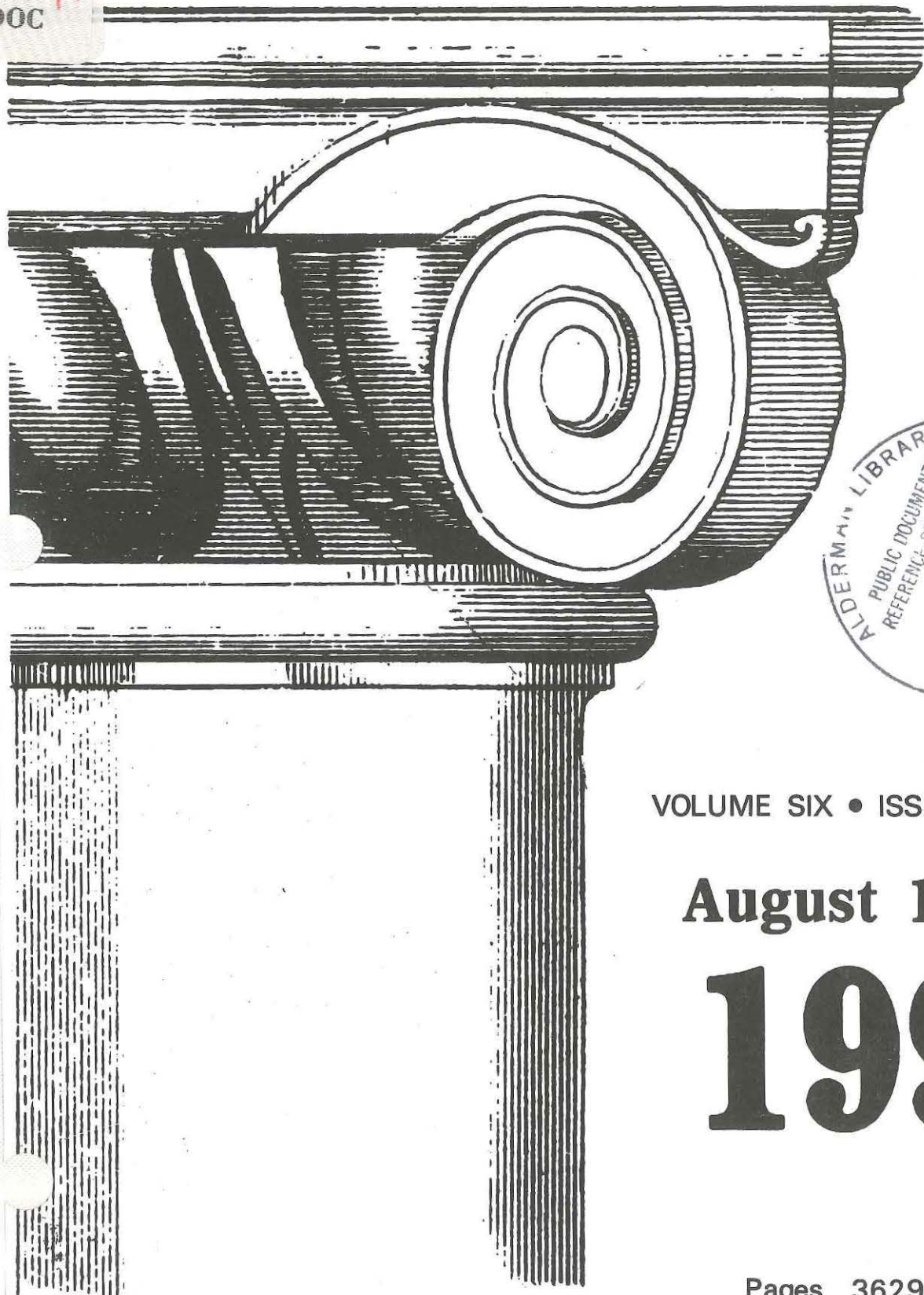


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THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME SIX • ISSUE TWENTY-THREE

August 13, 1990

1990

Pages 3629 Through 3746

VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

"The *Virginia Register of Regulations*" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for \$85 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the *Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

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

Members of the Virginia Code Commission: Dudley J. Emick, Jr., Chairman, J. Samuel Glasscock, Vice Chairman; Russell M. Carneal; Joseph V. Gartlan, Jr.; John Wingo Knowles; Gail S. Marshall; E. M. Miller, Jr.; Theodore V. Morrison; William F. Parkerson, Jr.; A. L. Philpott.

Staff of the Virginia Register: Joan W. Smith, Registrar of Regulations; Ann M. Brown, Deputy Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1990 through September 1991

MATERIAL SUBMITTED BY PUBLICATION DATE
Noon Wednesday

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June 13	July 2
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July 25	Aug. 13
Aug. 8	Aug. 27
Aug. 22	Sept. 10
Sept. 5	Sept. 24
Final Index - Volume 6	

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PROPOSED REGULATIONS

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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.

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulations:

VR 125-01-2. Advertising.

VR 125-01-3. Tied House.

VR 125-01-5. Retail Operations.

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

VR 125-01-7. Other Provisions.

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

Public Hearing Date: October 15, 1990 - 10 a.m.
(See Calendar of Events section
for additional information)

Summary:

Numerous regulations are being amended or promulgated, some of which relate to the (i) expansion of size limitations and types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees, (ii) definition of "college student publication," (iii) prohibition of references to brands or prices for alcoholic beverage advertising by a dining establishment in college student publications, (iv) sponsorship of government-endorsed civic events and advertising related to such events, (v) limitations on distribution of novelty and specialty items to retailers, their employees and patrons by manufacturers, importers, bottlers, brokers and wholesalers, (vi) restrictions on nonmember use of licensed club premises, (vii) compliance with 1990 statutory changes involving the mixed beverage food to alcoholic beverage ratio, bed and breakfast licenses and the number of additional retail establishments allowed farm wineries, and (viii) mixed licensee being left with one, unopened, 50 milliliter sample of each brand of distilled sprits being promoted by the permittee.

VR 125-01-2. Advertising.

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

A. Generally.

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

consideration is paid or promised, directly or indirectly, by any permittee does not constitute advertising.

B. Cooperative advertising.

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

C. Federal laws.

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

D. Beverages and cider.

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

E. Exceptions.

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

F. Restrictions.

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

1. Would intend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent, or depicts any person or group of persons which is immodest, undignified or in bad taste, or is suggestive of any illegal activity;
3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess;
4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;
5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags,

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seals or other insignia or otherwise;

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

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

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

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

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

A. Definition.

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

B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions:

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

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

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

a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper,

cardboard or plastic stock supplied by any manufacturer, bottler or wholesaler of wine or beer subject to the provisions of VR 125-01-3 § 8 F;

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

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

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events, government-endorsed civic events and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to the provisions of § 10 B of VR 125-01-2, this regulation;

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

f. Draft beer and wine knobs, bottle or can openers, beer and wine cut case cards, beer, and wine and distilled spirits clip-ons and beer and wine table tents, subject to the provisions of § 8 of VR 125-01-3;

g. Wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which have been shipped in the case;

h. Point-of-sale entry blanks relating to contests and sweepstakes may be affixed to cut the case cards advertising materials as defined in § 8 F of VR 125-01-3. Beer and wine wholesalers may attach such the entry blanks to cut case cards such advertising materials at the retail premises if such that service is offered to all retail licensees equally and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers;

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

j. Advertising materials that make reference to brands of alcoholic beverage not offered for sale in Virginia or to any manufacturer whose alcoholic beverage products are not sold in Virginia, provided the materials are not supplied by manufacturers,

bottlers or wholesalers of alcoholic beverages.

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

1. Such materials shall contain no depictions of an alcoholic beverage product and no reference to any brands of alcoholic beverages;
2. Such materials shall contain no more than two minor references to the name of the alcoholic beverage manufacturer or its corporate logo;
3. Such materials are limited to posters of reasonable size and table tents;
4. Such materials shall be approved in advance by the board.

D. C. Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising. However, furnishing materials relating to moderation in drinking or responsible drinking programs is permitted subject to the provisions of subdivision B 3 of this section.

E. D. Show windows.

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

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

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

1. Manufacturers and wholesalers, including wineries and farm wineries:
 - a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;
 - b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand

names;

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

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

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

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

b. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including any reference to or depiction of "Bar Room," "Saloon," "Speakeasy," "Happy Hour," or references or depictions of similar import, nor to prices of alcoholic beverages, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages.

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

A. Generally.

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

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

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are prohibited.

B. Further requirements and conditions:

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

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

3. Advertisements of beer wine and mixed beverages are not allowed in college student publications unless in reference to a dining establishment; and, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on premises," "beer," "wine," "mixed beverages," "cocktails" or any combination of these words; and

4. Advertisements of beer, wine and mixed beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3 above; notwithstanding the above mentioned provisions, all advertisements of beer, wine and mixed beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level readership are prohibited.

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

Distilled spirits advertising by distillers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed programs relating to professional, semi-professional and amateur athletic and sporting events, government-endorsed civic events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:

1. Required statements.

a. Name. Name and address (street address optional) of the responsible advertiser.

b. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of distilled spirits, such as "whiskey," is referred to, statements as to contents may be omitted.

c. Type size. Required information on contrasting background in no smaller than eight-point size type.

2. Prohibited statements.

a. "Bonded." Any reference to "bond," "bonded," "bottled in bond," "aged in bond," or the like, unless the words or phrases appear upon the label of the distilled spirits advertised.

b. Age. Any statement or depiction of age not appearing on the label, except that if none appears on the label and the distilled spirits advertised are four years or over in age such representations as "aged in wood," "mellowed in fine oak casks," and the like, if factually correct, may be used.

c. Religious references. Any statement or depiction referring to Easter, Holy Week, similar or synonymous words or phrases, except with reference to the Christmas holiday season if otherwise remote from any religious theme.

d. Price. Any reference to a price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

3. Further limitation. Distilled spirits may not be advertised in college student publications included but not limited to, as defined in § 4 B 3 of this regulation nor in newspapers and, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.

§ 6. Advertising; novelties and specialties.

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

1. Items not in excess of \$2.00 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give items not in excess of \$2.00 in wholesale value, limited to one item per retailer and one item per employee, per brand, which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers,

brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees;

2. 3. Items in excess of \$2.00 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, *professional, semi-professional or amateur athletics and sporting events subject to the limitations of § 10 of VR 125-01-2, government-endorsed civic events, and for events of a charitable nature, or cultural nature events or athletic or sporting events* ;

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

4. 5. Wearing apparel shall be in adult sizes;

5. 6. Point-of-sale order blanks, relating to novelty and specialty items, may be affixed to ~~cut ease cards~~ *advertising materials* as defined in § 8 F of VR 125-01-3. Beer and wine wholesalers may attach ~~such the order blanks to cut ease cards such advertising materials~~ at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put order blanks on the package at the wholesale premises and order blanks may not be shipped in the case to retailers. Wholesalers may not be involved in the redemption process.

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

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

1. Display of wine and beer in closed containers ~~and~~ *with* informational signs provided such merchandise is not sold or given away except as permitted in VR 125-01-7, § 10;

2. Distribution of informational brochures, pamphlets, and the like, relating to wine and beer; *and*

3. Distribution of novelty and specialty items bearing wine and beer advertising not in excess of \$2.00 in wholesale value.

§ 8. Advertising; film presentations.

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

1. Presentations made only to bona fide private

groups, associations or organizations upon request; and

2. Presentations essentially educational in nature.

§ 9. Advertising; coupons.

A. Definitions.

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

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

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Coupons may be part of, or attached to, the package only if the winery or brewery put them on at the point of manufacture; however, beer and wine wholesalers may attach coupon pads on holders to *ease cards paper, cardboard or plastic advertising materials as defined in VR 125-01-3 § 8 F* or place coupon pads on rebate bulletin boards designated by the retailer for coupons at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put them on the package at the wholesale premises and coupons may not be shipped in the case to retailers.

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

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

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

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons; the name of the retail establishment may

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not appear on any coupons offered by manufacturers and no manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers.

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

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

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

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events, *government-endorsed civic events* and events of a charitable or cultural nature by distilleries, wineries, and breweries.

B. Restrictions and conditions:

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

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

3. Awards or contributions of alcoholic beverages are prohibited;

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

5. a. 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;

b. A *government-endorsed civic event* is one event held for the purpose of promoting civic or government objectives including, the raising of funds for charity, and is conducted pursuant to the direct approval of a state or local governing body, and which is exempt from federal and state taxes;

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

7. Point-of-sale advertising materials may not be furnished to retailers by manufacturers, bottlers, or

wholesalers. However, at the request of the charity involved, employees of a wholesale licensee may deliver and place such material relating to charitable events which have been furnished to them by the charity involved. Wholesale licensees of the board may deliver to retailers point-of-sale advertising materials relating to charitable events which have been furnished to them by a third party provided that the charity involved so requests;

8. 7. Point-of-sale Advertising materials as defined in VR 125-01-3 § 8 F, shall be limited to counter cards, canisters and table tents as defined in VR 125-01-3 § 8 G and canisters are permitted of reasonable size, subject to the exceptions of subdivision 7 above ;

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

10. 9. Prior written notice of the event shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

11. 10. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable or *government-endorsed civic events*.

VR 125-01-3. Tied House.

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

A. Permitted acts.

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

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

2. Restock beer and wine;

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

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

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

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

B. Prohibited acts.

A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:

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

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

2. Mark or affix retail prices to products; or

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

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

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

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

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

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

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

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

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

including receipts from the sale of alcoholic beverages or beverages.

§ 3. Interests in the businesses of licensees.

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

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

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

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

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

§ 4. Restrictions upon employment; exceptions.

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

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

§ 5. Certain transactions to be for cash; "cash" defined; checks and money orders; reports by sellers; payments to the board.

A. Generally.

Sales of wine, beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, and each

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invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery.

B. "Cash" defined.

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

C. Checks and money orders.

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

1. If only alcoholic beverage merchandise is being sold, the amount of the check or money order shall be no larger than the purchase price of the alcoholic beverage or beverages; *and*

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

D. Reports by seller.

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

E. Payments to the board.

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

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

6. Forms provided to licensees at cost by the board.

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

A. Minimum deposit.

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

Bottles having a capacity of not more than 12 oz.	\$0.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz.	\$0.04
Cardboard, fibre or composition cases other than for 1 1/8-or 2 1/4-gallon kegs	\$0.02
Cardboard, fibre or composition cases for 1 1/8-or 2 1/4-gallon kegs	\$0.50
Kegs, 1 1/8-gallon	\$1.75
Kegs, 2 1/4-gallon	\$3.50
Kegs, 1/4-barrel	\$4.00
Kegs, 1/2-barrel	6.00
Keg covers, 1/4-barrel	4.00
Keg covers, 1/2-barrel	\$6.00
Tapping equipment for use by consumers	\$10.00
Cooling tubs for use by consumers	\$5.00
Cold plates for use by consumers	\$15.00

B. Records.

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

C. Redemption of deposits.

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

D. Exceptions.

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

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

A. Generally.

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

B. Permit required.

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

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

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

D. Solicitation and promotion under ~~the~~ *this* regulation may include educational programs regarding wine, beer or beverages to mixed beverage licensees, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks.

E. For the purposes of this regulation, the soliciting or promoting of wine, beer or beverages shall be

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

§ 8. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; ~~cut~~ *ease cards paper, cardboard or plastic advertising materials* ; clip-ons and table tents.

A. Beer tapping equipment.

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

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

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

B. Wine tapping equipment.

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

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and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

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

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

D. Bottle or can openers.

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

E. Banquet licensees.

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

F. Cut case cards. *Paper, cardboard and plastic advertising materials.*

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

itself. With the consent of the retail licensee, which may be a continuing consent, a wholesaler may mark or affix retail prices on such cut case cards, any nonmechanical advertising materials consisting of printed matter appearing on paper, cardboard or plastic stock. These materials need not be delivered by such persons in conjunction with deliveries of beer or wine. Such advertising materials may be installed in the interior of the licensed establishment, other than in exterior windows, by any manufacturer, bottler or wholesaler of beer or wine using any normal and customary installation materials. With the consent of the retail licensee, which may be a continuing consent, wholesalers may mark or affix retail prices on these materials; however, the following restrictions apply to any such paper, cardboard or plastic advertising materials:

1. Paper and cardboard advertising materials may be two or three dimensional and shall not contain display surfaces which exceed a total of 15 square feet in the aggregate;
2. Plastic advertising materials shall be restricted to thin sheets or strips containing only two dimensional display surfaces and such display surfaces may not exceed 48 square inches; and
3. If any such paper, cardboard or plastic advertising materials require assembly, the size limitations set forth above in this subdivision shall be applicable to the end product of such assembly.

G. Wine and beer Clip-ons and table tents.

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

H. Cleaning and servicing equipment.

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

I. Sale of ice.

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

J. Sanctions and penalties.

Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1 A of the Code of Virginia, wholesaler or retailer who violates,

solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4-79.1 D of the Code of Virginia.

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

A. Generally.

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

B. Permitted activities:

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

C. Conditions.

The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;
2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;
4. Routine business entertainment that requires overnight stay is prohibited;
5. No more than \$200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, on any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like,

shall not be included within the foregoing restrictions;

6. No person enumerated in ~~subsection~~ *subdivision C 5* may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;

7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained; *and*

8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

VR 125-01-5. Retail Operations.

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

A. Prohibited sales.

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

1. Under the age of 21 years;
2. Is Intoxicated; or
3. Is ~~an~~ *An* interdicted person.

B. Prohibited consumption.

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

§ 2. Determination of legal age of purchaser.

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

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; *and*
2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

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

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

§ 3. Restricted hours; exceptions.

A. Generally.

The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer, beverages or mixed beverages shall be as follows:

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

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

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

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

B. Exceptions:

1. Club licensees: No restrictions at any time;

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

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

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

A. Generally.

Each licensee, except a licensed individual who is on

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

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

B. Disapproval of designated manager.

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

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

C. Restrictions upon employment.

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

§ 5. Restriction upon employment of minors.

No person licensed to sell alcoholic beverages or beverages at retail shall permit any employee under the age of 18 years to sell, serve or dispense in any manner any alcoholic beverage or beverage in his licensed establishment for on-premises consumption, nor shall such person permit any employee under the age of 21 years to prepare or mix alcoholic beverages or beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves or dispenses alcoholic beverages for on-premises consumption at a counter as defined in § 11 of this regulation and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only.

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

A. Generally.

No mixed beverage restaurant or carrier licensee shall:

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

B. Mixed beverage restaurant licensees.

No mixed beverage restaurant licensee shall:

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

C. Sales of spirits in closed containers.

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

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon

purchase forms provided by the board;

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

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

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Employment of minors.

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

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

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

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

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

No retail licensee shall entreat, urge or entice any

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patron of his establishment to purchase any alcoholic beverage or beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

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

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

A. Generally.

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

B. Procedures under permits.

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

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

C. Exception.

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

§ 10. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.

A. Wine and beer.

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

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

Monthly sales \$2,000

Inventory (cost) \$2,000

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

Monthly sales \$3,500

Inventory (cost) \$3,500

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

Monthly sales \$2,000

Inventory (cost) \$2,000

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

Monthly sales \$2,000

Inventory (cost) \$2,000

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

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

Monthly sales \$2,000

Inventory (cost) \$2,000

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

1. "Delicatessen." An establishment as defined in subsection A above:

Monthly sales \$1,000

Inventory (cost) \$1,000

2. "Drugstore." An establishment as defined in subsection A above:

Monthly sales \$1,500

Inventory (cost) \$1,500

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

Monthly sales \$1,000

Inventory (cost) \$1,000

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

Monthly sales \$750

Inventory (cost) \$750

C. Exceptions.

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

D. Further conditions.

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

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Temporary licenses.

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

operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

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

A. Generally.

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

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

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

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

- a. The assortment of foods commonly offered for sale;
- b. The method and extent of preparation and service required; and
- c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

4. "Habitual sales." In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:

- a. The business hours observed as compared with similar type businesses;
- b. The extent to which such food or other merchandise is regularly sold; and
- c. Present and anticipated sales volume in such food or other merchandise.

5. "Sale" and "sell." The definition of "sale" and "sell" in VR 125-01-7, § 9 shall apply to this section.

B. Wine and beer. Retail on- or on-and off-premises licenses may be granted to persons operating the following

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types of establishments provided the total monthly food sales for consumption in dining rooms and other designated rooms on the premises are not less than those shown:

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

Monthly sales \$3,000

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

Monthly sales \$3,000

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

Monthly sales \$3,000

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

C. Beer .

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

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

Monthly sales \$1,800

2. *"Restaurant."* An establishment habitually selling food prepared on the premises:

Monthly sales \$1,800

3. *"Hotel."* See subdivision B3 above ;

Monthly sales \$1,800

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

D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

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

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

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

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

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

6. *"Tables and counters."*

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

therein;

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

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

E. Exceptions.

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

F. Temporary licenses.

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

§ 12. Fortified wines; definitions and qualifications.

A. Definition.

"Fortified wine" is defined as ~~Wines~~ wine having an alcoholic content of more than 14% by volume but not more than 21%.

B. Qualifications.

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

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

A. Applications.

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

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

B. Qualifications.

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

1. ~~The nature of the objectives of the club and whether the operation is in compliance therewith~~ *club's objectives and its compliance with the objectives* ;
2. ~~Whether the club qualifies for exemption from The club's qualification for tax exempt status from federal and state income taxes; and~~
3. ~~The extent to which the facilities of the club are permitted to be used~~ *club's permitted use of club premises* by nonmembers, including reciprocal arrangements.

C. Nonmember use.

The club shall limit nonmember use of club premises according to the provisions of this section and shall notify the board each time the club premises are used in accordance with this subdivision 1 below. The notice shall be received by the board at least two business days in advance of any such event.

1. *A licensed club may allow nonmembers to use club*

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premises where the privileges of the club license are exercised 12 times per calendar year for public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises;

2. A member of a licensed club may sponsor private functions on club premises for an organization or group of which he is a member, such attendees being guests of the sponsoring member; or

3. Notwithstanding subdivisions C 1 and C 2 above, a licensed club may allow any organization or group to use the club premises if (i) the group or organization obtains a banquet special events license or (ii) the privileges of the club's license are not exercised.

C. D. Reciprocal arrangements.

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

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

D. E. Changes.

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

E. F. Financial statements.

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

§ 14. Lewd or disorderly conduct.

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

1. The real or simulated display of any portion of the

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

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

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; *or*

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

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

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

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

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

A. Definitions.

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

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

B. Prohibited practices.

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

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;
2. Allowing a person to possess more than two drinks at any one time during a happy hour;
3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;
4. Selling two or more drinks for one price, such as "two for one" or "three for one";
5. Selling pitchers of mixed beverages;
6. Giving away drinks;
7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; or
8. Advertising happy hour in the media or on the exterior of the licensed premises.

C. Exceptions.

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

§ 17. Caterer's license.

A. Qualifications.

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

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § 4-2 of the Code of Virginia or as provided in § 4-98.2(c) of the Code of Virginia, and
2. With an established place of business with catering gross sales average of at least \$5,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

B. Privileges.

The license authorizes the following:

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

wholesalers or farm wineries or the purchase of beer or 3.2 beverages from licensed wholesalers;

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

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

C. Restrictions and conditions.

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

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

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

3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of alcoholic beverages, mixed beverages, beverages as defined in § 4-98 of the Code of Virginia and food;

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

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

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

7. The licensee shall insure that all functions at which

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alcoholic beverages are sold are ones which qualify for a banquet license, for a special event license or a mixed beverage special events license. Licensees are entitled to all services and equipment now available under a banquet license from wholesalers;

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

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

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

A. Qualifications.

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

1. Providing volunteer fire or rescue squad services ; ~~or both ; and~~

2. Having as its premises a fire or rescue squad station ; ~~or both~~, regularly occupied by such fire department or rescue squad ; ~~or both~~ ; and

3. Being duly recognized by the governing body of the city, county or town in which it is located.

B. Privileges.

The license authorizes the following:

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

C. Restrictions and conditions.

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

1. Alcoholic beverages cannot be sold or purchased by the licensee;

2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;

3. The private affair referred to in subdivision B 1

shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;

4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;

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

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

§ 19. *Bed and breakfast licenses .*

A. Qualifications.

Pursuant to § 4-25(A)(22) of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:

1. *No fewer than three and no more than 15 bedrooms available for rent;*

2. *Offering to the public, for compensation, transitory lodging or sleeping accommodations; and*

3. *Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.*

B. Conditions.

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

1. *Alcoholic beverages served under the privileges conferred by the license must be purchased from a Virginia A.B.C. store, wine or beer wholesaler or farm winery;*

2. *Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight*

guests and are of legal age to consume alcoholic beverages;

3. Lodging, meals and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums or surcharges shall be exacted for the service of alcoholic beverages;

4. Alcoholic beverages may be served in dining rooms and other designated rooms, including bedrooms, outside terraces or patios;

5. The bed and breakfast establishment upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival, any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;

6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and

7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

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

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

A. Records.

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

B. Restrictions upon employment.

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

C. Suspension or revocation of permit.

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

committed any other act that would justify the board in suspending or revoking a license.

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

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

A. Purchase orders generally.

Purchases of wine from the board, between licensees of the board and between licensees and persons outside the Commonwealth shall be executed only on forms prescribed by the board and provided at cost if supplied by the 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 board by the wholesale wine distributor at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the distributor reflecting accurately the date received and any changes.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

4. Peddling. Wine shall not be peddled to retail licensees.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine distributors shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of State Wine Tax collected from retailers pursuant to § 4-22.1 of the Code of Virginia. Each wholesale wine distributor shall on forms prescribed by the board on

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a quarterly basis indicate to the board the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

§ 3. Procedures for retail off-premises winery licenses; purchase orders; segregation, identification and storage.

A. Purchase orders.

Wine offered for sale by a retail off-premises winery licensee shall be procured on order forms prescribed by the board and provided at cost if supplied by the board. The order shall be accompanied by the correct amount of State Wine Tax levied by § 4-22.1 of the Code of Virginia, due the Commonwealth in cash, as defined in these regulations.

B. Segregation, identification and storage.

Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the board. The licensee shall place his license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified as herein required may be offered for sale at retail.

§ 4. Indemnifying bond required of wholesale wine distributors.

No wholesale wine distributor's license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth of Virginia in the penalty of \$1,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the faithful compliance with requirements of the Alcoholic Beverage Control Act and the regulations of the board.

A wholesale wine distributor may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

§ 5. Records required of distiller, fruit distiller, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's license, a fruit distiller's license, a winery license, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of

two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the board or licensees of the board;

d. Withdrawals of alcoholic beverages for shipment outside of Virginia showing:

(1) Name and address of consignee;

(2) Date of shipment; *and*

(3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; *and*

(4) Amount of consideration paid.

f. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller or fruit distiller manufacturing distilled spirits for another person shall:

a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;

b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; *and*

c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

C. Farm wineries.

A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.

§ 6. Wine or beer importer licenses; conditions for issuance and renewal.

In addition to complying with the requirements of § 4-25 A 10 of the Code of Virginia relating to wine importers' licenses, and of § 4-25 A 7 of the Code of Virginia, relating to beer importers' licenses, and to other requirements of law applying to board licensees generally, all persons applying to the board for the issuance or renewal of a wine or beer importer's license shall file with the board a list of the brands of wine or beer they intend to sell and deliver or ship into this Commonwealth, along with a corresponding list of the names of the owners of such brands and a copy of the written permission of the brand owner, or its duly designated agent, authorizing such applicant to sell and deliver or ship the indicated brands of wine or beer into this Commonwealth. In the event that, subsequent to the issuance or renewal of a wine or beer importer's license, the licensee makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the licensee shall make a supplemental filing with the board identifying such additional brands and brand owners and providing the required evidence of authorization by the brand owner, or its duly designated agent, for the licensee to sell and deliver or ship such additional brands of wine or beer into this Commonwealth.

§ 7. Beer and beverage excise taxes.

A. Indemnifying bond required of beer manufacturers, bottlers or wholesalers.

1. No license shall be issued to a manufacturer, bottler or wholesaler of beer or beverages as defined in § 4-127 of the Code of Virginia unless there shall be on file with the board, on a form approved or authorized by the board, an indemnifying bond running to the Commonwealth of Virginia in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the payment of the tax imposed by Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia in accordance with the provisions thereof.

2. A manufacturer, bottler or wholesaler of beer or beverages may request in writing a waiver of the surety and the bond by the board. The board may withdraw such waiver at any time for failure to

comply with the provisions of §§ 4-128, 4-129 and 4-131 of the Code of Virginia.

B. Shipment of beer and beverages to installations of the armed forces.

1. Installations of the United States Armed Forces shall include, but not be limited to, all United States, Army, Navy, Air Force, Marine, Coast Guard, Department of Defense and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of beer and beverages from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and beverages must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and beverages so delivered shall be exempt from the beer and beverage excise tax as provided by Chapter 4 of Title 4 of the Code of Virginia only if the sale thereof meets the exemption requirements of § 4-130.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday or Legal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any report required by Chapter 4 of Title 4 of the Code of Virginia may be filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest.

Unless otherwise specifically provided, interest on omitted taxes and refunds under Chapter 4 of Title 4 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia, as amended.

§ 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits.

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A. Generally.

This regulation applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale distilled spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this regulation shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit by the board. To obtain a permit, a person shall:

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-98.16 D of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of distilled spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; *and*

d. Be an individual at least 21 years of age.

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

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of distilled spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of distilled spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records.

1. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, which shall include the following:

a. Name and address of each mixed beverage licensee solicited;

b. Date of solicitation and name of each individual contacted;

c. Brand names of all distilled spirits promoted during the solicitation; and

d. Amount and description of any expenses incurred with respect to each such solicitation.

2. A permittee shall make available to any agent of the board on demand the records referred to in subdivision C 1.

D. Permitted activities.

Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one per retailer per brand) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of \$2.00 in wholesale value (one per retailer per brand) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages of distilled spirits *and furnish one, unopened, 50 milliliter sample container of each brand being promoted by the permittee and not sold by the licensee; such packages and sample containers shall be purchased at a Virginia ABC store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the package or container label; further, the distilled spirits package shall remain the property of the permittee and may not be left with the licensee and any 50 milliliter sample containers left with the licensee shall not be sold by the licensee; not then sold by the licensee which are purchased from a Virginia ABC store; the label on the distilled spirits package shall bear the word "sample" in lettering of reasonable size; the package of distilled spirits shall bear the permit number of the distilled spirits permittee, shall remain the property of the permittee and may not be left with the licensee;*

3. Promote their authorized brands of distilled spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or distilled spirits representatives for the benefit of their members and guests, and shall be limited as follows:

- a. To sample servings from packages of distilled spirits purchased from Virginia ABC stores when the distilled spirits donated are intended for consumption during the gathering;
- b. To displays of distilled spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this regulation;
- c. To distribution of informational brochures, pamphlets and the like, relating to distilled spirits;
- d. To distribution of novelty and specialty items bearing distilled spirits advertising not in excess of \$2.00 in wholesale value; *and*
- e. To film or video presentations of distilled spirits which are essentially educational.

