance needs of the family; the duration that a lump sum received by an assistance unit can be considered available to meet the needs of the family—and thereby render the family ineligible, the test of

whether there is financial deprivation (an eligibility requirement of the program); and the cash-equivalent value of food and/or clothing totally contributed to the program applicant/recipient.

Issues: Federal regulations require that a state administering the Aid to Dependent Children program "specify a statewide standard, expressed in money amounts, to be used in determining (i) the need of applicants and recipients and (ii) the amount of assistance payment." A state may have multiple payment levels where justifiable by the range in costs of living across the state, provided the provisions of uniformity and equity continue to be served.

The State Board of Social Services is charged by state law with adopting "...rules and regulations governing the amount of assistance persons shall receive.... In making such rules and regulations, the board shall give due consideration to significant differences in living costs in various counties and cities and shall establish or approve such variations in monetary assistance standards for shelter allowance on a regional or local basis, as may be appropriate in order to achieve the highest practical degree of equity in public assistance grants.... The amount of assistance which any person shall be sufficient, when added to all other income and support of the recipient (exclusive of that not to be taken into account), to provide such person with a reasonable subsistence."

Basis: The proposed Standards of Need and Locality Grouping have been developed pursuant to §§ 63.1-25 and 63.1-110 of the Code of Virginia, and 45 CFR 233.20 of the Code of Federal Regulations.

Purpose: The purpose of proposing new Aid to Dependent Children Standards of Need is to provide Virginia with Standards of Need that more closely approximate the current cost of living in the Commonwealth. The standards in use now were established in 1973 (implemented in July 1974). Inflation since 1973 would appear to have severely eroded the current Standards of Need as a reflection of today's cost of living in Virginia since Standards of Need and payment levels have increased by a total of 30.9% (includes the 8% increase effective July 1, 1985). During this same period, the Consumer Price Index—All Urban Consumers (CPI) has increased by more than 110.6%.

The purpose of proposing a regrouping of localities is to recognize that the cost of living in one locality relative to the cost of living in other localities across Virginia may have changed. Therefore, by regrouping local agencies, the Commonwealth can again assure the most equitable distribution of public assistance grants.

We believe both the proposal to establish new Standards of Assistance and the proposal to regroup localities into new payment groups are consistent with the aforesaid provisions and intent of federal regulations and state law.

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

Written comments may be submitted until September 5, 1985, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23288.

Contact: Howard W. Reisinger, Jr., Chief, Research and Special Projects, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23288, telephone (804) 281-9050 (toll-free number 1-800-552-7091)

* * * * *

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services, Division of Benefit Programs intends to amend regulations entitled: **Maximum Resource Limit in the Aid to Dependent Children (ADC) and General Relief (GR) Programs. (VR 615.01.3)** The State Board of Social Services intends to increase the maximum resource limit for resources which can be retained by an applicant/recipient of assistance in the Aid to Dependent Children (ADC) and General Relief (GR) Programs from \$600 to \$1,000.

STATEMENT

Subject: Proposed amendment to the following regulation:

Maximum Resource Limit in the Aid to Dependent Children (ADC) and General Relief (GR) Programs.

This amendment is being proposed for a 60-day comment period.

Substance: Federal regulations limit eligibility for assistance in the Aid to Dependent Children (ADC) Program to those families with available resources, not specifically excluded, which do not exceed \$1,000, or such lower limit established at the discretion of each state. In Virginia, the State Board of Social Services has set the maximum limit for resources which may be retained by an applicant/recipient of Aid to Dependent Children (ADC) at \$600. Additionally, the board has also adopted this amount as the maximum which may be retained by an applicant/recipient of General Relief (GR).

As set forth herein, the board is proposing to increase the maximum resource limit in both the Aid to Dependent Children (ADC) and General Relief (GR) Programs from \$600 to \$1,000.

Issues: Resource limits in the Aid to Dependent Children (ADC) and General Relief (GR) Programs have not been increased since January 1, 1978. It is, therefore, felt that an increase in the resource limit will allow applicants/recipients to retain an amount which more accurately reflects the current cost of living.

Basis: Chapter 1, Title 63.1-25 of the Code of Virginia delegates authority to the State Board of Social Services to promulgate rules and regulations necessary for operation

of public assistance programs in Virginia. Title IV-A, § 402(a)(7) of the Social Security Act has established the maximum resource limit for applicants/recipients in the Aid to Dependent Children (ADC) Program at \$1,000, or such lower limit established by each state.

