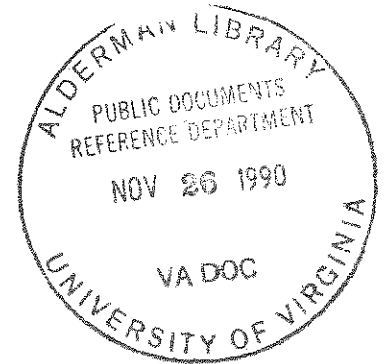
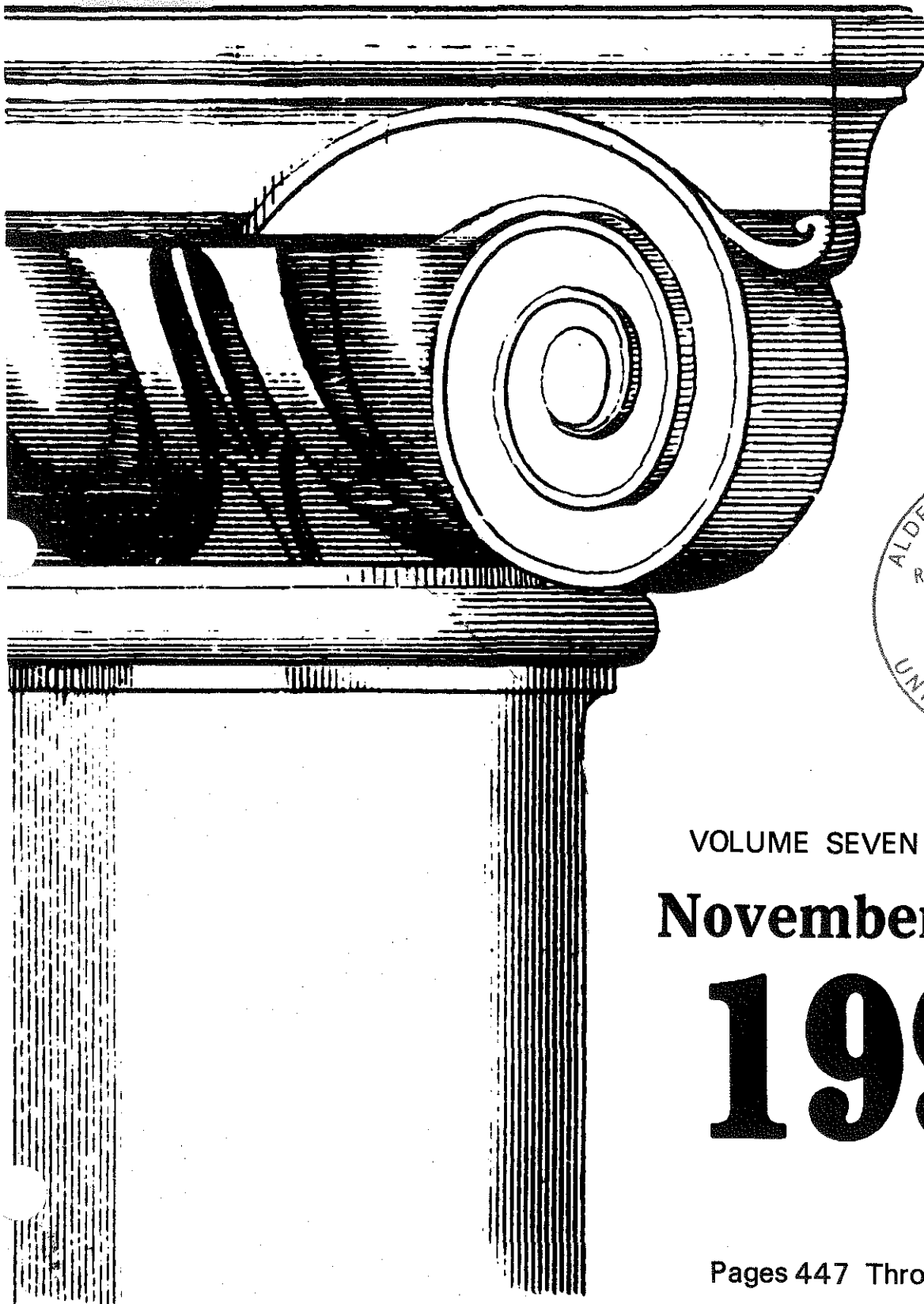


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THE VIRGINIA REGISTER

OF REGULATIONS

VA
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VOLUME SEVEN • ISSUE FOUR

November 19, 1990

1990

Pages 447 Through 622

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 V.A.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 \$100 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.

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VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1990 through September 1991

MATERIAL SUBMITTED BY
Noon Wednesday

PUBLICATION DATE

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July 25	Aug. 13
Aug. 8	Aug. 27
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Symbol Key

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

DEPARTMENT OF AIR POLLUTION CONTROL (STATE BOARD OF)

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: December 19, 1990 - 10 a.m. and 2:30 p.m.

(See Calendar of Events section for additional information)

Summary:

The regulation amendments concern provisions covering emission standards for noncriteria pollutants. The noncriteria pollutant program regulations were promulgated in 1985 to protect public health by setting Significant Ambient Air Concentration guidelines for all existing and new facilities emitting air toxic substances not already covered by federal regulations. The proposed regulation amendments are being made in response to problems discovered during the implementation of these rules.

The major provisions of the proposal are amendments to the Significant Ambient Air Concentration guidelines and to the exemption levels provided. Other amendments concern the exemption determinations for pollutants otherwise regulated; clarification of the standards section; clarification of the definition of the existing source control technology standard; the exemption determination in Appendix R for modifying the operation of a facility; and the title of the rules. The proposal adds a provision concerning consumer product exemptions; schedules for the submittal of information and completion of option demonstrations for existing facilities; a compliance requirement for existing sources emitting at levels significantly above the Significant Ambient Air Concentration guideline for the substance emitted; and a public participation requirement for any facility owner who chooses to demonstrate that his facility's emissions do not endanger human health.

VR 120-01. Regulations for the Control and Abatement of Air Pollution.

PART IV.

EMISSION STANDARDS FOR NON-CRITERIA TOXIC POLLUTANTS (RULE 4-3).

§ 120-04-0301. Applicability and designation of affected

facility.

A. Regardless of the provisions of § 120-04-01 and, except as provided in subsections C and D of this section, the affected facility to which the provisions of this rule apply is each facility or operation that emits or may emit any non-criteria toxic pollutant.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this rule is any stationary source or operation not part of a stationary source which has an uncontrolled emission rate less than the emission rate specified in Table 4-3 for the applicable TLV[®]. The exemption levels in Table 4-3 apply on an individual basis to each pollutant for which a TLV[®] has been established.

TABLE 4-3

TLV [®] (mg/m ³)	Range	Emission Rates (pounds/hour)
less than 1		0
1-2		0.13
3-5		0.76
6-12		1.52
13-25		3.29
26-50		6.58
51-250		12.90
251-500		63.51
501 or greater		126.77

C. Exemption determination.

1. Exempted from the provisions of this rule is any stationary source or operation not part of a stationary source which has a potential to emit a pollutant at a level equal to or less than the exempt emission rate calculated using the following exemption formulas for the applicable TLV[®]. If more than one exemption formula applies to a pollutant, the potential to emit that pollutant shall be equal to or less than each applicable exemption formula in order for the pollutant to be exempt. The

Proposed Regulations

exemption formulas apply on an individual basis to each pollutant for which a TLV[®] has been established.

a. For pollutants with a TLV-C[®], the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.033$$

b. For pollutants with both a TLV-STEL[®] and a TLV-TWA[®], the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV}^{\circledast} \text{-STEL (mg/m}^3\text{)} \times 0.033 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

c. For pollutants with only a TLV-TWA[®], the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.066 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA}^{\circledast} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

2. Exemption from the provisions of this rule for any stationary source or operation not part of a stationary source which has a potential to emit any toxic pollutant without a TLV[®] shall be determined by the board using available health effects information.

3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in § 120-04-0305.

D. The provisions of this rule do not apply to the following: Exemptions for pollutants otherwise regulated.

1. Owners of sources emitting pollutants regulated under any of the following may apply to the board for an exemption from this rule:

1. a. Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Rule 6-1.

2. b. Designated pollutants regulated under § 111(d) of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to other emission standards in this part.

3. Substances the disposal of which are for energy recovery or hazardous waste management in facilities which meet the 99.99% destruction and removal efficiency (DRE) standard required by the Resource Conservation and Recovery Act, provided the board is furnished with an acceptable certification that such facilities are in compliance with the DRE standard.

c. Substances regulated under the Virginia Hazardous Waste Management (HWM) Regulations (VR 672-10-1) and which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by VR 672-10-1 and (ii) has received an HWM permit or qualified for interim status in accordance with VR 672-10-1. The department shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of VR 672-10-1. Facilities which burn hazardous waste for energy recovery are not exempt from this section.

2. Exemptions for these pollutants may be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.

E. Provisions of this rule do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

F. No provision of this rule shall limit the power of the board to regulate any facility or stationary source that emits or may emit any toxic pollutant pursuant to this rule in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

§ 120-04-0302. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

C. Terms defined.

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"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Carcinogen" means any substance that has proven carcinogenic in man, or has induced cancer in animals under appropriate experimental conditions, and identified as such in Appendix A of the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see Appendix M).

"Non-criteria pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not non-criteria pollutants as generic classes of substances but individual substances within these classes are non-criteria pollutants with respect to their toxic properties based on the establishment of TLV[®] for the individual substances.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

"Threshold limit value (TLV)[®]" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see Appendix M). The TLV[®] is divided into three categories: TLV-Time-Weighted Average[®] (TLV-TWA[®]), TLV-Short-Term Exposure Limit[®] (TLV-STEL[®]), and TLV-Ceiling[®] (TLV-C[®]).

"TLV-TWA[®]" means the time-weighted average concentration for a normal 8-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"TLV-STEL[®]" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL[®] supplements the TLV-TWA[®] where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C[®]" means the concentration that should not be exceeded during any part of the working exposure.

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants with respect to their toxic properties or because a TLV[®] has been established.

§ 120-04-0303. Standard for non-criteria toxic pollutants.

If a stationary source or operation not part of a stationary source is not exempt under § 120-04-0301 C or D, then the following standards shall be met:

A. 1. Regardless of any other provision of these regulations, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of non-criteria toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.

B. 2. The owner of an affected facility shall employ control technology as may be directed by the board for the control of non-criteria toxic pollutants. The board may consider the potency and toxicity of each regulated pollutant as well as the technical and economic feasibility of any available control strategies. Possible control strategies may include but are not limited to emission control equipment, process changes, substitution of less toxic or nontoxic materials, or operation and maintenance procedures which lower or eliminate emissions of toxic pollutants.

§ 120-04-0304. Significant ambient air concentration guidelines.

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

Proposed Regulations

A. For carcinogens, any twenty-four hour concentration of a non-criteria pollutant in excess of 1/100 of the threshold limit value-time weighted average (TLV-TWA) [®] for that pollutant.

B. For non-carcinogens, any twenty-four-hour concentration of a non-criteria pollutant in excess of 1/60 of the threshold limit value-time weighted average (TLV-TWA) [®] for that pollutant except for those substances generally recognized and accepted by the board as being not harmful in the ambient air.