E. Prohibited activities.

A permittee shall not:

1. Sell distilled spirits to any licensee of the board, solicit or receive orders for distilled spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of distilled spirits with a licensee;
2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell distilled spirits to licensees;
3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;
4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;
5. Purchase or deliver distilled spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine, beer or beverages by a licensed wholesaler;
6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail

licensee;

7. Provide or offer to provide point-of-sale material to licensees;

8. Solicit licensees on Sundays except at conventions, trade association meetings, and similar gatherings as permitted in subdivision D 3;

9. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

10. Solicit or promote any brand or brands of distilled spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; *or*

11. Engage in solicitation of distilled spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

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

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act and regulations of the board.

§ 9. Sunday deliveries by wholesalers prohibited; exceptions.

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

VR 125-01-7. Other Provisions.

§ 1. Transportation of alcoholic beverages and beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. Permits generally.

The transportation within or through this Commonwealth of alcoholic beverages or beverages lawfully purchased within this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

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1. Wine and beer. No limitation.
2. Alcoholic beverages other than those described in subdivision A 1. Three gallons; provided, however, that not more than one gallon thereof shall be in packages containing less than 1/5 of a gallon.
3. Beverages. No limitation.

If any part of the alcoholic beverages being transported is contained in a metric-sized package, the three-gallon limitation shall be construed to be 12 liters and not more than four liters shall be in packages smaller than 750 milliliters.

The transportation within, into or through this Commonwealth of alcoholic beverages or beverages lawfully purchased outside of this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Alcoholic beverages, including wine and beer. One gallon (four liters if any part is in a metric-sized package).
2. Beverages. One case of not more than 384 ounces (12 liters if in metric-sized packages).

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages or beverages at all times to the final destination.

B. Commercial carrier permits.

Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages or beverages within, into or through this Commonwealth shall, except as hereinafter noted, file application in writing for a transportation permit upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages or beverages upon condition that there shall accompany each such transporting vehicle:

1. A bill of lading or other memorandum describing the alcoholic beverages or beverages being transported, and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment; and
2. Except for express companies and carriers by rail or air, a certified photocopy of the carrier's transportation permit.

C. Refusal, suspension or revocation of permits.

The board may refuse, suspend or revoke a carrier's transportation permit if it shall have reasonable cause to

believe that alcoholic beverages or beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending or revoking such permit, the board shall accord the carrier involved the same notice, opportunity to be heard, and follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act.

D. Exceptions.

There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;
2. Persons transporting wine, beer, cider or beverages purchased from the board or a licensee of the board;
3. Persons transporting alcoholic beverages or beverages which may be manufactured and sold without a license from the board;
4. A licensee of the board transporting lawfully acquired alcoholic beverages or beverages he is authorized to sell in a vehicle owned or leased by the licensee;
5. Persons transporting alcoholic beverages or beverages to the board, or to licensees of the board, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell;
6. Persons transporting alcoholic beverages or beverages as a part of their official duties as federal, state or municipal officers or employees; *and*
7. Persons transporting lawfully acquired alcoholic beverages or beverages in a passenger vehicle, other than those alcoholic beverages or beverages referred to in subdivisions D 2 and D 3, provided the same are in the possession of the bona fide owners thereof, and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A.

E. One-gallon (four liters if any part in a metric-sized package) limitation.

This regulation shall not be construed to alter the one-gallon (four liters if any part is in a metric sized package) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § 4-84(d) of the Code of Virginia.

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

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 milliliters if in a metric-sized package) nor more than one gallon (three liters if in a metric-sized package).

D. Labels.

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

E. Markup.

The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

F. Age limits.

Persons must be 21 years of age or older to purchase or possess cider.

§ 3. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders.

Purchase orders for sacramental wine shall be on separate order forms prescribed by the board and provided at cost if supplied by the board.

B. Permits.

Sales for sacramental purposes shall be only upon permits issued by the board without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Applications for permits.

Requests for permits by a religious congregation shall be in writing, executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

D. Use of sacramental wine.

Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

§ 4. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. Permits.

The board may issue a culinary permit to a person operating a dining room where meals are habitually served. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend or revoke a license.

B. Purchases.

Purchases shall be made from the board at government stores or at warehouses operated by the board, and all purchase receipts issued by the board shall be retained at the permittee's place of business for a period of one year and be available at all times during business hours for inspection by any member of the board or its agents. Purchases shall be made by certified or cashier's check, money order or cash, except that if the permittee is also a licensee of the board, remittance may be by check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase, provided that the money order or check is in an amount no larger than the purchase price.

C. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose, nor shall the permit authorize the possession of any other alcoholic beverages. They shall be stored in a place designated for the purpose upon the premises of the permittee, separate and apart from all other commodities, and custody thereof shall be limited to persons designated in writing by the permittee.

§ 5. Procedures for druggists and wholesale druggists; purchase orders and records.

A. Purchase orders.

Purchases of alcohol by druggists or wholesale druggists shall be executed only on orders on forms supplied by the board. In each case the instructions on the forms relative to purchase and transportation shall be complied with.

B. Records.

Complete and accurate records shall be kept at the place of business of each druggist and wholesale druggist for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall show:

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1. The amount of alcohol purchased;
2. The date of receipt; and
3. The name of the vendor.

In addition, records of wholesale druggists shall show:

1. The date of each sale;
2. The name and address of the purchaser; and
3. The amount of alcohol sold.

§ 6. Alcoholic beverages for hospitals, industrial and manufacturing users.

A. Permits.

The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 of the Code of Virginia; or
4. For use in a hospital or home for the aged (alcohol only).

Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.

The application for such permits shall be on forms provided by the board.

B. Permit fees.

Applications for alcohol shall be accompanied by a fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.

C. Storage.

A person obtaining a permit under this section shall:

1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the

application separate and apart from any other articles kept on such premises;

2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages;

3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year.

D. Refusal of permit.

The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4-31 of the Code of Virginia for which the board might refuse to grant the applicant any license.

E. Suspension or revocation of permit.

The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under § 4-37 of the Code of Virginia.

F. Access to storage and records.

The board and its agents shall have free access during business hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.

§ 7. Procedures for owners having alcoholic beverages distilled from grain, fruit, fruit products or other substances lawfully grown or produced by such person; permits and limitations thereon.

A. Permits.

An owner having a distiller or fruit distiller manufacture distilled spirits out of grain, fruit, fruit products or other substances lawfully grown or produced by such person may remove the finished product only upon permit issued by the board, which shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address and license number (if any) of the consignee;

2. The kind and quantity in gallons of alcoholic beverages; *and*

3. The name of the company employed to transport the shipment.

B. Limitations on permits.

Permits shall be issued only for shipments to the board, for sale to a lawful consignee outside of Virginia under a bona fide written contract therefor, and for the withdrawal of samples for the owner's use. Samples shall be packaged in containers of one pint or 500 milliliters and the words, "Sample-Not for Sale," shall be printed in letters of reasonable size on the label.

§ 8. Manufacture, sale, etc., of "sterno," and similar substances for fuel purposes.

No license from the board is required for the manufacture, sale, delivery and shipment of "Sterno," canned heat and similar substances intended for fuel purposes only.

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

A. Generally.

All licensees of the board shall keep complete and accurate records at the licensee's place of business for a period of two years. The records shall be available for inspection and copying by any member of the board or its agents at any time during business hours. Licensees of the board may use microfilm, microfiche, disks or other available technologies for the storage of their records, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or its agents.

B. Retail licensees.

Retail licensees shall keep complete and accurate records, including invoices, of the purchases and sales of alcoholic beverages, and beverages, food and other merchandise. The records of alcoholic beverages and beverages shall be kept separate from other records.

C. Mixed beverage restaurant licensees.

In addition to the requirements of subsections A and B above, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its agents a complete and accurate inventory of all alcoholic beverages and beverages currently held in

inventory on the premises by the licensee; *and*

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

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

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

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

D. "Sale" and "sell."

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

E. Gross receipts; food, hors d'oeuvres, alcoholic beverages, etc.

In determining "gross receipts from the sale of food" for the purposes of Chapter 1.1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

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

F. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned

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subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

§ 10. Gifts of alcoholic beverages or beverages generally; exceptions; *wine tastings*; taxes and records.

A. Generally.

Gifts of alcoholic beverages or beverages by a licensee to any other person are prohibited except as otherwise provided in this section.

B. Exceptions.

Gifts of alcoholic beverages or beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a package not then sold by such licensee of wine, beer or beverages, which such wholesaler otherwise may sell to such retail licensee, provided that in a case of packages the package does not exceed 52 fluid ounces in size (1.5 liter if in a metric-sized package) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample package. -

3. Hospitality rooms; conventions. A person licensed by the board to manufacture wine, beer or beverages may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including wine tastings; research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer, beverages or wines to:

a. A convention, trade association or similar

gathering, composed of licensees of the board, and their guests, when the alcoholic beverages or beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages or beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism;

d. Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees of the board when conducting a bona fide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by subdivisions B 3 b and B 4 are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine tastings.

Wine wholesalers may participate in a wine tasting sponsored by a wine specialty shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine.

D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 of the Code of Virginia; and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and internal revenue bonded warehouses; receipts; violations; limitation upon sales.

A. Release generally.

Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board;

2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;

3. Ships actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia;

4. Persons for shipment outside this Commonwealth to someone legally entitled to receive the same under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board and in accordance with the instructions therein set forth.

B. Receipts.

A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or his duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board by the permittee within 10 days after delivery.

C. Violations.

The board may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. Limitation upon sales.

A maximum of six imperial gallons of alcoholic beverages may be sold, released and delivered in any 30-day period to any member of foreign armed forces personnel.

§ 12. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Certificate of approval.

Upon the application of a person qualified under the provisions of § 4-84.1 of the Code of Virginia, the board may issue a certificate of approval for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

B. Segregation.

The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Release from storage.

Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same only upon permit issued by the board, and in accordance with the instructions therein set forth. The owner of the alcoholic

beverages, or the owner or operator of the approved warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board.

D. Records.

Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available at all times during business hours for inspection by a member of the board or its agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee;
2. Date of receipt or withdrawal, as the case may be; *and*
3. Type and quantity of alcoholic beverage.

E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5, § 9 are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Location.

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

B. Special privileges.

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

C. Taxes on licenses.

The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be \$25 per day.

§ 14. Definitions and requirements for beverage licenses.

A. Definition.

Proposed Regulations

Wherever the term "beverages" appears in these regulations it shall mean beverages as defined in § 4-99 of the Code of Virginia. Section 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing 0.5% or more of alcohol by volume, and not more than 3.2% of alcohol by weight.

B. Beverage licenses may be issued to carriers, and to applicants for retailers' licenses pursuant to § 4-102 of the Code of Virginia for either on-premises, off-premises, or on-and-off premises consumption, as the case may be, to persons meeting the qualifications of a licensee having like privileges with respect to the sale of beer. The license of a person meeting only the qualifications for an off-premises beer license shall contain a restriction prohibiting the consumption of beverages on premises.

§ 15. Wholesale alcoholic beverage and beverage sales; discounts, price-fixing; price increases; price discrimination; *retailers inducements*.

A. Discounts, price-fixing.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall require a person holding a wholesale license to discount the price at which the wholesaler shall sell any alcoholic beverage or beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage or beverage.

B. Notice of price increases.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase. A copy of such notice shall also be sent to the board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section.

No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days' notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

C. No price discrimination by breweries and wholesalers.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers and no wholesale wine or

beer licensee shall discriminate in price of alcoholic beverages or beverages between different retail purchasers except where the difference in price charged by such winery, brewery or wholesale licensee is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler or retail purchaser does occur, the board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.

D. Inducements.

No person holding a license authorizing sale of alcoholic beverages or beverages at wholesale or retail shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

§ 16. Alcoholic Beverage Control Board.

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

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

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

B. The term "other agricultural products" as used in subsection A of this section includes wine.

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

C. *A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments which need not be located on the premises. These two additional retail outlets may be moved throughout the state as long as advance board approval is obtained for the location, equipment and facilities of each remote outlet.*

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-11-02.02. Regulations Governing Newborn Screening and Treatment Program.

Statutory Authority: § 32.1-12 and Article 7 of Chapter 2 (§ 32.1-65 et seq.) of Title 32.1 of the Code of Virginia.

Publication Date: 6:3 V.A.R 301-304 November 6, 1989.

NOTICE: The Department is **Withdrawing** the proposed regulation VR 355-11-02.02. Regulations Governing Newborn Screening and Treatment Program.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: VR 425-01-74. Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Public Hearing Date: January 8, 1991 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The proposed regulation provides a procedure for notification to the Department of Labor and Industry of asbestos projects and establishes permit fees for those projects. It further defines the term "residential building" for the purposes of this regulation. While "residential buildings" are covered under this program, the procedure required for such structures does not include payment of a fee.

This regulation would apply to all licensed asbestos contractors or RFS contractors who engage in asbestos projects. This program would not affect the existing reporting requirement under subsection C of § 54.1-507 or any other reporting, notice, or inspection requirement pursuant to other provisions of the Code of Virginia.

Written notification to the Department of Labor and Industry of any asbestos project which equals or exceeds the minimum of 10 linear feet or 10 square feet would be required. Such notification would be required 20 days prior to commencing any asbestos project with the following information to be provided:

1. Contractor name, address, telephone number and asbestos contractor license number;
2. Facility owner name, address, and telephone number;

3. Type or purpose of project;
4. Description of worksite;
5. Estimate of amount of asbestos present;
6. Project schedule timeline;
7. Project supervisor name, and Virginia asbestos supervisor's license number;
8. Name, address, telephone number, contact person and landfill permit number of the waste disposal site;
9. Description of demolition or removal methods to be used;
10. Procedures and equipment to be used to control emissions and protect public health during removal, transit, loading and unloading (with monitoring plan);
11. Other information as requested by the department; and
12. Amount of the asbestos permit fee submitted.

An asbestos project permit fee would be submitted with the completed project notification. After review and analysis by the task force, a three-tiered fee schedule of \$45, \$140, and \$450 was developed.

The smallest level is the minimum reporting amount up to the amount which EPS requires a contractor to report (10 square or linear feet up to 260 linear feet or 160 square feet). Jobs of this size present a small risk to the public, require fewer inspections and are of short duration.

The middle level goes from the EPA reporting amounts to 10 times those amount. (260 linear feet or 160 square feet up to 2600 linear feet or 1600 square feet). This size of job is still relatively a short term one but will require more inspections.

The largest level is anything over 2600 linear feet or 1600 square feet. Above these levels jobs are likely to require more inspections and possibly even reinspections. This is the level with the greatest length of projects and potential risk to the public.

Notification of less than 20 days may be allowed by the department in cases of an emergency involving the protection of life, health or property. In such cases, notification and fee shall be submitted within five working days after the start of the emergency abatement. The department would be required to issue a permit within seven working days of receipt of a notification and fee.

For the purposes of this regulation "residential building" would be defined as "...site built homes,

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modular homes constructed off site, condominiums units, mobile homes, and duplexes, or other multi-unit dwelling consisting of four units or less." However, no project fee would be required for projects in "residential buildings."

Procedures for amending previously filed notices are detailed. Any project performed on a date other than that specified on the permit or involving quantities of asbestos in excess of that specified on the permit would be in violation of § 54.1-507 of the Code of Virginia which carries no criminal penalty. Violations would be reported to the Board for Contractors in the Department of Commerce for enforcement action.

VR 425-01-74. Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees.

§ 1. Definition of terms.

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

"Asbestos" means any material containing more than 1.0% asbestos by weight, which is friable or which has a reasonable probability of becoming friable in the course of ordinary or anticipated building use.

"Asbestos contractor's license" means an authorization issued by the Department of Commerce permitting a person to enter into contracts for a project to install, remove, or encapsulate asbestos.

"Asbestos project" means an activity involving removal or encapsulation of asbestos or involving the installation, removal, or encapsulation of asbestos-containing roofing, flooring, or siding material.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides supervision and direction to the workers engaged in asbestos projects.

"Commissioner" means the Commissioner of Labor and Industry.

"Department" means the Department of Labor and Industry.

"Friable" means material which is capable of being crumbled, pulverized, or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit fibers into the air.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwelling

consisting of four units or less which are currently in use or intended for use only for residential purposes. Demolitions of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition.

"RFS contractor's license" means an authorization issued by the Department of Commerce permitting a person to enter into contracts to install, remove, or encapsulate asbestos-containing roofing, flooring, and siding materials.

§ 2. Authority and application.

A. This regulation is established in accordance with § 54.1-507 of the Code of Virginia.

B. This regulation shall apply to all licensed asbestos contractors or RFS contractors who engage in asbestos projects.

C. This regulation shall not affect the reporting requirements under § 54.1-507 C or any other notices or inspection requirements under any other provision of the Code of Virginia.

§ 3. Notification and permit fee.

A. Written notification of any asbestos project of 10 linear feet or more or 10 square feet or more shall be sent by certified mail or hand-delivered to the department on a department form.

B. Notification shall be made 20 days before beginning any asbestos project and include the following information:

1. Name, address, telephone number, and Virginia asbestos contractor's license number of persons intending to engage in an asbestos project.
2. Name, address, and telephone number of facility owner or operator.
3. Type of notification; amended, emergency, renovation, or demolition.
4. Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated including present use, prior use or uses, age, and address.
5. Estimate of amount of friable asbestos and method of estimation.
6. Amount of the asbestos project fee submitted.
7. Schedule set-up date, removal date, and completion date of asbestos abatement work and times of removal.
8. Name and Virginia asbestos supervisor's license number of the project supervisor on site.

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site where the asbestos containing material will be disposed.

10. Detailed description of the demolition or removal methods to be used.

11. Procedures and equipment to control emissions and protect public health during removal, transit, loading, and unloading. Including the monitoring plan.

12. Any other information requested on the department form.

C. An asbestos project permit fee shall be submitted with the completed project notification. The fee is:

1. \$45 for each project equal to or greater than 10 linear feet or 10 square feet up to and including 260 linear feet or 160 square feet.

2. \$140 for each project of more than 260 linear feet or 160 square feet up to and including 2600 linear feet or 1600 square feet.

3. \$450 for each project or more than 2600 linear feet or 1600 square feet.

4. If the amount of asbestos is reported in both linear feet and square feet the amounts will be added and treated as if the total were all in square feet for the purposes of this subsection.

D. Notification of less than 20 days may be allowed in case of an emergency involving protection of life, health, or property, including but not limited to: leaking or ruptured pipes; accidentally damaged or fallen asbestos that could expose nonasbestos workers or the public; unplanned mechanical outages or repairs essential to a work process that require asbestos removal and could only be removed safely during the mechanical outage. Notification and asbestos permit fee shall be submitted within five working days after the start of the emergency abatement. A description of the emergency situation shall be included when filing an emergency notification.

E. No notification shall be effective if an incomplete form is submitted, or if the proper permit fee is not enclosed with the completed form.

F. On the basis of the information submitted in the asbestos notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

G. Amended notifications may be submitted for modification of § 3 B 3 through 11. No amendments to § 3 B 1 or 2 shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if any incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in the following amounts:

a. For modification to § 3 B 3 4 and 6 through 10 \$15.

b. For modifications to § 3 B 5;

(1) the difference between the permit fee in § 3 C for the amended amount of asbestos and the original permit fee submitted, plus

(2) \$15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

H. The department must be notified prior to any cancellation. A copy of the original notification form marked cancelled must be received no later than the scheduled removal date. Refunds of the asbestos project permit fee, less \$30 processing fee, will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

§ 4. Exemption.

No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this regulation.

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PLEASE TYPE OR PRINT ONLY

DLI USE ONLY

PERMIT NO: _____

COMMONWEALTH OF VIRGINIA
 ASBESTOS PROJECT 20 DLI NOTIFICATION
 DEPARTMENT OF LABOR AND INDUSTRY
 ATTN: ASBESTOS CONTROL CLERK
 405 N. 4TH STREET, ROOM 1006
 RICHMOND, VA 23219

FAX NUMBER (804) 371-7634

(MUST BE DELIVERED 20 DAYS BEFORE COMMENCING WORK)

1. Name & Address of Contractor _____ 2. Name & Address of owner/operator _____

Telephone No. () - _____ Telephone No. () - _____

VA license # _____

3. Type: Amended _____ *Emergency _____ Renovation _____ **Demolition _____

*A BRIEF DESCRIPTION OF THE SITUATION IS REQUIRED FOR ALL EMERGENCY NOTIFICATION

Description for Emergency Project: _____

4. Description of facility, structure, etc. _____

a. Present Use _____

b. Site Address _____

c. City and State _____

d. Prior Use _____ Age _____

5. Estimate of the amount of friable asbestos and estimation method.

a. Linear feet pipe _____ b. Square feet surface _____

Estimation method _____

Type material and estimated volume _____

6. PERMIT FEE: \$ _____

7. Set-up date _____/_____/____ Removal date _____/_____/____ Finish date _____/____/____

Removal Times: Weekdays (Monday-Friday) _____

Weekends (Saturday-Sunday) _____

HotX Shift Hours _____

8. Name and VA license # of project supervisor on site _____

9. Name and address of disposal site. _____

Contact Person and Telephone # _____

Landfill Permit # _____

10. Detailed description of Demolition/Removal Methods (wet removal, negative air, glove bag, etc.) _____

11. Procedures and equipment to control emissions and protect public health.

a. During removal: _____

b. During transit: _____

c. During loading and unloading _____

d. Monitoring plan: _____

** For renovation involving 160 square feet or 250 linear feet and all demolition a copy of this form must also be sent to U.S. Environmental Protection Agency Region III, Philadelphia, Pennsylvania

Only this form may be used. However it may be reproduced locally. Failure to answer all questions constitutes improper notification.

(900713)

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL HEALTH ENFORCEMENT DIVISION**

NO:

ISSUED DATE:
EXPIRES:

ASBESTOS PROJECT PERMIT

SITE ADDRESS

CITY

AMOUNT OF ASBESTOS: LINEAR FEET

SQUARE FEET

PERMIT FEE:

SET UP DATE

REMOVAL DATE

COMPLETION DATE

VA ASBESTOS CONTRACTORS LICENSE #:

CONTRACTOR
STREET ADDRESS
CITY

STATE ZIP

OWNER
STREET ADDRESS
CITY

STATE ZIP

THIS PERMIT MUST BE ON SITE FOR THE DURATION OF PROJECT.

ASBESTOS SUPERVISOR

Proposed Regulations

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-46-02. Assessment Process for Adult Clients.

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

Publication Date: 6:14 VA.R 2100-2102 April 9, 1990

NOTICE: The department is **Withdrawing** the proposed regulation titled "Assessment Process for Adult Clients (VR 615-46-02)" published in the April 9, 1990, issue of the Virginia Register of Regulations.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following regulations filed by the Department of Labor and Industry are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Labor and Industry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: VR 425-02-09. Asbestos Standard for General Industry (1910.1001).

VR 425-02-10. Asbestos Standard for Construction Industry (1926.58).

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 14, 1990.¹

Summary:

This amendment addresses OSHA's partial response to the first three of nine court ordered remand issues. In addressing two of these three issues by amendment, OSHA is (i) removing the ban on the spraying of asbestos-containing materials; and (ii) changing the regulatory text to clarify when construction employers must resume periodic monitoring.

As a result of a court challenge to the original Asbestos Standards for General Industry and the Construction Industry in the case of *Building and Construction Trades Department v. Brock*, 838 F. 2d 1258 (D.C. Cir. 1988), federal OSHA was ordered by the court to review among other things, the following issues:

1. The ban on the spraying of asbestos-containing materials;
2. Periodic monitoring in the Construction Industry; and
3. Clarification of the limited exemption for "small-scale, short duration operations" in the construction industry standard. (54 Fed. Reg. 52024)

This amendment adopts changes addressing issues 1

and 2 above. At this time, federal OSHA has chosen not to amend regulatory language to address issue 3.

The actions taken by federal OSHA are as follows:

Issue 1. Ban on the spraying of asbestos products

The determination to remove the ban on the spraying of asbestos-containing materials is made in response to an order from the U.S. Court of Appeals for the District of Columbia, which upon review of OSHA's findings directed OSHA to eliminate the ban on such spraying.

The court concluded that: "The support for the ban plainly fails to meet the 'substantial evidence' standard imposed by...[the OSHA]...Act...The ban cannot stand." OSHA has therefore amended its asbestos standard by deleting this prohibition. "Based on the record of the 1986 standard, OSHA believes that deleting this prohibition will not significantly increase the risk to employees. Many asbestos-containing products have been banned by EPA, and the remaining ones are formulated by encapsulating and any asbestos content which limits releases to undetectable amounts. In addition, the OSHA PEL [permissible exposure limit] and excursion limit apply to all asbestos operations, including spraying. Thus the ban would not have significantly reduced the risk to employees who may be present during the spraying of asbestos-containing products." (54 Fed. Reg. 52025)

Issue 2: Resumption of monitoring in the construction industry

Federal OSHA was also ordered by the court to add to the construction standard the resumption of monitoring requirement found in the general industry standard.

The court stated that: "The regulations allow a construction industry employer to terminate periodic monitoring if the results of monitoring demonstrate that exposures are below the action level...§ 1926.58(f)(4). Unlike the equivalent provision for general industry, however, the construction industry standard includes no requirement for the resumption of monitoring when a change in workplace conditions may result in exposures above the action level...OSHA replies only that this sort of resumption requirement is implicit in the current standard...In view of the risk that an employer might infer the opposite from the contrast in language, we believe that OSHA should clarify the regulation to conform...[to its

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expressed]...intent." (54 Fed. Reg. 52025)

In response, OSHA has renumbered paragraph (f) (4) as paragraph (f) (4) (i) and added a new paragraph (f) (4) (ii) which clarifies its expressed intent.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Asbestos Standard for General Industry (1910.1001), and the Asbestos Standard for Construction Industry (1926.58) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, the standards will not be printed in The Virginia Register of Regulations. Copies of the standards are available for inspection at the Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-09. Asbestos Standard for General Industry (1910.1001).

VR 425-02-10. Asbestos Standard for Construction Industry (1927.58).

On July 10, 1990, the Virginia Safety and Health Codes Board adopted an identical version of federal OSHA's amendment to the Asbestos Standard for General Industry and Construction Industry, 29 CFR 1910.1001 and 1926.58, as published in the Federal Register, Vol. 54, No. 243, pp. 52024-52028, Wednesday, December 20, 1989. The amendments as adopted are not set out.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: VR 425-02-50. Virginia Occupational Safety and Health Standards for General Industry - Welding, Cutting and Brazing (1910.252 through 1910.255).

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: September 14, 1990.

Summary:

On April 11, 1990, federal OSHA published in the Federal Register an amendment to the Welding, Cutting and Brazing Standard, 29 CFR 1910.252 - 1910.255, reorganizing its existing 1910 Standards as a first step in an effort to revise these standards comprehensively.

Because of the standard's length and complexity, it is difficult to read and to locate specific requirements. This amendment addressed the problems of complexity and poor organization.

This amendment reorganizes the standard. Also included in the reorganization action are some minor nonsubstantive changes, such as the addition of metric equivalent units.

The federal standard was amended by the board to reference the VOSH Confined Space Standard, 1910.146, to assure consistency and uniformity in the safety and health measures to be taken by employees while working with welding, cutting and brazing which also meet the definition of "confined space" contained in 1910.146.


The deleted and modified subsections require employers to comply with more stringent requirements contained in the Virginia Confined Space Standard, 1910.146, when working with welding, cutting and brazing which also meet the definition of "confined space" in 1910.146.

This reorganization will facilitate the standard's use by employers and other users. The creation of a more logical format and the renumbering of the standard will make it easier for both the public and VOSH to use.

VR 425-02-50. Virginia Occupational Safety and Health Standards for General Industry - Welding, Cutting and Brazing (1910.252 through 1910.255).

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Welding, Cutting and Brazing Standard (1910.252 through 1910.255) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The


COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

August 2, 1990

JOAN W. SMITH
REGISTRAR OF REGULATIONS

POST OFFICE BOX 346
RICHMOND, VIRGINIA 23213
(804) 788-2641

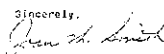
C. M. Martin, Sr., Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
205 North 4th Street
Richmond, Virginia 23219

Attention: Margaret Gravett, Administrative Staff Specialist

Re: VR 425-02-10. Amendments to the General Industry and Construction Standards for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by Federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:111

Final Regulations

Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-50. Virginia Occupational Safety and Health Standards for General Industry - Welding, Cutting and Brazing (1910.252 through 1910.255).


On July 10, 1990, the Virginia Safety and Health Codes Board adopted an identical version of federal OSHA's amendment to the Welding, Cutting and Brazing Standard, 29 CFR 1910.252 - 1910.255, as published in the Federal Register, Vol. 55, No. 70, pp. 13694 - 13711, Wednesday April 11, 1990. The amendments as adopted are not set out.

There are subsections in this reorganized standard which continue to be deleted or modified to accommodate the provisions of the Virginia Confined Space Standard.

The subsections of the Current General Industry Standard for Welding, Cutting and Brazing listed in the left hand column below were previously deleted or modified by the board in order to implement the Virginia Confined Space Standard. These subsections were renumbered by this amendment and are listed in the center column. They have been deleted or modified to comply with the provisions of the Virginia Confined Space Standard.

Current Subsections	Renumbered Subsections	Action
1910.252(d)(2)(vi)(C)	1910.252(a)(2)(vi)(C)	Deleted
1910.252(d)(4)(ii)	1910.252(a)(4)(ii)	Deleted
1910.252(e)(4)(i)	1910.252(b)(4)(i)	Deleted
1910.252(e)(4)(ii)	1910.252(b)(4)(ii)	Deleted
1910.252(e)(4)(iii)	1910.252(b)(4)(iii)	Deleted
1910.252(e)(4)(iv)	1910.252(b)(4)(iv)	Deleted
1910.252(e)(4)(vi)	1910.252(b)(4)(vi)	Deleted
1910.252(f)(2)(i)	1910.252(c)(2)(i)	Amended to apply 1910.146 to welding or cutting in confined spaces.
1910.252(f)(2)(i)(C)	1910.252(c)(2)(i)(C)	Amended to eliminate a reference to confined spaces.
1910.252(f)(4)(i)	1910.252(c)(4)(i)	Deleted
1910.252(f)(4)(iii)	1910.252(c)(4)(iii)	Deleted
1910.252(f)(4)(iv)	1910.252(c)(4)(iv)	Deleted
1910.252(f)(5)(i)	1910.252(c)(5)(i)	Amended to apply 1910.146

1910.252(f)(6)(i)	1910.252(c)(6)(i)	Amended to apply 1910.146 to welding with lead in confined spaces.
1910.252(f)(7)(iii)	1910.252(c)(7)(iii)	Amended to eliminate a reference to confined spaces.
1910.252(f)(8)	1910.252(c)(8)	Amended to apply 1910.146 to welding with beryllium in confined spaces.
1910.252(f)(9)(i)	1910.252(c)(9)(i)	Amended to eliminate a reference to confined spaces.
1910.252(f)(9)(ii)	1910.252(c)(9)(ii)	Amended to apply 1910.146 to welding with cadmium in confined spaces.
1910.252(f)(10)	1910.252(c)(10)	Amended to apply 1910.146 to welding with cadmium in confined spaces.