Purpose: To establish a more reasonable limit on the maximum value of resources which may be retained by an applicant/recipient of assistance in the Aid to Dependent Children (ADC) and General Relief (GR) Programs.

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

Written comments may be submitted until August 23, 1985, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Carolyn C. Ellis, Supervisor, Economic Assistance Unit, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 281-9046

* * * * *

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services, Division of Benefit Programs intends to amend regulations entitled: **Safeguarding Information in the Aid to Dependent Children (ADC) Program/Disclosure of Information to Law-Enforcement Officers. (VR 615.01.4)** The proposed regulation is intended to allow local agencies to disclose to state or local law-enforcement officers the address of a recipient if: (i) such recipient is a fugitive felon; (ii) location/apprehension of the felon is within the officer's official duties; and (iii) the request is made in the proper exercise of those duties.

STATEMENT

Subject: Proposed amendment to the following regulation:

Disclosure of Information to Law-Enforcement Officers in the Aid to Dependent Children (ADC) Program. (VR 615-01.4).

This amendment is being proposed for a 60-day comment period.

Substance: The proposed regulation will allow local departments of social services to disclose the address of a current recipient of Aid to Dependent Children to a state or local law-enforcement officer if the recipient is a fugitive felon. The officer must provide the recipient's name, social security number, and demonstrate that the location or apprehension of such felon is within the officer's official duties.

Issues: 1) Federal regulations allow states to define a fugitive felon utilizing a state law, federal law or

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combination thereof. In conjunction with the Attorney General's office, the department has determined the most appropriate definition of a fugitive felon is as follows:

Any person charged with a crime punishable by death, or which is a felony under the law in the place from which the person flees, or which, in the case of New Jersey, is a high misdemeanor under the law of said state who flees to avoid prosecution, or custody or confinement after conviction.

2) To ensure the request for the recipient's address is within the officer's official duties, the department has mandated that in addition to the recipient's name and social security number, the officer must provide evidence of an outstanding warrant for the fugitive felon's arrest.

3) The federal Deficit Reduction Act of 1984 (P.L. 98-369) allows states to disclose the address of a recipient who is a fugitive felon to a state or local law-enforcement officer regardless of whether the state has enacted legislation allowing public access to federal welfare records.

4) The federal law does not specify if disclosure of a recipient's current address is limited to state or local law-enforcement officers in the state from which the recipient is currently receiving assistance or is applicable to state or local law-enforcement officers from other states. The Attorney General's office has advised that disclosure of information need not be limited to state and local law-enforcement officers of the Commonwealth.

Basis: The proposed regulation has been developed pursuant to Chapter 1, Title 63.1-25 of the Code of Virginia and § 2636 of the federal Deficit Reduction Act of 1984 (P.L. 98-369).

Purpose: Prior to enactment of P.L. 98-369, states were prohibited from disclosing information regarding recipients to law-enforcement officers, except for public assistance related crimes, thereby, protecting such recipients who are fugitive felons from prosecution or confinement for crimes with which they have been charged or which they have committed. With passage of the Deficit Reduction Act, however, states may assist law-enforcement agencies in locating fugitive felons who are receiving Aid to Dependent Children.

As set forth in § 63.1-25 of the Code of Virginia, the State Board of Social Services has been delegated the authority to promulgate rules and regulations necessary to operate public assistance programs in Virginia. At the direction of the board, the proposed amendment to the Aid to Dependent Children (ADC) Program has been approved for a 60-day public comment period.

It is the intent of the board to allow local departments of social services to disclose the address of a current recipient of Aid to Dependent Children to a state or local law-enforcement officer if the recipient is a fugitive felon. Under current regulations, a recipient must be advised of

each such request for information and must provide written authorization before the requested information may be released.

As set forth in the federal Deficit Reduction Act of 1984 (P.L. 98-369), states need not enact legislation relaxing privacy laws in order to adopt the regulation as described herein.

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

Written comments may be submitted until August 23, 1985, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Carolyn C. Ellis, Supervisor, Economic Assistance Unit, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 281-9046

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services, Division of Benefit Programs intends to amend regulations entitled: **Collection of Overpayments in the Aid to Dependent Children (ADC) and Refugee Other Assistance Programs. (VR 615.01.5)** Allow waiver of overpayments to former recipients which are less than \$35 and overpayments are greater than \$35 if, after reasonable efforts to collect the overpayment, further efforts would not be cost effective. This provision does not apply to overpayments which are the result of fraud.