1. For pollutants with a TLV-C [®], any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C [®].

2. For pollutants with both a TLV-STEL [®] and a TLV-TWA [®], any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL [®] and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA [®].

3. For pollutants with only a TLV-TWA [®], any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA [®] and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA [®].

C. 4. Any concentration resultant resulting from the emissions of a non-criteria toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.

D. 5. Any concentration, other than those specified in subsection subdivision 1, 2, 3, or 4 of this section, including those not having a TLV [®], which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination shall be made by considering information by recognized authorities on the specific health effects of such pollutants.

§ 120-04-0305. Submittal of information.

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this rule. The board may determine the schedule, manner and form for the submittal of the information. Such information shall be submitted within 60 days of the request. Reasonable extensions may be granted when deemed appropriate by the board for extensive information gathering, such as emissions testing or review of large and complex facilities, and only if the request is accompanied by a written schedule.

§ 120-04-0306. Determination of ambient air concentrations.

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or

may emit, any non-criteria toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using procedures such as mass balance analysis, extrapolation of personal exposure data, and air quality analysis techniques (modeling) based on emission rates equal to the potential to emit of the stationary source for the applicable averaging time or any other method acceptable to the board.

C. Ambient air concentrations shall be determined using the maximum hourly emission rate of the stationary source.

§ 120-04-0307. Compliance.

A. If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is in excess of any significant ambient air concentration specified in § 120-04-0304, the owner shall do one or more of comply with the following:

1. For emissions resulting in concentrations which exceed the significant ambient air concentration by a factor of 10 or more times or which the board determines exceed the significant ambient air concentration established under § 120-04-0304 at such concentration as to have the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall within an approved timetable implement controls which reduce these emissions to a level specified by the board. For any emissions which remain in excess of the guidelines established under § 120-04-0304, the owner shall choose one or more of the options available under § 120-04-0307 A 2 and shall comply with the schedules contained in § 120-04-0307 B.

2. For emissions other than those specified in § 120-04-0307 A 1, the owner shall choose one or more of the following options and comply with the schedules contained in § 120-04-0307 B.

1. a. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentration in § 120-04-0304 being exceeded.

2. b. Demonstrate that the applicable significant ambient air concentration in § 120-04-0304 is inappropriate for the air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health.

3. c. Submit a plan (including an expeditious timetable for completion) acceptable to the board

demonstrating how the owner will control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

B. The owner shall notify the board of the choice of one or more of the alternatives set forth in § 120-04-0307 A 2 within 45 days of notification by the department that his facility exceeds the significant ambient air concentration specified in § 120-04-0304. Once the option has been chosen, the owner shall submit a plan and schedule to the department for approval within 45 days. If the owner fails to submit either his choice of an option or a plan and schedule to implement that option, the department may require the owner to install best available control technology to control the facility's emissions in a manner and by a schedule set out by the board. All options shall be completed within a reasonable time: 30 days for § 120-04-0307 A 2 a, 60 days for § 120-04-0307 A 2 b, and 18 months for § 120-04-0307 A 2 c. None of the times specified in this subsection include time needed for department or board approval. Reasonable extensions may be granted when deemed appropriate by the department.

C. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of § 120-04-0303.

§ 120-04-0308. Public participation.

If the owner of an affected facility chooses the demonstration under § 120-04-0307 A 2 b, the provisions of this section shall apply.

A. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

B. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in § 120-04-0304. The notice shall include a brief description of the demonstration, a statement listing the requirements in § 120-04-0308 D and E, and the name and telephone number of a person from whom detailed information on the demonstration may be obtained.

C. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the department, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

D. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under § 120-04-0307 A 2 b. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

1. The name, mailing address and telephone number of the requester.
2. The names and addresses of all persons for whom the requester is acting as a representative.
3. The reason why a hearing is requested.
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

E. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds the following:

1. There is significant public interest in the demonstration in question.
2. There are substantial, disputed issues relevant to the demonstration in question.

F. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

G. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by § 120-04-0308 F. The public hearing shall be held in the affected air quality control region.

H. The procedures for notification to the public and availability of information used for the public comment period and provided in subsections B and C of this

Proposed Regulations

section shall also be followed for the public hearing.

PART V. STANDARDS OF PERFORMANCE FOR NON-CRITERIA TOXIC POLLUTANTS (RULE 5-3).

§ 120-05-0301. Applicability and designation of affected facility.

A. Regardless of the provisions of § 120-05-01 and, except as provided in subsections C and D of this section, the affected facility to which the provisions of this rule apply is each new, modified, reconstructed or relocated facility or operation that emits or may emit any non-criteria toxic pollutant.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this rule is any stationary source or operation not part of a stationary source which has an uncontrolled emission rate less than the emission rate specified in Table 5-3 for the applicable TLV. The exemption levels in Table 5-3 apply on an individual basis to each pollutant for which a TLV has been established.

TABLE 5-3

TLV ® Range (mg/m³)	Emission Rates (pounds/hour)
less than 1	0
1-2	0.13
3-5	0.76
6-12	1.52
13-25	3.29
26-50	6.58
51-250	12.90
251-500	63.51
501 or greater	126.77

C. Exemption determination.

1. Exempted from the provisions of this rule is any stationary source or operation not part of a stationary source which has a potential to emit a pollutant at a level equal to or less than the exempt emission rate calculated using the following exemption formulas for the applicable TLV ®. If more than one exemption formula applies to a pollutant, the potential to emit that pollutant shall be equal to or less than each applicable exemption

formula in order for the pollutant to be exempt. The exemption formulas apply on an individual basis to each pollutant for which a TLV ® has been established.

a. For pollutants with a TLV-C ®, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C } \textcircled{\text{R}} \text{ (mg/m}^3\text{)} \times 0.033$$

b. For pollutants with both a TLV-STEL ® and a TLV-TWA ®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV-STEL } \textcircled{\text{R}} \text{ (mg/m}^3\text{)} \times 0.033 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA } \textcircled{\text{R}} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

c. For pollutants with only a TLV-TWA ®, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\begin{aligned} \text{Exempt Emission Rate (pounds per hour)} &= \text{TLV-TWA } \textcircled{\text{R}} \text{ (mg/m}^3\text{)} \times 0.066 \\ \text{Exempt Emission Rate (tons per year)} &= \text{TLV-TWA } \textcircled{\text{R}} \text{ (mg/m}^3\text{)} \times 0.145 \end{aligned}$$

2. Exemption from the provisions of this rule for any stationary source or operation not part of a stationary source which has a potential to emit any toxic pollutant without a TLV ® will be determined by the board using available health effects information.

3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in § 120-04-0305.

D. The provisions of this rule do not apply to the following: Exemptions for pollutants otherwise regulated.

1. Owners of sources emitting pollutants regulated under any of the following may apply to the board for an exemption from this rule:

1. a. Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Rule 6-1.

2. Non-criteria pollutants regulated under Section 111(b) of the federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to standards of performance in Rule 5-5.

3. Substances the disposal of which are for energy recovery or hazardous waste management in facilities which meet the 99.99% destruction and removal efficiency (DRE) standard required by the Resource Conservation and Recovery Act, provided the board is furnished with an acceptable certification that such facilities are in compliance with the DRE standard.

b. Substances regulated under the Virginia Hazardous Waste Management (HWM) Regulations (VR 672-10-1) and which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by VR 672-10-1 and (ii) has received an HWM permit or qualified for interim status in accordance with VR 672-10-1. The department shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of VR 672-10-1. Facilities which burn hazardous waste for energy recovery are not exempt from this section.

2. Exemptions for these pollutants may be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.

E. Provisions of this rule do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

F. No provision of this rule shall limit the power of the board to regulate a facility or stationary source that emits or may emit any toxic pollutant pursuant to this rule in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

§ 120-05-0302. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

C. Terms defined.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Carcinogen" means any substance that has proven carcinogenic in man, or has induced cancer in animals under appropriate experimental conditions, and identified as such as Appendix A in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see Appendix M).

"Non-criteria pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not non-criteria pollutants as generic classes of substances but individual substances within these classes are non-criteria pollutants with respect to their toxic properties based on the establishment of TLVs[®] for the individual substances.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable.

"Threshold limit value (TLV)[®]" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see Appendix M). The TLV[®] is divided into three categories: TLV-Time-Weighted Average[®] (TLV-TWA[®]), TLV-Short-Term Exposure Limit[®] (TLV-STEL[®]), and

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TLV-Ceiling ® (*TLV-C* ®).

"*TLV-TWA* ® " means the time-weighted average concentration for a normal 8-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"*TLV-STEL* ® " means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The *TLV-STEL* supplements the *TLV-TWA* ® where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"*TLV-C* ® " means the concentration that should not be exceeded during any part of the working exposure.

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants with respect to their toxic properties or because a *TLV* ® has been established.

§ 120-05-0303. Standard for ~~non-criteria~~ toxic pollutants.

If a stationary source or operation not part of a stationary source is not exempt under § 120-05-0301 C or D, then the following standards shall be met:

A. 1. Regardless of any other provision of these regulations, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of ~~non-criteria~~ toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.

B. 2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of ~~non-criteria~~ toxic pollutants.

§ 120-05-0304. Significant ambient air concentration guidelines.

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

A. For carcinogens, any twenty-four hour concentration of a non-criteria pollutant in excess of 1/100 of the threshold limit value-time weighted average (*TLV-TWA*) ® for that pollutant.

B. For non-carcinogens, any twenty-four hour concentration of a non-criteria pollutant in excess of 1/60 of the threshold limit value-time weighted average (*TLV-TWA*) ® for that pollutant except for those substances generally recognized and accepted by the board as being not harmful in the ambient air.

1. For pollutants with a *TLV-C* ® , any one-hour concentration of a toxic pollutant in excess of 1/40 of the *TLV-C* ® .

2. For pollutants with both a *TLV-STEL* ® and a *TLV-TWA* ® , any one-hour concentration of a toxic pollutant in excess of 1/40 of the *TLV-STEL* ® and any annual concentration of a toxic pollutant in excess of 1/500 of the *TLV-TWA* ® .

3. For pollutants with only a *TLV-TWA* ® , any annual concentration of a toxic pollutant in excess of 1/500 of the *TLV-TWA* ® and any one-hour concentration of a toxic pollutant in excess of 1/20 of the *TLV-TWA* ® .

C. D. Any concentration ~~resultant~~ resulting from the emissions of a ~~non-criteria~~ toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.

D. E. Any concentration, other than those specified in subsection A, B, C, or D subdivision 1, 2, 3 or 4 of this section, including those not having a *TLV* ® , which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination will be made by considering information by recognized authorities on the specific health effects of such pollutants.

§ 120-05-0305. Submittal of information.

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this rule. The board may determine the schedule, manner and form for the submittal of the information.

§ 120-05-0306. Determination of ambient air concentrations.

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any ~~non-criteria~~ toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using procedures such as mass balance analysis, extrapolation of personal exposure data, and air quality analysis techniques (modeling) based on emission rates equal to the facility's potential to emit for the applicable averaging time or any other method acceptable to the board.

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C. Ambient air concentrations shall be determined using the maximum hourly emission rate of the stationary source.