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

August 2, 1990

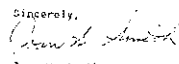
C. M. Martin, Sr., Chairman
Virginia Safety and Health Codes Board
Department of Labor and Industry
205 North 4th Street
Richmond, Virginia 23219

Attention: Margaret Gravett, Administrative Staff Specialist

Re: VR 425-02-50. Amendments to the General Industry Safety and Health Standards: Welding, Cutting and Brazing, Technical Corrections and Reorganizations

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14-4.1 C.4.(c), of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

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DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-02-4.1910. **Methods and Standards for Establishing Payment Rates (In-Patient Outlier Adjustments).**

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

Effective Date: September 26, 1990.

Summary:

The Medicare Catastrophic Coverage Act (MCCA) of 1988 required State Plans for Medical Assistance which reimburse inpatient hospital services on a prospective basis be amended to permit an outlier adjustment in payment amounts to disproportionate share hospitals. The Department of Medical Assistance Services adopted, with the Governor's approval, an emergency regulation to provide for this requirement in the State Plan. To qualify for this additional payment, these hospitals must be providing to infants under age one, on or after July 1, 1989, medically necessary inpatient services which involve exceptionally high costs or exceptionally long lengths of stay. DMAS currently provides, in § 1.F of Supplement 1 to Attachment 3.1 A & B of the State Plan, for unlimited medically necessary days for children under age 21. Therefore, no amendment is needed for services involving exceptionally long lengths of stay. This regulation amends Attachment 4.19A of the State Plan to authorize payments of outlier adjustments for exceptionally high costs, in other words, to permit additional payments to compensate for extraordinary costs which exceed a certain threshold. The threshold for each hospital will be set at two and one-half standard deviations above the mean operating costs per day in that hospital for patients under one year old. A separate mean will be calculated for those hospitals which qualify for the extensive neonatal care provision of Attachment 4.19A V (6). In addition to its prospective rate, a hospital will then be paid, as an outlier adjustment, all of its per diem operating costs which exceeded its threshold(s).

This final regulation completes the promulgation process for the permanent regulation and is substantially the same as the emergency and proposed regulations. This regulation will allow additional compensation for exceptionally high costs or long lengths of inpatient hospital stays. Each eligible hospital will be responsible for providing to DMAS information from which its mean Medicaid operating cost per day could be computed.

VR 460-02-4.1910. **Methods and Standards for Establishing Payment Rates - In-patient Hospital Care (In-patient Outlier Adjustments).**

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban—0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement

ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals will be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the

allowance for inflation will be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals will be adjusted to reflect this change.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1982, the group ceilings should not be recalculated on allowable costs, but should be updated by the escalator.

(4) Prospective rates for each hospital should be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment should be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to HIM-15 (Sec. 400), should be considered as pass throughs and not part of the calculation.

(5) An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference		Sliding Scale Incentive	
		% of Ceiling	\$	% of Difference	\$
\$230	\$230	0	0	0	0
\$230	207	23.00	10%	2.30	10%
\$230	172	57.50	25%	14.38	25%
\$230	143	76.00	33%	19.00	25%

(6) There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling shall be allowed a higher ceiling based on the

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individual hospital's Medicaid utilization. This shall be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% shall receive an adjustment to its ceiling. The adjustment shall be set at a percent added to the ceiling for each percent of utilization up to 30%.

Disproportionate share hospitals defined.

Effective July 1, 1988,¹ the following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

- a. At which the inpatients are predominantly individuals under 18 years of age; or
- b. Which does not offer nonemergency obstetric services as of December 21, 1987.

B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the individual hospital's Medicaid utilization. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment. The disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

2. A payment adjustment for hospitals meeting the eligibility criteria in subsection A above and calculated under subsection B 1 above shall be phased in over a

3-year period. As of July 1, 1988,² the adjustment shall be at least one-third the amount of the full payment adjustment; as of July 1, 1989, the payment shall be at least two-thirds the full payment adjustment; and as of July 1, 1990, the payment shall be the full amount of the payment adjustment. However, for each year of the phase-in period, no hospital shall receive a disproportionate share payment adjustment which is less than it would have received if the payment had been calculated pursuant to § V (5) of Attachment 4.19A to the State Plan in effect before July 1, 1988.

(8) DMAS shall pay to disproportionate share hospitals (as defined in § V (7) above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs for individuals under one year of age. The adjustment shall be calculated as follows:

(a) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals under one year of age. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(b) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals under one year of age. Any hospital which qualifies for the extensive neonatal care provision (as governed by § V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals under one year of age.

(c) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision (b) above.

(d) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

Pursuant to section 1 of Supplement 1 to Attachment 3.1 A and B, there is no limit on length of time for medically necessary stays for individuals under one year of age.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

VIII. Refund of overpayments.

A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36

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months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider

shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one

of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

Hospital Reimbursement Appeals Process

§ 1. Right to appeal and initial agency decision.

A. Right to appeal.

Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Service within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under § 5 E. The written request for appeal must contain the

information specified in § 1 B. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.

B. Required information.

Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.

C. Nonappealable issues.

The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bedsize and the use of bedsize and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the inflation factor identified in the State Plan as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "twenty-one day rule").

D. The rate which may be appealed shall include costs which are for a single cost reporting period only.

E. The hospital shall bear the burden of proof throughout the administrative process.

§ 2. Administrative appeal of adverse initial agency determination.

A. General.

The administrative appeal of an adverse initial agency determination shall be made in accordance with the Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia as set forth below.

B. The informal proceeding.

1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.

2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:

a. The adverse agency action appealed from;

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b. A detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia within 45 days of the request.

4. The Director of the Division of Provider Reimbursement of the Department of Medical Assistance Services, or his designee, shall preside over the informal conference. As hearing officer, the director (or his designee) may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Division of Provider Reimbursement, having considered the criteria for relief set forth in §§ 4 and 5 below, shall take any of the following actions:

a. Notify the provider that its request for relief is denied setting forth the reasons for such denial; or

b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or

c. Notify the provider that its request for relief will be granted in part and denied in part setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 30 days of the conclusion of the informal conference.

§ 3. The formal administrative hearing: procedures.

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from; and

2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the

hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

§ 4. The formal administrative hearing: necessary demonstration of proof.

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.

2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals, may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to

submit to the agency the data it has developed for the Virginia Health Services Cost Review Council. The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy,
- Average hourly wage,
- FTE's per adjusted occupied bed,
- Nursing salaries per adjusted patient day,
- Average length of stay,
- Average cost per surgical case,
- Cost (salary/nonsalary) per ancillary procedure,
- Average cost (food/nonfood) per meal served,
- Cost (salary/nonsalary) per pharmacy prescription,
- Housekeeping cost per square foot,
- Maintenance cost per square foot,
- Medical records cost per admission,
- Current ratio (current assets to current liabilities),
- Age of receivables,
- Bad debt percentage,
- Inventory turnover,
- Measures of case mix,
- Average cost per pound of laundry.

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospitals's operation.

- Flexible budgeting system,
- Case mix management systems,
- Cost accounting systems,
- Materials management system,
- Participation in group purchasing arrangements,
- Productivity management systems,
- Cash management programs and procedures,
- Strategic planning and marketing,
- Medical records systems,
- Utilization/peer review systems.

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover

operating costs related to inpatient care is insufficient to provide care and service that conforms to applicable state and federal laws, regulations and quality and safety standards.³

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.⁴ In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.⁵

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability; and

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care within a 30 minute travel time at a total per diem rate which is less to the Department of Medical Assistance Services than the costs which would be incurred by the Department of Medical Assistance Services per patient day were the appellant hospital granted relief.⁶

E. In determining whether to award additional reimbursement to a hospital for reimbursement cost which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid applicable Medicare rules of reimbursement.

§ 5. Available relief.

A. Any relief granted under §§ 1 through 4 above shall

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be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with § 4 (excluding plant and education costs and return on equity capital); and
2. The prospective operating cost per diem, identified in the Medicaid Cost Report and calculated by the Department of Medical Assistance Services.⁷

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system, or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients, or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

D. Any relief awarded under §§ 1 through 4 above shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began on or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in subsection A of § 1 is filed within 90 days of the effective date of these regulations.

§ 6. Catastrophic occurrence.

A. Nothing in §§ 1 through 5 shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

1. One time occurrence;
2. Less than 12 months duration;
3. Could not have been reasonably predicted;
4. Not of an insurable nature;
5. Not covered by federal or state disaster relief;
6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

Footnotes:

¹ This effective date tracks an emergency regulation adopted September 29, 1988, by the Director of the Department of Medical Assistance Services, pursuant to the Code of Virginia § 9-6.14-9, and filed with the Registrar of Regulations. HCFA has not approved the inclusion of this disproportionate share adjustment policy's effective date in the State Plan for Medical Assistance.

² Refer to explanation at first footnote.

³ See 42 U.S.C. § 1396(a)(13)(A). This provision reflects the Commonwealth's concern that it reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services. . . that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered - not "adequate health care." *Alexander v. Choate* - U.S. - decided January 9, 1985, 53 U.S. L.W., 4072, 4075.

⁴ In *Mary Washington Hospital v. Fisher*, the court ruled that the Medicaid rate "must be adequate to ensure reasonable access." *Mary Washington Hospital v. Fisher*, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid Program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state.

46 Fed. Reg. 47970.

⁵ The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated - and therefore has good cause to consider withdrawal from the Program - and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors - indeed, less than average cost per day for all patients - it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or "incremental harm" concept is a device to assess the potential harm to a hospital continuing to treat Medicaid recipients, and

not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

⁶ With regard to the 30 minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

⁷ The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, it may share in the cost associated with those circumstances. This is consistent with existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than its share of fixed costs. Any relief to an appellant hospital will be computed on an occupancy adjusted basis. Relief will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the 21 day limit currently in effect.

MILK COMMISSION

NOTICE: The Milk Commission 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 its regulations.

Due to its length, the following regulation filed by the Milk Commission is not being published; however, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. Also, the amendment is set out below. The full text of the regulation is available for inspection at the office of the Registrar of Regulations and at the Milk Commission.

Title of Regulation: VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Effective Date: September 1, 1990.

Summary:

The amendment to the Milk Commission's rules and regulations was necessitated by the inequity that existed when two or more cooperatives were supplying milk to the same processing plant and one cooperative failed to deliver base during the delivery period, which resulted in that cooperative receiving a higher blend price than the other cooperatives and to permit cooperatives and processing plants to mutually agree to deliveries other than those required by base assignment.

VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.

C. Producers and/or cooperative associations shall be paid a base price for base deliveries and an excess price for excess deliveries computed monthly for each distributor in accordance with the following procedure:

(1) To determine the excess price for 3.5% milk, add to the value obtained by multiplying the excess deliveries allocated to Class I-A and Class II by the Class II price 3.5% milk, the value obtained by multiplying the excess deliveries allocated to Class I by the Class I price for 3.5% milk and divide the sum by the total excess deliveries.

(2) To determine the base price for 3.5% milk, add to the value obtained by multiplying the base deliveries allocated to Class I by the Class I price for 3.5% milk, the value obtained by multiplying the base deliveries allocated to Class I-A and Class II by the Class II price for 3.5% milk and divide the sum by the total base deliveries.

D. Delivered base for each producer and/or cooperative association for a monthly delivery period shall be the assigned base, unless deliveries are less than assigned base. When deliveries are less than assigned base the delivered base shall be 92% of actual deliveries. *Delivered base shall be in accordance with the following:*

(1) *Delivered base for deliveries made in accordance with Regulation No. 5, Paragraph 2-A, shall be the assigned base unless deliveries are less than assigned base. When deliveries are less than assigned base the delivered base shall be (92%) of deliveries.*

(2) *Delivered base for deliveries made in accordance with Regulation No. 5, Paragraph 2-B, shall be the lesser of assigned base or deliveries.*

E. Excess deliveries for producers and/or cooperative associations shall be the difference between total deliveries and delivered base.

F. If a producer or cooperative association fails to make delivery of milk or delivers milk which is not merchantable or does not meet the requirements of the health authorities having jurisdiction in the market, the base of that producer or cooperative association shall be reduced by a percentage. That percentage shall be determined by dividing the number of days which the producer or cooperative association failed to make delivery of acceptable milk by the number of days in the delivery period.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: VR 625-01-01. The Virginia Erosion and Sediment Control Handbook. REPEALED

Title of Regulation: VR 625-02-00. Erosion and Sediment Control Regulations.

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Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Effective Date: September 13, 1990

Summary:

These regulations establish minimum standards for the control of soil erosion, sediment deposition and nonagricultural runoff from land-disturbing activities that must be met in local erosion and sediment control programs, and also by state agencies that conduct land-disturbing activities. Land-disturbing activities include, but are not limited to, clearing, grading, excavating, transporting and filling of land.

This regulatory action repeals regulations entitled: VR 625-01-01. The Virginia Erosion and Sediment Control Handbook, including standards, criteria and guidelines.

VR 625-02-00. Erosion and Sediment Control Regulations.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-560 of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey a chosen frequency storm event without [overtopping its banks or] causing erosive damage to the bed, banks and overbank sections of the same.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Board" means the Virginia Soil and Water Conservation Board.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Dam" means a barrier to confine or raise water for

storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of Conservation and Recreation.

["Development" means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.]

"Dike" means an embankment to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"District" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Division" means the Division of Soil and Water Conservation.

"Dormant" refers to denuded land that is not actively being brought to a desired grade or condition.

"Erosion and Sediment Control Plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

["Land development" means a man-made change to the land surface that potentially changes its runoff characteristics.]

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Plan approving authority" means the board, the district or a county, city, or town, or a department of a county, city, or town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of land and for approving plans.

"Post-development" [means that period of time following the completion of a land development project refers to conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land].

"Pre-development" [means that period of time just prior to the commencement of a land development project refers to conditions at the time the erosion and sediment control plan is submitted to the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions].

"Sediment basin" means a depression formed from the construction of a barrier or dam built to retain sediment and debris.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Single family residence-separately built" means a noncommercial dwelling that is occupied exclusively by one family and not part of a residential subdivision development.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

"Stabilized" means an area that can be expected to withstand normal exposure to atmospheric conditions

without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" [means an impoundment structure designed to retard runoff and thus reduce flood peaks and runoff volume means the process of temporarily impounding runoff to reduce flood peaks].

"Stormwater retention" means the process by which an impoundment structure stores the total runoff [hydrograph of a given storm] and then releases the flow at a controlled rate over an extended period.

"Subdivision" unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465 of the Code of Virginia, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

"Temporary stream crossing" means a temporary structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches.

"Ten-year frequency storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedence probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year frequency storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedence probability with a 50% chance of being equaled or exceeded in any given year.

["Water seepage plane" means a horizontally projected area that is frequently inundated by base flows or storm events.]

§ 1.2. Authority.

The authority for these regulations is contained in Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

§ 1.3. Purpose.

The purpose of these regulations is to form the basis for the administration, implementation and enforcement of the Act. The intent of these regulations is to establish the framework for compliance with the Act while at the same

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time providing flexibility for innovative solutions to erosion and sediment control concerns.

§ 1.4. Scope and applicability.

A. These regulations set forth minimum standards for the effective control of soil erosion, sediment deposition and nonagricultural runoff that are required to be met in erosion and sediment control programs adopted by districts and localities under the Act.

B. The standards contained in these regulations also apply to:

1. Erosion and control plans that may be submitted directly to the board pursuant to § 10.1-563 A of the Act;
2. Annual general erosion and sediment control specifications that electric and telephone utility companies and railroad companies are required to file with the board pursuant to § 10.1-563 D of the Act;
3. Conservation plans and annual specifications that state agencies are required to file with the department pursuant to § 10.1-564 of the Act; and
4. Federal agencies that enter into agreements with the board.

C. The submission of annual specifications to the board or the department by any agency or company does not eliminate the need for a project specific Erosion and Sediment Control Plan.

§ 1.5. Minimum standards.

An erosion and sediment control program adopted by a district or locality shall contain regulations that are consistent with the following criteria, techniques and methods:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant (undisturbed) for longer than 30 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
2. During construction of the project, soil stock piles shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as soil [intentionally] transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently

stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that, in the opinion of the local program administrator or his designated agent, is uniform, mature enough to survive and will inhibit erosion.

4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.

5. Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.

6. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The sediment basin shall be designed and constructed to accommodate the anticipated sediment loading from the land-disturbing activity. The outfall device or system design shall take into account the total drainage area flowing through the disturbed area to be served by the basin.

7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.

9. Whenever [a slope face crosses a water seepage plane, water seeps from a slope face,] adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state and local regulations pertaining to working in or crossing live watercourses shall be met.

15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

a. No more than 500 linear feet of trench may be opened at one time.

b. Excavated material shall be placed on the uphill side of trenches.

c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.

d. Restabilization shall be accomplished in accordance with these regulations.

e. Applicable safety regulations shall be complied with.

17. Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by [runoff of vehicle vehicular] tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual subdivision lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the local program administrator. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in

volume, velocity and peak flow rate of stormwater runoff [for the stated frequency storm of 24-hour duration] in accordance with the following standards and criteria:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question.

(2) Natural channels shall be analyzed by the use of a two-year frequency storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(3) All previously constructed man-made channels shall be analyzed by the use of a ten-year frequency storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks.

(4) Pipes and storm sewer systems shall be analyzed by the use of a ten-year frequency storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

(1) improve the channels to a condition where a ten-year frequency storm will not overtop the banks and a two-year frequency storm will not cause erosion to channel the bed or banks; or

(2) improve the pipe or pipe system to a condition where the ten-year frequency storm is contained within the appurtenances; or

(3) develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a ten-year storm to increase when runoff outfalls into a man-made channel.

(4) provide a combination of channel improvement,

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stormwater detention/retention or other measures which is satisfactory to the Plan Approving Authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention/retention, he shall obtain approval from the locality of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel or detention facility.

h. In applying these stormwater management criteria, individual lots in a residential subdivision development shall not be considered to be separate development projects. Instead, the residential subdivision development, as a whole, shall be considered to be a single development project. [Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.]

i. Proposed commercial or industrial subdivisions shall apply these stormwater management criteria to the development as a whole. Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.

§ 1.6. Variances.

The plan approving authority may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan approving authority shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan approving authority. The plan approving authority shall respond in writing either approving or disapproving such a

request. If the plan approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

3. The plan approving authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

§ 1.7. Maintenance and inspections.

A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

B. Periodic inspections are required on all projects by the enforcement authority. An inspection shall be made during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds.

§ 1.8. Residential [~~subdivisions~~ subdivision development].

A. An erosion and sediment control plan shall be filed for a [~~subdivision~~ residential development] and the buildings constructed within, regardless of the phasing of construction.

B. If individual lots or sections in a residential [~~subdivision~~ development] are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.

C. Land-disturbing activity [~~on individual lots in a subdivision shall not be considered exempt from the provisions of the Act and these regulations on the grounds that the disturbed land area is less than 10,000 square feet of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the Act and these regulations~~].

D. The construction of permanent roads or driveways that disturb in excess of 10,000 square feet and that serve more than one single-family residence separately built is not exempt from the requirements of the Act and these regulations.

§ 1.9. [~~Land-disturbing activities associated with the determination of nonexempt classification.~~ Criteria for

determining status of land-disturbing activity.]

A. A property owner who disturbs 10,000 square feet, or more, of land and claims that the activity is exempted from the requirements of the Act [as shown in § 10-1-560 of the Code of Virginia] shall have one year from the date of commencement of the activity to demonstrate to the erosion and sediment control enforcement authority that the activity is exempt. As soon as a nonexempt status is determined, the requirements of the Act shall be immediately enforced.

B. Should a land-disturbing activity cease for more than 180 days, the plan approval authority or the permit issuing authority shall evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

§ 1.10. State agency projects.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Permit Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act.

B. Where inspections by division personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the Chief Administrative Officer of the Board, who is authorized to sign such an order. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by division staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural Resources Secretariat, to the secretary of Natural Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate

agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

STATE CORPORATION COMMISSION

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 19, 1990

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE900029

Ex Parte: In the matter of adopting
Commission rules for
electric capacity bidding programs

ORDER DIRECTING PUBLIC NOTICE AND INVITING COMMENTS

On April 25, 1990, the Commission issued its Order Establishing a Commission investigation to clarify the relationships among utility construction of power plants, bidding programs for capacity purchases, and Commission arbitration of qualifying facilities in utility disputes under PURPA. Therein, we directed our Staff to conduct an investigation and to formulate proposed rules. Staff filed its Report on June 15, 1990.

In its Report, Staff generally determined that competitive bidding continues to offer many advantages in Virginia and that the existing competitive bidding framework was working reasonably well. Staff therefore did not propose an abrupt departure to existing procedures although Staff identified the need for certain modifications and for clear delineation through publication of rules. The rules as proposed would apply to any investor-owned electric utility or cooperative operating in Virginia that chooses to establish a competitive bidding program. We recognize certain modifications to the rules may be required for a cooperative that chooses to implement a bidding program and we invite comments on those changes.

Staff proposes that each utility or cooperative would maintain the right to establish a bidding program or to secure its capacity and energy through other means, such as on a first come, first served basis. The Staff also addressed the need for a benchmark. The Staff rules would require an electric utility conducting a bidding program to develop detailed cost estimates of its own build options. Staff recommends that the utility not be required to divulge those estimates to potential bidders, however if the utility elects not to release those estimates for public review, the estimates would be submitted to the Commission on a confidential basis prior to the Company's receipt of competitive bids.

Staff also proposes several nonprice factors which should be incorporated into the evaluation, many of which are the same nonprice factors identified in our January 1988 policy ruling accepting bidding in concept. Commonwealth of Virginia, ex rel. State Corporation Commission EX Parte, In re: Commission policy regarding the purchase of

electricity by public utilities from qualifying facilities when a surplus of power exists, 1988 S.C.C. Ann. Rep. 297. Staff proposes the addition of several nonprice factors including consideration of the environmental impact of a project.

Staff further proposes that the Commission adopt a rule to allow a utility with an active competitive bid program to refuse offers of capacity that have been received outside of the bidding process. In anticipation of extraordinary opportunities which may arise, Staff, however, proposes to allow limited projects to be negotiated outside of a bidding program. Specifically, Staff suggests that a utility or a developer be allowed to propose such a project, but only if they can demonstrate that the opportunity could not be accommodated in the bidding process and that the terms and price of such purchase are more favorable than existing alternatives. This issue also requires further development and we encourage extensive comments thereon.

Finally, we invite specific comment on Staff's discussion relative to the approval of purchase plans resulting from a competitive bid solicitation. Both the need and suggested procedure of such a formal approval process should be addressed.

NOW THE COMMISSION, having reviewed the Staff Report, appendix, and the applicable law, is of the opinion and finds that notice of the proposed rules contained in the Staff Report would be made and that any interested persons should be provided an opportunity to comment on these proposals in writing and in oral argument. Accordingly,

IT IS ORDERED:

- (1) That, on or before August 20, 1990, the Commission's Division of Economics and Finance shall cause a copy of the following notice to be published once a week for two consecutive weeks in newspapers having general circulation throughout the Commonwealth:

NOTICE OF CONSIDERATION BY THE VIRGINIA STATE CORPORATION COMMISSION OF PROPOSED RULES FOR ELECTRIC CAPACITY BIDDING PROGRAMS - CASE NO. PUE900029

On April 25, 1990, the State Corporation Commission initiated an investigation to assess the relationships among utility construction of power plants, bidding for capacity purchases and Commission arbitration of qualifying facilities and utility disputes under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The Commission intends that such investigation will ultimately result in the promulgation of rules for electric capacity bidding programs. To initiate the investigation, the Commission directed its Staff to recommend proposed rules governing the contracting process between the utilities subject to Commission jurisdiction and other power suppliers.

Pursuant to that direction, the Staff filed its report and proposed rules on June 15, 1990.

The text of the Staff Report and accompanying appendix may be reviewed by the public at the State Corporation Commission's Document Control Center, located on Floor B-1 of the Jefferson Building, Bank and Governor Streets, Richmond, Virginia from Monday through Friday during its regular hours of operation, i.e., 8:15 a.m. to 5:00 p.m. In addition, the Staff Report and its appendix may be reviewed at each electric utility's business office where utility bills may be paid. Any interested person who wishes to submit written comments on the proposed rules must file an original and fifteen (15) copies of such comments with George W. Bryant, Jr., Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216 no later than September 17, 1990. A copy of the comments shall be served upon all persons reflected in the attestation paragraph of the Commission's July 19, 1990 order.

An oral argument has also been scheduled for October 25, 1990 at 10:00 a.m. in the Commission's 13th Floor Courtroom in the Jefferson Building, Bank and Governor Streets, Richmond, Virginia, to receive oral comment on the proposed rules and written comments. Notice of intent to participate in the oral argument, along with a list of those issues which will be addressed in oral comments, should be received by the Commission on or before October 19, 1990.

VIRGINIA STATE CORPORATION COMMISSION DIVISION OF ECONOMICS AND FINANCE

(2) That any person may file written comments concerning the Staff Report and proposed rules, provided an original and fifteen (15) copies of the comments are filed no later than September 17, 1990, with George W. Bryant, Jr., Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, and shall refer to Case No. PUE900029. A copy of the comments shall be served upon all persons reflected in the attestation paragraph of this order.

(3) That Staff may file further written comments on or before October 12, 1990. A copy of those comments shall be served upon all parties of record.

(4) That oral argument will be scheduled for October 25, 1990 at 10:00 a.m. in the Commission's 13th Floor Courtroom, Jefferson Building, Bank and Governor Streets, Richmond, Virginia. Any person desiring to provide oral argument on the proposed rules or any written comment submitted herein shall submit an original and fifteen (15) copies of its notice of intent to participate and an outline of those issues it intends to address provided it is filed no later than October 19, 1990 with George W. Bryant, Jr., Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. A copy of

such notice shall be served upon all parties of record.

(5) That all investor-owned electric utilities and electric cooperatives subject to the Commission's jurisdiction shall forthwith make available for public inspection during normal business hours, at the respective business offices where utility bills may be paid, a copy of the June 15, 1990 Staff Report and accompanying appendix and a copy of this order. A copy of the Staff Report and its appendix is incorporated as a part of this order as Attachment A; and

(6) That the Division of Economics and Finance shall, upon completion, provide proof of the publication required herein.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each electric utility subject to the jurisdiction of this Commission; Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-9970; Evans B. Brasfield, Esquire, Hunton & Williams, P.O. Box 1535, Richmond, Virginia 23212; Harrison Wellford, Esquire, National Eric M. Page, Esquire, Thorsen & Page, 320 West Broad Street, Richmond, Virginia 23220; Glenn J. Berger, Esquire, 1440 New York Avenue, N.W., Washington, D.C. 20005; John K. Pollock, Virginia Hydro Power Association, P.O. Box 413, Afton, Virginia 22920; Hullahen Moore, Esquire, Christian, Barton & Epps, 1200 Mutual Building, Richmond, Virginia 23219; Beverley L. Crump, Esquire, P.O. Box 1463, Richmond, Virginia 23212; Stephen H. Watts, II, Esquire, One James Center, 901 East Cary Street, Richmond, Virginia 23219; Laurence M. Hamrick, Esquire, Williams, Mullen & Christian, P.O. Box 1320, Richmond, Virginia 23210; Office of Virginia Attorney General, Division of Consumer Counsel, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; and to the Commission's Divisions of Energy Regulation and Economics and Finance.

PROPOSED RULES REGARDING COMPETITIVE BIDDING PROGRAMS

I. INTRODUCTION

On April 25, 1990, the Virginia State Corporation Commission initiated an investigation of the contracting process between Virginia electric utilities and other power sources.¹ This investigation was prompted in part by questions regarding an appropriate benchmark for weighing additional construction by utilities against purchases of additional capacity and by concerns over the potential exclusivity of bidding. In response to these and other concerns the Commission found "that it is appropriate to initiate this investigation to revisit the principles discussed in the January, 1988 order and adopt rules delineating a framework for the contracting process between utilities and other power suppliers (both qualifying facilities under PURPA and non-PURPA independent power producers)."

State Corporation Commission

This document summarizes the findings of the Commission Staff's investigation and is organized as follows: the background section reviews the growth and impact of non-utility generators and the need for a change in the Commission's bidding policy; the discussion section addresses major aspects of a competitive bidding program, including both utility and Commission responsibilities; and the proposed rules section outlines minimum requirements for utilities in future bid solicitations. An appendix contains summary information from selected state public utility commissions regarding their bidding policies.

II. BACKGROUND

The Commission identified the need to adopt rules for utilities securing electric capacity through bid solicitations in its April 25, 1990 order. This need arose, in part, from a continuing increase in the number of cogenerators, small power producers, and independent power producers in Virginia.

PURPA and FERC Rules

During the late 1970s, serious concerns over future energy availability led lawmakers to consider methods for reducing dependence on traditional fossil fuels. At that time economic and regulatory barriers limited the growth of non-utility power suppliers. However, passage of the Public Utility Regulatory Policies Act of 1978 (PURPA) eased the barriers facing qualifying facilities (QFs).

PURPA required the Federal Energy Regulatory Commission (FERC) to prescribe rules designed to encourage cogeneration and small power production. Utilities were compelled to purchase power from QFs at a price no greater than the purchasing utility's avoided cost. Furthermore, by exempting QFs from certain state and federal regulations, PURPA and the new FERC rules stimulated the growth of cogenerators and small power producers.

Utilities operating in Virginia were not immediately faced with the consequences of PURPA. By the late 1980s though there was a growing interest in non-utility generation.

Developments in Virginia Prior to the Bidding Order

Through the early 1980s utilities in Virginia were executing negotiated contracts or standard rate contracts with QFs. PURPA required a utility to purchase needed capacity and energy offered by QFs at a price not to exceed the utility's avoided cost. Avoided cost calculations for many utilities allowed QFs to receive very attractive prices. In some areas of the country high avoided cost payments contributed to a surplus of QF production. At this point the electric utility industry was faced with two new problems: how to best determine avoided cost and how to select from among the many QFs willing to supply power.

In Virginia a task force was established by the Commission to address the first problem. The Avoided Cost Task Force attempted to determine an appropriate methodology for estimating Virginia Power's avoided cost. In 1987 the group issued a report recommending a differential revenue requirement method for determining avoided cost.

The second concern, an abundance of offers of QF power, began to affect Virginia Power by 1986. The Company felt burdened with contract negotiations due to the unexpectedly large amount of capacity being offered by QFs. The traditional first come, first served method of contracting with QFs was no longer considered practical due to the number of capacity offers. As a result, the Company decided to solicit sealed proposals from the non-utility suppliers. In December, 1986, Virginia Power sent a letter to interested QFs, describing its contract terms and inviting proposals. The response to Virginia Power's letter was tremendous; offers for over 5,000 MW of capacity were received. Virginia Power selected ten projects for further negotiation and eventually signed contracts with seven suppliers totaling approximately 1,200 MW of capacity.

Virginia Power's solicitation, though successful in securing capacity, evoked some concern among QFs and others in the industry. These questions focused on the legality of the Company's solicitation process. A main concern was whether its approach conformed to PURPA and the FERC rules.

These issues and problems convinced the Commission to establish Case No. PUE870080 to consider appropriate capacity acquisition policies.