STATEMENT

Subject: Proposed amendment to the following regulation:

Collection of Overpayments in the Aid to Dependent Children (ADC) and Refugee Other Assistance Programs.

This amendment is being proposed for a 60-day comment period.

Substance: Current regulations in the Aid to Dependent Children (ADC) and Refugee Other Assistance Programs require states recover all overpayments of assistance which are the result of both agency and client error. The federal Deficit Reduction Act of 1984 (P.L. 98-369), however, allows states to waive recovery of outstanding overpayments to former Aid to Dependent Children (ADC) and Refugee Other Assistance recipients in situations where the total overpayments are less than \$35. Additionally, states may opt to waive recovery of overpayments to former recipients which are \$35, or more if, after reasonable efforts to collect the overpayments, it is determined that further efforts to collect the overpayment would not be cost-effective. The option to waive such overpayments is not applicable in situations

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involving fraud.

Issues: Federal regulations require that prior to determining if further efforts to collect an overpayment which is \$35, or more, would not be cost-effective, the agency must ensure "reasonable efforts" have been made to collect the overpayment from the former recipient. At minimum, the regulations require the agency to attempt to contact the former recipient to notify him of the amount of the overpayment, the reason the overpayment occurred, and that repayment is required. The department has expanded this requirement to ensure clarity and consistency. In situations where the former recipient cannot be located; or he refuses, in writing, to repay the overpayment; or he has no means by which to repay the overpayment, the local agency must conduct an evaluation to determine if further action to collect the overpayment will be cost-effective.

Federal regulations are also unclear with regard to whether states may allow localities, at their discretion, to pursue collection of overpayments which are less than \$35. To ensure uniform procedures regarding overpayments are applied throughout the Commonwealth, the proposed regulation, as set forth herein, will mandate local agencies to forego collection of all overpayments less than \$35.

Basis: Section 63.1-25 of the Code of Virginia and § 2633 of P.L. 98-369 (the Deficit Reduction Act of 1984) established the basis for states to adopt the regulation as set forth herein.

Purpose: The intent of the proposed regulation is to reduce administrative costs incurred by the local social services agencies through collection of overpayments which are not deemed to be cost-effective. Additionally, adoption of this regulation will increase consistency between the Aid to Dependent Children (ADC), Refugee Other Assistance, and Food Stamp Programs with regard to collection of overpayments. Under current Food Stamp Program regulations, local agencies may forego collection of Food Stamp overissuances which are less than \$35 from former program participants.

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

Written comments may be submitted until August 23, 1985 to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Carolyn C. Ellis, Supervisor, Economic Assistance Unit, Division of Benefit Programs, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 281-9046

* * * * *

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Social Services intends to amend regulations entitled:
Protective Payments in the Aid to Dependent

Children (ADC) and Refugee Other Assistance Programs. (VR 615.01.6) These regulations will allow local departments of social services to continue making assistance payments payable to a sanctioned caretaker relative for remaining eligible members of the assistance unit if, after all reasonable efforts, the local agency cannot locate an appropriate protective payee.

STATEMENT

Subject: Proposed amendment to the following regulation:

Protective Payments in the Aid to Dependent Children (ADC) and Refugee Other Assistance Programs (VR 615.01.6).

This amendment is being proposed for a 60-day comment period.

Substance: Under current regulations, there is no provision for continuing Aid to Dependent Children and Refugee Other Assistance payments to a caretaker relative who is sanctioned for failure to participate in the Employment Services Program, as well as for failure to assign rights to child/spousal support or cooperate in establishing paternity and securing such support. The caretaker relative who fails to fulfill these requirements not only has his needs removed from the grant, but is also replaced as the payee by a protective payee appointed by the local agency.

It is the intent of the State Board of Social Services to allow local agencies to continue Aid to Dependent Children and Refugee Other Assistance payments to the sanctioned caretaker relative for the remaining members of the assistance unit if, after making all reasonable efforts, the local agency is unable to locate an appropriate individual to whom protective payments can be made.

Issues: As set forth in the federal Deficit Reduction Act of 1984 (Public Law 98-369), states may opt to continue Aid to Dependent Children and Refugee Other Assistance payments to sanctioned caretaker relatives when they fail to meet the above-mentioned program requirements. Having carefully reviewed the impact of the above, the State Board has endorsed an amendment, as proposed herein, which will allow the continuation of assistance payments payable to the sanctioned caretaker relative for the remaining members of the assistance unit.