§ 120-05-0307. Compliance.

A. If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is in excess of any significant ambient air concentration specified in § 120-05-0304, a permit shall not be issued until the owner shall do one or more of complies with one or more of the following:

1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentrations in § 120-05-0304 being exceeded.
2. Demonstrate that the applicable significant ambient air concentration in § 120-05-0304 is inappropriate for the air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health.
3. Submit a plan (including an expeditious timetable for completion) acceptable to the board demonstrating how the owner will Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

B. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of § 120-05-0303.

§ 120-05-0308. Public participation.

If the owner of an affected facility chooses the demonstration under § 120-05-0307 A 2, the provisions of this section shall apply.

A. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

B. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the

affected facility exceed the significant ambient air concentration guidelines in § 120-05-0304. The notice shall include a brief description of the demonstration, a statement listing the requirements in § 120-05-0308 D and E, and the name and telephone number of a person from whom detailed information on the demonstration may be obtained.

C. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the department, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

D. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under § 120-05-0307 A 2. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

1. The name, mailing address and telephone number of the requester.
2. The names and addresses of all persons for whom the requester is acting as a representative.
3. The reason why a hearing is requested.
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

E. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds the following:

1. There is significant public interest in the demonstration in question.
2. There are substantial, disputed issues relevant to the demonstration in question.

F. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

G. If the board determines to hold a public hearing, the

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hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by § 120-05-0308 F. The public hearing shall be held in the affected air quality control region.

H. The procedures for notification to the public and availability of information used for the public comment period and provided in subsections B and C of this subsection shall also be followed for the public hearing.

APPENDIX R. NEW AND MODIFIED SOURCE PERMIT EXEMPTION LEVELS.

I. Determination of exemption levels.

In determining whether a facility is exempt from the requirements of § 120-08-01, the provisions of Sections II through VIII of this appendix are independent from the provisions of Section IX of this appendix. A facility must be determined to be exempt both under the provisions of Sections II through VIII taken as a group and under the provisions of Section IX to be exempt from § 120-08-01.

II. New source exemption levels by size.

Facilities as specified below shall be exempt from the requirements of § 120-08-01 as they pertain to construction, reconstruction or relocation.

A. Fuel burning equipment.

1. Any unit using solid fuel with a maximum heat input of less than 350,000 Btu per hour.
2. Any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.
3. Any unit using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.
4. Any unit using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.
5. Any unit that powers a mobile source but is removed for maintenance or repair and testing.

B. Solvent metal cleaning operations

1. Conveyorized degreasers. Any degreaser with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour. No exemptions in AQCR 7.
2. Open top vapor degreasers. Any degreaser with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour. No exemptions in AQCR 7.
3. Cold cleaners. Any cleaner with an uncontrolled

emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour. No exemptions in AQCR 7.

C. Volatile organic compound storage and transfer operations.

Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

1. Volatile organic compound transfer operations.

- a. Any tank of 2,000 gallons or less storage capacity.
- b. Any operation outside the volatile organic compound emissions control areas designated in Appendix P.

2. Volatile organic compound storage operations. Any tank of 40,000 gallons or less storage capacity.

D. Large appliance coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

E. Magnet wire coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

F. Automobile and light duty truck coating lines.

1. Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.
2. Any vehicle refinishing operation.

G. Can coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

H. Metal coil coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

I. Paper and fabric coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds

per day and 8 pounds per hour.

J. Vinyl coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

K. Metal furniture coating lines.

Any coating line in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.

L. Miscellaneous metal parts and products coating application systems.

1. Any coating application system in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour.
2. Any vehicle customizing coating operation, if production is less than 20 vehicles per day.
3. Any vehicle refinishing operation.
4. Any aircraft or marine vessel exterior coating operation.

M. Flatwood paneling coating application systems.

Any coating application system in a plant with an uncontrolled emission rate of not more than 7 tons per year, 40 pounds per day and 8 pounds per hour, if the system is used on one of the following paneling types:

1. Printed interior panels made of hardwood plywood and thin particleboard.
2. Natural finish hardwood plywood panels.
3. Class II hardwood paneling finishes.

N. Graphic art (printing processes).

Any coating application system in a plant which has the potential to emit less than 100 tons per year, if the plant is engaged in flexographic, packaging or publication rotogravure printing.

O. Petroleum liquid storage and transfer operations.

Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of § 120-08-01 when used or stored at

ambient temperatures); and any operation specified below:

1. Gasoline bulk loading - bulk terminal. Any operation outside volatile organic compound emissions control areas designated in Appendix P.

2. Gasoline dispensing facilities - transfer of gasoline - Stage I.

a. Any tank of 2,000 gallons or less storage capacity.

b. Any facility with an expected monthly throughput of less than 20,000 gallons.

c. Any operation outside volatile organic compound emissions control areas designated in Appendix P or inside rural volatile organic compound emissions control areas designated in Appendix P.

3. Bulk plants - gasoline bulk loading.

a. Any facility with an expected daily throughput of less than 4,000 gallons.

b. Any operation outside volatile organic compound emissions control areas designated in Appendix P or inside rural volatile organic compound emissions control areas designated in Appendix P.

4. Account/tank trucks. No permit is required for account/tank trucks, but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

5. Petroleum liquid storage.

a. Any tank of 40,000 gallons or less storage capacity.

b. Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed and/or treated at a drilling and production facility prior to custody transfer.

c. Any tank storing waxy, heavy pour crude oil.

III. New sources with no exemptions.

Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of § 120-08-01 as they pertain to construction, reconstruction or relocation.

A. 1. Petroleum Refinery Operations

B. 2. Asphalt Plants

C. 3. Chemical Fertilizer Manufacturing Operations

D. 4. Kraft Pulp Mills

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- ~~E~~. 5. Sand and Gravel Processing Operations
- ~~F~~. 6. Coal Preparation Plants
- ~~G~~. 7. Stone Quarrying and Processing Operations
- ~~H~~. 8. Portland Cement Plants
- ~~I~~. 9. Wood Product Manufacturing Operations
- ~~J~~. 10. Secondary Metal Operations
- ~~K~~. 11. Lightweight Aggregate Process Operations
- ~~L~~. 12. Feed Manufacturing Operations
- ~~M~~. 13. Incinerators
- ~~N~~. 14. Coke Ovens
- ~~O~~. 15. Sulfuric Acid Production Units
- ~~P~~. 16. Sulfur Recovery Operations
- ~~Q~~. 17. Primary Metal Operations
- ~~R~~. 18. Nitric Acid Production Units
- ~~S~~. 19. Concrete Batching Plants
- ~~T~~. 20. Pharmaceutical Products Manufacturing Operations
- ~~U~~. 21. Rubber Tire Manufacturing Operations
- ~~V~~. 22. Dry Cleaning Systems

IV. New source exemption levels by emission rate.

Facilities not covered by Section II or III of this appendix shall be exempt as specified below.

A. Facilities with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of § 120-08-01 pertaining to construction, reconstruction or relocation.

SIGNIFICANT EMISSION RATES

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 10 tons per year.

Sulfur dioxide - 10 tons per year.

Particulate matter - 1 ton per year.

Volatile organic compounds - 7 tons per year.

Lead - 0.6 ton per year.

B. Where a source is constructed in increments which individually are not subject to approval under this section and which are not part of a program of construction in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.

V. Modified source exemption levels by emission rate.

A. Facilities with increases in uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of § 120-08-01 pertaining to modification.

SIGNIFICANT EMISSION RATES

Carbon monoxide - 100 tons per year.

Nitrogen dioxide - 10 tons per year.

Sulfur dioxide - 10 tons per year.

Particulate matter - 1 ton per year.

Volatile organic compounds - 7 tons per year.

Lead - 0.6 ton per year.

B. Where a source is modified in increments which individually are not subject to approval under this section and which are not part of a program of modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.

VI. New source performance standards and national emission standards for hazardous air pollutants.

Regardless of the provisions of Sections II, IV and V of this appendix, affected facilities subject to Rule 5-5 or subject to Rule 6-1 shall not be exempt from the provisions of § 120-08-01.

VII. Relocation of portable facilities.

Regardless of the provisions of Sections II, III, IV, V and VI of this appendix, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under Part VIII provided that:

~~A~~. 1. The emissions of the unit at the new location would be temporary;

~~B~~. 2. The emissions from the unit would not exceed its allowable emissions;

~~C~~. 3. The unit would not undergo modification or reconstruction;

~~D~~. 4. The unit is suitable to the area in which it is to

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be located; and

E. 5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

$$TLV-TWA^{\circ} (mg/m^3) \times 0.066$$

$$Exempt\ Emission\ Rate(tons\ per\ year) =$$

$$TLV-TWA^{\circ} (mg/m^3) \times 0.145$$

D. Exemption from the provisions of this rule for any stationary source or operation not part of a stationary source which has a potential to emit any toxic pollutant without a TLV^o shall be determined by the board using available health effects information.

VIII. Requirements for exempted fuel burning equipment.

Fuel burning equipment units exempted from the provisions of § 120-08-01 by Section II A of this appendix shall be subject to the provisions of Rule 4-8 unless exempted by § 120-04-0801 of Rule 4-8.

E. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in § 120-05-0305.

IX. Exemption levels for ~~Non-Criteria~~ toxic pollutants.

A. Facilities with uncontrolled emission rates a potential to emit a pollutant equal to or less than the significant emission rates specified below for the applicable TLV^o the exempt emission rate calculated using the following exemption formulas for the applicable TLV^o shall be exempt from the requirements of § 120-08-01 pertaining to construction, modification, reconstruction or relocation. If more than one exemption formula applies to a pollutant, the potential to emit that pollutant shall be equal to or less than each applicable exemption formula in order for the pollutant to be exempt. The exemption formulas apply on an individual basis to each pollutant for which a TLV^o has been established.

B. Facilities with increases in uncontrolled emission rates less than the significant emission rates specified below for the applicable TLV^o shall be exempt from the requirements of § 120-08-01 pertaining to modification.

SIGNIFICANT EMISSION RATES

TLV ^o (mg/m ³)	Range	Emission Rates (pounds/hour)
less than 1		0
1-2		0-13
3-5		0-76
6-12		1-62
13-25		3-29
26-50		6-58
51-250		12-90
251-500		63-51
501 or greater		126-77

A. For pollutants with a TLV-C^o, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$Exempt\ Emission\ Rate\ (pounds\ per\ hour) =$$

$$TLV-C\ (mg/m^3) \times 0.033$$

B. For pollutants with both a TLV-STEL^o and a TLV-TWA^o, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$Exempt\ Emission\ Rate\ (pounds\ per\ hour) =$$

$$TLV-STEL^{\circ} (mg/m^3) \times 0.033$$

$$Exempt\ Emission\ Rate\ (tons\ per\ year) =$$

$$TLV-TWA^{\circ} (mg/m^3) \times 0.145$$

C. For pollutants with only a TLV-TWA^o, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$Exempt\ Emission\ Rate(pounds\ per\ hour) =$$

C. Where a source is constructed or modified in increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section.

AUCTIONEERS BOARD

Title of Regulation: VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-602 of the Code of Virginia.

Public Hearing Date: December 11, 1990 - 10 a.m.