The January, 1988 Bidding Order

In December, 1987 the Commission Staff completed its investigation of procedures for utilities acquiring capacity from non-utility suppliers and filed its report in the above referenced case. As a result of the investigation, the Commission issued an order on January 29, 1988 addressing many of the questions and concerns regarding bidding.² The order established general non-binding guidelines. The Commission found that bidding or "competitive negotiation" was consistent with PURPA and the FERC regulations. In addition, the Commission decided that, due to the unique features of each utility operating in Virginia, utilities should be able to develop their own bidding procedures as necessary. The utilities would also be free to reject the bidding process. While the Commission recognized the need for an evolving, responsive bidding process, certain criteria were suggested for future bid evaluations. The order indicated that, in addition to price, utilities should consider non-price factors such as use of state resources, financial viability, and previous experience.

Another issue addressed in the January, 1988 order was whether a utility must offer to all QFs a price equivalent

to its avoided cost. The Commission ruled that PURPA and the FERC regulations do not require a utility to offer full administratively determined avoided costs to QFs. Rather, the competitive bid process could determine the fair market price.

The order also briefly addressed the status of independent power producers (IPPs). The Commission noted that these firms might be subject to state and federal laws governing public utilities. At the time of the 1988 order, however, there were no IPPs in Virginia.³

In concluding, the Commission noted its intention to continue the oversight of utilities' acquisition policies by monitoring the process, including proposed requests for proposals, selection criteria, and chosen projects, and by providing a forum should complaints arise. The Commission also indicated that it would continue to assess future developments in the area of power procurement by utilities.

Bidding Activity in Virginia

Since the January, 1988 order was issued, Virginia Power has initiated three bid solicitations. In March, 1988 the Company solicited bids for 1,750 MW of capacity. Specified levels of power were to be supplied beginning in each year from 1989 through 1994. This solicitation resulted in bids from 95 projects totaling 14,653 MW. Virginia Power contracted with 19 of the projects for 2,086 MW of power.

Virginia Power's second request for proposals (RFP) was issued in November, 1988. The Company was specifically seeking projects that would provide peaking capacity. In this case comparison of the bid projects to the Company's construction option led Virginia Power to reject the bids in favor of building its own units.

In August, 1989, Virginia Power again requested proposals for additional power. With this request, the Company was seeking 1,100 MW of total capacity. In the instructions for the 1989 RFP, Virginia Power indicated that it might purchase more or less than the 1,100 MW or the Company might build its own facility. On May 14, 1990, Virginia Power announced that it had chosen three projects representing over 400 MW of capacity. In addition, Virginia Power announced plans to build its own 400 MW coal-burning facility to be on line in 1997.

Delmarva Power has also conducted a competitive bid solicitation. The Company requested bids for 100 MW of capacity in February, 1989. This solicitation elicited ten proposals for 830 MW of capacity. Delmarva Power signed one contract for a 48 MW project to be on line in 1992.

Staff Oversight of the Bidding Process

The Commission Staff's role in past bid solicitations, as specified in the January, 1988 bidding order, was to monitor the process and to assure that the utilities

perform unbiased evaluations of all proposals received. Following Virginia Power's 1988 bid solicitation, the Commission Staff began a review of that bidding process. In evaluating this first solicitation the Commission Staff recognized the need to develop a program for ongoing monitoring and oversight. The Staff's investigation included a review of the RFP, an examination of the non-price factors used, a review of non-price scoring, and discussions with a number of both winning and losing bidders. Oversight in future solicitations will include ongoing discussions with the utility throughout the bidding process as well as informational filings.

The Staff's review of this first evaluation was favorable overall. However, the Staff did note some problems. The main concern was the lack of an appropriate cost benchmark for comparing potential projects to a utility build option. The evaluation identified several other aspects of the process that could be improved. Among these were the size of the solicitation, the non-price factors and their evaluation, and the extent of negotiation conducted.

The Staff is currently reviewing information concerning the August, 1989 solicitation process. At the conclusion of that review, the Staff will submit its report to the Commission.

The Commission's Role as an Arbitrator

Traditionally the Commission has directed utilities to negotiate purchase power contracts with large QFs in compliance with their PURPA obligation. Those contacts were negotiated on a first come, first serve basis. If the utility and the developer were unable to fully negotiate the contract, the Commission stood ready to arbitrate any impasses.

The January, 1988 order on bidding was the culmination of an investigation to assess the viability of an alternative approach to ordering capacity acquisitions. Therein the Commission determined a bidding process was an acceptable means to queue contracts.

The Commission, however, indicated its willingness to resolve disputes arising from the bidding process. Specifically, the January, 1988 order states that if "complaints arise from outside parties regarding particular policies, the Commission stands ready, as always, to provide a forum for review of the prudence and fairness of such programs."

Since the bidding order was issued in 1988, several companies have sought traditional arbitration from the Commission despite the existence of a bidding process. They each argued that PURPA entitled them to contracts with the utility and further, that they had justly relied on the traditional process. The Commission agreed to arbitrate in each case finding that a right to sell was vested in the QF prior to the issuance of the January, 1988 Order and therefore, there was a proper reliance on the traditional

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process. The Commission therefore ordered Virginia Power to negotiate with each party.

More recently, Smith Cogeneration of Virginia, Inc. filed a petition requesting arbitration with Virginia Power. Smith did not argue that its right to sell power was vested prior to the Commission's 1988 bidding policy statement. It argued that it simply was not required to participate in Virginia Power's competitive bid process. Smith interpreted the 1988 bidding order as providing QFs with a parallel alternative to the traditional process, but not a replacement for it. In this case, the Commission also required Virginia Power to negotiate with Smith because the January, 1988 order did not address the potential exclusivity of the bidding process. The Commission did direct this investigation be initiated and proper rules promulgated.

The Need for Changes to Existing Policies

The Smith Cogeneration petition emphasized the need to review Commission policies on bidding. Virginia Power states that its bidding process should be the sole means by which non-utility generators can sell capacity to the utility. Further, the utility contends that continued arbitration would inhibit the competitive market conditions created by the bidding process.

The Commission realizes that changes in the traditional procurement methods have created the need for additional study of the contracting process. In addition to questions raised in the Smith case, other issues, such as an appropriate benchmark for comparing utility construction to bids, have been raised in Commission proceedings.

General changes in the utility industry in Virginia also motivate a policy re-examination by the Commission. For example, independent power producers have now entered the market. In addition, utilities other than Virginia Power have become interested in a bidding process.

Based on these factors, the Commission, on April 25, 1990, initiated an investigation to revisit the findings of the January, 1988 order and to adopt new rules for future power contracting between utilities and non-utility suppliers.

III. DISCUSSION

The Staff believes that competitive bidding continues to offer many advantages in Virginia. The guidelines established in the Commission's January, 1988 order have allowed the State's largest electric utility, Virginia Power, to develop a sophisticated system for soliciting and evaluating bids. There is no reason to make any abrupt departure from the competitive bidding framework that is now in place and we do not propose such change. There is a need, however, for modification to existing procedures and clear delineation through publication of rules. The proposed rules represent an evolution and refinement of existing competitive bidding procedures. The future will

most likely bring further modifications as circumstances change.

The Staff proposes to replace the Commission's current non-binding guidelines with formal bidding rules. However, much of the flexibility of the current system would be maintained. We have purposely avoided establishing detailed rules and regulations because such procedures would only hamper the development of efficient and responsive bidding programs. The proposed rules establish broad parameters within which a utility can develop a bidding program that best serves its system needs and the needs of its service territory. While the rules allow the host utility considerable discretion in conducting competitive bid solicitations, they also include several changes that better protect the interests of the parties offering to sell power to the utility.

The Staff's proposed rules are included as Section IV of this report. The rules would apply to any investor owned electric utility or cooperative operating in Virginia that chooses to establish a competitive bidding program. An electric utility would maintain the right to establish a bidding program or secure electric capacity and energy through other means.

The remainder of Section III will discuss major aspects of the Staff's proposed rules.

ELECTRIC UTILITY PROCEDURES

Development of Resource Plan

A starting place for the development of a bidding program is the electric utility's resource plan. Investor owned electric utilities in Virginia submit annually a long term forecast of their anticipated demand and capacity needs. These resource plans identify the type and timing of company generating plant additions. If a utility chooses to establish a bidding program, the program should be an integral part of the utility's optimal long term resource plan. The size and type of capacity specified as needed in a utility's request for proposal (RFP) should be consistent with what is stated in its most recent long term forecast submitted to the Commission. If the two sources of information are not consistent, the company must justify any differences before an RFP is issued.

Request for Proposal

It is to the advantage of the electric utility to be open and candid about its needs for power. The more a prospective provider of power knows about the utility's needs, the better the chance of a proposal that meets those needs. The electric utility conducting a bidding program should provide all information that would reasonably be expected to have a bearing on the viability of a proposed project.

The utility should also explain in detail how proposals will be evaluated. Specific price and non-price factors

should be identified.

We feel the RFP should include, at a minimum, the following:

- a. The type and timing of capacity for which the company anticipates contracting.
- b. Explicit instructions for preparing bids so that bids can be evaluated on a consistent basis.
- c. Any minimum thresholds that must be met by respondents.
- d. A standard power purchase and operating agreement.
- e. A system map and preferred site locations.
- f. Specific information concerning the factors involved in determining price and non-price criteria used for selecting winning bids.

The utility's RFP should be well advertised and widely distributed. There should also be ample opportunity for potential bidders to meet with utility representatives in the event that clarification is needed.

Evaluation of Bids

The evaluation of bids can be complex and time consuming, particularly if there are a large number of bids submitted. In order to assure fair treatment, the evaluation must conform closely to the criteria outlined in the utility's RFP. The evaluation should take into account the effect on the utility's operating system of combinations of projects if it is likely that more than one project will be selected.

Proposals should compete not only with other bids but also with the utility's own build option, including generating plant life extensions. We do not feel it is necessary that the utility's build option be treated as a sealed bid. However, the utility must be able to demonstrate that it has objectively evaluated its build option against the bids received. If a utility elects to construct its own facilities, it will have the burden of proving the superiority of the build option in its construction approval hearing.

Some parties have argued that if a utility rejects all competitive bids and elects to build its own unit, then the utility should be bound by its cost estimates. Under this approach the utility would recover only the cost it estimated, even if the cost of the project exceeded the utility's projections. If the actual cost were lower than the estimate, then the utility's stockholders would be allowed to profit.

While this approach has some intuitive appeal, we don't believe it would be appropriate in Virginia. Utilities are

allowed by Virginia statute to recover prudent costs. Unless there is a showing of imprudence, a utility would be allowed to recover its construction costs despite earlier estimates.

Even if such an approach were determined to be legal in Virginia, we question its effectiveness. If an electric utility was held to its benchmark estimate, and due to events it cannot control such as changing environmental standards, its construction cost increased significantly, there could be negative repercussions for both the utility and its ratepayers. The Company's credit rating could drop and its cost of capital could increase. Before recommending that a utility benchmark estimate be treated as a contract price, we must be assured that the regulatory process can adequately handle such implications.

Company Cost Benchmark

An electric utility conducting a bidding program must develop detailed cost estimates for constructing its own units. These estimates should be developed so as to be current at the time of the evaluation of bids. Estimates should be based on the prices likely to be actually quoted by vendors and manufacturers of power plant equipment. Sole reliance on general cost estimates and guidelines, such as those included in EPRI Technical Assessment Guide (TAG) manuals, is clearly inappropriate.

A utility's cost estimates need not be divulged to prospective bidders. However, if the utility's own cost estimates are not identified in the company's RFP, then benchmark estimates must be submitted to the Commission prior to the company receiving competitive bids.

Price and Non-price Factors

It is important that the evaluation of bids be based on a combination of price and non-price factors. We believe each utility should have considerable discretion in selecting and weighting price and non-price factors. However, there are some factors which should be given at least some weight in all evaluations. These include the following:

Level and structure of required energy and capacity payments

Status of project development

Demonstrated financial viability

A developer's prior experience in the field

Fuel diversity

Dispatchability

Project location and effect on the transmission grid

State Corporation Commission

The efficiencies of joint production of electricity and steam inherent in the cogeneration process

Use of Virginia fuels, manpower and other state resources

Benefits to be derived by the industries and communities associated with particular projects

Environmental impact of projects

Many of these factors were identified by the Commission in its January, 1988 order. One factor that was not explicitly identified by the Commission, however, was the environmental impact of projects. The Staff believes that the environmental impact of projects should be given weight in the evaluation. Virginia Power, for example, does consider environmental impacts in its evaluation of a project, but only to the extent that it considers the likelihood of a project securing environmental permits. All other factors being equal, we believe a preference should be given to projects that are more environmentally benign. The Staff invites comments on the appropriateness of environmental considerations in a utility's bid evaluation process. The Staff also invites comments on the issue of promoting highly efficient cogeneration projects. The proposed rules identify the efficiencies associated with cogeneration as a non-price factor that should be considered in the evaluation of bids. Is such promotion appropriate and, if so, what specific Commission rules are needed?

Negotiations and Contracts

The utility should clearly specify in its RFP the extent of possible contract negotiations with potential suppliers of electricity. Because of the nature of bidding programs, it is unlikely that extensive negotiations will be needed. Bidders should be encouraged to extend their best offer at the time of submission of the bid. The utility should also verify that all representations made by the bidder are accurate, achievable and reasonable. In the interest of fairness to all bidders, fundamental changes in the nature of the project or capacity and energy payments should not be negotiated.

Although a standard power purchase and operating agreement would be available, the actual terms of contracts signed will be the result of negotiations between the parties. Therefore, contract terms could vary considerably from project to project. All contracts signed, however, should offer reasonable provisions to assure a facility's performance and continued availability under the agreement. These provisions could include liquidated damages charges and/or rights to take control of the power generation facilities. The utility maintains an obligation to serve despite any non-performance by a supplier of electricity.

Once a contract is signed, each party will, in general, be held to the terms of the contract. Opportunities for

contract reopeners should be limited. However, we are aware that unforeseen events may force a re-examination of contracts. More restrictive environmental regulations, for example, could cause some current contracts to become unworkable.

Utility Affiliates

In order to assure a fair and objective evaluation of bids, directly affiliated companies should not participate in a utility's capacity solicitation. We believe it would be extremely difficult to prevent self-dealing by the utility in such a situation. Even a perception of self-dealing would threaten the integrity of utility bidding programs.

Demand-Side Bidding

The Staff has not proposed rules regarding the bidding of demand-side programs. Although demand-side bidding programs have been developed in other states, there has been no experience with such programs in Virginia. We note that nothing in the Staff's proposed rules preclude utility experimentation with demand side bidding. We encourage comments on the appropriateness of demand-side bidding and how such programs could be structured.

Transmission Access

The Staff has not addressed the issue of bidder access to transmission facilities in its proposed rules. The Virginia State Corporation Commission has limited jurisdiction over wheeling services in Virginia. The Federal Energy Regulatory Commission has jurisdiction over the price, terms, and conditions of most wheeling arrangements. This includes most transactions in which the points of origin and destination are located within the same state.

We note that Virginia Power has agreed to "wheel out" losing bidders. All utilities are encouraged to be as accommodative as reasonably possible in developing voluntary wheeling policies. A competitive generation market will not reach its full potential without access to transmission facilities.

Purchases Outside of the Bidding Process

In general, negotiated purchases in parallel with a bidding process will act to undermine a utility's bidding program. With the exceptions noted below, the Staff believes that a utility with an active bidding program should be allowed to refuse offers of capacity that have been made outside of the bidding process. Of course, the utility would maintain an obligation to purchase energy from qualifying facilities.

A utility with a capacity solicitation program should still be able to make certain types of electricity purchases outside of the bidding process. These clearly would include purchases under tariffs (such as Schedule 19 for Virginia Power), as well as short term purchases from other

utilities and economy and emergency purchases. Such purchases may also include modifications or extensions of existing QF contracts or negotiations of additional purchases from an existing project. Staff, however, is not certain how to fairly evaluate such purchases in the context of available capacity offers and encourages comments on the parameters of such evaluation.

Although we would normally expect that all purchases other than those identified above would go through a bidding process, we do not want to preclude exceptional purchases that for some reason might be lost if required to wait for the next solicitation. If a utility or a developer does want to negotiate a purchased power contract outside of the bidding process, they should be required to seek approval from the Commission. In order to receive approval, they should have to demonstrate that the terms of the contract are favorable from both a cost and a reliability standpoint, and that the offer cannot be accommodated in a bidding process.

COMMISSION PROCEDURES

The State Corporation Commission will exercise jurisdiction over bidding processes in several ways under the Staff's proposed rules. First, it will maintain, and revise if appropriate, rules to assure a fair and efficient process by which utilities procure power through competitive bidding programs. Second, the Commission Staff will provide continuing oversight of the bidding process from issuance of the RFP to final selection of winners. Finally, the Commission will resolve disputes between bidders and the host utility.

Staff Overview Function

A bidding program will only be successful if the parties involved believe the solicitation and evaluation of bids is conducted fairly and in accordance with information provided in the utility's request for proposal. The Commission Staff must take an active role in providing oversight of the utility bidding programs.

The Staff's oversight should be detailed enough to enable it to identify potential problems in a utility's solicitation and evaluation techniques. The results of the Staff's oversight efforts would be presented periodically in formal reports to the Commission.

Commission Arbitration Role

The Commission should continue to provide a forum to resolve disputes regarding the solicitation and evaluation of purchased power offers. Moreover, if a utility does not elect to implement an exclusive bidding process, the Commission should continue its traditional role of arbitrating price, terms and conditions of purchase power contracts when the parties reach an impasse. However, the traditional arbitration process should not be allowed to be used to circumvent an orderly acquisition process. As stated earlier, a utility should have a right to refuse

certain offers of power received outside of an active bidding program.

Public Hearings

The Commission does not currently formally approve the power purchase plans of electric utilities. However, it is time to consider an approval process given the magnitude of power now being purchased through capacity solicitations.

Formal approval of the purchase plans resulting from a competitive bid solicitation would offer several advantages. First, it would provide a forum for any interested parties to challenge a utility's capacity solicitation techniques and evaluation methods. This challenge could result in a substantial improvement in the utility's techniques. Second, it would improve the public's perception of the fairness of the process. Finally, it would result in consistent regulatory treatment of a utility's build and buy options. Currently if a utility intends to construct generating facilities in excess of 100 MW it must justify its plans in a public hearing and receive formal Commission approval. A utility's purchase plans of comparable magnitude may need similar public scrutiny and Commission approval.

However, a requirement of formal hearings and Commission approval of utility purchase power plans is not without its drawbacks. Considerable time and resources may be expended in conducting evidentiary proceedings. Such proceedings could prevent a timely acquisition of capacity. The fact that the utility, as well as participants in the bidding process, will likely consider key cost and bid information to be proprietary may also severely limit the effectiveness of such proceedings. Perhaps most importantly, approval of proposed purchase plans, and particularly revisions to such plans, greatly increases Commission involvement in the planning of the electric utility. Such a step further blurs the traditional roles of regulators and utility management in the capacity planning process. Responsibility for capacity acquisition becomes shared between the Commission and the utility, essentially precluding future prudence reviews of capacity acquisition.

Our proposed rules do not specify procedures for formal Commission approval of utility purchase power plans. We refrain from proposing such rules because we believe the issue needs considerably more thought. The Commission may want to maintain the flexibility to adopt or reject hearing procedures on a case by case basis. We invite comments on the need for and appropriate format of hearings on electric utility purchase plans and solicitation procedures.

IV. PROPOSED RULES GOVERNING THE USE OF BIDDING PROGRAMS TO PURCHASE ELECTRICITY FROM OTHER POWER SUPPLIERS

I. Purpose and Scope

The purpose of these rules is to establish minimum

State Corporation Commission

requirements for any electric utility bidding program that is used to purchase electric capacity and energy from other power suppliers. The rules apply to any investor owned electric utility or cooperative operating in Virginia that chooses to establish a bidding program.

Electric utilities maintain the right to establish a bidding program or secure electric capacity and energy through other means. If a bidding program is developed, the responsibilities of developing requests for proposals, evaluating bids and negotiating and enforcing contracts lies with the utility.

Utilities that are subject to bidding regulations of other states or federal agencies may file for exemptions from some or all of this Commission's requirements.

II. Sources of Capacity

With the exception noted below, a utility should allow all sources of capacity to submit offers in a bidding program. This would include other electric utilities, independent power producers, cogenerators and small power producers.

A host utility may not allow directly affiliated companies to participate in its capacity solicitation. Parties offering capacity reductions through load management may participate at the discretion of the host utility.

III. Development of Resource Plan

A bidding program must be an integral part of the utility's long term resource plan. The information in a utility's resource plan should determine the size of solicitations, the timing of the need and many of the evaluation criteria.

An electric utility's need for capacity as identified in its Request for Proposal (RFP) should be consistent with its long-term resource plans filed most recently with this Commission. If the RFP is not consistent with the resource plan, the company must justify any differences before an RFP is issued.

IV. Request for Proposal

The utility's request for proposals should provide accurate information about the company's need for capacity. Such information should, at a minimum, include the following:

- a. The type and timing of capacity for which the company anticipates contracting.
- b. Any minimum thresholds that must be met by respondents.
- c. Explicit instructions for preparing bids so that bids can be evaluated on a consistent basis.

d. Preferred site locations.

e. A standard power purchase and operating agreement.

f. Specific information concerning the factors involved in determining price and non-price criteria used for selecting winning bids.

The electric utility should provide all information that would reasonably be expected to have a bearing on the viability of a proposed project. Potential bidders should have the opportunity to meet with the utility to discuss the RFP and the utility's capacity needs. Advance notice of the issuance of an RFP must be provided to the Commission Staff.

V. Evaluation of Bids

The evaluation of bids submitted in a bidding program must be based on the criteria identified in the utility's request for proposal. Bids should compete not only with other bids but also with the company's own build options, including plant life extensions.

While a company's build option need not be treated as a sealed bid, the utility must be able to demonstrate that it has objectively evaluated its build option against the bids received. It should be recognized that the utility's evaluation will be under close scrutiny by the Commission Staff and other interested parties.

VI. Company Cost Benchmark

An electric utility conducting a bidding program must develop detailed cost estimates of its own build options. Such estimates must be current and based on the prices likely to be actually quoted by manufacturers and vendors of power plant equipment. These estimates need not be divulged to potential bidders. However, if cost estimates are not identified in the company's RFP they must be submitted to the Commission prior to the company receiving competitive bids.

VII. Price and Non-Price Factors

The price and non-price factors selected for evaluation and the weightings attached to each can reasonably vary from utility to utility. However, the following factors must be considered for each project.

- a. Level and schedule of required capacity and energy payments
- b. Status of project development
- c. Demonstrated financial viability
- d. A developer's prior experience in the field
- e. Fuel diversity

- f. Project location and effect on the transmission grid
- g. Efficiencies of joint production of electricity and steam inherent in the cogeneration process.
- h. Use of Virginia fuels, manpower and other state resources
- i. Benefits to be derived by the industries and communities associated with particular projects
- j. Environmental impact of projects

VIII. Contract Negotiations

Any contract negotiations between the utility and a potential supplier of electricity should be in strict accordance with what is stated in the company's RFP. In fairness to all bidding participants, contract negotiations should not be extensive. Fundamental changes in the nature of the project or capacity and purchase payments must not be negotiated. Any contract signed must include provisions that assure a facility's performance and continued availability under the agreement.

IX. Purchases Outside of the Bidding Process

Generally a utility with an active competitive bid program may refuse offers of capacity that have been received outside of a bidding process. Energy, however, must always be purchased from an offering QF.

Electricity purchases outside of the bidding process could include purchases under tariffs from small power producers and cogenerators, short term, economy and emergency purchases. If a utility or a developer does want to negotiate a purchased power contract outside of the bidding process, it must demonstrate that the opportunity cannot be accommodated in a bidding process and that the terms of the purchase are favorable from both a cost and reliability standpoint.

X. Utility Reporting Requirements

An electric utility conducting a competitive bid solicitation must submit a written report to the Commission Staff within 30 days of the completion of its evaluation of bids. This report should describe in detail the evaluation of bids and the company's comparison of the bids received to its own construction options. A second report, similar to the report submitted to the Staff but without information considered to be proprietary, must be prepared as a public document. The company should cooperate fully with the Staff in its review of the solicitation and evaluation process.

APPENDIX

SURVEY OF SAMPLE STATE COMMISSIONS'

BIDDING GUIDELINES

The Commission Staff contacted several other public utility commissions concerning the development of bidding guidelines and the progress of competitive bidding in their states. The following summaries provide information on the commissions' competitive bidding positions.

California

The California Public Utility Commission addressed bidding as a method of procuring QF capacity in an order released in 1986. This contracting process, called Final Standard Offer 4 (or Final SO4), includes a solicitation process and QF auction. QFs have three months to respond to a utility's request for capacity. The utility opens all responses at the end of the solicitation process. If the bid capacity does not cumulatively exceed the requested amount, all QFs are offered contracts at a price equal to the avoided costs.

If the capacity offered by QFs seeking Final SO4 contracts exceeds needed power, the available contracts are awarded through bidding. In the bid process, contracts up to the desired MW limit are offered to the low-bidding QFs at the price bid by the lowest losing bidder. (This procedure is called a "second price" auction.)

Pacific Gas and Electric Company was the first California utility to solicit for capacity using this plan. In May, 1989, the company submitted an RFP consistent with Final SO4 to the Commission for approval.

Connecticut

Connecticut's Department of Public Utility Control has developed relatively specific guidelines for the purchase of capacity from non-utility generators by utilities. The Department closely oversees the bidding process from the issuing of RFPs to the evaluation of completed bids.

Initially, each utility must file its RFP with the Department. The current regulations allow capacity or energy needs to be filled by power purchases, by conservation and demand management programs, or by both. The RFP must describe the manner of selection and the criteria for weighting of factors used in the evaluation of bids. Among the factors that the utility should consider are: price, timing, quality of output, likelihood of project success, reliability, safety, fuel use and likely environmental impact.

Once bids are received, the utilities must file an evaluation of all of the bids with the Department. This filing should indicate the recommended winning bids. After reviewing the bids, the Department issues a decision indicating whether the proposals are consistent with state regulations. The Department then notifies successful bidding participants.

Florida

State Corporation Commission

An RFP for reserve capacity issued in 1987 by Seminole Electric Cooperative (SEC) led the Florida Public Service Commission to address the legality and methodology of competitive bidding in Florida. However, to date, the Florida Commission has not established any firm guidelines for bid solicitations. In a final order dated March 23, 1989, the Commission granted a petition allowing SEC to choose from among the QFs and IPPs submitting bids in the 1987 bid solicitation. Using the cost of building two 220 MW combined cycle units as a benchmark, SEC chose two bidders to supply the needed capacity. The Commission agreed that SEC's methodology resulted in the most cost effective alternatives and, subsequently, approved the selections (order dated December 22, 1989). Since then, Florida Power and Light has become active in bidding by issuing an RFP for an additional 800 MW of purchased capacity.

Georgia

While the Georgia Public Service Commission continues to monitor competitive bidding developments in other states, the Commission does not, at present, perceive a need for formal bidding guidelines for the utilities in Georgia.

Maine

One of Maine's utilities, Central Maine Power, (CMP) initiated the bidding process in that state. While the Public Utilities Commission has rules for the purchase of electricity from QFs, it has not formally enacted bidding guidelines. Therefore, CMP's procedure is viewed as the state standard.

Under the CMP plan, IPPs, QFs and utility affiliates may participate in a bid solicitation. IPPs can only contract with the utility through the bid process. In contrast, QFs are encouraged to participate in bidding, but they may sign contracts outside of the bidding procedure if they prefer. Utility affiliates must have less than 50 percent utility ownership in order to qualify as a participant in a CMP bid solicitation.

Under the CMP plan, the utility calculates avoided cost by comparing a base case (the utility's current production plan) with a plan reflecting purchased capacity. The Commission reviews this avoided cost calculation and the utility's need for additional capacity.

In most cases, CMP accepts bids only for projects located within its service territory. (Special wheeling arrangements may allow a project located outside the service territory to participate in the bid process.) Among these bids, any project whose cost is below the calculated avoided cost is considered. Projects are then ranked according to price, capacity, endurance, and operational characteristics. Other factors are also evaluated (i.e., site location, financial stability, etc.). The highest ranking bids that total the level of capacity needed are then selected. Those selected are paid their bid price. Bidders not

chosen may appeal their rankings to the Commission.

Under the Maine system, bidding is a continuous process; as soon as one solicitation is completed, the process starts again. Using this procedure, CMP has had several successful solicitations. The company estimates that, by 1992, 32 percent of its electricity needs will be met by cogenerators and small power producers. Most of this capacity will be contracted through bid solicitations.

Massachusetts

In December 1989, the Massachusetts bidding guidelines were expanded to include resources other than QF capacity. The Massachusetts Department of Public Utilities' revised solicitation process encompasses utility generation and demand side programs, QFs, IPPs, and non-utility conservation and demand side management programs. Under the Massachusetts guidelines, electric companies should issue Department-approved RFPs approximately every two years. The utilities evaluate company-built units against the bid capacity. The Department feels that this comparison is necessary to eliminate any bias toward non-utility resources. However, the resulting resource plan is also carefully reviewed for partiality toward the utility resources.

The utility ranks all proposed projects based on price and non-price criteria, then selects the best mix of the highest ranking projects. The revised bidding guidelines suggest a change from self-scoring criteria to utility scoring. The electric company must specify minimum threshold standards but the new plan allows it more flexibility in selecting winning projects.

When the winning projects are selected, the utility is required to file an integrated resource plan which includes capacity from the selected bids. The Department evaluates the entire solicitation and has final approval of the resource plan.

Emergency and short-term purchases may be acquired outside the all-resource solicitation. However, purchases of long-term capacity outside the bidding procedures must be approved by the Department on a case-by-case basis. This type of purchase is not encouraged but is allowed in special circumstances.

New Jersey

In an order issued on September 28, 1988, New Jersey's Board of Public Utilities endorsed procedures under which electric utilities may select and purchase electric capacity. The Board believes that ratepayers will ultimately benefit from utilities shifting construction and operating risk to non-utility generators. The Board-approved bid policy (known as the "Stipulation of Settlements" or the "Stipulation") was established and agreed upon by a group consisting of representatives from utilities, cogenerators, IPPs, industrial users, and Board Staff.

The New Jersey policy applies to QFs, IPPs and large scale conservation projects. The Stipulation requires that, when additional capacity is needed, utilities must annually initiate a bid solicitation. Each solicitation has a bid price ceiling based on the utility's avoided cost. Bids greater than the ceiling are rejected. The remaining bids are then evaluated on both price and non-price criteria. A utility's own units should not be included in this evaluation. For three years after the adoption of the Stipulation, utility affiliates may not participate in a capacity solicitation. At the end of this period, the Board will review the issue of affiliates bidding.

Each annual solicitation requires substantial and detailed informational filings. Using this information and the results of the solicitation, the Board reviews the utility's bidding process and purchase selections. Since the 1988 order, Jersey Central Power & Light has successfully negotiated contracts for both supply and demand-side projects under the New Jersey guidelines.

New York

The New York Public Service Commission issued its first order concerning competitive bidding on June 3, 1988. In this order, the Commission encouraged utilities to engage in bidding as a means of procuring new capacity. However, the order allows individual utilities to decide the specifics of their bid programs within a broad framework outlined by the Commission.