Pursuant to P.L. 98-369, states which opt to implement exceptions to requirements for protective payments will continue issuing payments to sanctioned caretaker relative only after making all reasonable efforts to locate an appropriate protective payee.

Due to the fact that local agencies are best suited to evaluate what constitutes "reasonable efforts," the board has determined that final authority for such decisions will rest with the superintendent/director of each locality. Such responsibility may be delegated by the

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superintendent/director to the most suitable party.

Basis: The proposed amendment is an option made available to state in § 2634 of the federal Deficit Reduction Act of 1984 (P.L. 98-369). Section 63.1-25 of the Code of Virginia, delegates authority to the State Board of Social Services to promulgate rules and regulations necessary for operation of public assistance programs in Virginia.

Purpose: The purpose of the proposed regulation is to allow for the continuation of assistance on behalf of eligible assistance unit members to the caretaker relative in situations where the caretaker relative has been sanctioned and a protective payee cannot be reasonable located.

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

Written comment may be submitted until September 6, 1985, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Carolyn Ellis, Supervisor, Economic Assistance Unit, Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8699, telephone (804) 281-9046 (toll-free number 1-800-552-7091)

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Division of Service Programs

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Department of Social Services, Division of Service Programs intends to amend regulations entitled: **Elimination of Eligibility Criteria for Direct Social Services**. The proposed regulation would allow local Social Service agencies the option of eliminating financial eligibility criteria for all social services provided directly by local agency staff except for the Employment Services Program.

STATEMENT

Basis: This regulation is issued under authority granted by § 63.1-25 of the Code of Virginia.

Subject: This regulation would allow local social service agencies the option of eliminating financial eligibility criteria for all social services provided directly by local agency staff except for the Employment Services Program.

Substance: Current regulations for social services provided directly by local social service staff require financial eligibility determination for all persons needing Employment Services and certain individuals and families needing Family and Adult Services.

This regulation is offered as an option to local social

service agencies. It would allow local social service agencies to either continue under current regulations or to eliminate financial eligibility determination for all social services when provided directly by agency staff except for services provided under the Employment Services Program.

Issues: This regulation should allow localities more flexibility in offering direct services to their communities. It will free up time now spent on eligibility determination for direct service delivery. In the absence of the regulation local agencies may have to deny services to some persons who truly need the service. This is particularly unfortunate in communities where the local social service agency is the only service agency. Although an increase in service applications was thought to be an issue, a preliminary study of the impact of the regulation did not indicate that this was the case.

Purpose: The purpose of this regulation is to save staff time and to enable local agencies to better provide preventative and early interventive services prior to the need for protective services or substitute care.

Summary: Current regulations for social services provided directly by local social services staff require financial eligibility determination for all persons needing Employment Services and certain individuals and families needing Family and Adult Services. The proposed regulation would allow local service agencies the option of eliminating the financial eligibility determination for all social services when provided directly by agency staff except for services provided under the Employment Services Program.

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

Written comments may be submitted until September 6, 1985.

Contact: Elaine F. Jefferson, Generic Services Specialist, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, Va. 23229-8669, telephone (804) 281-9139 (toll-free number 1-800-552-7091)

VIRGINIA SOIL AND WATER CONSERVATION BOARD

† **September 19, 1985 - 9 a.m. - Open Meeting**
Division of Soil and Water Conservation Board, 203 Governor Street, Room 200, Richmond, Virginia. (Location accessible to handicapped.)

A regular bimonthly business meeting of the board.
Contact: Donald L. Wells, 203 Governor St., Suite 206, Richmond, Va. 23219, telephone (804) 786-2064

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DEPARTMENT OF TAXATION

August 27, 1985 - 10 a.m. - Open Meeting
Department of Taxation, 2220 West Broad Street,
Richmond, Virginia. (Location accessible to handicapped.)

An informal meeting to solicit comments and suggestions on the proposed revision of VR 630-10-86 of the Virginia Retail Sales and Use Tax Regulations relating to printing.

August 28, 1985 - 3 p.m. - Open Meeting
Department of Taxation, 2220 West Broad Street,
Richmond, Virginia. (Location accessible to handicapped.)

An informal meeting to solicit comments and suggestions in the development of amendments to the Virginia Sales and Use Tax Regulation VR 630-10-3.