Proposed Regulations

(See Calendar of Events section for additional information)

Summary:

The proposed regulations apply to approximately 1,285 registered/certified auctioneers and approximately 165 auction firms in Virginia. The only substantive changes in the regulations are proposed increases in registration, certification, renewal, and reinstatement fees in order to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia.

VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board.

PART I. GENERAL.

§ 1.1. Board of Auctioneers.

A. Officers.

The board shall elect the following officers for a term of one year beginning July 1 and ending June 30:

Chairman

Vice-Chairman

B. Terms of chairman.

No board member shall serve more than two consecutive terms as chairman.

C. Committees.

The board may establish from its membership committees to conduct business for specific purposes.

D. Quorum.

Three members of the board shall constitute a quorum for the purpose of transaction of official business.

PART II. ENTRY REQUIREMENTS.

§ 2.1. Registration.

All persons or firms as defined in § ~~54-824-2~~ 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in this Commonwealth are required to file a registration application and pay the specified fee to the board. Applicants shall be at least 18 years of age.

A. Notarized information required.

Information necessary to obtain registration shall

include, but not be limited to the following:

1. Name of individual or firm;
2. Name and address where the business is located or home address if individual;
3. Any trading as name;
4. Type of legal entity;
5. Name of owner;
6. Statement that the applicant has read the statutes and regulations governing auctioneers;
7. Statement of no criminal convictions related to past auction activity;
8. Number of auctioneers employed in the firm.

B. Bond required.

All applicants shall submit evidence that a surety bond in at least the amount of \$10,000 has been obtained.

C. Fees.

The application fee for *individual* registration shall be established by the board pursuant to § ~~54-1-28-1~~ \$100. The firm registration fee shall be \$125.

D. Renewal registration fee.

Individual registrations issued under these regulations shall be issued for a two-year period and shall expire on September 30 of each even-numbered year. Each registration holder shall be required to renew the registration by submitting a fee established by the board pursuant to § ~~54-1-28-1~~ of \$110, made payable to the Treasurer of Virginia, to the Director of the Department of Commerce. The renewal fee is to be paid before the expiration date shown on the last valid registration. At least 45 days prior to the date of expiration, a renewal notice shall be mailed to each registration holder reminding him of the amount due and the method for renewing the registration. Failure to receive written notice from the Director of the Department of Commerce does not relieve the registration holder from the requirement to renew the registration.

E. If the *individual* registration holder fails to renew the registration within 30 days after the expiration date, a late renewal fee of twice the renewal fee \$110 shall be assessed at the time of reregistration.

F. If the registration holder fails to renew the *individual* registration within six months following the expiration date of the last valid registration, he shall be required to apply for reinstatement. The applicant shall be required to present reasons for reinstatement and the board may grant

Proposed Regulations

reinstatement of the registration in conformity with existing regulations. The application fee for reinstatement shall be an amount equal to twice the renewal fee \$220 .

G. Firm renewal fee.

Firm registrations issued under these regulations shall be issued for a two-year period and shall expire on September 30 of each even-numbered year. Each firm shall be required to renew by submitting a fee of \$135, made payable to the Treasurer of Virginia, to the Director of the Department of Commerce. The renewal fee is to be paid before the expiration date shown on the last valid registration. At least 45 days prior to the date of expiration, a renewal notice shall be mailed to each firm reminding them of the amount due and the method for renewing the registration. Failure to receive written notice from the Director of the Department of Commerce does not relieve the holder from the requirement to renew the firm registration.

H. If the firm registration holder fails to renew the registration within 30 days after the expiration date, a late renewal fee of \$135 shall be assessed at the time of reregistration.

I. If the holder fails to renew the firm registration within six months following the expiration date of the last valid registration, they shall be required to apply for reinstatement. The applicant shall be required to present reasons for reinstatement and the board may grant reinstatement of the firm registration in conformity with existing regulations. The application fee for firm reinstatement shall be \$300.

E. J. Change of address.

Written notice shall be given within 30 days to the board by each registrant of any change of principal business location, whereupon the board shall issue an amended registration without fee for the unexpired portion of the biennial period.

PART III. STANDARDS OF PRACTICE.

§ 3.1. Advertising.

All advertising must be truthful and contain no false or misleading statements with respect to types or conditions of goods offered at auction, or the terms and conditions of sale. In all advertisements relating to an auction, the auctioneer's name and registration number (V.A.A.R.), or the auction firm's name and registration number (V.A.A.F.), shall be clearly given.

In all advertising media, the designation "Certified Virginia Auctioneer" shall be used only with an individual's name. If conducting business as an auction firm, or under a trading-as name, the designation shall be used only when the firm or trading-as name precedes the

name and designation of the certified individual. The designation "Certified Virginia Auctioneer" shall not be abbreviated in any advertisement.

§ 3.2. Contracts.

When an auctioneer agrees to conduct an auction, a contract shall be drawn setting forth particulars for the disbursement of the proceeds and the terms and conditions under which the auctioneer received the goods for sale.

A. A list of the type of goods received for sale shall be made a part of the contract.

B. Each contract shall include above the signature line: "I have read and accepted the terms of this contract."

C. Each contract shall include the name, address, telephone number and registration number of the auctioneer.

D. The seller shall be given a legible executed copy of the contract at the time of signature.

§ 3.3. Conduct of auctions.

No auctioneer shall attempt to escalate bidding through false bids, or through collusion with another (shills). Unless notice has been given that liberty for such bidding is reserved, the auctioneer shall not bid on the sellers behalf; nor shall he knowingly accept a bid made by the seller or made on the sellers behalf.

§ 3.4. Display of registration.

Auctioneers shall carry their pocket cards on their person and shall produce them on request; auction houses shall display their registration in conspicuous locations.

§ 3.5. Documentation.

Upon completion of the auctioneer's services each seller shall be given legible copies of bills of sale, clerk sheets/consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

§ 3.6. Escrow funds.

Proceeds of a personal property auction not disbursed to the seller on auction day shall be deposited in an Auction Escrow Account by the auctioneer no later than the next banking day. Auctioneers shall use federally insured depositories in this Commonwealth. Proceeds due shall be disbursed to the seller not to exceed 30 days after completion of the auctioneer's services. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

In the event the sellers' goods are not sold in a single auction, proceeds due shall be disbursed to the seller

Proposed Regulations

within 30 days after each auction in which a portion of the sellers goods have been sold and shall be accompanied by a listing of the goods remaining to be sold and their scheduled auction dates.

The Auction Escrow Account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement; escrow funds for any other purposes shall not be commingled with the Auction Escrow Account. The presence of contingency funds in this account to guarantee checks accepted on the sellers behalf shall not be considered commingling of funds.

Moneys due the auctioneer shall not be drawn from the Auction Escrow Account until final settlement is made with the seller.

§ 3.7. Records.

The following business records shall be retained for a period of four years from the date of settlement:

The contract drawn with each seller, auction records including but not limited to lists of buyers and their addresses, clerk sheets which show the items sold together with the buyers number or name and the selling price and final settlement papers. Such records shall be available for inspection by the board or its designated agent as deemed appropriate and necessary.

§ 3.8. Use of designation - Certified Virginia Auctioneer.

No person may hold himself out to the public as a Certified Virginia Auctioneer until regulations pertaining to such certification have been promulgated by the board and such person has been certified under those regulations.

§ 3.9. Revocation, suspension, failure to renew.

The board may suspend, revoke or not renew a registration or certificate for auctioneers or impose fines and hearing costs on registrants for the following causes:

1. Failure to pay the seller for goods sold at auction;
2. Permitting a nonregistered individual to call bids at their auction; or calling bids for an unregistered person engaging (engaged) in an auction business;
3. Conviction in a court of this Commonwealth or of any state of a criminal offense directly relating to the auction business.
4. Violation of any of these regulations or of the provisions of Chapters 1, ~~1-1~~, 2, 3, and ~~20-1~~, 6 of Title 54, 54.1 of the Code of Virginia.

§ 3.10. Allowing nonregistered bid callers exception.

The only circumstances in which a nonregistered bid caller is permissible in the Commonwealth of Virginia

shall be in the case of a person enrolled in a class at an approved school of auctioneering in the Commonwealth and who for the purpose of training and receiving instruction may call bids under the direct supervision of a Certified Virginia Auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student involved in bid calling.

PART IV. CERTIFICATION.

§ 4.1. Qualifications for certification.

Those registered individuals who desire to be designated CERTIFIED VIRGINIA AUCTIONEERS, unless exempt under § ~~54-824.17(ii)~~ § 54.1-604 C(ii) of the Code of Virginia, shall have the following qualifications:

A. The applicant shall not have been convicted within the past five years of a criminal offense related to auction activity in Virginia or any other jurisdiction.

B. The applicant shall not have had a registration, certificate or license as an auctioneer revoked within the past five years in Virginia or any other jurisdiction.

C. The applicant shall meet one of the experience levels set forth below:

1. Have conducted at least 25 auctions within the past eight years at which the applicant has cried the bids; or
2. Have, in lieu of the above, successfully completed a course of study at a school of auctioneering which has obtained course approval from the board, or an equivalent course, and have conducted at least 12 auctions within the past eight years at which the applicant cried the bids.

D. The applicant shall take and pass a written examination offered by the board unless exempt as set forth below:

Those applicants who have been practicing auctioneers for at least two years under a Virginia revenue license and make application prior to January 1, 1987, shall be exempt from the examination.

§ 4.2. Application.

Applicants shall submit an application either for examination and certification, or for certification, as applicable, and shall pay the proper fees to the board.

A. Notarized information required. Information necessary to obtain certification shall include, but not be limited to the following:

1. Name and registration number of the individual.

Proposed Regulations

2. Address of the individual as appearing on the applicant's registration.

3. Statement of no criminal conviction related to auction activity within the past five years.

4. Statement of no revocation of registration, certificate or license within the past five years.

5. Statement of experience level.

6. Statement, when applicable, of exemption from examination.

B. Attachments required. Attachments to the application shall include, as applicable, copies of satisfactory auction school completion, newspaper advertisements, hand bills, direct mail advertising, brochures, catalogs, contracts with settlement papers, or notarized statements from clients making evident the applicant meets the required experience level.

Applicants exempt from examination under subsection D of § 4.1 shall, in addition to providing attachments required by this subsection, attach copies of their state revenue licenses or checks therefor.

§ 4.3. Examination.

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principals or real estate, brokerage, contract drawing, agency, advertising, auction, bid calling, arithmetic and percentages, settlement statements, ethics; and

2. The Virginia statutes entitled Auctioneers' Registration and Certification Act, §§ 54-824.1 through 54-824.21 of the Code of Virginia; bulk transfers, §§ 8.6-101 through 8.6-111 and § 8.2-328 of the Code of Virginia, and the rules and regulations of the board.

§ 4.4. Certification through reciprocity.

Applicants shall submit an application for certification and pay the proper fee to the board.

A. Notarized information required.

Information necessary to obtain certification shall include, but not be limited to the following:

1. Name and registration number of the individual.

2. Address of the individual as appearing on the applicant's registration.

B. Attachment required.

A copy of the applicant's valid auctioneer license or certification shall be attached to the application.

§ 4.5. Fees.