The Commission indicates, in its order, the types of facilities that may participate in bidding. This group includes QFs, facilities that began operating before PURPA was enacted, fossil fuel plants that do not cogenerate power and steam, and the utility's QF affiliates. If utility affiliates participate in the bid solicitation, the bids must remain sealed until all bids are received, then they should be opened by a third party.

The Commission also ordered that non-price factors be taken into account. These factors should be in quantitative terms so that prospective bidders may self-score their proposals. The RFPs should be ranked based on: price, price schedule, price risk, dispatchability, fuel diversity, location, availability of production, environmental impacts, and the likelihood of project completion. However, the Commission feels that utilities should have enough flexibility beyond the self-scored proposals to exercise some subjective judgment in choosing projects.

New York's rules state that the ceiling price for the proposed bids should be equivalent to the cost of the utility's own optimal generating plan. The utility can base the contract price on the bid price ("first price") or the lowest losing bid ("second price"). Losing bidders are not guaranteed payments for avoided capacity costs but, because utilities in New York must purchase electricity from all bidders, losing bidders may receive payments for avoided energy costs. Small producers (2 MW or less) can receive auction based payments (i.e., the average of the

winning bids in the most recent auction) for capacity.

Pennsylvania

The Staff of the Pennsylvania Public Utility Commission was preparing a recommendation on bidding for the Commission when Metropolitan Edison initiated a bid solicitation. Due to complaints concerning the solicitation, an Administrative Law Judge was appointed to review the case and make a recommendation on bidding for the state. The Commission's main concern over accepting bids from non-utility generators is the increased risk associated with these suppliers. An order in the Metropolitan Edison case is expected at the end of June. At that time, the Commission will likely make a decision concerning a state-wide bidding policy.

Wisconsin

The Wisconsin Public Service Commission is scheduled to consider competitive bidding in a June 15, 1990 meeting. In preparation for this meeting, the Commission Staff has drafted recommendations regarding bidding for demand-side and supply-side resources. The general conclusion of the Staff's report is that bidding should not be initiated by the Commission. Individual utilities, though, may pursue a limited bidding program within their territory.

One of the major arguments against bidding is that such a program would not easily fit into the existing planning process in Wisconsin. The staff also questions the reliability of third party generation. Overall, the Staff believes that existing procurement procedures have been successful, but both the Commission and Wisconsin utilities will continue to monitor the development of bidding procedures in other states.

¹ Ex Parte: In the Matter of Adopting Commission Rules for Electric Capacity Bidding Programs, Case No PUE900029.

² Final Order, Case No. PUE870080.

³ The Commission has since addressed issues concerning independent power producers in certification proceedings for Doswell Limited Partnership (Case No. PUE8900068) and Commonwealth Atlantic Limited Partnership (Case No. PUE900013).

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Bureau of Insurance

July 13, 1990

Administrative Letter 1990-9

TO: Rate Service Organizations and All Companies
Licensed to Write Motor Vehicle Insurance in Virginia.

State Corporation Commission

RE: Point Assignment Under a Safe Driver Insurance Plan.

Virginia Code Section 38.2-1905 pertaining to point for at-fault accidents under a safe driver insurance plan has been amended by HB 1050. This amendment requires insurers to assign points under a safe driver insurance plan to the vehicle customarily driven by the operator responsible for incurring the points. This requirement applied to all policies effective on and after January 1, 1991.

All insurers writing motor vehicle insurance must review their classification and point assignment rules on file with the Bureau of Insurance to verify that they are in compliance with this new requirement. Any classification or rule not in compliance must be amended to the effect that points are to be assigned to the vehicle customarily driven by the operator responsible for incurring the points. All revisions to filings must be received so that they may be utilized with policies effective on or after January 1, 1991.

/s/ Steven T. Foster
Commissioner of Insurance

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Bureau of Insurance

July 17, 1990

Administrative Letter 1990-11

TO: All Licensed Insurers and Rate Service Organizations

RE: Deductibles Reducing Policy Limits

Pursuant to the provisions of § 38.2-317 of the Code of Virginia, forms and policies that reduce policy limits by deductible amounts will be disapproved. Any such forms which are currently on file in Virginia must be withdrawn from use no later than January 1, 1991.

It is the Bureau's position that it is misleading to display limits in the policy declarations that would not actually be available to the insured. Policy limits must be available, in full, above deductible amounts.

/s/ Steven T. Foster
Commissioner of Insurance

GOVERNOR

EXECUTIVE ORDER NUMBER FOURTEEN (90)

GOVERNOR'S ADVISORY BOARD OF ECONOMISTS

By virtue of the authority vested in me as Governor by § 2.1-393 of the Code of Virginia and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Advisory Board of Economists.

The general responsibility of the Board shall be to review and evaluate revenue estimates to be used in the formulation of the Governor's Budget and amendments thereto. The Board shall review and make recommendations regarding:

1. Economic assumptions and technical econometric methodology used to prepare the Governor's annual six-year estimates of anticipated general and nongeneral fund revenues;
2. Assumptions and methodologies used to project general fund and nongeneral fund revenues for the current and future biennia;
3. Current and projected economic outlook for the Commonwealth and the nation; and
4. Other related issues, at the request of the Governor.

The Board shall be comprised, of no more than ten members appointed by the Governor and serving at his pleasure. The Governor or his designee shall serve as chairman. Members of the Board shall be economists selected from both the public and private sectors and shall include those who teach and conduct research and practice economics.

This Executive Order supersedes and rescinds Executive Order Number 12 (86), Governor's Advisory Board of Economists, issued June 16, 1986, by Governor Gerald L. Baliles.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1990.

/s/ Lawrence Douglas Wilder
Governor

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EXECUTIVE ORDER NUMBER FIFTEEN (90)

CONTINUATION OF VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM

By virtue of the authority vested in me by the Constitution of Virginia and §§ 2.1-39 and 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Coastal Resources Management Program. I hereby direct all state agencies to carry out their legally established duties consistently with this program and in a manner which promotes coordination among those agencies in achieving its goals and objectives.

COASTAL RESOURCES POLICY

State agencies having responsibility for the Commonwealth's coastal resources shall promote the Coastal Resources Management Program (the Program) consistently with the following goals and objectives:

Prevention of Environmental Pollution and Protection of Public Health

1. To maintain, protect, and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact;
2. To reduce non-point pollution, caused by inappropriate land uses and inadequate land management practices, in tidal streams, estuaries, embayment, and coastal waters;
3. To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective site selection and planning, as well as improved containment and cleanup programs;
4. To prevent significant deterioration of air quality; and
5. To protect the public health from contaminated seafood.

Prevention of Damage to Natural Resource Base

6. To protect ecologically significant tidal marshes from despoliation or destruction;
7. To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation;
8. To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances;
9. To reduce the adverse effects of sedimentation on productive marine systems; and
10. To maintain wildlife habitat areas and to preserve endangered fish and wildlife species.

Protection of Public and Private Investment

11. To conserve coastal sand dune systems;
12. To reduce or prevent losses of property, tax base, and public facilities caused by shorefront erosion; and
13. To minimize dangers to life and property caused by coastal flooding and storms.

Promotion of Resources Development

14. To promote the wise use of coastal resources for the economic benefit and employment of the citizens of the Commonwealth;
15. To protect and maintain existing uses of estuarine waters for shellfish propagation and marketing;
16. To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities;
17. To coordinate the Commonwealth's planning processes for major projects to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and implications;
18. To improve or maintain productive fisheries;
19. To encourage exploration and production of outer continental shelf energy reserves; and
20. To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.

Promotion of Public Recreation Opportunities

21. To provide and increase public recreational access to coastal waters and shorefront lands.

Promotion of Efficient Government Operation

22. To provide a shoreline permitting procedure, administered at the local level wherever possible, which assures adequate review and mitigation of probable impacts as well as timely response to applicants.

Provision of Technical Assistance and Information

23. To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources;
24. To conduct continuing educational programs in Coastal Resources Management for local and state officials; and
25. To maintain and improve base data, maps and

photoimagery to support decision-makers' needs.

ENFORCEMENT

The following agencies shall have primary responsibility for implementing the enforceable policies of the Program:

Council on the Environment
Department of Air Pollution Control
Department of Conservation and Recreation
Department of Game and Inland Fisheries
Department of Health
Marine Resources Commission
State Water Control Board

In addition, other agencies that conduct activities which may affect coastal resources shall conduct such activities in a manner consistent with and supportive of Virginia's Coastal Resources Management Program. For purposes of this Program, the Coastal Area shall mean Tidewater Virginia as defined in § 62.1-13.2(d) of the Code of Virginia.

The Administrator of the Council on the Environment (COE) shall monitor all state actions which affect coastal resources. When, in the judgment of the COE Administrator, a state agency, regulatory board, or commission is ready to act in a manner that appears to be inconsistent with the Program, the Administrator shall discuss the situation with the agency head to determine if a consistency problem in fact exists.

If, after discussion, the agency head and the Administrator are in disagreement about the existence of a consistency problem, the Administrator will inform the Secretary of Natural Resources of the disagreement. The Secretary shall then determine if a state consistency problem exists.

If the agency head and the Administrator agree that a consistency problem exists, the agency head shall attempt to resolve the problem. If the agency head cannot resolve the problem, the Administrator shall advise the Secretary that a state consistency problem exists.

Upon notification of the existence of a consistency problem, the Secretary shall review the problem, determine how it would best be resolved, and effect such resolution within the Secretariat of Natural Resources or consult with other Cabinet offices to resolve consistency problems with agencies not within that Secretariat. If unable to resolve the problem, the Secretary shall report the problem to the Governor and recommend appropriate action. The Governor shall have the ultimate responsibility for resolving any consistency problem which cannot be

resolved by the agency head or by the Secretary.

Any person having authority to resolve consistency problems under the terms of this Executive Order shall resolve those problems in a manner which furthers the goals and objectives of the program as set forth above and in accordance with existing state law, regulations, and administrative procedures.

EFFECTIVE DATE

This Executive Order will become effective on July 1, 1990 and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

This Executive Order supersedes and rescinds Executive Order Number 13 (86), Establishment of Virginia Coastal Resources Management Program, issued on June 23, 1986, by Governor Gerald L. Baliles.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 29th day of June, 1990.

/s/ Lawrence Douglas Wilder
Governor

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EXECUTIVE ORDER NUMBER SIXTEEN (90)

JOB TRAINING PARTNERSHIP ACT

By virtue of the authority vested in me as Governor by §§ 2.1-704, 2.1-707, and 2.1-710 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign authority for carrying out the State's responsibilities under the federal Job Training Partnership Act, PL 97-300 as amended by PL 100-418 (hereafter referred to as the Act).

The purpose of programs funded under the Act is to prepare youths, unskilled adults, and dislocated workers for entry into the labor force and to afford job training to economically disadvantaged individuals and others who face serious barriers to employment and who are in special need of training to obtain productive employment.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

The Governor's Job Training Coordinating Council is hereby continued as an advisory body in accordance with § 2.1-704 of the Code of Virginia and the provisions of the Act, as hereinafter provided. The Secretary of Health and Human Resources will provide policy guidance and direction for the Council.

The Council's primary duty shall be to recommend a coordinated state policy for all job training programs, that shall result in better job opportunities, improved program coordination, and reduced duplication of services and

activities. The Council shall have the following specific advisory responsibilities:

1. To identify, in concert with appropriate state agencies, the Commonwealth's employment and training and vocational education needs, and to assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state and local programs and services represent a consistent, integrated, and coordinated approach to meeting those needs;

2. To recommend to the Governor a coordination and special services plan, as required by the Act;

3. To recommend to the Governor substate service delivery areas, to plan resource allocations not subject to § 202(a) of the Act, to provide management guidance and review for all programs in the state funded by the Act, to develop appropriate linkages with other employment and training programs, to coordinate activities with private industry councils established under the Act, to develop the Governor's Coordination and Special Services Plan and to recommend variations in performance standards;

4. To advise the Governor and local entities on job training plans and substate plans and to certify the consistency of such plans with criteria under the Governor's Coordination and Special Services Plan for coordinating activities under the Act with other federal, state and local employment-related programs, including programs operated in urban enterprise zones designated in accordance with § 59.1-274 of the Code of Virginia;

5. To review the operation of programs conducted in each service delivery area, including the availability, responsiveness and adequacy of state services;

6. To recommend to the Governor, state agencies, appropriate chief elected officials, private industry councils, service providers, the General Assembly, and the general public ways to improve the effectiveness of programs or services provided under the Act;

7. To make an annual report to the Governor which shall be a public document, and to issue such other studies, reports, or documents as it deems advisable to assist service delivery areas in carrying out the purposes of the Act;

8. To review plans of all state agencies that provide employment and training, and related services, including the state plan developed pursuant to § 8(a) of the federal Wagner-Peyser Act and the plan required pursuant to § 114 of the federal Carl D. Perkins Vocational Education Act; and to provide comments and recommendations to the Governor, the General Assembly and the appropriate state and

Governor

federal agencies on appropriateness and effectiveness of employment and training and related services delivery systems in the Commonwealth; and

9. To provide advice to the Governor regarding the use of funds under Title III, including advice on the designation of substate areas and substate grantees, and the procedures for the selection of representatives within such areas under § 312 and the methods for allocation and reallocation of funds including the method for distribution of funds reserved under § 302(c) and funds subject to reallocation under § 303(d).

All reports, recommendations, reviews, and plans prepared by the Council shall be transmitted to the Secretary of Health and Human Resources and the Secretary of Economic Development, who jointly will advise the Governor on appropriate actions to be taken with respect to such submissions.

All state agencies, institutions, and collegial bodies are instructed to cooperate and assist the Council in the performance of its duties when requested to do so. The Council may seek advice and assistance from any available source. The Council may establish such ad hoc advisory committees as it deems necessary and appropriate for the performance of its duties. Local government officials and community leaders throughout the Commonwealth are requested and urged to advise and assist the Council in the performance of its duties.

The Council shall consist of forty members appointed by the Governor and serving at his pleasure. The Governor shall appoint the chairman of the Council, who shall be a nongovernmental member. The Council shall consist of representatives of the groups listed below.

1. Twelve members shall be private sector representatives from private for-profit companies or other major nongovernmental employers. One member from this group shall represent agricultural employers. One member from this group shall represent agricultural interests. Three of the private sector members shall represent private sector organizations with 500 or fewer employees.

2. Eight state officials, or their designees, shall be appointed as follows:

One member of the Senate of Virginia,

One member of the House of Delegates of Virginia,

The Commissioner of the Virginia Employment Commission,

The Commissioner of the Department of Rehabilitative Services,

The Commissioner of the Department of Social

Services,

A community college president, appointed from nominations of the Advisory Council of Community College Presidents,

The Director of Industrial Training of the Department of Economic Development, and

The Administrative Director of Vocational and Adult Education of the Department of Education.

3. Three members shall be representative of units of general local government or consortia thereof. Members of this group, one of whom shall represent administrative entities or grantees under the Act, shall be appointed from nominations of the chief elected officials of such units or consortia.

4. One member shall be a representative of local educational agencies who shall be appointed from nominations by the Virginia Association of School Administrators.

5. Twelve members shall be representatives of organized labor and community-based organizations.

6. Four members shall be appointed from the general public.

Members of the Council will be eligible for reimbursement for their travel expenses in accordance with state travel regulations.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

In accordance with § 2.1-708 of the Code of Virginia, the Governor's Employment and Training Department receives all federal funds allocated under Titles II and III of the Act and is responsible for implementing Titles I, II, and the substate part of Title III.

In accordance with § 2.1-707 of the Code of Virginia, the Department, under the direction of its Executive Director, shall provide assistance to the Council. Such staff support as is deemed necessary by the Executive Director for the conduct of the Council's business is to be furnished by the Governor's Employment and Training Department. Such funding as is deemed necessary by the Executive Director for the Council's operation is to be provided from funds appropriated to the Department.

The Governor's Employment and Training Department and each other state agency that administers employment and training programs shall coordinate their planning and develop means to assure the best quality job training and placement programs for participants in programs funded under the Act.

The administrative entities of the service delivery areas

have been designated by the Governor as the substate grantees under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA). Oversight of the substate grantees and reporting requirements shall be the shared responsibility of the Governor's Employment and Training Department and the Virginia Employment Commission as outlined in a memorandum of understanding between the Department and the Commission.

VIRGINIA EMPLOYMENT COMMISSION

In accordance with § 2.1-710 of the Code of Virginia, the Virginia Employment Commission is designated as the agency responsible for administering and managing the following programs authorized by PL 97-300 as amended by PL 100-418 (Economic Dislocation and Worker Adjustment Assistance Act):

Dislocated Worker Unit under the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA); and

Labor Market Information (Title IV, Part E).

The Commission will retain the authority designated in Executive Order 67 (89) to continue to operate the Title III Dislocated Worker Program through completion and closeout, to include National Reserve Discretionary Projects.

The Commission will receive the state program allocation through the Governor's Employment and Training Department for the purpose of implementing the responsibilities of the Dislocated Worker Unit.

DEPARTMENT OF EDUCATION

In accordance with § 2.1-710 of the Code of Virginia, the Virginia Department of Education is designated as the agency responsible for administering the state education grants authorized by § 123 of the Act. The Department of Education will receive appropriate funds granted under the Act through the Governor's Employment and Training Department. In addition to those funds, the Department of Education will arrange for matching funds as required by the Act to provide education and training programs for eligible participants through agreements with administrative entities in service delivery areas in Virginia and, where appropriate, local education agencies. Funds available for program coordination will be used in conformity with the adopted Governor's Coordination and Special Services Plan.

DEPARTMENT FOR THE AGING

In accordance with § 2.1-710 of the Code of Virginia, the Virginia Department for the Aging is designated as the agency responsible for administering training programs for older individuals authorized by § 124 of the Act. The Department for the Aging will receive appropriate funds

granted under the Act through the Governor's Employment and Training Department. Programs for eligible individuals shall be developed in conjunction with service delivery areas in Virginia and shall be consistent with the plan for each service delivery area prepared and submitted in accordance with the provisions of the Act.

These programs shall be designed to assure the training and placement of older individuals in employment opportunities with private business concerns. Wherever possible, these programs shall train participants for jobs in growth industries and jobs that reflect the use of new technological skills. Funds available for program coordination will be allocated in conformity with the adopted Governor's Coordination and Special Services Plan.

This Executive Order will become effective on July 1, 1990 and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of Commonwealth of Virginia this 30th day of June, 1990.

/s/ Lawrence Douglas Wilder
Governor

* * * * *

EXECUTIVE ORDER NUMBER SEVENTEEN (90)

EDUCATION BLOCK GRANTS ADVISORY COMMITTEE

By virtue of the authority vested in me as Governor by § 2.1-393 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby reestablish the Education Block Grants Advisory Committee.

The Committee is classified as an advisory committee, as defined in § 9-6.25 of the Code of Virginia.

The Committee shall advise the State Board of Education on the allocation, use, and oversight of funds received under the federal Education Consolidation and Improvement Act of 1981, P. L. No. 97-35, 95 Stat. 463 (1981) (hereinafter referred to as "the Act") and similar legislation.

The Committee shall advise the State Board of Education on the following matters pertaining to the use of funds received under the Act:

1. The allocation of those funds which may be used exclusively by the Department of Education for its several activities;
2. The development of a formula for the allocation of funds to local education agencies; and
3. The planning, development, support implementation,

Governor

and evaluation of state programs which receive funds under the Act.

The Committee also shall advise the Secretary of Education on matters related to the use of these funds.

The Committee shall consist of twenty-seven members appointed by the Governor and serving at his pleasure. The membership of the Committee shall be representative of the general public of the Commonwealth, and of the following:

1. Public and private elementary and secondary school children;
2. Classroom teachers;
3. Parents of elementary and secondary school children;
4. Local boards of education;
5. Local and regional school administrators;
6. Institutions of higher education;
7. The General Assembly;
8. Elementary and secondary school librarians; and
9. School counselors and other pupil services personnel.

The Lieutenant Governor shall serve as Chairman of the Committee. The Chairmen of the House and Senate Education Committees shall serve as Vice Chairmen of the Education Block Grants Advisory Committee. Vacancies in the membership of the Committee shall be filled by appointment of the Governor.

Members of the Committee will serve without compensation and will not receive reimbursement for expenses incurred in the discharge of their official duties.

Such staff support as is necessary for the conduct of the Committee's business during the term of its existence shall be furnished by the Office of the Secretary of Education and the Department of Education. Such funding as is necessary for the term of the Committee's existence shall be provided from funds appropriated to the Department of Education.

This Executive Order supersedes and rescinds Executive Order Number Eighteen (86), Education Block Grants Advisory Committee, issued on June 26, 1986, by Governor Gerald L. Baliles.

This Executive Order will become effective upon its signing and will remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the

Commonwealth of Virginia this 30th day of June, 1990.

/s/ Lawrence Douglas Wilder
Governor

* * * * *

EXECUTIVE ORDER NUMBER EIGHTEEN (90)

ASSIGNING RESPONSIBILITY TO STATE OFFICIALS AND STATE AGENCIES FOR PARTICIPATION IN THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980 ("SUPERFUND" PROGRAM)

By virtue of the authority vested in me by § 2.1-39.1 of the Code of Virginia and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign responsibilities for the administration and coordination of state response actions under the Federal Comprehensive Environmental Response and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, to the following executive branch agencies and officials:

The Secretary of Public Safety or the Secretary's designee shall be responsible for entering into cooperative agreements with the United States Environmental Protection Agency (EPA) regarding the immediate response to the release of, or substantial threat of a release of, hazardous substances that threaten the public health, welfare, and environment.

The State Coordinator of the Department of Emergency Services, under the direction of the Secretary of Public Safety, shall be responsible for developing the Virginia Oil and Hazardous Materials Emergency Response Plan and other requisite documents.

The Secretary of Natural Resources or the Secretary's designee shall be responsible for entering into cooperative agreements with the EPA for the Superfund Removal Program, for the expeditious removal of hazardous substances from the environment, and for remedial actions providing permanent resolution of the release of hazardous substances into the environment. Before signing any cooperative agreement, the Secretary of Natural Resources shall assure the adherence to any applicable requirements of the General Provisions of the current Appropriation Act.

The Executive Director of the Department of Waste Management, under the direction of the Secretary of Natural Resources, shall be responsible for developing and negotiating the State/EPA cooperative agreements for the Superfund Planning, Removal, and Remedial Action Programs, except removals that involve immediate response to the release of hazardous substances that threaten the public health, welfare,

and environment.

/s/ Lawrence Douglas Wilder
Governor
Date: July 20, 1990

The Executive Director of the Department of Waste Management is authorized to sign, on behalf of the Commonwealth, the hazardous waste capacity assurance plan mandated by the Superfund Amendments and Re-authorization Act and any amendments thereto.

The Secretary of Natural Resources shall act on behalf of the public as trustee for natural resources. The Secretary of Natural Resources shall assess damages to natural resources in the case of an injury to, destruction of, or loss of natural resources. Funds recovered by the Secretary of Natural Resources as trustee shall be available only to restore, rehabilitate, or acquire the equivalent of such natural resources.

The Secretary of Natural Resources and the Secretary of Public Safety are authorized to develop memoranda of understanding which set forth the working relationships between the state agencies assigned to coordinate responsibility by this Executive Order and those state agencies with statutory responsibilities that may impinge on these activities.

This Executive Order supersedes and rescinds Executive Order 66 (89), Assigning Responsibility to State Officials and State Agencies for Participation in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 ("Superfund" Program), issued by Governor Gerald L. Baliles on February 20, 1989.

This Executive Order shall become effective on July 1, 1990, and shall remain in full force and effect until June 30, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of June, 1990.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON FINAL REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

VIRGINIA RACING COMMISSION

Title of Regulation: VR 662-01-04. Regulations Pertaining to Limited Licenses for Horse Racing with Pari-Mutuel Wagering.

Governor's Comment:

These regulations establish procedures for licensing limited horse race meetings. Pending public comment, I recommend approval of the regulations.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF COMMERCE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider amending regulations entitled: **VR 190-05-1. Virginia Asbestos Licensing Regulations.** The purpose of the proposed action is to amend the current regulations to include requirements created by legislative action.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: Peggy J. Wood, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or toll-free 1-800-552-3106

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider promulgating regulations entitled: **Regulations Governing Athlete Agents.** The purpose of the proposed action is to regulate the activities of athlete agents in the Commonwealth of Virginia through the establishment of licensing requirements, to conform to HB 706 which becomes law January 1, 1991.

Statutory Authority: § 54.1-525 of the Code of Virginia.

Written comments may be submitted until September 3, 1990

Contact: Pamela M. Templin, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8531.

DEPARTMENT OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider promulgating regulations entitled: **VR 215-03-00. Virginia Outdoors Fund Regulations.** The purpose of the proposed regulation is to provide uniform application procedures and uniform criteria and requirements for the

administration and management of public recreational areas and facilities acquired or developed from the Commonwealth's general funds awarded through the Virginia Outdoors Fund.

Statutory Authority: §§ 10.1-104 and 10.1-200 of the Code of Virginia.

Written comments may be submitted until August 30, 1990, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219, FAX No. 804/786-6141.

Contact: John R. Poland, Recreation Resources Bureau Manager, Department of Conservation and Recreation Resources, Division of Planning and Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-7898.

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **Regulations for State Reimbursement of Local Correctional Facility Construction Costs.** The purpose of the proposed regulation is to set forth the requirements for localities requesting reimbursement of local correctional facility construction costs.

Statutory Authority: § 53.1-80 of the Code of Virginia.

Written comments may be submitted until August 15, 1990.

Contact: A. T. Robinson, Local Facilities Administrator, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **Virginia Probation and Parole Standards.** The purpose of the proposed regulation is to provide procedural standards for Adult Probation and Parole Officers.

Statutory Authority: §§ 53.1-5, 53.1-140 and 53.1-141 of the Code of Virginia.

Written comments may be submitted until August 31, 1990.

Contact: Andrew Molloy, Jr., Administrative Assistant, Adult Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3221.

BOARD FOR COSMETOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider amending regulations entitled: **Virginia Board for Cosmetology Regulations**. The purpose of the proposed action is to solicit public comment on all existing regulations governing the practice of cosmetology and to solicit comment on the establishment of nail artistry regulations.

Statutory Authority: § 54.1-201(5) and Chapter 12 (§ 54.1-1200 et seq.) of the Code of Virginia.

Written comments may be submitted until August 17, 1990.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider promulgating, amending and repealing regulations entitled: **Board of Dentistry Regulations**. The board proposes the following:

1. To establish entry requirements and fees for dentists and dental hygienists seeking licensure by endorsement.
2. To require successful completion of law exam by applicants for full-time faculty licenses and temporary permits.
3. To assess a fee of \$50 per month to any licensee who has practiced on an expired license.
4. Other minor clarifications and nonsubstantive changes.

Statutory Authority: §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.

Written comments may be submitted until August 15, 1990.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804)

662-9906

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **Regulations on Preneed Funeral Planning**. The purpose of the proposed action is to promulgate regulations for the practice of preneed funeral sales and arrangements by licensees of the Board of Funeral Directors and Embalmers. A committee meeting on the development of the regulations will be held on October 3, 1990 at 9 a.m.

Statutory Authority: § 54.1-2803 10 of the Code of Virginia.

Written comments may be submitted until September 28, 1990.

Contact: Meredyth P. Partridge, Executive Director of the Board, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9941

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-34-02. Regulations Governing Sewage Handling and Disposal**. The purpose of the proposed action is to delete portions of Article 11 related to Nonpublic Drinking Water Supply Systems Utilized in conjunction with onsite sewage disposal systems, now included in private well regulations (VR 355-340-01).

Statutory Authority: § 32.1-176.4 of the Code of Virginia.

Written comments may be submitted until September 30, 1990.

Contact: Donald Alexander, Director, Bureau of Sewage and Water, Virginia Department of Health, 109 Governor St., Suite 500, Richmond, VA 23219, telephone (804) 786-3559.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations**. The purpose of the proposed action is to amend the existing Virginia

General Notices/Errata

Medical Care Facilities Certificate of Public Need Rules and Regulations so that the regulations are consistent with amended law. These amendments appeared as Emergency Regulations in the July 30, 1990, issue of the Virginia Register.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et. seq. of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: Marilyn H. West, Director, Division of Resources Development, Virginia Department of Health, James Madison Bldg., Room 1005, 109 Governor St., Richmond, VA 23219, telephone (804) 786-7463.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider amending regulations entitled: **Boiler and Pressure Vessel Rules and Regulations**. The purpose of the proposed action is to amend the Boiler and Pressure Vessel Rules and Regulations; commissioner's approval of variances; exemptions; and regulatory review.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until September 14, 1990.

Contact: Anna Bradley Johnson, Statistical Analyst Senior, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-0610.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider amending regulations entitled: **General Industry Safety and Health Standard: Welding, Cutting and Brazing**. The purpose of the proposed action is to set out technical amendments to VOSH's General Industry Welding, Cutting and Brazing.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until September 14, 1990.

Contact: Anna Bradley Johnson, Statistical Analyst Senior, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-0610.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Client Appeals**. The purpose of the proposed action is to promulgate permanent final regulations to supersede the currently effective emergency regulation governing the client appeals process.

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

Written comments may be submitted until 4 p.m., August 31, 1990, to Marsha Vandervall, Director, Division of Client Appeals, DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **VR 480-03-19. Coal Surface Mining Reclamation Regulations**. The purpose of the proposed action is to incorporate changes that have been made in the federal surface mining regulations, and to clarify the meaning or correct inconsistencies in the rules. Federal law requires state regulations to be consistent with the federal regulations.

The subjects addressed in the amendments that will be considered are: (i) fish and wildlife protection; (ii) civil penalties; (iii) repeal of the two-acre exemption, subsidence control, map certifications, and previously mined land; (iv) petitions to declare land unsuitable for mining; (v) bond-release notifications; (vi) revegetation; (vii) impoundments; (viii) ownership and control of mining operations; (ix) roads; (x) prime farmland; (xi) support facilities; (xii) permits for exploration; (xiii) permits for reclamation only; (xiv) termination of jurisdiction over operations; and (xv) incidental extraction of coal.

Statutory Authority: §§ 45.1-3(4) and 45.1-230 of the Code of Virginia.

Written comments may be submitted until August 28, 1990.

Contact: Conrad Spangler, Chief Engineer, Division of Mined Land Reclamation, P.O. Drawer U, Big Stone Gap, VA 24219, telephone (804) 523-8178.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider repealing regulations entitled: **VR 480-05-22. Rules and Regulations Governing Conservation of Oil and Gas Resources and Well Spacing.** The purpose of the proposed action is to repeal the regulation. VR 480-05-22.1. Gas and Oil Regulation will be promulgated concurrently with the repeal of this regulation.

Statutory Authority: §§ 45.1-3(4) and 45.1-361.27 of the Code of Virginia.

Written comments may be submitted until August 28, 1990.

Contact: B. Thomas Fulmer, Virginia Gas and Oil Inspector, P.O. Box 1416, 230 Charwood Dr., Abingdon, VA 24210, telephone (703) 628-8115 or toll-free 1-800-552-3831/TDD ☎

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **VR 480-05-22.1. Gas and Oil Regulation.** The purpose of the proposed action is to govern gas and oil exploration, development, and production operations in Virginia. VR 480-05-22. Rules and Regulations Governing Conservation of Oil and Gas and Well Spacing, will be repealed concurrently with the promulgation of this regulation. This notice extends the comment period published 6:18 VA.R. 2963 July 4, 1990.