Contact: Danny M. Payne, Director, Tax Policy Division,
P. O. Box 6-L, Richmond, Va. 23282, telephone (804)
257-8010

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **August 28, 1985 - 8 a.m. - Open Meeting**
Richard Bland College, Student Center, Petersburg, Virginia

A meeting of the Board of Visitors called by the rector of the college to review contracts, budget considerations, and any other matters presented by the administrations of William and Mary and Richard Bland College.

An informal release will be available four days prior to the board meeting for those individuals and/or organizations who request it.

Contact: Office of University Communications, James Blair Hall, Room 308, College of William and Mary, Williamsburg, Va. 23185, telephone (804) 253-4226

VIRGINIA DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

September 14, 1985 - 10:30 a.m. - Open Meeting
Administrative Headquarters, 397 Azalea Avenue,
Richmond, Virginia. (Location accessible to handicapped;
interpreter for deaf provided if requested.)

The committee meets quarterly to advise the Virginia Department for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

Contact: George A. Koger, Executive Assistant, 397 Azalea Ave., Richmond, Va. 23227, telephone (804) 264-3148

STATE WATER CONTROL BOARD

August 26, 1985 - 9 a.m. - Open Meeting
August 27, 1985 - 9 a.m. - Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. (Location accessible to handicapped.)

September 19, 1985 - 9 a.m. - Open Meeting
September 20, 1985 - 9 a.m. - Open Meeting
Ramada Inn, Duffield, Virginia

Regular board meetings.

Contact: Doneva A. Dalton, State Water Control Board,
Office of Policy Analysis, P. O. Box 11143, Richmond,
Va. 23230, telephone (804) 257-6829

September 5, 1985 - 2 p.m. - Public Hearing
Virginia War Memorial, 621 South Belvidere Street,
Auditorium, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **Water Quality Standards, Section 2.02. Fecal Coliform Bacteria - Other Waters**. This amendment allows for a case-by-case determination of sewerage disinfection requirements.

STATEMENT

Subject: Proposed Amendment to Virginia's Water Quality Standards.

Basis: Section 62.1-44.15(3) of the Code of Virginia authorizes the board to establish Water Quality Standards and Policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established. Such standards shall be adopted only after a hearing is held and the board takes into consideration the economic and social costs and benefits which can reasonably be expected to be obtained as a result of the standards as adopted, modified, amended, or cancelled.

Section 303 of the Federal Clean Water Act requires states to adopt water quality standards and to have them approved by the Environmental Protection Agency (EPA). Additionally, both state and federal law require triennial reviews of water quality standards, with adoption of new standards, amendments to existing standards, as appropriate. If EPA determines that Virginia's water quality standards are not appropriate, it will promulgate its own federal water quality standard for Virginia.

This standards amendment is proposed as a result of EPA review of Virginia's triennial review process.

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Substance and Purpose of Proposed Amendment: The purpose of the proposed amendment is to revise § 2.02 Fecal Coliform Bacteria - Other Wastes of the Water Quality Standards to include a description of the protocol which must be followed in making a case-by-case determination of sewerage disinfection requirements, based on the actual and potential uses of the receiving waters, according to the board's Disinfection Policy. The current version of the standard allows for the case-by-case determination, but does not contain a standard protocol for conducting a site-specific beneficial use-attainability analysis on which decisions about sewerage disinfection would be based.

Issues: The proposed amendment to the Fecal Coliform Standard For Other Waters is needed to assure that all beneficial uses of a water body are considered before a decision is made on disinfection requirements in a discharge permit. The Environmental Protection Agency (EPA) expressed concern that the current wording of the standard might in some cases result in degradation of beneficial stream uses and be in violation of the Federal Water Quality Standards Regulation. In a March 1985, letter, EPA conditioned approval of this standard upon the Commonwealth's commitment to revise the standard by January 1, 1986. If this revision is not accomplished by that date, federal award of construction grants will be halted until such time as the appropriate revisions of § 2.02 are made.

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

Written comments may be submitted until September 16, 1985, to Ms. Donnie Dalton, State Water Control Board, P. O. Box 11143, Richmond, Virginia 23230.

Contact: Jean W. Gregory, Water Resources Ecologist, State Water Control Board, P. O. Box 11143, Richmond, Va. 23230, telephone (804) 257-6985

VIRGINIA WINEGROWERS ADVISORY BOARD

† August 27, 1985 - 1 p.m. - Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Location accessible to handicapped.)

This is the organizational meeting of the newly-created Virginia Winegrowers Advisory Board. The purpose of the meeting is to elect officers, and to establish policy and procedures.