All fees are nontransferable or nonrefundable.

A. The fee, good for one year for examination, shall be ~~\$50~~ \$70 and submitted with the application.

B. The fee, good for one year for reexamination, shall be \$50 and submitted with the application.

C. The fee for certification shall be ~~\$75~~ \$100 and submitted upon notice of passing the examination or with the application if exempt from examination.

§ 4.6. Duration of certification.

Certification on an individual shall remain in effect so long as the registration of such auctioneer has not been revoked, suspended or allowed to expire without renewal.

§ 4.7. Schools of auctioneering.

A. Application for course approval.

Schools seeking approval of their courses shall file a request with the board. The request shall include the following information:

1. Name and address of the school.

2. Locations where classes will be held.

3. Length of the course and total number of hours of instruction.

4. Subjects covered together with number of instruction hours assigned.

5. Names and qualifications of instructors (areas of expertise and experience).

B. Requirements for course approval.

To receive course approval the institution must offer a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements and ethics. There must be at least five instructors who have been licensed/certified auctioneers for at least five years and who specialize in different fields of the auction business.

BOARD FOR COSMETOLOGY

Title of Regulation: VR 235-01-02. Board for Cosmetology Regulations.

Proposed Regulations

Statutory Authority: § 54.1-201 5 and Chapter 12 (§ 54.1-1200 et seq.) of the Code of Virginia.

Public Hearing Date: N/A - Written comments may be submitted until January 18, 1991.

(See Calendar of Events section for additional information)

Summary:

The proposed amendments to these regulations apply directly to approximately 95 licensed cosmetology schools, 1,015 certified cosmetology instructors, 5,240 licensed cosmetology salons, and 34,374 licensed cosmetologists.

The proposed amendments apply to fee adjustments.

It is anticipated that the impact to the regulated industry will be minimal since the fee increases range from a minimum of \$5.00 per fee to the maximum of \$25 per fee.

VR 235-01-02. Board for Cosmetology Regulations.

PART I. ENTRY.

§ 1.1. Individual license.

Upon filing an application with the Board for Cosmetology on forms approved by the board, and paying the license fee, any person meeting the qualifications set by the board shall be granted a license if the applicant has amply demonstrated that:

1. The applicant has received training as defined in Part III of these regulations.
2. The applicant has qualified for licensure either by passing the required examination or by endorsement.
3. The applicant's license as a cosmetologist has not been previously revoked or suspended.

The fee for license by endorsement shall be ~~\$20~~ \$30 .

§ 1.2. Acceptable training.

A. Schools.

Any person completing a training program in a licensed cosmetology school or a Virginia public school's cosmetology program shall be eligible for examination.

B. Apprenticeship training.

Any person completing the Virginia apprenticeship program in cosmetology shall be eligible for examination.

Cosmetology salons training apprentices shall comply

with the standards established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry for Apprenticeship Training.

§ 1.3. Exceptions to training requirements shown in § 1.2.

A. A licensed barber enrolling in a cosmetology training school shall be given credit for 50% of the training required for a barber's license.

B. A student shall be given educational credit for 50% of the training received in a barber school when transferring to a cosmetology school.

C. Persons with two years of cosmetology training or experience outside the territorial limits of the United States shall be eligible for examination upon submission of satisfactory documentary evidence of the training or experience.

§ 1.4. Examinations required.

A. Examinations generally.

Applicants for licensure shall pass a practical and written examination provided by the board or by a testing service acting on behalf of the board.

B. Any applicant passing one part of the examination shall not be required to take that part again provided both parts are passed within one year.

C. The fee for taking the entire examination shall be \$60.

D. The fee for retaking the written portion of the examination shall be \$20.

E. The fee for retaking the practical portion of the examination shall be \$40.

F. Failure to appear.

Any candidate failing to appear as scheduled for examination shall forfeit the fee, and shall be required to pay a rescheduling fee equal to the original examination fee.

§ 1.5. Administration of examination.

A. The examination shall be administered by examiners independent from the board and shall be supervised by a chief examiner.

B. Every examiner shall be a practicing cosmetologist who has completed the prescribed cosmetology training and who has three or more years of active experience as a cosmetologist, and who holds a current cosmetology license.

C. No certified instructor who is currently teaching or

who is a school owner shall be an examiner.

D. A chief examiner shall be a practicing cosmetologist who has completed the prescribed cosmetology training and who has five or more years of active experience as a licensed cosmetologist, and who has three years of active experience as an examiner, and who holds a cosmetology license.

§ 1.6. License/certification by endorsement.

Upon proper application to the board, on prescribed forms, any person currently licensed to practice as a cosmetologist in any other state or jurisdiction of the United States may be issued a cosmetology license without an examination.

§ 1.7. Temporary permit.

A. A temporary permit to work as a cosmetologist under the supervision of a currently licensed cosmetologist may be issued to any person found eligible by the board for examination.

B. The temporary permit shall remain in force for 30 days following the next scheduled examination for which the applicant would be eligible to sit.

C. A licensed cosmetologist or person holding a temporary permit may be granted a student instructor permit to function under the direct supervision of a certified instructor. The student instructor permit shall remain in force for no more than 12 months after the date of issuance and shall be nonrenewable. Failure to maintain a cosmetology license or a temporary permit pending examination shall disqualify an individual from holding a student instructor permit.

D. All temporary permits are nonrenewable.

§ 1.8. Salon license.

A. Any individual wishing to operate a cosmetology salon shall obtain a license in compliance with § 54.1-1205 of the Code of Virginia.

B. A cosmetology salon license shall not be transferable and shall bear the same name and address as the business. Any changes in the name of the salon, address, or owners shall be reported to the board in writing within 30 days of such changes.

C. The application fee for a salon shall be ~~\$75~~ \$100 .

PART II. RENEWAL OF LICENSE/CERTIFICATE.

§ 2.1. Renewal required.

A. All cosmetology licenses, instructor certificates, and salon licenses shall expire two years from the last day of

the month in which they were issued.

B. All certified cosmetology instructors shall have until September 1, 1989, to renew their instructor certificate. The instructor certificate will expire two years from the last day of the month in which issued. Individuals failing to renew the certificate by September 1, 1989, shall apply for reinstatement of the certificate in accordance with § 2.3.

C. Cosmetology school licenses shall expire on December 31 of each even numbered year.

D. The renewal fee for a cosmetology license shall be ~~\$35~~ \$40 , for an instructor certificate shall be \$40, for a salon license shall be ~~\$60~~ \$85 , and for a school license shall be ~~\$100~~ \$120 .

§ 2.2. Notice of renewal.

The Department of Commerce will mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the old license may be submitted as evidence of intent to renew, along with the required fee.

§ 2.3. Failure to renew.

A. When a licensed/certified individual or entity fails to renew the license within 30 days following its expiration date, an additional fee of ~~\$35~~ \$40 for a cosmetology license, of \$40 for a teachers certificate, of ~~\$60~~ \$85 for the salon license, and of ~~\$100~~ \$120 for the school license will be required in addition to the regular renewal fee in order to renew his license.

B. When a licensed/certified individual or entity fails to renew his license within six months following its expiration date, the licensee must apply for reinstatement of the license by submitting to the Department of Commerce a reinstatement application and reinstatement fee of ~~\$160~~ \$150 for a cosmetology license, of \$180 for an instructor certificate, of \$250 for a salon license, and \$300 for a school license with a statement of the reasons for failing to renew prior to the expiration date.

C. Upon receipt of the reinstatement application and fee the board may reinstate the license/certificate or require requalification, reexamination, or both.

D. When an individual licensee fails to renew his license after a two-year period of time the licensee must pass both a practical and a written examination in order to be reinstated.

E. The date a renewal fee is received by the Department of Commerce, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a license is applicable.

Proposed Regulations

F. Fees.

All fees are nonrefundable.

§ 2.4. Board discretion to deny renewal.

The board, in its discretion, may deny renewal of a license upon such denial, the application for renewal may request that a hearing be held.

PART III. COSMETOLOGY SCHOOLS.

§ 3.1. General requirements.

A cosmetology school shall:

1. Hold a school license for each and every location;
2. Hold a salon license if the school receives compensation for services provided in its clinic;
3. Employ a staff of certified cosmetology instructors;
4. Develop individuals for entry level of competency in cosmetology.

The application fee for a cosmetology school license shall be ~~\$100~~ \$125 .

§ 3.2. To obtain a certificate as a cosmetology instructor, a person shall:

1. Hold a current Virginia cosmetology license;
2. Pass a course in teaching techniques approved by the State Board of Education; or

Complete an instructor training course approved by the Board for Cosmetology under the supervision of a certified cosmetology instructor in a beauty school and a seminar approved by the Board for Cosmetology; or

Pass an examination in cosmetology instruction administered by the board.

§ 3.3. Curriculum requirements.

Each school shall submit with its application a detailed course outline, to be taught, which shall include the following:

A. Orientation:

- School policies
- State law, regulations, and professional ethics
- Personal hygiene
- Bacteriology, sterilization, and sanitation

B. Manicuring and pedicuring:

Anatomy and physiology

Diseases and disorders

Procedures to include both natural and artificial application

Sterilization

C. Shampooing and rinsing:

Fundamentals

Safety rules

Procedures

Chemistry, anatomy, and physiology

D. Scalp treatments:

Analysis

Disorders and diseases

Manipulations

Treatments

E. Hair styling:

Anatomy and facial shapes

Finger waving, molding, and pin curling

Roller curling, combing, and brushing

Heat curling, waving, and pressing

F. Hair cutting:

Anatomy and physiology

Fundamentals, materials, and equipment

Procedures

Safety practices

G. Permanent waving-chemical relaxing:

Analysis

Supplies and equipment

Procedures and practical application

Chemistry

Proposed Regulations

Record keeping	Bleaching and frosting	10
Safety	Temporary rinses	10
H. Hair coloring and bleaching:	Semi-permanent color	10
Analysis and basic color theory	Cold permanent waving or chemical relaxing	25
Supplies and equipment	Hair shaping	50
Procedures and practical application	Wig care, styling, placing on model	5
Chemistry and classifications	Finger waving and thermal waving	30
Record keeping	Manicuring	10
Safety	Facials	5
I. Skin care and make up:	Total	500
Analysis		
Anatomy		
Health, safety, and sanitary rules		
Procedures		
Chemistry and light therapy		
Temporary removal of hair		
Lash and brow tinting		
J. Wigs, hair pieces, and related theory:		
Sanitation and sterilization		
Types		
Procedures		
K. Salon management:		
Business ethics		
Care of equipment		

§ 3.4. Performance completions.

Each approved school or approved apprenticeship sponsor shall certify, on a form provided by the board, that the student or apprentice has satisfactorily completed the following minimum performances.

Hair and scalp treatments		10
Shampooing and hair styling		320
Tinting		15

§ 3.5. Performances and hours reported.

Upon completion of 25%, 50%, and 75% of performances or hours completed by a student in a licensed school, the school shall provide an individualized written report to the student of performances and hours completed. Upon termination of a student from a licensed school, for any reason, the school shall provide a written report to the board on performances and hours within 30 days from the date of termination.

§ 3.6. Each cosmetology school shall maintain written records of hours and performances completed for each student for a period of five years after the student terminates or completes the curriculum.