Statutory Authority: §§ 45.1-3(4) and 45.1-361.27 of the Code of Virginia.

Written comments may be submitted until August 28, 1990.

Contact: B. Thomas Fulmer, Virginia Gas and Oil Inspector, P.O. Box 1416, 230 Charwood Dr., Abingdon, VA 24210, telephone (703) 628-8115 or toll-free 1-800-552-3831/TDD ☎

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **VR 480-05-96. Rules and Regulations Governing Vertical Mine Ventilation Holes.** The purpose of the proposed action is to ensure the safety of underground coal miners by providing standards for the drilling and casing of vertical ventilation holes, and to protect groundwater resources.

The agency is considering the addition of a section to ensure the safety of underground coal miners while mining is conducted near or through gas or oil wells.

Statutory Authority: §§ 45.1-3(4) and 45.1-92.1 of the Code of Virginia.

Written comments may be submitted until August 28, 1990.

Contact: Harry Childress, Chief, Division of Mines, 219 Wood Ave., Big Stone Gap, VA 24219, telephone (703) 523-8200 or toll-free 1-800-552-3831/TDD ☎

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **Aid to Dependent Children - Unemployed Parent (ADC-UP) Program Limitation of Assistance.** The purpose of the proposed action is to formally adopt emergency regulation VR 615-01-34, "Aid to Dependent Children - Unemployed Parent (ADC-UP) Program - Limitation of Assistance," which limits the number of months to which a family may receive benefits to six months in a 12-consecutive-month period.

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

Written comments may be submitted until September 12, 1990, to I. Guy Lusk, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenber, Agency Regulatory Liaison, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF TAXATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-3-323.1. Corporation Income Tax: Excess Cost Recovery.** The purpose of the proposed action is to implement 1990 Acts, Chapter 794 (SB 199), which extends the ACRS recovery period from five to seven years.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 17, 1990.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

General Notices/Errata

public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-10-73.1. Nonprescription Drugs and Proprietary Medicines**. The purpose of the proposed regulation is to set forth the application of the retail sales and use tax to nonprescription drugs and proprietary medicines.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 13, 1990.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Part VIII Racehorses**. The purpose of the proposed regulation is to establish conditions under which racehorses will be identified, determined to be eligible for racing and under which horses may be barred.

Statutory Authority: § 59.1-369 of the Code of Virginia

Written comments may be submitted until September 1, 1990, to Don Price, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races**. The purpose of the proposed regulation is to establish conditions under which claiming races may be run and eligibility to claim horses is established.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until October 17, 1990.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Entries**. The purpose of the proposed regulation is to establish conditions under which horses may be entered for racing and their eligibility determined.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until October 17, 1990.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia of Waste Management Board intends to consider promulgating regulations entitled: **VR 672-20-11. Solid Waste Management Permit Application Fees**. The purpose of the proposed regulation is to establish a fee schedule for Solid Waste Management Facility permit applications.

Statutory Authority: § 10.1-1402(16) of the Code of Virginia.

Written comments may be submitted until August 31, 1990.

Contact: Stuart T. Ashton IV, Environmental Program Analyst, Department of Waste Management, Division of Technical Services, 101 N. 14th Street, 11th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 225-2867.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given that the Board of Youth and Family Services intends to consider promulgating regulations entitled: **VR 690-01-001. Public Participation Guidelines**. The purpose of the proposed regulation is to provide consistent, written procedures that will ensure input from interested parties during the development, review, and final stages of the regulatory process.

Statutory Authority: § 66-10 of the Code of Virginia.

Written comments may be submitted until September 14, 1990.

Contact: Linda Nablo, Lead Analyst for Youth Services,

Virginia Department of Youth and Family Services, P.O. Box 26963, Richmond, VA 23231, telephone (804) 674-3262

SUBJECT: Proposed Changes in Boiler and Pressure Vessel Rules and Regulations.

DATE: July 11, 1990.

GENERAL NOTICES

DEPARTMENT OF LABOR AND INDUSTRY

† Notice to the Public

The Virginia Safety and Health Codes Board adopted the following Federal OSHA Standards at their meeting on July 10, 1990:

- A. Amendment to the General Industry Standard and Construction Standard for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, (partial response to court remand).

Effective date is September 14, 1990.

Amendment to the General Industry Safety and Health Standards: Welding, Cutting and Brazing, Technical corrections and reorganization.

Effective date is September 14, 1990.

NOTE: A requirement was added to this standard that any more stringent provisions contained in the Virginia Confined Space Standard for General Industry, 1910.146, shall also apply to Welding, Cutting and Brazing areas that meet the definition of a "confined space" in 1910.146.

Other action included adoption of:

- A. Proposed regulation concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits & Permit Fees.

Effective Date: April 1, 1991

Employer's Crane Inspection Certification Record form.

Contact Person for Further Information: John Crisanti, Director of Enforcement Policy, (804) 786-2384

Memorandum Requesting Comments Regarding Boiler and Pressure Vessel Rules and Regulation.

TO: Boiler and Pressure Vessel Owner/Users, Operators, Manufacturers and Repair Organizations.

FROM: Jim Hicks, Director/Chief Inspector.

The Department of Labor and Industry is again working on a Regulatory Review, and considering an amendment to the Boiler and Pressure Vessel Rules and Regulations to include a requirement for the National Board "R" Stamp for organizations performing repairs and alterations to boilers and pressure vessels.

We are also considering the requirement for the "VR" certification for organizations who set or repair safety valves or relief valves; and the "NR" certification for organizations repairing nuclear components.

I would appreciate your written comment concerning this matter prior to August 20, 1990, as to whether you support or reject this proposal.

You may address your comment to:

Jim Hicks, Director/Chief Inspector
Department of Labor and Industry
Boiler Safety Enforcement Division
P.O. Box 12064
Richmond, VA 23241

If you have any questions concerning this matter, you may contact me at (804) 786-3160.

Notice of Meeting Regarding the Proposed Amendment to VR 425-02-71. General Industry Standard for the Control of Hazardous Energy Sources (Lockout/Tagout) and VR 425-02-72. Construction Industry Standard for Sanitation.

August 15, 1990 - 7 p.m. - Open Meeting
Department of Motor Vehicles, Military Circle Branch Office, 5754 Poplar Hall Drive, Norfolk, Virginia.

August 22, 1990 - 7 p.m. - Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

In accordance with this agency's Public Participation Guidelines, comments on the proposed changes to the proposed Amendment to the General Industry Standard for the Control of Hazardous Energy Sources (Lockout/Tagout) and the proposed Amendment to the Construction Industry Standard for Sanitation will be accepted at the Open Meetings listed. The full text of these proposed amendments was printed in the May 7, 1990 issue of the Virginia Register. Oral comments to be presented must be accompanied by a written copy. Written copies will be accepted at the meetings or by mail prior to the meeting date. Send to John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241.

General Notices/Errata

SUMMARY OF PROPOSED AMENDMENT TO THE CONTROL OF HAZARDOUS ENERGY SOURCES (LOCKOUT/TAGOUT)

The proposed amendment eliminates references which permit a general industry employer to tagout rather than lockout the energy control devices that would disable a piece of machinery or equipment during maintenance or servicing only if the machinery or equipment is "capable of being locked out."

Elimination of such reference means that employers will be required to use a lockout procedure only whenever the machinery or equipment is capable of being locked out. If machinery is not capable of being locked out, the employer will still be able to use a tagout system under the amendment.

SUMMARY OF THE PROPOSED AMENDMENT TO CONSTRUCTION SANITATION

The proposed standard amends the current Sanitation Standard for the Construction Industry § 1926.51. The standard applies to all employers engaged in construction activities. Such employers covered by this amendment are required to furnish, without cost to the employee the following: potable drinking water, toilet facilities and handwashing facilities.

Potable drinking water containers as well as the toilet and handwashing facilities are required to be maintained in a clean and sanitary condition (in accordance with appropriate public health sanitation practices). Furthermore, employees shall be allowed opportunities during the workday to use the sanitation facilities.

The potable drinking water which must be furnished under the standard must be suitably cool and in sufficient amounts so that it is not completely consumed during the work day. Drinking water must be dispensed in single use drinking cups. The use of common drinking cups and dippers is prohibited.

The amendment requires that toilet and handwashing facilities shall be provided at a 20:1 (workers:facility) ratio (the present standard requires a ratio of one toilet and one urinal for every 40 employees, or a 40:1 ratio. Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy. The toilet facilities shall be operational and maintained in clean and sanitary condition.

NOTICE TO SUBSCRIBERS OF THE VIRGINIA REGISTER OF REGULATIONS

The Virginia Code Commission at its meeting on June 12, 1990, agreed to increase the annual subscription rate for the Virginia Register of Regulations to \$100 per year. This increase is the first since the Register began in October

1984. The increase will become effective on October 1, 1990.

NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01
NOTICE OF COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE OF MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-04-09. Rules and Regulations for the Enforcement of the Virginia Seed Law:

Publication: 6:21 VA.R. 3303-3315 July 16, 1990.

Correction to the Proposed Regulation:

Page 3303, in the summary, "Nassella trachotoma" should read "Nassella trichotoma."

Page 3303, § 2, the term "Serrated tussock - "Nassella tricholoma" should read "Serrated tussock - "Nassella trichotoma."

Page 3303, § 1, subdivision 3, the term "MAND" should be deleted.

Title of Regulation: **VR 115-04-12. Rules and Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.**

(703) 818-1300

Publication: 6:21 V.A.R. 3312-3315 July 16, 1990.

Correction to the proposed regulation:

Page 3314, § 3 B, should appear as follows:

B. Diesel fuel.

Diesel fuel shall meet the requirements of the following specifications when tested in compliance with the latest version of the American Society for Testing and Materials *Methods of Tests Test Methods specified below* :

Test	Specification	ASTM Method
1. Flash point, degrees F minimum (If registered and labeled as #1 Diesel) (If registered and labeled as #2 Diesel)	100°F 125°F	D93
2. Water and sediment, percent by volume, maximum	0.05%	D1796
3. Sulfur, percent by weight maximum	0.5%	D2622 (D129 shall be the referee method)
4. Cetane number, minimum	40	D613
5. 90 % distillation point, degrees F maximum	640°F	D86
6. Corrosion-ASTM copper strip scale maximum	No. 3	D130 3 hours at 50°C

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Title of Regulation: **VR 130-01-2. Board of Architects, Professional Engineers, Land Surveyors and Landscape Architects.**

Publication: 6:20 V.A.R. 3222-3240 July 2, 1990.

Correction to the Final Regulation:

Page 3223, § 2.1 G 3, the address should read as follows:

Council of Landscape Architectural Registration Boards
(CLARB)
Suite 110, 12700 Fair Lakes Circle
Fairfax, Virginia 22033

Page 3238, § 9.2 A should read as follows:

A. If the renewal fee is not received by the board within 30 days following the expiration date noted on the license, certificate or registration, a reinstatement fee....

Page 3239, § 10.7 should read as follows:

A professional licensed or certified to practice architecture, professional engineering, land surveying or landscape architecture in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended,...prior to applying for licensure or certification in Virginia.

DEPARTMENT OF TRANSPORTATION

Title of Regulation: **VR 385-01-22. Vegetation Control Regulations.**

Publication: 6:19 V.A.R. 3180 June 18, 1990.

Correction to Calendar Notice:

Page 3180, description should read as follows:

The regulation defines a set of rules to be followed by businesses and owners of outdoor advertising signs and other advertising structures when trimming vegetation on state-owned right of way to make visible billboard or businesses located on private property.

CALENDAR OF EVENTS

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

VIRGINIA AGRICULTURAL COUNCIL

† August 27, 1990 - 9 a.m. - Open Meeting
† August 28, 1990 - 9 a.m. - Open Meeting
Holiday Inn-Airport, 5203 Williamsburg Road, Sandston, Virginia.

A meeting to (i) elect the officers of the council; (ii) review progress reports on approved research projects; (iii) hear new project proposals which are properly supported by the Board of Directors of a commodity group; (iv) review year end financial statements; and (v) conduct any other business that may come before the members of the council.

Contact: Henry H. Budd, Assistant Secretary, 7th Floor, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 371-0266.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

August 22, 1990 - 1 p.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations

entitled: **VR 115-02-01. Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia.**

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until 9 a.m., August 18, 1990.

Contact: Dr. William D. Miller, State Veterinarian, Washington Building, Suite 600, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-2481.

August 22, 1990 - 1 p.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-02-17. Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases.**

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until 9 a.m., August 18, 1990.

Contact: Dr. William D. Miller, State Veterinarian, Washington Building, Suite 600, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-2481.

August 22, 1990 - 1 p.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-02-18. Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry.**

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of

Virginia.

Written comments may be submitted until 9 a.m., August 18, 1990.

Contact: Dr. William D. Miller, State Veterinarian, Washington Building, Suite 600, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-2481.

August 22, 1990 - 1 p.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: VR 115-02-19. Rules and Regulations Pertaining to the Testing Requirements for Poultry Affected by Salmonella Enteritidis.

Statutory Authority: §§ 3.1-724 and 3.1-726 of the Code of Virginia.

Written comments may be submitted until 9 a.m., August 18, 1990.

Contact: Dr. William D. Miller, State Veterinarian, Washington Building, Suite 600, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-2481.

September 26, 1990 - 10 a.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: VR 115-04-09. Rules and Regulations for the Enforcement of the Virginia Seed Law. The purpose of this amendment is to add Serrated tussock, Nassella trichotoma, to the list of prohibited noxious weed seeds.

Statutory Authority: § 3.1-271 of the Code of Virginia.

Written comments may be submitted until September 19, 1990.

Contact: D. E. Brown, Supervisor, Seed Section, Virginia Department of Agriculture and Consumer Services, PAIR Division, 1100 Bank St., Room 505, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-3797

September 26, 1990 - 10:30 a.m. - Public Hearing
Virginia Department of Agriculture and Consumer Services Board Room, Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: VR 115-04-12. Rules and Regulations for the Enforcement of the Gasoline and Motor Fuels Law. The regulation amendments (i) change the volatility limit for gasoline from 11.5 pounds per square inch (psi) to 9.0 psi Reid vapor pressure (RVP) for the months of May, June, July, August, and September of each year, to be implemented May, 1991, contingent upon obtaining approval from the U.S. Environmental Protection Agency (EPA); (ii) change the distillation specifications to accommodate a new volatility limit; (iii) require the use of EPA-approved test methods for gasoline volatility measurement when the 9.0 psi RVP standard is in effect; and (iv) provide for a 1.0 psi RVP allowance for gasoline-ethanol blends.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Written comments may be submitted until 5 p.m., September 18, 1990.

Contact: W. Penn Zentmeyer, Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-3511.

STATE AIR POLLUTION CONTROL BOARD

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Southwest Regional Office, 121 Russell Road, Abingdon, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Valley of Virginia Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Central Virginia Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Northeastern Virginia Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, State Capitol Regional Office, 8205 Hermitage Road, Richmond, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Hampton Roads

Calendar of Events

Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia.

August 22, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Northern Virginia Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulation for the Control and Abatement of Air Pollution.** The proposed amendments to the regulations will provide the latest edition of referenced documents and incorporate newly promulgated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), which are found in Rules 5-5 and 6-1 respectively. The proposed amendments will update the reference to the American Conference of Governmental Industrial Hygienists' Handbook which forms the basis for the noncriteria pollutant rules. The proposed amendments also will update the consolidated list of documents incorporated by reference found in Appendix M of the agency's regulations.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 5, 1990, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

Contact: Nancy Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 22, 1990 - 10 a.m. - Public Hearing
First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: **VR 125-01-6. Manufacturers and Wholesalers Operations.** The purpose of this proposed action is to improve the control and regulation of wine and beer being imported or shipped into Virginia pursuant to §§ 4-25 A 10 and 4-25 A 7 of the Code of Virginia and other applicable law; to promote lawful business relationships under the Virginia Wine Franchise Act and the Virginia Beer Franchise Act between licensed wine or beer wholesalers and the winery or brewery who supplies the product, whether directly or through a third party; to enable the board to properly identify all brands of wine or beer to be imported under an importer's license and to clarify the business, agency

and commercial relationships between manufacturers, importers and wholesalers of wine or beer; to retain and enhance existing "primary source" regulatory provisions requiring authorization from the brand owner to import or ship wine or beer into Virginia; to improve compliance with those provisions of the Virginia Wine Franchise Act and Virginia Beer Franchise Act requiring proper territory designation, and generally, to promote compliance with said acts by importers, suppliers and brand owners of wine or beer and to simplify the process of renewing wine and beer importer's licenses.

Statutory Authority: §§ 4-7(b) and (1), 4-11, 4-25 A 7 and 10, 4-103(b), Chapter 2.1 (§ 4-118.3 et seq.), and Chapter 2.3 (§ 4-118.42 et seq.) of Title 4 of the Code of Virginia.

Written comments may be submitted until 10 a.m., August 22, 1990.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, 2901 Hermitage Rd., Richmond, VA 23261, telephone (804) 367-0616.

* * * * *

† **October 15, 1990 - 10 a.m. - Public Hearing**
First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: **VR 125-01-2. Advertising; VR 125-01-3. Tied-House; VR 125-01-5. Retail Operations; VR 125-01-6. Manufacturers and Wholesalers Operations; and VR 125-01-7. Other Provisions.** The amendments relate to the (i) expansion of size limitations and types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees, (ii) definition of "college student publication," (iii) prohibition of reference to brands or prices for alcoholic beverage advertising by a dining establishment in college student publications, (iv) sponsorship of government-endorsed civic events and advertising related to such events, (v) limitations on distribution of novelty and specialty items to retailers, their employees and patrons by manufacturers, importers, bottlers, brokers, and wholesalers, (vi) restrictions on nonmember use of licensed club premises, (vii) compliance with 1990 statutory changes involving the mixed beverage food to alcoholic beverage ratio, bed and breakfast licenses and the number of additional retail establishments allowed farm wineries, and (viii) mixed licensee being left with one, unopened, 50 milliliter sample of each brand of distilled spirits being promoted by the permittee.

STATEMENT

Pursuant to §§ 9-6.14:7.1 and 9-6.14:22 of the Code of

Virginia, notice is given that the Virginia Alcoholic Beverage Control Board will conduct a public hearing on whether the following proposed action should be taken to amend its regulations:

1. VR 125-01-2 § 2. Advertising; Interior; Retail Licensees; Show Windows.

a. Basis: §§ 4-7(1), 4-11(a), 4-60(i), 4-69, 4-69.2, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

b. Purpose: Expansion of the types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees.

c. Substance: Advertising materials consisting of printed matter on plastic are permitted; advertising materials consisting of printed matter appearing on paper, cardboard or plastic materials may be supplied by any manufacturer, bottler, or wholesaler to retail licensees subject to the provisions of VR 125-01-3 § 8 F; removal of most restrictions for advertising materials regarding responsible drinking or moderation in drinking.

d. Issue: The types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees.

e. Impact: Increased use of alcoholic beverage advertising inside retail licensee establishments.

2. VR 125-01-2 § 4. Advertising; Newspaper, Magazines, Television, Trade Publications, Etc.

a. Basis: §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

b. Purpose: To clarify what types of publications are restricted in their use of beer, wine and mixed beverage advertisements.

c. Substance: Defines "college student publication" as any college or university publication that is prepared, edited or published primarily by students at the educational institution, sanctioned as a curricular or extracurricular activity by the educational institution and which is distributed or intended to be distributed to persons under 21 years of age; prohibits references to brands or prices for alcoholic beverage advertising by a dining establishment in college student publications.

d. Issue: The restriction of alcoholic beverage advertising in publications directed primarily to students and educational institutions.

e. Impact: Minimal.

3. VR 125-01-2 § 5. Advertising; Newspapers and

Magazines; Programs; Distilled Spirits.

a. Basis: §§ 4-7(1), 4-11(a), 4-69 and 4-98.14 of the Code of Virginia.

b. Purpose: Expansion of the types of events eligible for distilled spirits advertising in printed programs.

c. Substance: To allow distilled spirits advertising in printed programs relating to government-endorsed civic events.

d. Issue: Allowing distilled spirits advertising in printed programs relating to government-endorsed civic events.

e. Impact: Minimal.

4. VR 125-01-2 § 6. Advertising; Novelties and Specialties.

a. Basis: §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

b. Purpose: To incorporate current enforcement policy regarding novelty and specialty items.

c. Substance: Manufacturers, importers, bottlers, brokers and wholesalers may give one novelty or specialty item per brand not in excess of \$2.00 in wholesale value to retailers and each of their employees. Manufacturers, importers, bottlers, brokers and wholesalers may not distribute novelty or specialty items to patrons on the premises of retail licensees.

d. Issue: Incorporation of current enforcement policy regarding novelty and specialty items.

e. Impact: Minimal.

5. VR 125-01-2 § 9. Advertising; Coupon.

a. Basis: §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w), 4-98.14, and 4-103(b) and (c) of the Code of Virginia.

b. Purpose: To comply with the proposed amendment to VR 125-01-3 § 8 F.

c. Substance: To change the term "case card" to "advertising materials."

d. Issue: Usage of the same terms throughout the regulations.

e. Impact: Minimal.

6. VR 125-01-2 § 10. Advertising; Sponsorship of Public Events; Restrictions and Conditions.

a. Basis: §§ 4-7(1), 4-11(a), 4-69 and 4-98.14 of the Code of Virginia.

Calendar of Events

b. Purpose: Expansion of the types of events eligible for sponsorship; to allow wholesalers to cosponsor government-endorsed civic events which are exempt from taxation; and clarification of terms.

c. Substance: To allow sponsorship of government-endorsed civic events by manufacturers of alcoholic beverages; and to give government-endorsed civic events which are exempt from federal and state taxes the same privileges that charitable events are allowed.

d. Issue: Allowing sponsorship of government-endorsed civic events by alcoholic beverage manufacturers and treating government-endorsed civic events which are exempt from taxation the same as charitable events.

e. Impact: Wholesalers will be allowed to cosponsor government-endorsed civic events which are exempt from federal and state taxes.

7. VR 125-01-3 § 8. Inducements to Retailers; Tapping Equipment; Bottle or Can Openers; Banquet Licensees; Cut Case Cards; Clip-Ons and Table Tents.

a. Basis: §§ 4-7(1), 4-11(a), 4-69.2, 4-79.1, 4-98.10(w) and 4-98.14 of the Code of Virginia.

b. Purpose: Expansion of the size limitations and types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees.

c. Substance: To eliminate the requirement that paper or cardboard point-of-sale materials be furnished to retail licensees as part of a case display; to permit wholesalers to install paper or cardboard point-of-sale materials using any normal or customary materials (tape, string, etc.) ordinarily used for such purposes; to set more precise size limitations for cut case cards; and not refer to paper and cardboard materials as cut case cards; to permit the use of pliable, plastic static stickers which are defined as two dimensional point-of-sale materials, the dimensions of which do not exceed 48 square inches.

d. Issue: The size limitations and types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees.

e. Impact: Increased use of alcoholic beverage advertising inside retail licensee establishments.

8. VR 125-01-5 § 13. Clubs; Applications; Qualifications; Reciprocal Arrangements; Changes; Financial Statements.

a. Basis: §§ 4-2(6), 4-7(1), 4-11(a), 4-25, 4-61.1, 4-98.2, 4-98.14 and 4-118.1 of the Code of Virginia.

b. Purpose: To ensure that clubs continue operating as private, not public, establishments.

c. Substance: Nonmembers may use club premises and exercise the privileges of the club's license for public events 12 times per calendar year. In addition, any organization or group may use the club premises if (i) the organization or group obtains a banquet special events license or (ii) the privileges of the club's license are not exercised. A member may sponsor private functions on club premises for any organization or group of which he is a member.

d. Issue: The use of a club's premises for public affairs.

e. Impact: Nonmember use of club premises will be curtailed.

9. VR 125-01-5 § 17. Caterer's License.

a. Basis: §§ 4-7(1), 4-11(a), 4-98.2, 4-98.7, 4-98.11 and 4-98.18 of the Code of Virginia.

b. Purpose: To comply with 1990 statutory changes involving §§ 4-98.2 and 4-98.7 of the Code of Virginia.

c. Substance: To remove the sale of beer and wine from the determination of the 45% food to 55% alcoholic beverage ratio.

d. Issue: Compliance with 1990 statutory changes.

e. Impact: Minimal.

10. VR 125-01-5 § 19. Bed and Breakfast License.

a. Basis: §§ 4-2, 4-7(1), 4-11(a), 4-25, 4-33, 4-38, 4-98.14 and 4-103 of the Code of Virginia.

b. Purpose: To adopt a new regulation implementing § 4-25(A)(22) of the Code of Virginia which establishes a specific license for bed and breakfast establishments to serve alcoholic beverages.

c. Substance: Defines a bed and breakfast establishment; specifies where a licensee may purchase alcoholic beverages, who may be served alcoholic beverages and where alcoholic beverages may be served, when accommodation purchases may be made and required record keeping; and prohibits charging for alcoholic beverages separately from the one general price for lodging and meals.

d. Issue: The implementation and interpretation of the bed and breakfast license.

e. Impact: Minimal. Federal, state and local license fees may prevent many bed and breakfast establishments from applying for bed and breakfast licenses.

11. VR 125-01-6 § 8. Solicitation of Mixed Beverage Licensees by Representatives of Manufacturers, Etc., of

Distilled Spirits.

a. Basis: §§ 4-7(1), 4-11(a), 4-98.14 and 4-98.16 of the Code of Virginia.

b. Purpose: To allow distilled spirits permittees to give mixed beverage licensees 50 milliliter sample containers of distilled spirits which may be consumed at the licensee's convenience.

c. Substance: To allow a distilled spirits permittee to leave with a mixed beverage licensee one, unopened, 50 milliliter sample of each brand being promoted by the permittee.

d. Issue: Allowing a distilled spirits permittee to leave one, unopened, 50 milliliter sample of each brand being promoted with the mixed beverage licensee.

e. Impact: Minimal.

12. VR 125-01-7 § 17. Farm Wineries; Percentage of Virginia Products; Other Agricultural Products; Remote Outlets.

a. Basis: §§ 4-2(10a), 4-7(1), 4-11(a) and 4-25.1 of the Code of Virginia.

b. Purpose: To comply with 1990 statutory changes involving § 4-25.1 of the Code of Virginia.

c. Substance: To allow a farm winery licensee two additional retail establishments which do not need to be located on the winery premises.

d. Issue: This amendment ensures that the regulation does not conflict with statutory law.

e. Impact: Minimal.

The hearing will be conducted on **October 15, 1990, at 10 a.m. in the Hearing Room, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.** Interested persons will be afforded an opportunity to submit data, views and arguments orally or in writing with respect to the proposals. Drafts of the proposed regulations, as amended, will be available for public inspection at the Office of the Secretary to the Board at the foregoing address, with copies obtainable at such address or by request addressed to such office at P.O. Box 27491, Richmond, Virginia 23261.

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

Written comments may be submitted until 10 a.m., October 15, 1990.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, 2901 Hermitage Rd., Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Architects

August 23, 1990 - 9:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from April 19, 1990, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Board for Land Surveyors

August 17, 1990 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from March 9, 1990; (ii) review applications; (iii) review and discuss correspondence; and (iv) review enforcement files.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or toll-free 1-800-552-3016.

AUCTIONEERS BOARD

August 16, 1990 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to (i) review complaints; (ii) discuss regulatory review; (iii) discuss revenue and expenditures; and (iv) consider other matters which require board action.

Contact: Mr. Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016.

DEPARTMENT OF AVIATION

† **August 27, 1990 - 9 a.m. - Open Meeting**
† **August 28, 1990 - 9 a.m. - Open Meeting**
† **August 29, 1990 - 9 a.m. - Open Meeting**
Sheraton-Fredericksburg, Rt. 3 at I-95, Fredericksburg, Virginia.

17th Annual Virginia Aviation Conference and board meeting.

Contact: Nancy Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284.

Calendar of Events

BOARD FOR BARBERS

August 13, 1990 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☒

A meeting to (i) review correspondence; (ii) review applications; (iii) review enforcement cases; and (iv) to consider routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **August 17, 1990 - 10 a.m. - Open Meeting**
Fourth Street State Office Building, 205 North Fourth Street, Second Floor Conference Room, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to consider requests for interpretation of the Virginia Uniform Statewide Building Code; to consider appeals from the rulings of local appeal boards regarding application of the Virginia Uniform Statewide Building Code, and to approve minutes of previous meeting.

Contact: Jack A. Proctor, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 786-4752.

CHESAPEAKE BAY COMMISSION

† **September 6, 1990 - 10 a.m. - Open Meeting**
† **September 7, 1990 - 9 a.m. - Open Meeting**
The Tides Inn, Irvington, Virginia.

A quarterly meeting. Agenda items include (i) update on work of VA and MD Growth Commissions; (ii) preliminary findings of Nonpoint Source Program Evaluation Committee; (iii) CBC recommendations on oil spill preventions; (iv) recreational boat pollution; and (v) 1991 legislative agenda.

Contact: Ann Pesiri Swanson, 60 West St., Suite 200, Annapolis, MD 21401, telephone (301) 263-3420.

DEPARTMENT FOR CHILDREN

Consortium on Child Mental Health

September 5, 1990 - 9 a.m. - Open Meeting
October 3, 1990 - 9 a.m. - Open Meeting
Eighth Street Office Building, 11th Floor Conference Room, 805 East Broad Street, Richmond, Virginia. ☒

A regular business meeting open to the public, followed by an executive session, for purposes of confidentiality, to review applications for funding of

services to individuals.

Contact: Wenda Singer, Chair, Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-2208.

State-Level Runaway Youth Services Network

August 23, 1990 - 10:30 a.m. - Open Meeting
Department of Corrections, 6900 Atmore Drive, Room 3056, Richmond, Virginia. ☒

A regular meeting open to the public.

Contact: Martha Frickert, Community Services Coordinator, Department for Children, 805 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-5994.

DEPARTMENT OF CONSERVATION AND RECREATION

August 21, 1990 - 10 a.m. - Public Hearing
General Assembly Building, Senate Room B, Capitol Square, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Conservation and Recreation intends to adopt regulations entitled: **VR 215-02-00. Stormwater Management Regulations**. The purpose of the proposed regulations is to implement the Stormwater Management Act, Chapters 467 and 499 of the 1989 Virginia Acts of Assembly. The proposed regulations specify minimum technical criteria and administrative procedures for stormwater management programs which local governments are authorized to adopt. State agencies with land development projects are also governed by the proposed regulations.

Statutory Authority: §§ 10.1-104 and 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until September 28, 1990, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219.

Contact: Donald R. Vaughan, Supervisor, Urban Programs Section, Department of Conservation and Recreation, DS&WC, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483.

Catoctin Creek Scenic River Advisory Board

† **September 7, 1990 - 2 p.m. - Open Meeting**
Junelia Farm, Rt. 7, across from Asburn Village, located 6 1/2 miles east of Leesburg, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program

Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

Goose Creek Scenic River Advisory Board

† **September 5, 1990 - Noon** – Open Meeting
Offices of Shaw-Pittman, 201 Liberty Street, S.W., Leesburg, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

Recovery Fund Committee

† **August 28, 1990 - 9 a.m.** – Open Meeting
3600 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A meeting to review and consider recovery fund claims against the Virginia Contractor Transaction Recovery Fund.