Contact: S. Mason Carbaugh, Commissioner, Virginia Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, Va. 23209, telephone (804) 785-3501

LEGISLATIVE

AMUSEMENT RIDE SAFETY JOINT SUBCOMMITTEE

† September 10, 1985 - 10 a.m. - Public Hearing
William and Mary Campus Center, 2nd Floor, Rooms A and B, Williamsburg, Virginia

† October 9, 1985 - 10 a.m. - Public Hearing
Municipal Building, 215 Church Street, City Council Chambers, Room 450, Roanoke, Virginia

The joint subcommittee will hold a public hearing on amusement park safety inspections and how such an inspection program might best be implemented in the Commonwealth (HJR 331).

† November 12, 1985 - 10 a.m. - Public Hearing
George Mason University, 4400 University Drive, Student Union 2, Rooms 3 and 4, Fairfax, Virginia

The joint subcommittee will hold a public hearing on amusement park safety inspections and how such an inspection program might best be implemented in the Commonwealth. A work session on proposed legislation will follow the public hearing.

Contact: Barbara H. Hanback, House of Delegates, General Assembly Bldg., Richmond, Va. 23219, telephone (804) 786-7681 or Jessica Bolecek, Staff Attorney, Division of Legislative Services, General Assembly Bldg., Richmond, Va. 23219, telephone (804) 786-3591

HOUSE APPROPRIATIONS COMMITTEE AND SENATE FINANCE COMMITTEE JOINT MEETING

August 23, 1985 - 9:30 a.m. - Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. (Location accessible to handicapped.)

A joint regular monthly meeting.

Contact: Donna C. Johnson, House Appropriations Committee, General Assembly Building, 9th Floor, Richmond, Va. 23219, telephone (804) 786-1837

VIRGINIA CODE COMMISSION

August 28, 1985 - 9:30 a.m. - Open Meeting
General Assembly Building, Capitol Square, 6th Floor Conference Room, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to continue the revision of Title 38.1 of the

Code of Virginia, which sets forth the insurance laws of the Commonwealth.

Contact: Joan Smith, Registrar of Regulations, Virginia Code Commission, General Assembly Building, 9th and Broad Sts., Richmond, Va. 23219, telephone (804) 786-3591

CONSERVATION AND NATURAL RESOURCES COMMITTEE ACID RAIN SUBCOMMITTEE

† **August 28, 1985 - 9:30 a.m.** – Open Meeting
Shenandoah National Park, Skyland Lodge, Conference Hall, Skyline Drive near Luray, Virginia

An informal meeting to discuss area air pollution problems in the Shenandoah Valley.

Contact: Michael Ward, Staff Attorney or Martin G. Farber, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

CHANGES IN VIRGINIA'S ELECTION LAWS JOINT SUBCOMMITTEE

September 10, 1985 - 10 a.m. – Public Hearing
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. (Location accessible to handicapped.)

A public hearing for suggestions on changes in Virginia's Election Laws. Deadline for written comments to be submitted to Dr. Jack Austin by August 1, 1985. (SJR 92)

Contact: Dr. Jack Austin, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591 or Thomas G. Gilman, Senate Clerk's Office, P. O. Box 396, Richmond, Va. 23203, telephone (804) 786-5742

HOUSE OF DELEGATES GENERAL LAWS SUBCOMMITTEE

August 22, 1985 - 2 p.m. – Open Meeting
Pavilion-Virginia Beach Convention Center, Room 101, Virginia Beach, Virginia. (Location accessible to handicapped.)

A meeting of a special five-member House of Delegates General Laws Subcommittee which will study feasibility of providing incentives to owners of buildings for the installation of fire prevention systems.

Contact: Angela Bowser, Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va.

23208, telephone (804) 786-3591

INFANT MORTALITY IN THE COMMONWEALTH JOINT SUBCOMMITTEE

September 9, 1985 - 10 a.m. – Public Hearing
City Council Chambers, 418 Patton Street, Danville, Virginia

A public hearing on causes of, and prevention of, infant mortality in the Commonwealth. (SJR 106)

Contact: Brenda Edwards, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591 or George Diradour, Senate Clerk's Office, P. O. Box 396, Richmond, Va. 23203, telephone (804) 786-5742

MONITORING LONG-TERM CARE JOINT SUBCOMMITTEE

September 17, 1985 - 10 a.m. – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. (Location accessible to handicapped.)