§ 3.7. Hours and performances required, exception:

Curriculum and completion requirements shall be offered over a minimum of 1500 clock hours unless the school presents evidence satisfactory to the board that the school:

1. Will measure for competency, for each student enrolled, tasks specified in subsections C through J of § 3.3 of these regulations;
2. Inform each student of progress in achieving competency of tasks taught; and
3. Record the number of clock hours of instructions and performances of each student.

**PART IV.
STANDARDS OF PRACTICE.**

§ 4.1. Display of license, permit, and certificate.

All current licenses, permits, and certificates issued by the board shall be visibly displayed in the school or

Proposed Regulations

establishment where business is conducted.

§ 4.2. Sanitation.

Licensees of schools and salons shall comply with the following sanitation standards and shall ensure that all employees likewise comply:

1. Premises and equipment.

a. Cleanliness. Wash basins and sinks shall be clean. Floors shall be kept free of hair and other waste materials. Combs, brushes, towels, razors, clippers, scissors, and other instruments shall be cleaned after every use and stored free from contamination.

b. Soiled towels and robes or smocks shall be stored in a closed container.

2. Operation and service.

a. Towels and robes. Clean towels and robes shall be used for each patron.

b. Haircloth. When a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin.

c. Brushes, combs, scissors, razors, clippers, and all sharp-edged cutting instruments shall be washed and sanitized after each use.

d. Permanent wave rods shall be rinsed after each use and end papers shall not be reused.

§ 4.3. Discipline.

The board has the power to fine any licensee or certificate holder or to suspend or revoke any license or certificate issued under the provisions of Chapter 12 of Title 54.1 of the Code of Virginia and the regulations of the board, at any time after a hearing is conducted pursuant to the provisions of Chapter 1.1:1 of Title 9 of the Code of Virginia if the board finds that:

1. The licensee or certificate holder is incompetent or negligent in practice or incapable mentally or physically to practice as a cosmetologist; or

2. The licensee or certificate holder is guilty of fraud or deceit in the practice or teaching of cosmetology; or

3. The owner or operator of a school or salon allowed a person to practice or teach cosmetology without the person obtaining a license, temporary permit, or certificate issued by the board. Exception: Holders of associate degrees or higher shall not be prohibited from teaching theory.

4. The licensee, certificate holder, or owner violates, induces others to violate, or cooperates with others in violating any of the provisions of Chapters 3 and 12 of Title 54.1 of the Code of Virginia, or these regulations.

5. The licensee, certificate holder, or owner refuses or fails, upon request or demand, to produce to the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, or owner's possession concerning the practice or teaching of cosmetology.

Revised 3-89

Certificate No. _____
Date _____
For office use only

APPLICATION FOR CERTIFICATE FOR
COSMETOLOGY INSTRUCTOR

Section III

NO FEE

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Cosmetology
Post Office Box 11066
Richmond, Virginia 23230-1066
Section I

NO FEE

(To Be Executed By all Applicants) Have this AFFIDAVIT completed by a Notary Public

State of _____

County or City of _____

The undersigned applicant, being duly sworn deposes and says that they are the person who executed this application, that the statements herein contained are true, that they have not suppressed any information that might affect this application, and that they have read and understand this affidavit.

Applicant's Last Name (Place one letter in each block)

Grid for last name: 26 boxes

Phone No. _____

First Name

Grid for first name: 18 boxes

Middle Name

Grid for middle name: 16 boxes

Street Address

Grid for street address: 38 boxes

City

Grid for city: 26 boxes

State

Grid for state: 2 boxes

Zip Code

Grid for zip code: 5 boxes

Date of Birth:

Grid for date of birth: 6 boxes

Social Security No.

Grid for social security number: 9 boxes

FOR OFFICE USE ONLY

Approved for CERTIFICATE _____

Section II

- Must hold a current Virginia Cosmetology license, number _____, and
- Must have completed one of the following: (Section 3.2 of the Regulations)
 - () Pass a course in teaching techniques approved by the Department of Education. (Attach certification)
 - () Complete an instructor training course approved by the Virginia Board for Cosmetology under the direct supervision of a certified cosmetology instructor in a beauty school and a seminar approved by the Virginia Board for Cosmetology.

Name of School attended: _____

Name of course: _____

Dates of attendance: From _____ To _____

- Attach copy of seminar certificate
- Attach written evaluation by instructor.

Signature of Applicant _____

Signature of Notary Public _____

Subscribed and sworn to before me this _____ day of _____, 19____

My commission expires: _____

APR 11 1989
MAY 11 1989

(No Fee Required)

DEPARTMENT OF COMMERCE
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230
(804)367-8567

APPLICATION FORM
FOR COSMETOLOGY INSTRUCTOR TEMPORARY PERMIT

- 1. SOCIAL SECURITY NO.
- 2. BIRTH DATE
- 3. PRINT FULL NAME
Last
First
Middle
- 4. RESIDENCE MAILING ADDRESS
Street
City
State Zip Code
- 5. TELEPHONE
Area Code Number

Complete applicable section:

- 1. Virginia Cosmetology License # _____
- 2. Date scheduled for examination _____ and expiration date of temporary permit _____

(*Note: Failure to maintain a cosmetology license or temporary permit shall disqualify an individual from holding a student instructor permit).

Have the affidavit completed by a notary public.

(To be executed by all applicants)

County or City of _____

The undersigned applicant, being duly sworn, deposes and says that s/he is the person who executed this application, that the statements herein contained are true, that s/he has not suppressed any information that might affect this application, and that s/he has read and understood this affidavit.

Applicant's Signature _____ Notary Public Signature _____

Subscribed and sworn to before me this _____ day of _____, 19____
My commission expires: _____

APPLICATION CONTINUED ON REVERSE PAGE

TEMPORARY INSTRUCTOR PERMIT SPONSORSHIP
VIRGINIA COSMETOLOGY

I, the undersigned, agree to supervise all activities related to the instruction of cosmetology for the above named individual and am responsible for the actions of the applicant in this regard.

Sponsor's signature _____ Date _____

Sponsor's Virginia Cosmetology License #

Sponsor's Virginia Cosmetology Instructor Certificate #

Revised 03-89

Certificate No. _____
Date _____
For office use only

FEE: \$75.00
(Make check or money
order payable to the
Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Cosmetology
Post Office Box 11066
Richmond, Virginia 23230-1066

FEE: \$75.00

Section 1.8. Salon license.

- A. Any individual wishing to operate a cosmetology salon shall obtain a license in compliance with Section 54.1-1205 of the Code of Virginia.
- B. A cosmetology salon license shall not be transferable and shall bear the same name and address as the business. Any changes in the name of the salon, address, or owners shall be reported to the board in writing within 30 days of such changes.
- C. The application fee for a salon shall be \$75.

APPLICATION FOR LICENSE TO OPERATE A COSMETOLOGY SALON

NAME OF SALON: _____ PHONE NO. _____

ADDRESS OF SALON: _____
Street and Number City County Zip Code

OWNER'S NAME: _____
Last Name First Name Middle

OWNER'S MAILING ADDRESS: _____
Street and Number City County Zip Code

NOTE: DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED.
ALL FEES ARE NONREFUNDABLE.

AFFIDAVIT OF INSPECTION
(If required by Local Ordinance)

This is to certify _____ cosmetology salon

(Address)

has been inspected and found to comply with the regulations of the Local and/or State Health Department(s).

State and/or Local Health Department _____ Signature of Inspector _____

AFFIDAVIT

I do hereby certify that the information given by me in this application is true to the best of my knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 19 _____

Signature of Applicant _____ Signature of Notary Public _____

My commission expires: _____

RECEIVED
MAY 13 1989

Revised 03-89

APPLICATION FOR: () Competency Based Program () Hours Program

Certificate No. _____ Date _____ For office use only

FEES: \$100.00 (Make check or money order payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA DEPARTMENT OF COMMERCE Board for Cosmetology Post Office Box 11066 Richmond, Virginia 23230-1066

FEE: \$100.00

APPLICATION FOR LICENSE TO OPERATE A COSMETOLOGY SCHOOL

NAME OF SALON: _____ PHONE NO. _____

ADDRESS OF SALON: _____ Street and Number City County Zip Code

OWNER'S NAME: _____ Last Name First Name Middle

OWNER'S MAILING ADDRESS: _____ Street and Number City County Zip Code

NOTE: DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED. ALL FEES ARE NONREFUNDABLE.

AFFIDAVIT OF INSPECTION (If required by Local Ordinance)

This is to certify _____ cosmetology salon (Address)

has been inspected and found to comply with the regulations of the Local and/or State Health Department(s).

State and/or Local Health Department _____ Signature of Inspector _____

AFFIDAVIT

I do hereby certify that the information given by me in this application is true to the best of my knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 19 _____

Signature of Applicant _____ Signature of Notary Public _____

My commission expires: _____

DO NOT WRITE BELOW THIS LINE

Approved for COMPETENCY BASED PROGRAM _____

Approved for HOURS PROGRAM _____

All schools and programs must be approved by the Board.

HOURS PROGRAM

Section 3.3. Curriculum requirements - Each school shall submit with its application a detailed course outline-refer to pages 6-8 of regulations.

COMPETENCY BASED PROGRAM

Section 3.7. Hours and performances required, exception:

Curriculum and completion requirements shall be offered over a minimum of 1500 clock hours unless the school presents evidence satisfactory to the Board that the school:

- 1. Will measure for competency, for each student enrolled, tasks specified in subsections C through J of Section 3.3. of these regulations; and
2. Inform each student of progress in achieving competency of tasks taught; and
3. Record the number of clock hours of instruction and performances of each student.

If your school is seeking approval to offer a Competency Based curriculum you must submit evidence of compliance with the above regulations. This make take the form of:

- 1. Identify the competencies a worker on the job must have.
2. Students informed prior to instruction, of the competencies or tasks they are expected to master.
3. The tests used to evaluate performance be to job standards.
4. A system exists for documenting each student's performance on each task.

Handwritten notary stamp

Proposed Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: State Plan for Medical Assistance Relating to Spousal Impoverishment.
VR 460-02-2.6100. Eligibility Conditions and Requirements.
VR 460-03-2.6113. § 1924 Provisions.
VR 460-04-8.6. Spousal Impoverishment.

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

Public Hearing Date: N/A – Written comments may be submitted until January 18, 1991.
 (See Calendar of Events section for additional information)

Summary:

This Plan amending and regulatory action affects Attachment 2.6 A and the Spousal Impoverishment regulations at VR 460-04-8.6.

The provisions of § 1924 of the Social Security Act define new methods for determining income and resource eligibility and set forth a new method of computing post-eligibility income for institutionalized individuals who have spouses and dependent relatives at home. These new requirements allow a community spouse (or other dependent relative) of a nursing home patient a minimum income allowance for basic living expenses, and protect a specified amount of the resources which the institutionalized spouse owns individually or jointly with the community spouse. In this way, the community spouse is not completely impoverished in order for the institutionalized spouse to become eligible for Medicaid.

The regulation is based upon the statutory language where that is clear, and upon the interpretive guidelines obtained from HCFA where interpretation is required. The levels of income and resource standards are the minimum required by federal law.