Complaints Committee

† **September 12, 1990 - 11 a.m.** – Open Meeting
3600 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

A meeting to review and consider complaints filed by consumers against licensed contractors.

Contact: A. R. Wade, Recovery Fund/Complaints Administrator, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561 or toll-free 1-800-552-3016.

COMMUNITY CORRECTIONS RESOURCES BOARD - MIDDLE VIRGINIA

September 6, 1990 - 7 p.m. – Open Meeting
502 South Main Street, No. 4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., No. 4, Culpeper, VA 22701, telephone (703) 825-4562.

BOARD OF CORRECTIONS

September 12, 1990 - 10 a.m. – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented to the Board of Corrections.

Contact: Ms. Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD OF DENTISTRY

† **September 12, 1990 - 2 p.m.** – Open Meeting

Omni Hotel, 777 Waterfront Drive, Brandon Room, Norfolk, Virginia. ☒

Informal conferences. No public comment will be heard.

† **September 13, 1990 - 9 a.m.** – Open Meeting

Omni Hotel, 777 Waterfront Drive, Brandon Room, Norfolk, Virginia. ☒

9 a.m. Endorsement Committee meeting.

4 p.m. Executive Committee meeting.

No public comment will be heard.

† **September 14, 1990 - 1:30 p.m.** – Open Meeting

† **September 15, 1990 - 9 a.m.** – Open Meeting

† **September 16, 1990 - 9 a.m.** – Open Meeting

Omni Hotel, 777 Waterfront Drive, Brandon Room, Norfolk, Virginia. ☒

The meeting will consist of (i) board business; (ii) formal hearing; and (iii) committee reports relating to endorsement, RFP, advertising, executive, budget, legislative, and exams. Public comment will be heard at the conclusion of the meeting.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9906.

BOARD OF EDUCATION

† **September 27, 1990 - 9 a.m.** – Open Meeting

† **September 28, 1990 - 9 a.m.** – Open Meeting

† **October 25, 1990 - 9 a.m.** – Open Meeting

† **October 26, 1990 - 9 a.m.** – Open Meeting

General Assembly Building, 910 Capitol Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

Calendar of Events

The Board of Education and the Board of Vocational Education will hold their regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Margaret Roberts, Executive Director, Board of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

GOVERNOR'S COMMISSION ON EDUCATIONAL OPPORTUNITY FOR ALL VIRGINIANS

August 22, 1990 - 9:30 a.m. - Open Meeting
September 26, 1990 - 9:30 a.m. - Open Meeting
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☒

A full commission meeting.

† **October 3, 1990 - 4 p.m. - Public Hearing**
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☒

A commission public hearing.

Contact: Kris Ragan, Staff, P.O. Box 1422, Ninth Street Office Bldg., Room 329, Richmond, VA 23211, telephone (804) 786-1688.

LOCAL EMERGENCY PLANNING COMMITTEE - ALEXANDRIA

September 12, 1990 - 6 p.m. - Open Meeting
Chesapeake and Potomac Telephone Company, 4242 Duke Street, Alexandria, Virginia.

A regular meeting. A tour of the facility will be conducted after the meeting.

Contact: Chap Coleman, Emergency Preparedness Coordinator, Fire Department, 900 Second St., Alexandria, VA 22314-1395, Telephone (703) 838-3825.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

† **September 6, 1990 - 5:30 p.m. - Open Meeting**
† **October 4, 1990 - 5:30 p.m. - Open Meeting**
Chesterfield County Administration Building, 10,001 Ironbridge Road, Chesterfield, Virginia. ☒

Local emergency preparedness committee meeting as required by SARA Title III.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

Board of Trustees

September 7, 1990 - 10 a.m. - Open Meeting
October 12, 1990 - 10 a.m. - Open Meeting
Koger Executive Center, West End, Blair Building, Conference Room C, 8007 Discovery Drive, Richmond, Virginia. ☒

The board will plan and evaluate its fund raising campaign. It will carry out all the activities necessary for implementation of this project.

Contact: Molly Moncure Jennings, Executive Director, Family and Children's Trust Fund, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

VIRGINIA FARMERS' MARKET BOARD

August 23, 1990 - 1 p.m. - Open Meeting
State Capitol, House Room 1, Capitol Square, Richmond, Virginia. ☒

A general meeting.

Contact: Nancy L. Isreal, Farmers' Market Network Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6157.

VIRGINIA FIRE SERVICES BOARD

August 16, 1990 - 7:30 p.m. - Public Hearing
Holiday Inn, Interstate 81 and U.S. Route 50, Winchester, Virginia. ☒

A public session to discuss fire training and fire policies. This public session is for comments and questions relating to the fire services in the Commonwealth and the area in which the session is held.

August 17, 1990 - 9 a.m. - Open Meeting
Holiday Inn, Interstate 81 and U.S. Route 50, Winchester, Virginia. ☒

A regular business meeting. This meeting is open to the public for their input and comments.

Fire/EMS Training Committee

August 16, 1990 - 1 p.m. - Open Meeting
Holiday Inn, Interstate 81 and U.S. Route 50, Winchester, Virginia. ☒

A committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Fire Prevention and Control Committee

August 16, 1990 - 9 a.m. - Open Meeting
Holiday Inn, Interstate 81 and U.S. Route 50, Winchester,
Virginia. ☒

A committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Legislative Committee

August 16, 1990 - 1 p.m. - Open Meeting
Holiday Inn, Interstate 81 and U.S. Route 50, Winchester,
Virginia. ☒

A committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Contact: Anne J. Bales, Executive Secretary Senior, James Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **August 21, 1990 - 9 a.m. - Open Meeting**
† **September 19, 1990 - 9 a.m. - Open Meeting**
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111.

DEPARTMENT OF GAME AND INLAND FISHERIES

† **August 31, 1990 - 9:30 a.m. - Open Meeting**
4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will meet to adopt the 1990-91 migratory waterfowl season and to propose fish regulations. In addition, general and administrative matters will be discussed.

Contact: Belle Harding, Secretary to Director, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000/TDD ☎ or toll-free 1-800-237-5712.

DEPARTMENT OF HEALTH (STATE BOARD OF)

August 20, 1990 - 10 a.m. - Public Hearing
Council Chambers, Roanoke, Virginia.

August 21, 1990 - 10 a.m. - Public Hearing
Monroe Building, 101 North 14th Street, Richmond,

Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to consider amending regulations entitled: **VR 355-18-01. Waterworks Regulation**. This regulation is being updated from 1982 to include federal requirements of the Safe Drinking Water Act and to add technical design information.

Statutory Authority: § 32.1-170 of the Code of Virginia.

Written comments may be submitted until September 16, 1990.

Contact: Allen R. Hammer, Director, 109 Governor St., Room 927, Richmond, VA 23219, telephone (804) 786-5566.

BOARD OF HEALTH PROFESSIONS

Task Force on the Practice of Nurse Practitioners

† **August 24, 1990 - 10 a.m. - Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,
Room 1, Richmond, Virginia. ☒

The Task Force will meet to continue its study of access and barriers to the appropriate use of nurse practitioner sources in Virginia.

Public and Professional Information and Education Committee

† **August 29, 1990 - 7 p.m. - Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,
Room 1, Richmond, Virginia. ☒

The committee has invited presentations from selected organizations and individuals on public information programs and policies of the Department of Health Professions including: (i) the content and distribution of public information materials for the general public and for specific groups; (ii) the content and distribution of public notifications of disciplinary actions taken by health regulatory boards; (iii) the coordination of systems to address concerns with health care quality and competence, and the role of public informational activity to promote public understanding of these systems; (iv) the use of public information activity to foster a better understanding of the range of sanctions determined by health regulatory boards; and (v) mechanisms for informing agencies, organizations and individuals of federal and state reporting requirements pertaining to licensed health care providers.

A background statement on these issues is available on request.

Written comments are invited from all interested

Calendar of Events

organizations and individuals, and may be sent to the address below. The deadline for receipt of all comments is Friday, September 14, 1990.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

Regulatory Research Committee

† **August 29, 1990 - 2:30 p.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Room 2, Richmond, Virginia. ☐

The committee will consider further proposals for the statutory certification of athletic trainers and therapeutic recreation specialists, and review regulations promulgated or proposed by health regulatory boards as appropriate.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

DEPARTMENT OF HEALTH PROFESSIONS

Advisory Board of Physical Therapy

† **October 5, 1990 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Room 2, Richmond, Virginia. ☐

The advisory board will review and discuss regulations, bylaws, procedural manuals, receive reports, and other items. The advisory board will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 28, 1990 - 8:30 a.m. – CANCELLED
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☐

The meeting of the Policy and Public Information Task Force of the council to review the draft of the Annual Charge Survey has been cancelled.

August 28, 1990 - 9:30 a.m. – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☐

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **August 30, 1990 - 10:30 a.m.** – Open Meeting
CIT Building, 6th Floor Conference Room, Dulles Airport, Washington, D.C.

A general business meeting.

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

DEPARTMENT OF HISTORIC RESOURCES

State Review Board

August 21, 1990 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

A meeting to consider nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Covington Historic District
2. Aurora, Patrick County
3. Bragassa Toy Store, Lynchburg
4. Bryn Arvon/Gqyn Arvon, Buckingham County
5. District of Columbia Boundary Markers, Arlington and Fairfax County
6. Jefferson Street First Baptist Church, Roanoke
7. Little Mountain Pictographs, Nottoway County
8. Locust Level, Bedford County
9. McClung Farm, Highland County
10. Mt. Fair, Albermarle County
11. Office Hall, King George County
12. Phoenix Bank of Nansemond, Suffolk
13. Snake Creek Farm, Carroll County
14. White Oak Primitive Baptist Church, Stafford County
15. Courthouse Historic District, Petersburg
16. Urbanna Historic District, Middlesex County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 4, 1990 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☐ (Interpreter for deaf provided upon request)

Local Emergency Preparedness Community meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

August 20, 1990 - 10 a.m. - Public Hearing General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: VR 394-01-02. Virginia Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumbers, Electricians and Building Related Mechanical Workers/1990. The 1990 edition of the Virginia Certification Standards for Building Inspection Personnel, Amusement Device Operators, Blasters, Plumbers, Electricians and Building Related Mechanical Workers is a statewide, uniform regulation that must be used by every local governing body that chooses to require certification of plumbers, electricians and building related mechanical workers as to ability, proficiency and qualifications. The regulation also provides for certification by the Department of Housing and Community Development of building inspection personnel, amusement device inspectors and blasters.

Statutory Authority: §§ 27-97, 36-98.3, 36-137 and 36-139 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Jack Proctor, Deputy Director, Department of Housing and Community Development, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 786-4752.

August 20, 1990 - 10 a.m. - Public Hearing General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: VR 394-01-04. Virginia Amusement Device Regulations/1990. The 1990 edition of the Virginia Amusement Device Regulations provides for the administration and enforcement of uniform, statewide standards for the construction, maintenance, operation and inspection of amusement devices, whether mobile

or affixed to a site. These regulations supplement the provisions of the Uniform Statewide Building Code for the purpose of protecting the health, safety, and welfare of amusement device users. The technical requirements of the Amusement Device Regulations are based on standards developed by the American Society for Testing and Materials (ASTM). Provisions are included in the regulations for the inspection of amusement devices, reports and investigation of accidents, certification and conduct of operators, and an administrative appeals system for the resolution of disagreements between building officials and amusement device owners and operators.

Statutory Authority: §§ 36-98, 36-98.3 and 36.1-137 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

August 20, 1990 - 10 a.m. - Public Hearing General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: VR 394-01-06. Virginia Statewide Fire Prevention Code. The 1990 edition of the Virginia Statewide Fire Prevention Code is a mandatory, statewide set of regulations that must be complied with for the protection of life and property from the hazards of fire or explosion. Technical requirements of the Statewide Fire Prevention Code are based on the BOCA National Fire Prevention Code, a companion document to the BOCA National Building Code which is incorporated by the Uniform Statewide Building Code. The Fire Prevention Code supersedes all fire prevention regulations heretofore adopted by local government or other political subdivisions. Local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure. Local enforcement of this code is optional. The State Fire Marshal shall have authority to enforce the Fire Prevention Code in those jurisdictions in which the local governments do not enforce the code. An administrative appeals system is established for resolution of disagreements between the enforcing agency and aggrieved party.

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Calendar of Events

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

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August 20, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.** Volume I - New Construction of the 1990 edition of the Virginia Uniform Statewide Building Code (USBC) is a mandatory, statewide uniform regulation which must be complied with in all buildings or additions hereafter constructed, altered, enlarged, repaired, or converted to another use group. Its purpose is to protect the health, safety, and welfare of building users, and to provide for energy conservation, water conservation, and accessibility for the physically handicapped and aged. Technical requirements of the New Construction Code are based on the BOCA model building code. The New Construction Code specifies the enforcement procedures to be used by local governments. Enforcement by local government is mandatory. Provision is made for modifications by the building official when alternate means will provide equivalent health and safety. An administrative appeals system is established for resolution of disagreements between the building owner and the building official.

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

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August 20, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.** Volume II - Building Maintenance Code of the 1990 edition of the Virginia Uniform Statewide Building Code (USBC) is a mandatory, statewide

uniform set of regulations that must be complied with in all buildings to protect the occupants from the health and safety hazards that might arise from improper maintenance or use. Technical requirements of the Building Maintenance Code are based on the BOCA National Property Maintenance Code, a companion document to the BOCA National Building Code which serves as the basis for Volume I of the USBC, the New Construction Code. Enforcement procedures are provided that must be used when the Building Maintenance Code is enforced by local agencies. Local enforcement of the Code is optional. An administrative appeals system is established for resolution of disagreements between the building owner and the code official.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

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August 20, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to adopt regulations entitled: **VR 394-01-23. Standards Governing Operation of Individual and Regional Code Academies/1990.** The 1990 edition of the Standards Governing Operation of Individual and Regional Code Academies is a uniform, statewide set of regulations that must be used by localities establishing code academies. These regulations establish requirements for localities to meet in order to receive accreditation from the Department of Housing and Community Development for local or regional training programs to provide for certification of persons enforcing the building regulations promulgated by the Board of Housing and Community Development. Accreditation is based on information submitted to the Department of Housing and Community Development relating to financial resources, educational and teaching qualifications, instruction courses provided, and anticipated enrollment. The department will issue accreditation certificates on an annual basis and monitor the operation of approved academies.

Statutory Authority: §§ 36-137 and 36-139 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Jack Proctor, Deputy Director, 205 N. Fourth St.,

Richmond, VA 23219, telephone (804) 786-4752.

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August 20, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990.** The Virginia Industrialized Building and Manufactured Home Safety Regulations provide for the administration and enforcement of uniform, statewide, health and safety standards for industrialized buildings and manufactured homes, wherever produced. A major purpose of the regulations is to make good quality housing more affordable for residents of Virginia. It does so by providing precertification of manufactured buildings that contain concealed parts which can not be readily inspected at the point of use. Such units must be accepted by the local building official without disassembly. The enforcement system includes: (i) state accreditation, use, and monitoring of independent third-party compliance assurance agencies to review the design of manufactured buildings and to inspect their production for code compliance; (ii) assignment of responsibility for safe installation to local building department, and (iii) state action to secure correction of defects discovered after installation.

Statutory Authority: §§ 36-73 and 36-85.7 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

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August 20, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-42. Virginia Liquefied Petroleum Gas Regulations/1990.** The Virginia Liquefied Petroleum Gas Regulations, 1990 edition, is a mandatory, statewide uniform regulation that must be complied with in the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, and utilizing L-P gases for fuel purposes, and for the odorization of L-P gases in order to protect individuals and property from fire and explosion hazards. All

law-enforcement officers are empowered to enforce the regulations.

Statutory Authority: § 27-87 of the Code of Virginia.

Written comments may be submitted until August 27, 1990.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **August 21, 1990 - 11 a.m. - Open Meeting**
601 South Belvidere Street, Richmond, Virginia. ☐

A regular meeting of the board 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. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INDIANS

† **October 10, 1990 - 2 p.m. - Open Meeting**
Koger Executive Complex, Blair Building, 8007 Discovery Drive, Conference Room C, Richmond, Virginia.

A regular meeting to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Information Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or toll-free 1-800-552-7096.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

† **September 12, 1990 - 7 p.m. - Open Meeting**
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☐

† **September 19, 1990 - 7 p.m. - Open Meeting**
Department of Motor Vehicles, Military Circle Branch Office, 5754 Poplar Hall Drive, Norfolk, Virginia.

Calendar of Events

† **September 26, 1990 - 7 p.m. -- Open Meeting**
Fairfax City Council Chambers, 10455 Armstrong Street,
Fairfax, Virginia.

† **October 3, 1990 - 7 p.m. -- Open Meeting**
Roanoke County Administration Building, 3738 Brambleton
Avenue, S.W., Roanoke, Virginia.

In accordance with this agency's Public Participation Guidelines, comments on the proposed changes to the proposed regulation concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees (VR 425-01-74) will be accepted at the open meetings listed. The proposed regulation appears in this issue of the Register. Oral comments to be presented must be accompanied by a written copy. Written copies will be accepted at the meetings or by mail prior to the meeting date.

† **September 18, 1990 - 10 a.m. -- Open Meeting**
General Assembly Building, House Room C, 910 Capitol
Street, Richmond, Virginia. ☐

The preliminary agenda consists of: (i) amendment to the Boiler and Pressure Vessel Rules and Regulations; (ii) commissioner's approval of variances, exemptions, regulatory review; (iii) amendment to Construction Standard for Sanitation; (iv) amendment to Control of Hazardous Energy Source (Lockout/Tagout); and (v) technical amendments to General Industry Safety and Health Standards: Welding, Cutting and Brazing.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2384.

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September 18, 1990 - 10 a.m. -- Public Hearing
General Assembly Building, House Room C, Richmond,
Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia or the requirements of federal law that the Department of Labor and Industry intends to amend regulations entitled: **VR 425-02-71. The Control of Hazardous Energy (Lockout/Tagout).** The proposed amendment eliminates reference which permit an employee to tagout rather than lockout energy isolating devices in order to disable machinery or equipment during maintenance or servicing.

Statutory Authority: § 40.1-22(5), of the Code of Virginia.

Written comments may be submitted until July 8, 1990

Contact: John J. Crisanti, Senior Policy Analyst, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2384

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September 18, 1990 - 10 a.m. -- Public Hearing
General Assembly Building, House Room C, Richmond,
Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: **VR 425-02-72. Virginia Occupational Safety and Health Standards for the Construction Industry, Sanitation.** This action will amend the current Sanitation Standard for Construction Industry, § 1926.51 to include additional sanitary requirements for potable water and toilet and handwashing facilities.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until July 8, 1990.

Contact: John J. Crisanti, Senior Policy Analyst, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2384

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† **January 8, 1991 - 10 a.m. -- Public Hearing**
Virginia Housing and Development Authority Conference
Center, 601 South Belvidere Street, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: **VR 425-01-74. Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees.** The proposed regulation provides a procedure for notification to the Department of Labor and Industry of asbestos projects and establishes permit fees for those projects.

STATEMENT

Basis and purpose: Chapter 318 of the 1990 session of the Virginia General Assembly approved on March 30, 1990, amends the Code of Virginia by adding a new subsection B to § 54.1-507 which directs the Department of Labor and Industry to require that licensed asbestos contractors and RFS contractors obtain an asbestos project permit from the department and to pay a fee to the department prior to the commencement of any asbestos project.

Substance: The proposed regulation provides a procedure for notification to the Department of Labor and Industry of asbestos projects and establishes permit fees for those projects. It further defines the term "residential building" for the purposes of this regulation. While "residential buildings" are covered under this program, the procedure required for such structures does not include payment of a fee.

This regulation would apply to all licensed asbestos contractors or RFS contractors who engage in asbestos projects. This program would not affect the existing

reporting requirement under subsection C of § 54.1-507 or any other reporting, notice, or inspection requirement pursuant to other provisions of the Code of Virginia.

Written notification to DLI of any asbestos project which equals or exceeds the minimums of 10 linear feet or 10 square feet would be required. Such notification would be required 20 days prior to commencing any asbestos project.

Issues and impact:

A. Employers: Licensed asbestos contractors and RFS contractors undertaking affected projects are currently making notification to the department based on the requirements of § 54.1-507 A. This regulation will have a minor effect on the current process by requiring completion of one or more additional questions.

Additional direct costs include payment of a fee. As the fee structure is designed to generate sufficient revenue to offset departmental program costs, total monetary impact is expected to be approximately \$564,000 to be distributed across approximately 3,900 affected projects annually.

B. Employees: No direct impact on employees is anticipated by this regulation. However, it is expected that the regulation will result in improved working conditions in affected industry.

C. Department of Labor and Industry: To provide the necessary oversight and enforcement required by this regulation, additional staff will be needed for greater numbers of inspections and reinspections. The expansion of enforcement staff and new permit requirements will also necessitate additional support staff. As approved by the 1990 General Assembly Session, the total staff for the proposed program will consist of a supervisor, a secretary, a clerk, a fiscal technician and ten inspectors.

Based on the language in § 54.1-507 B of the Code of Virginia, the department will be using the funds generated by these fees to carry out the department's mandate under § 54.1-507. This will mean that fees are designed to cover the costs of the entire asbestos program as augmented to provide greater protection to the public.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, P.O. Box 12064, Richmond, VA 23241-0064, telephone (804) 786-2384.

STATE LAND EVALUATION ADVISORY COUNCIL

August 24, 1990 - 10 a.m. – Open Meeting
September 10, 1990 - 10 a.m. – Open Meeting

Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

To adopt ranges of values to be recommended to localities for application to agricultural, horticultural, forest, and open-space land participating in use-value assessment programs.

Contact: David E. Jordan, Assistant Director, Property Tax Division, Department of Taxation, P.O. Box 1-K, Richmond, VA 23201, telephone (804) 367-8020.

COMMISSION ON LOCAL GOVERNMENT

August 13, 1990 - 11 a.m. – Open Meeting
Broadway High School Auditorium, 226 West Lee Street, Broadway, Virginia.

Oral presentations regarding the Town of Broadway and Rockingham County Agreement Refining Annexation Rights. Persons desiring to participate in the Commission's oral presentations and require special accommodations or interpreter services should contact the Commission's office by August 6, 1990.

August 13, 1990 - 7 p.m. – Public Hearing
Broadway High School Auditorium, 226 West Lee Street, Broadway, Virginia.

A public hearing regarding the Town of Broadway and Rockingham County Agreement Refining Annexation Rights. Persons desiring to participate in the Commission's oral presentations and require special accommodations or interpreter services should contact the Commission's office by August 6, 1990.

Contact: Barbara Bingham, Administrative Assistant, Eighth Street Office Building, Room 702, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

STATE LOTTERY BOARD

August 22, 1990 - 10 a.m. – Open Meeting
September 26, 1990 - 10 a.m. – Open Meeting
State Lottery Department, 2201 West Broad Street, Conference Room, Richmond, Virginia. ☒

A regular monthly meeting to conduct business according to items listed on agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

Calendar of Events

MARINE RESOURCES COMMISSION

† August 28, 1990 - 9:30 a.m. - Open Meeting
VMRC Headquarters, 2600 Washington Avenue, Room 403,
4th Floor, Newport News, Virginia.

9:30 a.m. - The commission will hear and decide marine environmental matters: permit application for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

2 p.m. - The commission will hear and decide fishery management items: regulatory proposals; fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meeting are open to the public. Testimony is taken under oath from parties addressing agenda items on permits, licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088.

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August 28, 1990 - 9:30 a.m. - Public Hearing
VMRC Headquarters, 2600 Washington Avenue, Newport News, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Marine Resources Commission intends to consider adopting new regulations entitled: VR 450-01-0058. **Barrier Island Policy (A part of the Commission's Coastal Primary Sand Dune/Reaches Guidelines)**. The regulation will (i) assist the agency in implementing the policy set forth in § 62.1-13.21 of the Code of Virginia; (ii) assist localities in regulating activities that impact coastal primary sand dunes, beaches or barrier islands; and (iii) enable the public to self-evaluate the acceptability and consequences of such proposed uses.

Statutory Authority: §§ 62.1-13.4 and 62.1-13.24 of the Code of Virginia.

Written comments may be submitted until August 3, 1990.

Contact: Robert W. Grabb, Chief, Habitat Management Division, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-2252.

BOARD OF MEDICAL ASSISTANCE SERVICES

† August 22, 1990 - 10 a.m. - Open Meeting
600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia. ☒

An open meeting to discuss medical assistance services and issues pertinent to the board.

Contact: Patricia A. Sykes, Legislative Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, toll-free 1-800-552-8627 or 1-800-343-0634/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Technical Advisory Panel

† August 23, 1990 - 10 a.m. - Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia. ☒

Orientation session for new Technical Advisory Panel members and briefing on activities of the Technical Advisory panel up to the current date.

Contact: David Coronado, Director, Division of Policy and Research, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

BOARD OF MEDICINE

Informal Conference Committee

August 16, 1990 - 9 a.m. - Open Meeting
Sheraton-Fredericksburg Resort and Conference Center, I-95 and Route 3, Fredericksburg, Virginia. ☒

August 17, 1990 - 9:30 a.m. - Open Meeting
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg, Virginia. ☒

† September 21, 1990 - 9:30 a.m. - Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia. ☒

The committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia.

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908 or 662-9943/TDD ☎

Credentials Committee

† **September 15, 1990 - 8:15 a.m.** – Open Meeting
Department of Health Professions, Surry Building, 1st Floor, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The committee will meet to conduct general business, interview, and review medical credentials of applicants applying for licensure in Virginia in open and executive session and discuss any other items which may come before this committee.

The board will not receive public comments.

Executive Committee

† **September 14, 1990 - 9 a.m.** – Open Meeting
Department of Health Professions, Surry Building, 1st Floor, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The committee will meet in open session to review closed cases, cases/files requiring administrative actions, procedures for examination for optometry, and consider any other items which may come before the committee.

The committee will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **August 21, 1990 - 10 a.m.** – Public Hearing
† **August 21, 1990 - 6 p.m.** – Public Hearing
Virginia Highlands Community College, Main Instructional Building, Room 402-404 (exit 7 off I-81), Abingdon, Virginia.

† **August 21, 1990 - 10 a.m.** – Public Hearing
† **August 21, 1990 - 6 p.m.** – Public Hearing
Randolph-Macon Woman's College, Smith Building, Room 300 (corner of N. Princeton Circle & Rivermont Ave.), Lynchburg, Virginia.

† **August 21, 1990 - 10 a.m.** – Public Hearing
† **August 21, 1990 - 6 p.m.** – Public Hearing
Riverside Conference Center, Warwick Professional Park, 12420 Warwick Boulevard, Building 6, Newport News, Virginia.

† **August 21, 1990 - 10 a.m.** – Public Hearing
† **August 21, 1990 - 6 p.m.** – Public Hearing
Fairfax County Community Services Board, 14601 White Granite Drive, Oakton, Virginia.

† **August 21, 1990 - 10 a.m.** – Public Hearing
James Monroe Building, Conference Room C, 101 North

14th Street, Richmond, Virginia.

† **August 21, 1990 - 6 p.m.** – Public Hearing
Tuckahoe Branch, Henrico Public Library, 1700 Parham Road, Richmond, Virginia.

DMHMRAS will conduct public hearings (locations as indicated) to provide for comment on draft policies and procedures for early intervention services for infants and toddlers in Virginia in accordance with P.L. 99-457, Part H.

Persons wishing to speak may register in advance by phoning (804) 786-3710 or in person during the times indicated. To receive a copy of the proposed draft policies and procedures call (804) 786-3710.

Contact: Jean McCann, Program Information Officer, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

MIGRANT AND SEASONAL FARMWORKERS BOARD

† **August 22, 1990 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 1, Richmond, Virginia. ☒

A regular meeting of the board.

Contact: Marilyn Mandel, Director, Office of Planning and Policy, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **September 1, 1990 - 8:30 a.m.** – Open Meeting
Smith Hall Board Room, Virginia Military Institute, Lexington, Virginia. ☒

A regular meeting of the VMI Board of Visitors to consider election of president and committee reports. The Board of Visitors will provide an opportunity for public comment at this meeting immediately after the superintendent's comments (about 9 a.m.).

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

August 21, 1990 - 10 a.m. – Public Hearing
Powell Valley High School Auditorium, Big Stone Gap, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines,

Calendar of Events

Minerals and Energy intends to amend regulations entitled: **VR 480-05-9.2. Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines.** The purpose of the proposed amendments is to adopt a standard for the sulfur content of diesel fuel and to update air-quality standards for sulfur dioxide and formaldehyde.

Statutory Authority: §§ 45.1-1.3 and 45.1-90 of the Code of Virginia.

Written comments may be submitted until August 21, 1990.

Contact: Bill Edwards, Policy Analyst, Department of Mines, Minerals and Energy, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330.

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

September 28, 1990 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Minority Business Enterprise intends to adopt regulations entitled: **VR 486-01-01. Public Participation Guidelines.** These proposed regulations will outline the procedure in which the Department of Minority Business Enterprise will involve interested persons in developing or amending agency regulations.

Statutory Authority: § 2.1-64.35:8 of the Code of Virginia.

Written comments may be submitted until September 28, 1990.

Contact: Garland W. Curtis, Deputy Director, Department of Minority Business Enterprise, Ninth Street Office Bldg., Suite 200-202, Richmond, VA 23219, telephone (804) 786-5560 or toll-free 1-800-223-0671.

BOARD OF NURSING

† **August 28, 1990 - 9:30 a.m.** – Open Meeting
Christopher Newport College, Campus Center Room 214, 50 Shoe Lane, Newport News, Virginia. ☒ (Interpreter for deaf provided upon request)

† **August 29, 1990 - 10:30 a.m.** – Open Meeting
Community Hospital of Roanoke Valley, Gray Room, 4th Floor, 101 Elm Avenue, S.E., Roanoke Virginia. ☒ (Interpreter for deaf provided upon request)

† **August 30, 1990 - 9:30 a.m.** – Open Meeting
The Martha Washington Inn, Board Room, 150 Main Street, Abingdon, Virginia. ☒ (Interpreter for deaf provided upon request)

Formal hearings will be held to inquire into

allegations that certain laws and regulations governing the practice of nursing in Virginia may have been violated.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560.

BOARD OF NURSING HOME ADMINISTRATORS

† **September 5, 1990 - 8 a.m.** – Open Meeting
† **September 6, 1990 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒

National and state examinations will be given to applicants for licensure for Nursing Home Administrators. A regularly scheduled board meeting will also be held.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111.

OLD DOMINION UNIVERSITY

Executive Committee

August 28, 1990 - 3 p.m. – Open Meeting
Old Dominion University, New Administration Building, Board Room 226, Norfolk, Virginia. ☒

A meeting of the committee to conduct university business on behalf of the full board. Agendas should be available at least five working days prior to the meeting.

Contact: Donna W. Meeks, Secretary to the Board, Old Dominion University, Norfolk, VA 23529-0029, telephone (804) 683-3072.

VIRGINIA PESTICIDE CONTROL BOARD

† **August 18, 1990 - noon** – Open Meeting
Natural Resources Building, Headquarters Conference Room, Alderman and McCormick Roads, Charlottesville, Virginia. ☒

The board will continue deliberations of the fees and licenses committee from its meeting on July 12, 1990. The committee will resume deliberations on Regulations Governing Licensing of Pesticide Businesses Operating under authority of the Virginia Pesticide Control Act.