The joint subcommittee will hear reports from task forces and agencies studying (i) housing needs of the disabled, (ii) post-educational transition services for the handicapped, (iii) reserve requirements for continuing care retirement communities, (iv) new methods of Medicaid reimbursement to nursing homes, and (v) assessment of public and private costs of maintaining the elderly in their communities.

Contact: Susan Ward, Staff Attorney, Division of Legislative Services, 2nd Floor, General Assembly Bldg., Richmond, Va., telephone (804) 786-3591

MARITAL RAPE JOINT SUBCOMMITTEE

† **August 22, 1985 - 2 p.m.** – Public Hearing
George Mason University, 4400 University Drive, Student Union 2, Rooms 5, 6 and 7, Fairfax, Virginia

† **August 29, 1985 - 2 p.m.** – Public Hearing
Municipal Building, 215 Church Avenue, SW, City Council Chambers, 4th Floor, Room 450, Roanoke, Virginia

† **September 5, 1985 - 2 p.m.** – Public Hearing
City Council Chambers, 810 Union Street, Norfolk, Virginia

These public hearings shall be held specifically for the purpose of receiving testimony relating to marital rape. (HJR 301)

† **September 19, 1985 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. (Location accessible to handicapped.)

Calendar of Events

This public hearing shall be held specifically for the purpose of receiving testimony relating to marital rape. There will be a work session in the afternoon following this hearing.

Contact: Barbara H. Hanback, House of Delegates, Richmond, Va. 23219, telephone (804) 786-7681 or Oscar Brinson, Staff Attorney, Division of Legislative Services, Richmond, Va. 23219, telephone (804) 786-3591

VIRGINIA MEDICAL MALPRACTICE LAWS JOINT SUBCOMMITTEE

† **September 6, 1985 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to discuss (i) malpractice review panels, (ii) contingent fees, (iii) collateral source rule, (iv) St. Paul's requested rate increase and (v) a no-fault approach to malpractice insurance.

Contact: Mary Devine, Staff Attorney, Division of Legislative Services, General Assembly Bldg., P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

UNEMPLOYMENT TRUST FUND JOINT SUBCOMMITTEE

† **October 17, 1985 - 2 p.m.** – Open Meeting
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. (Location accessible to handicapped.)

A meeting to hear report from the Virginia Employment Commission.

Contact: Bill Cramme', Staff Attorney, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

STATE WATER COMMISSION

August 22, 1985 - 7:30 p.m. – Public Hearing
Clarke County, Circuit Court House, 102 North Church Street, Circuit Court Room, 1st Floor, Berryville, Virginia

A public hearing on draft legislation dealing with the withdrawal of groundwater and surface water.

† **August 29, 1985 - 7:30 p.m.** – Public Hearing
Virginia Highlands Community College, Route 140, Lecture Hall, Room 220, Abingdon, Virginia

† **September 5, 1985 - 7:30 p.m.** – Public Hearing
City Council Chambers, 2400 Washington Avenue, Newport News, Virginia

† **September 12, 1985 - 7:30 p.m.** – Public Hearing

City Hall Building, City Council Chambers, Municipal Center, Courthouse Drive, Virginia Beach, Virginia

A public hearing on draft legislation dealing with the withdrawal of groundwater and surface water.

Contact: Michael D. Ward, Staff Attorney or Martin G. Farber, Research Associate, Division of Legislative Services, P. O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591

CHRONOLOGICAL LIST OPEN MEETINGS

August 20, 1985

Air Pollution Control Board, State
Geology, Virginia State Board of
Housing and Development Authority, Virginia
Board of Commissioners
Library Board, Virginia State

August 21

Milk Commission, State
Motor Vehicles, Department of
Real Estate Board, Virginia

August 22

Commerce, Virginia Board of
General Laws, House of Delegates
Subcommittee

August 23

Appropriations Committee, House AND
Finance Committee, Senate
Joint Meeting

August 26

Agricultural Foundation, Virginia
Water Control Board, State

August 27

Alcoholic Beverage Control Commission
Architect, Professional Engineers, Land Surveyors and
Certified Landscape Architects, Department of
Professional Engineers, Virginia State Board of
Taxation, Department of
Water Control Board, State
Winegrowers Advisory Board, Virginia

August 28

Code Commission, Virginia
Conservation and Natural Resources Committee
Acid Rain Subcommittee
Criminal Justice Services Board Committee
Criminal Justice Information Systems
Health Services Cost Review Commission, Virginia
Mental Health and Mental Retardation Board
Real Estate Board, Virginia
Taxation, Department of
The College of William and Mary