The federal statute allows states to apply these income and resource rules to individuals in home and community-based care waiver programs. These individuals receive services intended to prevent their entering nursing homes. The department evaluates eligibility for these individuals in the same manner as if they were institutionalized. This similar treatment ensures that individuals are not forced to enter nursing homes to become eligible for Medicaid if services in their private homes would cost Medicaid less than nursing home care. Failure to implement spousal allowance rules for both groups simultaneously could result in unnecessary and more expensive nursing home placements for individuals who otherwise would remain at home under the waiver program.

VR 460-02-2.6100. Eligibility Conditions and Requirements.

Revised 3-89

Certificate No. _____
 Date _____
 For office use only

APPLICATION FOR ENDORSEMENT

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF COMMERCE
 Board for Cosmetology
 Post Office Box 11066
 Richmond, Virginia 23230-1066
 Section I

FEE: \$20.00
 (make check or money order payable to the Treasurer of Virginia)

Applicant's Last Name (Place one letter in each block) _____ Phone No. () _____

First Name _____ Middle Name _____

Street Address _____

City _____ State _____ Zip Code _____

Date of Birth: [][] [][] [][] Social Security No. [][][] [][][] [][][]

Section II

1. Attach copy of current cosmetology license.

FOR OFFICE USE ONLY

Approved for Endorsement _____ State _____

NOTE: DEPOSIT OF APPLICANT PROCESSING FEE DOES NOT INDICATE LICENSE HAS BEEN APPROVED.
 ALL FEES ARE NONREFUNDABLE.

Section III

(To Be Executed By Applicant) Have this AFFIDAVIT completed by a Notary Public

State of _____

County or City of _____

The undersigned applicant, being duly sworn deposes and says that they are the person who executed this application, that the statements herein contained are true, that they have not suppressed any information that might affect this application, and that they have read and understand this affidavit.

Subscribed and sworn to before me this _____ day of _____

Signature of Applicant _____ Signature of Notary Public _____

My commission expires: _____

Proposed Regulations

Citations(s)	Condition or Requirement	§ 1924(d) plus actual shelter costs not to exceed maximum standard contained in § 1924(d)(3)(c). The standard used is \$856.
	3. For families and children, each family member	
	AFDC level \$ Monthly Medically needy levels \$ See Below Other as follows \$	b. Other family members who are dependent.
	4. Amounts for incurred medical expenses not subject to payment by a third party	X 1. Standard based on the formula contained in § 1924(d)(1)(C) is used. 2. A fixed standard greater than the amount which would be used if the formula described in § 1924(d)(1)(c) were used. The standard used is
Except as provided in § 1924 of the Act, the policies reflected in C, items 1-5 apply. See Supplement 13 for additional policies relative to § 1924.	a. Health insurance premiums, deductibles and co-insurance charges	
	b. Necessary medical or remedial care not covered under the Medicaid plan (Reasonable limits on amounts are described in Supplement 3 to ATTACHMENT 2.6-A.) (No limits on amounts are applied)	X c. The standards described above are used for individuals receiving home and community based services in lieu of services provided in medical or remedial institutions.
	5. An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified he or she is likely to return home within that period.	d. Definition of dependency. The definition of dependency below is used to define dependent children, parents and siblings for purposes of deducting allowances under § 1924.
	X Yes. Amount for maintenance of home \$. See B.2. No.	
1902(l) of the Act, P.L. 99-643 (§ 3(b))	6. SSI benefits paid under § 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, SNF, or ICF. For § 1924 policies see 5a.	The definition used is: Dependent Children - A couples' children age 21 and older who live with a community spouse and who may be claimed as dependents by either member of a couple for tax purposes under the Internal Revenue Services Code. This also includes minor children under age 21 who live with a community spouse.
435.711 435.721 435.831	C. Financial Eligibility - Categorically and Medically Needy and Qualified Medicare Beneficiaries	Dependent Parents - Parents of either member of a couple who reside with the community spouse and who may be claimed as dependents by either spouse for tax purposes under the Internal Revenue Services Code.
	1. Income disregards - Categorically and Medically Needy and Qualified Medicare Beneficiaries	Dependent Siblings - A brother or sister of either member of a couple (including and half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and who may be claimed by either member of the married couple for tax purposes under the Internal Revenue Services Code.
B.2. Group I = \$216.67; Group II - \$250.00; Group III = \$325.00		
B.3. For appropriate family size (see Supplement 1 to Attachment 2.6A, Page 2)		
	7. Maintenance Standard for community spouse and other dependent family members under § 1924 of the Act.	
	a. Community Spouses	
	X 1. Standard based on formula contained in § 1924(d) is used.	
	2. Maximum standard contained in § 1924(d)3.	
	3. A fixed standard which is greater than the minimum standard described in	

VR 460-03-2.6113. § 1924 Provisions.

§ 1924 Provisions

Proposed Regulations

- a. Income and Resource eligibility policies used to determine eligibility for institutionalized spouses who have spouses living in the community are consistent with § 1924.
- b. In the determination of resource eligibility the state resource standard is \$12,000 adjusted annually in accordance with § 1924(g).
- c. The definition of undue hardship or purposes of determining if institutionalized spouses receive Medicaid in spite of having excess countable resources is described below:

Denial of Medicaid eligibility would result in the institutionalized spouse being removed from the institution and unable to purchase life-sustaining medical care.

"Community spouse maintenance needs allowance" is an amount by which the applicable percentage of 1/12 of the FPL for a family of two, in effect on July 1 of each year, plus an excess shelter allowance exceeds the amount of monthly income otherwise available to the community spouse. The community spouse maintenance allowance cannot exceed \$1,500 except pursuant to a court order or an amount designated by a DMAS hearing officer.

"Community spouse resource allowance" means the difference between a couple's countable resources and the greatest of (i) the spousal share, not to exceed \$60,000; or (ii) the spousal resource standard, \$12,000; or (iii) an amount transferred to the community spouse by the institutionalized spouse pursuant to a court order; or (iv) an amount designated by a department hearing officer. For services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

VR 460-04-8.6. Spousal Impoverishment.

PART I. GENERAL.

Article 1. Definitions.

§ 1.1. Definitions.

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

"Acceptable medical evidence" means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

"Applicable percent" means that percentage as defined in § 1924 (d)(3)(B) of the Social Security Act.

"As soon as practicable" (transfer of resources) means within 90 days from the date an institutional spouse agrees to transfer resources to the community spouse, unless the department determines that a longer period is necessary.

"At the beginning" of a continuous period of institutionalization means the first calendar month of the most recent continuous period of institutionalization or receipt of waiver services.

"Community spouse" means a married person who is not an inpatient at a medical institution or nursing facility and who is married to an institutionalized spouse.

"Continuous period of institutionalization" means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of waiver services, or 30 consecutive days of a combination of institutional and waiver services. Continuity is broken only by 30 or more days absence from institutionalization or waiver services.

"Countable resources" means all nonexempt resources, except for a couple's home, contiguous property, household goods, and one automobile. These items are exempt for purposes of determining the combined and separate resources of institutionalized and community spouses only.

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent family member" means a parent, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to

Proposed Regulations

pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the actual monthly expense of maintaining the community spouse's residence that exceeds 30% of the community spouse maintenance needs allowance, but limited to the total of (i) rent or mortgage, including interest and principal; (ii) taxes and insurance; (iii) any maintenance charge for a condominium or cooperative; and (iv) utilities, if not included in the rent or maintenance charge, except that utility expenses will not be included to the extent that they exceed the standard deduction under the Food Stamp program that would be appropriate to the number of persons living in the community spouse's household.

"Federal Poverty Level" or "FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"Initial determination" means:

1. Eligibility determinations made in conjunction with Medicaid applications filed during an individual's most recent continuous period of institutionalization; or

2. The first redetermination of eligibility for a Medicaid eligible institutionalized spouse after being admitted to an institution or receiving waiver services.

"Initial redeterminations" means those redeterminations of eligibility for a Medicaid eligible spouse which are regularly scheduled, or which are made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means a married person who is an inpatient at a medical institution or nursing facility or who is receiving waiver services and who is likely to remain in such facility or under such care, and whose spouse is not an inpatient at a medical institution or nursing facility.

"Likely to remain" in an institution means a reasonable expectation based on acceptable medical evidence that an individual will be institutionalized for 30 consecutive days, even if his institutionalization or waiver services actually terminate in less than 30 consecutive days.

"Maintenance needs standard" means an income standard to which a community spouse's or other family member's income is compared in order to determine the community spouse's and other family members' maintenance allowance.

"Medical institution or nursing facility" means hospitals, skilled nursing facilities, intermediate care facilities (including ICF/MR) consistent with the definitions of such institutions found in the Code of Federal Regulations at

42 CFR 435.1009 and which are authorized under Virginia law to provide medical care.

"Minor" means a child under age 21, of either spouse, who lives with the community spouse.

"Other family members maintenance needs allowance" means an amount for each family member, equal to 1/3 of the applicable percentage of 1/12 of the FPL for a family of two in effect on July 1 of each year, reduced by the amount of the monthly income of that family member.

"Otherwise available income or resources" means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

"Resource assessment" means an appraisal completed by request of a couple's combined countable resources at the beginning of each continuous period of institutionalization beginning on or after September 30, 1989.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources (\$12,000 in 1989 and as increased each year beginning in 1990 by the same percentage increase as in the Consumer Price Index), necessary for the community spouse to maintain himself in the community.

"Spousal share" means 1/2 of the couple's countable resources at the beginning of the most recent continuous period of institutionalization, or at the beginning of a continuous period of receipt of waiver services, as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means denial of Medicaid eligibility would result in the institutionalized spouse being removed from the institution and unable to purchase life sustaining medical care.

"Waiver services" means Medicaid reimbursed home or community-based services covered under a 1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

PART II. RESOURCE ASSESSMENTS AND ELIGIBILITY.

Article 1.

Proposed Regulations

General.

§ 2.1. Applicability.

Resource assessment and resource eligibility rules contained in Part II of these regulations shall apply to:

1. Persons whose first continuous period of institutionalization began on or after September 30, 1989; and
2. Institutionalized persons who leave the institution, or cease receiving waiver services, for at least 30 consecutive days and who are readmitted to the institution for a continuous period, or begin receiving waiver services for a continuous period, on or after September 30, 1989.

Article 2.

Assessments of Couple's Resources.

§ 2.2. Resource assessment initiated.

A resource assessment shall be initiated:

1. Upon payment of a fee, if any, the amount of which is determined by the Department of Social Services, by either member of a couple, or a representative acting on behalf of either spouse, if the institutionalized spouse has not applied for Medicaid; or
2. Upon application for Medicaid by an institutionalized spouse who has a community spouse.

§ 2.3. Notification of documentation required.

When a resource assessment is initiated, the Department of Social Services shall notify the applicant of all relevant documentation required to be submitted for the assessment.

§ 2.4. Failure to provide documentation.

If an applicant fails to provide requested documentation within 45 days of receipt of notification sent pursuant to § 2.3, the department shall notify him that the assessment cannot be completed.

§ 2.5. Notification of assessment and appeal rights.

The department shall provide each member of a couple with copies of the completed resource assessment and the documentation used to produce it. The department shall notify the couple of the procedure by which to appeal the resource assessment.