Contact: Marvin A. Lawson, Program Manager, P.O. Box 1163, Room 403, Richmond, VA 23209, telephone (804) 371-6558.

† August 27, 1990 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, Capitol
Square, Richmond, Virginia. ☒

An informational proceeding to gather data specifically pertaining to the use of granular carbofuran and granular carbofuran's effect on avians and to consider proposals by FMC, the manufacturer of granular carbofuran, and others to reduce or to eliminate the toxic or other harmful effects of granular carbofuran on avians or on the environment. The board desires to hear comments on, but not limited to, the following specific issues: efficacy of granular carbofuran and alternative pesticides; avian toxicology of granular carbofuran and alternative pesticides, interactions among other alternative pesticides, and any increased environmental risks which may be caused by the use of alternative pesticides.

In order to speak at this proceeding, speakers must submit a written outline of their comments by 5 p.m., August 22, 1990. Written comments and requests to speak should be submitted to Dr. Marvin A. Lawson, Office of Pesticide Management, P.O. Box 1163, Room 403, Richmond, VA 23209.

The board may consider other procedures necessary for the conduct of these proceedings.

Contact: Marvin A. Lawson, Program Manager, P.O. Box 1163, Room 403, Richmond, VA 23209, telephone (804) 371-6558.

BOARD OF PHARMACY

† September 12, 1990 - 9 a.m. - Public Hearing
† September 13, 1990 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive,
Conference Rooms 1 and 2, Richmond, Virginia. ☒

September 12 - A public hearing on regulatory review and board meeting (conference room 1).

September 13 - A routine board business meeting (conference room 2).

† September 12, 1990 - 9 a.m. - Public Hearing
Department of Health Professions, 1601 Rolling Hills Drive,
Conference Room 1, Richmond, Virginia. ☒

Pursuant to its Public Participation Guidelines, the Board of Pharmacy will hold a public hearing to receive public comments on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance.

Interested parties may appear at the hearing and offer oral or written comments. Written comments may be submitted directly to the board office until September 17, 1990.

Contact: Jack B. Carson, Executive Director, Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911.

REAL ESTATE BOARD

August 14, 1990 - 10:30 a.m. - Open Meeting
Fredericksburg Juvenile Courtroom, Third Floor, 601
Caroline Street, Fredericksburg, Virginia.

The board will meet to conduct a formal hearing:
Real Estate Board v. Frank M. Frece file number
90-01216.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8524.

VIRGINIA RESOURCES AUTHORITY

† August 14, 1990 - 10 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Suite 707,
Conference Room A, Richmond, Virginia.

The board will meet to approve minutes of the meeting of July 10, 1990, to review the authority's operations for the prior months; and to 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.

Public comments will be received at the beginning of the meeting.

Contact: Mr. Shockley D. Gardner, Jr., 909 E. Main St., Suite 707, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

Protection and Advocacy for Mentally Ill Individuals Advisory Council

† August 30, 1990 - 10 a.m. - Open Meeting
"On Our Own, Charlottesville," 310 East Market Street,
Charlottesville, Virginia. ☒ (Interpreter for deaf provided upon request)

A regularly scheduled meeting for the conduct of business. Public participation welcomed. For directions please call (804) 979-2440.

Contact: Barbara Hoban, PAMI Program Manager, Department for Rights of Virginians with Disabilities, James Monroe Building, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042/TDD ☎ or

Calendar of Events

toll-free 1-800-552-3962/TDD ☎

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

September 16, 1990 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-01-32. Aid to Dependent Children (ADC) Program - Deprivation Due to Continued Absence.** The purpose of this amendment is to clarify policy regarding the determination of deprivation when the continued absence of a parent is due to separation.

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

Written comments may be submitted until September 16, 1990, to I. Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD OF SOCIAL WORK

† **August 24, 1990 - 11 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond, Virginia. ☎

A meeting to (i) conduct general board business; (ii) respond to correspondence; and (iii) review applications for licensure and supervision of trainees. Comments will be received at the end of the board meeting.

Contact: Evelyn Brennan Brown, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9914.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

September 20, 1990 - 9 a.m. – Open Meeting
Colonial Farm Credit Office, Mechanicsville, Virginia.

A regular bi-monthly meeting.

Contact: Donald L. Wells, Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2064.

DEPARTMENT OF TAXATION

September 18, 1990 - 10 a.m. – Open Meeting

General Assembly Building, House Room D, Capitol Square, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-6-4006. Virginia Income Tax Withholding: Lottery Winnings.** This regulation will establish the application of withholding requirements on lottery prizes of the Virginia State Lottery Department.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until September 18, 1990.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Department of Taxation, Richmond, VA 23282, telephone (804) 367-8010.

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September 18, 1990 - 10 a.m. – Open Meeting
General Assembly Building, House Room D, Capitol Square, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-31. Retail Sales and Use Tax: Dealer's Returns and Payment of the Tax.** This regulation sets forth the sliding scale dealer's discount that ranges from 2.0% to 4.0% based upon dealers' monthly sales volume.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until September 18, 1990.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Department of Taxation, Richmond, VA 23282, telephone (804) 367-8010.

VIRGINIA'S TRANSITION TASK FORCE

† **September 13, 1990 - 10 a.m.** – Open Meeting
The James Monroe Building, 101 North 14th Street, Richmond, Virginia. ☎ (Interpreter for deaf provided upon request)

Virginia's Transition Task Force comprised of representatives from 13 state agencies and the community will meet to develop strategies for implementing transition planning and service statewide for youth and young adults with disabilities. Public comment is invited between 11:30 a.m. and 12:30 p.m.

Contact: Sharon deFur, Coordinator of Transition Services, Virginia Department of Education, P.O. Box 6-Q, Monroe

Building, 23rd Floor, Richmond, VA 23216, telephone (804) 225-2880, toll-free 1-800-422-2083 or 1-800-422-1098/TDD ☎

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

August 20, 1990 - 7 p.m. - Public Hearing
Salem District Transportation Office, Salem, Virginia.

August 22, 1990 - 7 p.m. - Public Hearing
Northern Virginia's Stonewall Jackson Senior High School,
Manassas, Virginia.

August 27, 1990 - 7 p.m. - Public Hearing
Suffolk District Transportation Office, Suffolk, Virginia.

August 29, 1990 - 7 p.m. - Public Hearing
Richmond Central Transportation Office, Richmond,
Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to adopt regulations entitled: **VR 385-01-22. Vegetation Control Regulations.** The regulation defines a set of rules to be followed by businesses and owners of outdoor advertising signs and other advertising when trimming vegetation on state-owned rights of way to make visible billboards or businesses located on private property.

Statutory Authority: §§ 33.1-12 and 33.1-351 of the Code of Virginia.

Written comments may be submitted until August 29, 1990.

Contact: Mr. J.R. Barrett, Environmental Program Planner,
Virginia Department of Transportation, 1401 E. Broad St.,
Richmond, VA 23219, telephone (804) 371-6826.

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† **August 21, 1990 - 7:30 p.m. - Public Hearing**
Department of Transportation, 1221 East Broad Street,
Main Hall Auditorium, Richmond, Virginia. ☒

A public hearing on 1989 Update to the State Rail Plan.

Contact: Billy D. Ketron, Rail Transportation Engineer Sr.,
Virginia Department of Transportation, 1221 E. Broad St.,
Richmond, VA 23219, telephone (804) 786-1065.

COMMONWEALTH TRANSPORTATION BOARD

† **August 15, 1990 - 2 p.m. - Open Meeting**
Virginia Department of Transportation, Board Room, 1401
East Broad Street, Richmond, Virginia. (Interpreter for
deaf provided if requested)

A work session of the board and department staff.

† **September 20, 1990 - 2 p.m. - Open Meeting**
Virginia Department of Transportation, Board Room, 1401
East Broad Street, Richmond, Virginia. (Interpreter for
deaf provided if requested)

Monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: Albert W. Coates, Jr., Assistant Commissioner,
Department of Transportation, 1401 E. Broad St.,
Richmond, VA 23219, telephone (804) 786-9950.

TRANSPORTATION SAFETY BOARD

September 21, 1990 - 8:30 a.m. - Open Meeting
Virginia Port Authority, 600 World Trade Center, Board
Conference Room, Norfolk, Virginia. ☒

A meeting to discuss the distribution of the USDOT Highway Safety Funds.

Contact: William H. Leighty, Deputy Commissioner for
Transportation Safety, 2300 W. Broad St., Richmond, VA
23269-0001, telephone (804) 367-6614 or (804)
367-1752/TDD ☎

TREASURY BOARD

† **August 15, 1990 - 9 a.m. - Open Meeting**
† **September 19, 1990 - 9 a.m. - Open Meeting**
James Monroe Building, 101 North 14th Street, 3rd Floor,
Treasury Board Conference Room, Richmond, Virginia. ☒

A monthly meeting of the board.

Contact: Laura Wagner-Lockwood, Senior Debt Manager,
Department of the Treasury, P.O. Box 6-H, Richmond, VA
23215, telephone (804) 225-4931.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

August 31, 1990 - 10 a.m. - Public Hearing
Chrysler Museum, Norfolk, Virginia.

September 6, 1990 - 10 a.m. - Public Hearing

Calendar of Events

100 Arbor Street, Suite 6, Christiansburg, Virginia.

September 12, 1990 - 10 a.m. - Public Hearing
Manassas Park, City Hall, Manassas Park, Virginia

October 15, 1990 - 10 a.m. - Public Hearing

October 16, 1990 - 10 a.m. - Public Hearing
Richmond, Virginia (Site to be determined).

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to amend regulations entitled: **VR 647-01-02. Commission on VASAP Policy and Procedure Manual.** These regulations describe policies and direction for operation of local ASAPs and procedures to be utilized when conforming to policy directives.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until September 28, 1990, to William T. McCollum, Commission on VASAP, 1001 E. Broad St., Suite 245, Box 28, Old City Hall Bldg., Richmond, VA 23219.

Contact: Kimberly A. Morris, Executive Assistant, Commission on VASAP, 1001 E. Broad St., Suite 245, Old City Hall Bldg., Box 28, Richmond, VA 23219, telephone (804) 786-5895.

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August 31, 1990 - 10 a.m. - Public Hearing
Chrysler Museum, Norfolk, Virginia.

September 6, 1990 - 10 a.m. - Public Hearing
100 Arbor Street, Suite 6, Christiansburg, Virginia.

September 12, 1990 - 10 a.m. - Public Hearing
Manassas Park, City Hall, Manassas Park, Virginia.

October 15, 1990 - 10 a.m. - Public Hearing

October 16, 1990 - 10 a.m. - Public Hearing
Richmond, Virginia (Site to be determined).

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to amend regulations entitled: **VR 647-01-03. VASAP Case Management Policy and Procedure Manual.** These regulations provide policy and guidance to local ASAP programs and the process for handling offenders referred for education and treatment of convictions for driving under the influence (DUI).

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until September 28, 1990, to William T. McCollum, Commission on VASAP, 1001

E. Broad St., Suite 245, Box 28, Old City Hall Bldg., Richmond, VA 23219.

Contact: Kimberly A. Morris, Executive Assistant, Commission on VASAP, 1001 E. Broad St., Suite 245, Old City Hall Bldg., Box 28, Richmond, VA 23219, telephone (804) 786-5895.

* * * * *

August 31, 1990 - 10 a.m. - Public Hearing
Chrysler Museum, Norfolk, Virginia.

September 6, 1990 - 10 a.m. - Public Hearing
100 Arbor Street, Suite 6, Christiansburg, Virginia.

September 12, 1990 - 10 a.m. - Public Hearing
Manassas Park, City Hall, Manassas Park, Virginia.

October 15, 1990 - 10 a.m. - Public Hearing

October 16, 1990 - 10 a.m. - Public Hearing
Richmond, Virginia (Site to be determined).

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to amend regulations entitled: **VR 647-01-04. Certification Requirements Manual.** All programs are established under § 18.2-271.1 of the Code of Virginia and are required to be certified by the Commission on VASAP. These regulations provide guidance for meeting the certification requirements.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until September 28, 1990, to William T. McCollum, Commission on VASAP, 1001 E. Broad St., Suite 245, Box 28, Old City Hall Bldg., Richmond, VA 23219.

Contact: Kimberly A. Morris, Executive Assistant, Commission on VASAP, 1001 E. Broad St., Suite 245, Old City Hall Bldg., Box 28, Richmond, VA 23219, telephone (804) 786-5895.

VIRGINIA RACING COMMISSION

September 19, 1990 - 9:30 a.m. - Public Hearing
VSRS Building, 1204 East Main Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-03-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Racing Officials.** This regulation sets forth the qualifications, duties and responsibilities of racing officials who will serve at race meetings licensed by the commission.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until September 30, 1990, to Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

August 28, 1990 - 2 p.m. - Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☐

A regular monthly meeting.

Contact: Glen R. Slonneger, Jr., Program and Policy Specialist/Program for Infants, Children and Youth, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140.

VIRGINIA VOLUNTARY FORMULARY BOARD

† September 14, 1990 - 10 a.m. - Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on April 23, 1990. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on September 14, 1990, will be made a part of the hearing record and considered by the board.

† October 4, 1990 - 10:30 a.m. - Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and new product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

August 20, 1990 - 7 p.m. - Public Hearing
Northampton County Circuit Court Room, Business Route 13, Eastville, Virginia.

August 23, 199 - 7 p.m. - Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

August 28, 1990 - 7 p.m. - Public Hearing
Franklin General District Courtroom, City Hall, 2nd Floor, 207 West 2nd Avenue, Franklin, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: VR 690-15-01. **Water Withdrawal Reporting.** The purpose of the proposed amendment is to extend the reporting requirement to specified crop irrigators and to withdrawers of saline surface waters. A further purpose is to conform with the style and formal requirements of the Virginia Registrar of Regulations.

Statutory Authority: § 62.1-44.38 C of the Code of Virginia.

Written comments may be submitted until 4 p.m., August 31, 1990, to Ms. Doneva Dalton, Office of Water Resources Planning, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Julian Alexander, Office of Water Resources Planning, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6424.

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August 22, 1990 - 2 p.m. - Public Hearing
Prince William County McCourt Building, Board Room 1, County Complex, 4850 Davis Ford Road, Prince William, 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 consider amending regulations entitled: VR 690-11-05. **Occoquan Policy.** The policy provides for the protection of the Occoquan Watershed from point source pollution. The proposed amendments serve to reflect current permitting practices and to be consistent with the Commonwealth's water quality management program.

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

Written comments may be submitted until 4 p.m., September 4, 1990, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, VA 23230.

Contact: Mr. James C. Adams, Regional Director, Northern Regional Office, 1519 Davis Ford Rd., Suite 14,

Calendar of Events

Woodbridge, VA 22192, telephone (703) 490-8922.

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September 11, 1990 - 2 p.m. - Public Hearing
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The purpose of this proposed regulatory action is to repeal the Toxics Management Regulation. The intent and scope of the regulation will be concurrently incorporated into the Permit Regulation through a separate rulemaking.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 17, 1990, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, VA 23230.

Contact: Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6302.

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August 23, 1990 - 2 p.m. - Public Hearing
Samuels Public Library, 538 Villa Avenue, Front Royal, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-08.4. River Basin Section Tables, Potomac River Basin - Potomac Subbasin, Water Quality Standards.** The proposal is to amend the section description for the Opequon Creek, Put and Take Trout Waters, § 11, Potomac River Subbasin. The result of the proposed action is that a portion of § 11 would be reclassified as mountainous zone waters.

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

Written comments may be submitted until 4 p.m., September 17, 1990, to Ms. Doneva Dalton, State Water Control Board, P.O. Box 11143, Richmond, VA 23230.

Contact: Eleanore Daub, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6418.

COUNCIL ON THE STATUS OF WOMEN

August 14, 1990 - 10 a.m. - Open Meeting

Virginia Department of Health Professions, 1st Floor, Conference Room 1, 1601 Rolling Hills Drive, Richmond, Virginia.

A regular meeting of the council to conduct general business and to receive reports from the council standing committees.

Contact: B.J. Northington, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or toll-free 1-800-552-7096/TDD ☎

STATE BOARD OF YOUTH AND FAMILY SERVICES

September 14, 1990 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-01-001. Public Participation Guidelines.** These guidelines establish the procedures for public participation in the development of regulations.

Statutory Authority: § 66-10 of the Code of Virginia.

Written comments may be submitted until September 14, 1990.

Contact: Linda Nablo, Lead Analyst, Virginia Department of Youth and Family Services, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

LEGISLATIVE

JOINT SUBCOMMITTEE STUDYING LICENSING OF BOAT OPERATORS

† **August 21, 1990 - 10 a.m. - Open Meeting**
The joint subcommittee will meet to study the licensing of boat operators and ways to enhance boating safety. HJR 102.

Contact: Deanna S. Byrne, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

HOUSE AGRICULTURE SUBCOMMITTEE STUDYING COMMISSIONS ON THE SALE OF BURLEY TOBACCO

† **August 29, 1990 - 9:30 a.m. - Public Hearing**
Virginia Highlands Community College, Auditorium, Room 605, Learning Resources/Business Technologies Building,

Abingdon, Virginia (exit 7 from I-81).

This is the first of a series of public hearings to be held in Southwest Virginia by the special subcommittee.

† August 29, 1990 - 2 p.m. - Public Hearing
Russell County General District Court Room, 121 East Main Street, Lebanon, Virginia.

This is the second of a series of public hearings to be held in Southwest Virginia by the special subcommittee.

† August 30, 1990 - 10 a.m. - Public Hearing
Board of Supervisors Room, Lower Level, Public Library, Suite 1, 112 Water Street, Gate City, Virginia.

This is the third of a series of public hearings to be held in Southwest Virginia by the special subcommittee.

Contact: Deanna S. Byrne, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA COAL AND ENERGY COMMISSION

August 28, 1990 - 9:30 a.m. - Open Meeting
Martha Washington Inn, Ballroom, Abingdon, Virginia.

A business meeting in the morning on acid rain legislation pending in Congress followed by an afternoon public hearing on the topic of how best to prepare for that point in time when Virginia's coal reserves have been depleted. Persons wishing to address the Commission during the public hearing may preregister with Mr. Heard at (804) 786-3591.

Contact: John T. Heard, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING CREDIT CARD FRAUD

† September 12, 1990 - 1 p.m. - Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 131.

Contact: Mary P. Devine, Staff Attorney, Division of Legislative Services, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or Amy W. Rider, Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3838.

VIRGINIA STATE CRIME COMMISSION

† August 21, 1990 - 10 a.m. - Open Meeting
General Assembly Building, 6th Floor Speaker's Conference Room, 910 Capitol Street, Richmond, Virginia. ☐

The purpose of the meeting will be for the Enforcement Subcommittee of the drug study task force to examine drug related efforts in law enforcement and the effectiveness of the state's anti-drug efforts, and also receive activity reports.

† August 22, 1990 - 10 a.m. - Open Meeting
General Assembly Building, 6th Floor Speaker's Conference Room, 910 Capitol Street, Richmond, Virginia. ☐

The purpose of the meeting will be for the Education Subcommittee of the drug study task force to examine drug related efforts in law enforcement and the effectiveness of the state's anti-drug efforts, and also receive activity reports.

† August 23, 1990 - 10 a.m. - Open Meeting
General Assembly Building, 6th Floor Speaker's Conference Room, 910 Capitol Street, Richmond, Virginia. ☐

The purpose of the meeting will be for the Corrections/Treatment Subcommittee of the drug study task force to examine drug related efforts in law enforcement and the effectiveness of the state's anti-drug efforts, and also receive activity reports.

Contact: Robert E. Colvin, 910 Capitol St., Suite 915, Richmond, VA 23219, telephone (804) 225-4534.

EDUCATION SUBCOMMITTEE

August 17, 1990 - 1 p.m. - Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

The purpose of the meeting is to review various proposals for addressing the issues before the subcommittee. (HB 445)

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING ELECTION LAWS

† August 27, 1990 - 10 a.m. - Open Meeting
† September 24, 1990 - 10 a.m. - Open Meeting
† October 24, 1990 - 10 a.m. - Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 82.

Calendar of Events

Contact: Mary Spain, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4638.

HOUSE APPROPRIATIONS COMMITTEE

Subcommittee on Transportation

NOTE: CHANGE IN MEETING DATE

August 17, 1990 - 1:30 p.m. - Open Meeting
General Assembly Building, 9th Floor, Appropriations Committee Room, 910 Capitol Street, Richmond, Virginia. ☐

To hear from experts in freight and passenger rail service and those interested in Senate Bill 421.

Contact: Linda Ladd, General Assembly Building, 9th Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-1837.

HOUSE APPROPRIATIONS, HOUSE FINANCE AND SENATE FINANCE COMMITTEES

† **August 17, 1990 - 9:30 a.m. - Open Meeting**
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☐

House and Senate Finance Committees to meet jointly with House Appropriations to hear from Governor regarding General Fund balance at end of last fiscal year and to hear Administration's revisions to General Fund Revenues for the current 1990-92 biennium.

Contact: John Garka, Manager, Tax and Finance, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, or Linda Ladd, General Assembly Bldg., 9th Floor, Richmond, VA 23219, telephone (804) 786-1837.

HOUSE CORPORATIONS, INSURANCE AND BANKING SUBCOMMITTEE

August 15, 1990 - 10 a.m. - Open Meeting
State Capitol, House Room 4, Capitol Square, Richmond, Virginia. ☐

A special subcommittee will meet to study HB 899, "Rebating of Premiums on Insurance."

Contact: Arien K. Bolstad, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING FOSTER CARE SYSTEM IN THE COMMONWEALTH

† **August 22, 1990 - 10 a.m. - Open Meeting**
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 73.

Contact: Jessica Bolecek, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or Amy W. Rider, Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3838.

JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

† **August 23, 1990 - 10 a.m. - Open Meeting**
University of Virginia Hospital, Dining Conference Room (1st Floor), Lee Street at 11th, Charlottesville, Virginia.

An open meeting to consider SJR 118.

Contact: Steve Harms, Senate Finance Office, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-4400 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639.

LOCAL AND STATE GOVERNMENT INFRASTRUCTURE AND REVENUE RESOURCES COMMISSION

† **August 21, 1990 - 10 a.m. - Open Meeting**
Charlottesville Omni, Salon A, 235 West Main Street, Charlottesville, Virginia.

The commission will continue its meetings from 1989 to study local and state Government Infrastructure and Revenue Resources.

Contact: John A. Garka, Manager, Tax and Finance, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE USE OF JET SKIS

† **September 14, 1990 - 9 a.m. - Public Hearing**
Marine Science Museum, 717 General Booth Boulevard, Virginia Beach, Virginia.

A public hearing to consider SJR 29.

Contact: Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869. Those persons wishing to speak should contact: Deanna S. Byrne, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol

St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING MOTOR VEHICLE INSURANCE AND UNISEX RATINGS

August 23, 1990 - 10 a.m. - Open Meeting
Roanoke City Council Chambers, 215 Church Street, S.W.,
Roanoke, Virginia.

An open meeting to consider SJR 61.

Contact: C. William Cramme, III, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, or Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869.

COMMISSION ON OIL SPILL READINESS

† August 28, 1990 - 10 a.m. - Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 56.

Contact: John McConnell, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING PERSONNEL AND PURCHASING PRACTICES FOR TEACHING HOSPITALS

† August 17, 1990 - 2:30 p.m. - Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 127.

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or Thomas C. Gilman, Chief Committee Clerk, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869.

STATE WATER COMMISSION

August 16, 1990 - 10 a.m. - Open Meeting
State Capitol, House Room 4, Capitol Square, Richmond, Virginia. ☐

The agenda will include the recommendations of the Advisory Committee regarding the financing of drinking water initiatives (HB 1115 carry-over of the 1990 Session) and a presentation on above-ground

storage tanks (pursuant to SJR 114, 1990).

Contact: Martin G. Farber, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol Street, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 13

Barbers, Board for
Local Government, Commission on

August 14

Real Estate Board
† Resources Authority, Virginia
Women, Council on the Status of

August 15

Insurance and Banking Subcommittee, House
Corporations
† Transportation Board, Commonwealth
† Treasury Board

August 16

Auctioneers Board
Fire Services Board, Virginia
- Fire/EMS Training Committee
- Fire Prevention and Control Committee
- Legislative Committee
Medicine, Board of
Water Commission, State

August 17

Appropriations Committee, House
- Subcommittee on Transportation
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Land Surveyors
† Building Code Technical Review Board, State
Education Subcommittee
Fire Services Board, Virginia
† House Appropriations, House Finance and Senate
Finance Committees
Medicine, Board of
† Personnel and Purchasing Practices for Teaching
Hospitals, Joint Subcommittee Studying

August 18

† Pesticide Control Board, Virginia

August 21

† Boat Operators, Joint Subcommittee Studying,
Licensing of
† Crime Commission, Virginia State
† Funeral Directors and Embalmers, Board of

Calendar of Events

Historic Resources, Department of
- State Review Board
† Housing Development Authority, Virginia
† Infrastructure and Revenue Resources Commission,
Local and State Government

August 22

† Crime Commission, Virginia State
Educational Opportunity for All Virginians, Governor's
Commission on
† Foster Care System in the Commonwealth, Joint
Subcommittee Studying
Lottery Board, State
† Medical Assistance Services, Board of
† Migrant and Seasonal Farmworkers Board

August 23

Architects, Land Surveyors, Professional Engineers and
Landscape Architects, Board for
- Board for Architects
Children, Department for
- State-Level Runaway Youth Services Network
† Crime Commission, Virginia State
Farmers' Market Board, Virginia
† Health Care for All Virginians, Joint Subcommittee
Studying
† Medical Assistance Services, Department of
† - Technical Advisory Panel
Motor Vehicle Insurance and Unisex Ratings, Joint
Subcommittee Studying

August 24

† Health Professions, Board of
† - Task Force on the Practice of Nurse
Practitioners
† Social Work, Board of

August 26

Lottery Board, State

August 27

† Agricultural Council, Virginia
† Aviation, Department of
† Election Laws, Joint Subcommittee Studying
† Pesticide Control Board, Virginia

August 28

† Agricultural Council, Virginia
† Aviation, Department of
Coal and Energy Commission, Virginia
† Contractors, Board for
† - Recovery Fund Committee
Health Services Cost Review Council, Virginia
† Marine Resources Commission
† Nursing, Board of
† Oil Spill Readiness, Commission on
Old Dominion University
- Executive Committee
Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of
Related Services to Handicapped Children

August 29

† Aviation, Department of
† Health Professions, Board of
† - Public and Professional Information and
Education Committee
† - Regulatory Research Committee
† Nursing, Board of

August 30

† Historic Preservation Foundation, Virginia
† Nursing, Board of
† Rights of Virginians with Disabilities, Department for
† - Protection and Advocacy for Mentally Ill
Individuals Advisory Council

August 31

† Game and Inland Fisheries, Department of

September 1

† Military Institute, Virginia
† - Board of Visitors

September 4

Hopewell Industrial Safety Council

September 5

Children, Department for
- Consortium on Child Mental Health
† Conservation and Recreation, Department of
† - Goose Creek Scenic River Advisory Board
† Nursing Home Administrators, Board of

September 6

† Chesapeake Bay Commission
Community Corrections Resources Board - Middle
Virginia
† Emergency Planning Committee, Local - Chesterfield
County
† Nursing Home Administrators, Board of

September 7

† Chesapeake Bay Commission
† Conservation and Recreation, Department of
† - Catoctin Creek Scenic River Advisory Board
Family and Children's Trust Fund of Virginia
- Board of Trustees

September 10

Land Evaluation Advisory Council, State

September 12

† Contractors, Board for
† - Complaints Committee
Corrections, Board of
† Credit Card Fraud, Joint Subcommittee Studying
† Dentistry, Board of
Emergency Planning Committee, Local - Alexandria
† Labor and Industry, Department of
† - Safety and Health Codes Board

September 13

Calendar of Events

- † Dentistry, Board of
† Transition Task Force, Virginia's
- September 14**
† Dentistry, Board of
† Medicine, Board of
† - Executive Committee
† Pharmacy, Board of
- September 15**
† Dentistry, Board of
† Medicine, Board of
† - Credentials Committee
- September 16**
† Dentistry, Board of
- September 18**
† Labor and Industry, Department of
† - Safety and Health Codes Board
- September 19**
† Funeral Directors and Embalmers, Board of
† Labor and Industry, Department of
† - Safety and Health Codes Board
† Treasury Board
- September 20**
Soil and Water Conservation Board, Virginia
† Transportation Board, Commonwealth
- September 21**
† Medicine, Board of
† - Informal Conference Committee
Transportation Safety Board
- September 24**
† Election Laws, Joint Subcommittee Studying
- September 26**
Educational Opportunity for All Virginians, Governor's
Commission on
† Labor and Industry, Department of
† - Safety and Health Codes Board
Lottery Board, State
- September 27**
† Education, Board of
- September 28**
† Education, Board of
- October 3**
Children, Department for
- Consortium on Child Mental Health
† Labor and Industry, Department of
† - Safety and Health Codes Board
- October 4**
† Emergency Planning Committee, Local - Chesterfield
County
- † Voluntary Formulary Board, Virginia
- October 5**
† Health Professions, Department of
† - Advisory Board on Physical Therapy
- October 10**
† Indians, Council On
- October 12**
Family and Children's Trust Fund of Virginia
- Board of Trustees
- October 24**
† Election Laws, Joint Subcommittee Studying
- October 25**
† Education, Board of
- October 26**
† Education, Board of
- ## PUBLIC HEARINGS
- August 16**
Fire Services Board, Virginia
- August 20**
Health, Department of
Housing and Community Development, Department of
Transportation, Department of
Water Control Board, State
- August 21**
Conservation and Recreation, Department of
Health, Department of
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
Mines, Minerals and Energy, Department of
† Transportation, Department of
- August 22**
Agriculture and Consumer Services, Department of
Air Pollution Control Board, State
Alcoholic Beverage Control Board
Transportation, Department of
Water Control Board, State
- August 23**
Water Control Board, State
- August 27**
Transportation, Department of
- August 28**
Marine Resources Commission
Water Control Board, State

Calendar of Events

August 29

† Burley Tobacco, House Agriculture Subcommittee
Studying Commissions on the Sale of
Transportation, Department of

August 30

† Burley Tobacco, House Agriculture Subcommittee
Studying Commissions on the Sale of

August 31

Virginia Alcohol Safety Action Program, Commission
on the

September 6

Virginia Alcohol Safety Action Program, Commission
on the

September 11

Water Control Board, State

September 12

† Pharmacy, Board of
Virginia Alcohol Safety Action Program, Commission
on the

September 14

† Use of Jet Skis, Joint Subcommittee Studying the
† Voluntary Formulary Board, Virginia

September 18

Labor and Industry, Department of
Taxation, Department of

September 19

Racing Commission, Virginia

September 26

Agriculture and Consumer Services, Department of

October 3

† Educational Opportunities for All Virginians,
Governor's Commission on

October 15

† Alcoholic Beverage Control, Department of
Virginia Alcohol Safety Action Program, Commission
on the

October 16

Virginia Alcohol Safety Action Program, Commission
on the

January 8, 1991

† Labor and Industry, Department of
† - Safety and Health Codes Board