Calendar of Events

August 29

Health Regulatory Boards, Department of Professional Review Committee
Mental Health and Mental Retardation, Department of Mentally Ill in Virginia's Jails
Real Estate Board, Virginia

August 30

Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, Department of Land Surveyors, Virginia State Board of

September 4

Higher Education, Council of

September 6

Child Abuse and Neglect, Governor's Advisory Committee on
General Services, Department of Art and Architectural Review Board
Medical Malpractice Laws, Virginia Joint Subcommittee
Opticians, State Board of

September 9

Health, State Board of

September 10

Alcoholic Beverage Control Commission
Health, State Board of

September 11

Corrections, Board of
Outdoor Recreation Advisory Board
Sewage Handling and Disposal Appeals Review Board, State

September 12

Apprenticeship Council, Virginia

September 13

Medicine, Virginia State Board of
Opticians, State Board of

September 14

Medicine, Virginia State Board of
Visually Handicapped, Virginia Department for the Advisory Committee on Services

September 16

Governor's Job Training Coordinating Council
Health Coordinating Council, Virginia Statewide

September 17

Health Coordinating Council, Virginia Statewide
Monitoring Long-Term Care
Joint Subcommittee

September 18

Health Regulatory Boards, Department of Board of Dentistry

September 19

Health Regulatory Boards, Department of Board of Dentistry
Soil and Water Conservation Board, Virginia
Water Control Board, State

September 20

Water Control Board, State

September 24

Alcoholic Beverage Control Commission
Local Government, Commission on
Resources Authority, Virginia

September 30

Cosmetology, Virginia Board of

October 7

Air Pollution Control Board, State

October 11

General Services, Department of
State Insurance Advisory Board

October 14

Local Government, Commission on

October 15

Local Government, Commission on

October 16

Corrections, Board of

October 17

Unemployment Trust Fund
Joint Subcommittee

October 22

Marine Resources Commission

November 13

Health, State Board of

November 14

Health, State Board of

PUBLIC HEARINGS

August 20, 1985

Human Resources, Secretary of
Small Business Financing Authority, Virginia
Social Services, Department of
Division of Benefit Programs

August 21

Children, Virginia Department for

Calendar of Events

August 22

Social Services, Department of
Division of Benefit Programs
Marital Rape
Joint Subcommittee
Water Commission, State

August 23

Game and Inland Fisheries, Commission of
Health, Department of

August 27

Children, Virginia Department for

August 29

Social Services, Department of
Division of Benefit Programs
Marital Rape
Joint Subcommittee
Water Commission, State

September 4

Social Services, Department of
Division of Benefit Programs

September 5

Marital Rape
Joint Subcommittee
Water Commission, State
Water Control Board, State

September 6

Health Regulatory Boards, Board on
Professional Review Committee

September 9

Infant Mortality in the Commonwealth
Joint Subcommittee

September 10

Amusement Ride Safety
Joint Subcommittee
Election Laws, Changes in Virginia's
Joint Subcommittee
Governor's Regulatory Reform Advisory Board
Hazardous Waste Facility Siting Council
Mental Health and Mental Retardation, Department of

September 11

Hazardous Waste Facility Siting Council
Mental Health and Mental Retardation, Department of
Social Services, Department of
Division of Benefit Programs

September 12

Hazardous Waste Facility Siting Council
Mental Health and Mental Retardation, Department of
Mines, Minerals and Energy, Department of
Division of Mines
Water Commission, State

September 13

Mental Health and Mental Retardation, Department of

September 16

Health, Department of
Housing and Community Development, Board of

September 19

Marital Rape
Joint Subcommittee

September 24

Aging, Virginia Department for the
Hazardous Waste Facility Siting Council
Medical Assistance Services, Department of

October 1

Hazardous Waste Facility Siting Council

October 2

Criminal Justice Services Board
Hazardous Waste Facility Siting Council

October 9

Amusement Ride Safety
Joint Subcommittee
Hazardous Waste Facility Siting Council

October 10

Hazardous Waste Facility Siting Council

October 15

Hazardous Waste Facility Siting Council
Local Government, Commission on

October 21

Hazardous Waste Facility Siting Council

October 22

Alcoholic Beverage Control, Department of

October 29

Social Services, State Board of

November 12

Amusement Ride Safety
Joint Subcommittee