§ 2.6. Appeal of resource assessment.

A. Non-Medicaid application.

If the resource assessment was conducted pursuant to a non-Medicaid application, it may be appealed pursuant to the existing Client Appeals Regulations (VR 460-04-8.7).

B. Medicaid application.

A resource assessment which was conducted pursuant to a Medicaid application submitted by the institutionalized spouse may be appealed pursuant to existing Client Appeals regulations (VR 460-04-8.7).

Article 3.

Resource Eligibility Determinations for Institutionalized Spouses.

§ 2.7. Applicability.

This article shall be used to determine an institutionalized spouse's initial and continuing eligibility for his current continuous period of institutionalization.

§ 2.8. Initial eligibility determinations.

Except as provided in §§ 2.10 and 2.11 of these regulations, an institutionalized spouse is eligible for Medicaid if the difference between the couple's combined countable resources and its community spouse resource allowance, as defined in § 1.1, is equal to or less than the appropriate Medicaid resource limit for one person.

§ 2.9. Initial determinations of ineligibility.

If the difference between a couple's current combined countable resources and its community spouse resource allowance is greater than the appropriate Medicaid resource limit for one person, the institutionalized spouse shall be ineligible for Medicaid until the couple's combined countable resources are reduced to the greatest of:

1. The state's spousal resource standard (\$12,000) plus the appropriate Medicaid resource limit for one person; or
2. The spousal share (not to exceed \$60,000) plus the appropriate Medicaid resource limit for one person; or
3. A court ordered spousal share plus the appropriate Medicaid resource limit for one person; or
4. A spousal allowance determined necessary by a department hearing officer plus the appropriate Medicaid resource limit for one person.
5. For services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

§ 2.10. Revisions to the community spouse resource allowance.

For the purposes of this article, a community spouse resource allowance may be revised if:

1. A department hearing officer determines on appeal that the income generated from the community spouse resource allowance as originally calculated as described in § 2.9 of this article is inadequate to raise the community spouse's income to the minimum amount to be deducted as a maintenance allowance in the post-eligibility determination made pursuant to Part III of these regulations; or
2. A department hearing officer determines on appeal that the original calculation was incorrect; or
3. The department determines that the original information with which the spousal share was calculated was incorrect.

§ 2.11. Additional resource exclusions.

If an institutionalized spouse has resources exceeding the appropriate Medicaid resource limit for one person, the following are deducted from his resources for the purpose of establishing eligibility, as appropriate:

1. The amount of resources which the institutionalized spouse has transferred to the community spouse or to other dependents pursuant to a court support order;
2. Support rights of institutionalized spouses assigned to the Commonwealth;
3. Any support rights which cannot be assigned due to the institutionalized spouse's legal incompetency and upon which the Commonwealth would have a legal right to recover against the community spouse;
4. An amount necessary to make the individual eligible if the Department determines that the denial of Medicaid would create undue hardship as defined in § 1.1 of these regulations.

§ 2.12. Redetermination of eligibility of institutionalized spouses.

Beginning with the first calendar month following the date of the initial determination of eligibility, unless § 2.18 or 2.19 of these regulations applies, the institutional spouse's continuing eligibility shall be determined based solely on resources held in his name. The community spouse's resources shall not be deemed available to the institutional spouse in the month following the initial month of ongoing eligibility.

§ 2.13. Post-eligibility resource transfers.

After an initial determination of eligibility, an

institutionalized spouse may transfer to his community spouse any of the community spouse resource allowance which is not already titled to the community spouse. Any amount of the community spouse resource allowance which is not transferred pursuant to this section and which is not actually available to meet the community spouse's needs, shall be deemed available to the institutional spouse for the purpose of determining continuing eligibility.

§ 2.14. Protected periods of eligibility.

Subject to § 2.15, for 90 days after an initial determination of eligibility, an institutionalized spouse's eligibility shall be protected (i.e., the resources in the community spouse resource allowance shall not be attributed to the institutionalized spouse) to allow him time to legally transfer resources pursuant to § 2.13 if the institutionalized spouse expressly indicates his intention to effect such a transfer. Absent such an expression of intent, the protected period will not extend beyond the end of the month in which eligibility is being determined. The department may extend the protected period if it finds an extension is necessary.

§ 2.15. Exception to protected period of eligibility.

If, at the time of an initial determination of eligibility, a community spouse has title to resources equal to or exceeding his community spouse resource allowance, no protected period of eligibility shall exist. In this circumstance, an institutionalized spouse may transfer resources in any amount to the community spouse, pursuant to § 1917 of the Social Security Act, but there shall be no protected period of eligibility for doing so.

§ 2.16. Additional resources acquired during protected period of eligibility.

If a couple obtains additional resources during a protected period of eligibility, the additional resources shall be exempt during the protected period if:

1. The new resources combined with other resources that the institutionalized spouse intends to retain do not exceed the appropriate Medicaid resource limit for one person, or
2. The institutionalized spouse intends to transfer the new resources during the protected period of eligibility to the community spouse, and the community spouse's resources are less than the community spouse resource allowance.

§ 2.17. Resources transferred pursuant to § 1917 of the Act.

Provided transfers are made within one month of the initial determination of eligibility, resources held by an institutionalized spouse shall not be counted in determining continuing eligibility when § 1917 transfers

Proposed Regulations

are made to parties for which there is no penalty for failure to receive equitable value, or transfer for which equitable value is received.

§ 2.18. Resource eligibility determinations in retroactive periods.

A. First application for Medicaid.

In each of the three months preceding an institutionalized spouse's first application for Medicaid in the current continuous period of institutionalization for which resource eligibility is to be determined, the community spouse resource allowance shall be deducted from the couple's combined countable resources.

B. Later applications for Medicaid.

In later applications for the same period of institutionalization, including retroactive months, the community spouse resource allowance shall not be deducted for the couple's combined countable resources except in the first month in the retroactive period for which eligibility is being determined.

§ 2.19. Eligibility for community spouses and other family members.

Resources are considered under the eligibility rules which would apply to the community spouse and other family members, regardless of the rules governing the institutionalized spouse.

PART III. POST-ELIGIBILITY PROCESS.

Article 1. General.

§ 3.1. Applicability.

The post-eligibility process contained in Part III of these regulations shall apply to persons living in a nursing facility and to persons receiving services under home and community-based waivers. This process determines how much such persons contribute to the cost of their institutional care and/or waiver services.

Article 2. Income.

§ 3.2. Determining of income.

A couple's income shall be determined as follows, without regard to state laws governing community property or division of marital property:

1. Income from nontrust property. Unless a department hearing officer determines that the institutionalized spouse has proven to the contrary by a preponderance of the evidence:

a. Income paid to one spouse belongs to that spouse;

b. Each spouse owns one-half of all income paid to both spouses jointly;

c. Each spouse owns one-half of any income which has no instrument establishing ownership;

d. Income paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

2. Income from trust property. Ownership of trust property shall be determined pursuant to the State Plan, except as follows:

a. Each member of a couple owns the income from trust property in accordance with the trust's specific terms.

b. If a trust instrument is not specific as to the ownership interest in income, ownership shall be determined as follows:

(1) Income paid to one spouse belongs to that spouse;

(2) One-half income paid to both spouses shall be considered available to each spouse;

(3) Income from a trust paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income from a trust is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

Article 3. Patient Pay.

§ 3.3. Applicability.

After all appropriate deductions pursuant to §§ 3.4, 3.5, and 3.6 have been made from an institutionalized spouse's gross monthly income pursuant to this article, the balance shall constitute the amount the institutionalized spouse shall pay for institutional or waiver services.

§ 3.4. Mandatory deductions from institutionalized spouse's income.

The following amounts shall be deducted from the institutionalized spouse's gross monthly income:

- 1. A personal needs allowance of \$30; and
- 2. The community spouse maintenance allowance as calculated pursuant to § 3.5; and
- 3. The family maintenance allowance, if any, as calculated pursuant to § 3.6; and
- 4. Incurred medical and remedial care expenses recognized under State law, not covered under the State Plan and not subject to third party payment.

Notification.

§ 3.5. Community spouse maintenance allowance.

A. The community spouse maintenance allowance shall be the greatest of the following amounts:

- 1. The total of the community spouse maintenance needs standard and the excess shelter allowance; or
- 2. An amount set in a spousal support court order; or
- 3. An amount determined necessary by a department hearing officer because of exceptional circumstances resulting in extreme financial duress.

B. Deductions are not made from the income of the institutionalized spouse when the allowances are not actually made available to the community spouse.

§ 3.6. Family members maintenance needs allowance.

A. An amount equal to 1/3 of the minimum monthly standard for the community spouse, without regard to excess shelter allowances, minus each family member's income, shall be deducted for the maintenance of each family member.

B. This allowance is to be deducted regardless of whether the institutionalized spouse actually makes the allowance available to the family member.

PART IV.
APPEALS.

Article 1.
General.

§ 4.1. Applicability.

The appeals process contained in Part IV of these regulations shall apply to appeals of initial determinations and redeterminations of resources and income amounts and allowances made in connection with applications for Medicaid benefits by spouses institutionalized for a continuous period on or after September 30, 1989, or receiving waived services for a continuous period on or after September 30, 1989, pursuant to existing Client Appeals regulations.

Article 2.

§ 4.2. Notices.

Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:

- 1. The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and
- 2. Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.

§ 4.3. Regulatory authority.

Hearings and appeals held for the purpose of § 4.1 are consistent with regulations at 42 CFR § 431 Subpart E.

§ 4.4. Hearing officer authority.

Through the appeals process applicable as described in § 4.1 of these regulations, hearing officers shall prescribe appropriate increases in spousal maintenance allowances in the event they determine that exceptional circumstances exist which cause financial duress to the community spouse.

BOARD OF MEDICINE

Title of Regulation: VR 465-01-01. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted until January 19, 1991.

(See Calendar of Events section for additional information)

Summary:

These regulations provide the basis for public participation in the development of all other regulations that may be adopted by the Board of Medicine. The Public Participation Guidelines set out methods of identifying interested parties, notifying them of contemplated board regulatory actions, soliciting their views and, when deemed necessary, having them serve on advisory committees on the formulation, promulgation, adoption and review of other regulations.

The proposed amendments establish the requirements by which the public may re-petition the board on a specific subject or regulation that the board has previously considered and ruled on.

VR 465-01-01. Public Participation Guidelines.

Proposed Regulations

§ 1. Applicability.

These guidelines apply to the development of all other regulations that may be adopted by the Virginia State Board of Medicine. The guidelines are regulations that are to be used in the formulation, promulgation, adoption and review of other regulations.

§ 2. Public Participation Guidelines.

A. Mailing list.

The Board of Medicine will maintain a list of persons and organizations who will be mailed the following documents as they become available.

1. "Notice of Intent" to promulgate regulations.
2. "Notice of Public Hearing" or "Informational Proceedings," the subject of which is proposed or existing regulations.
3. Final regulation adopted.

B. Being placed on list or deletion.

Any person or organization wishing to be placed on the mailing list may be added by writing the board. In addition, the board may, at its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons and organizations on the list will be provided all information stated in subsection A of these guidelines. Individuals and organizations will be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.

C. Notice of Intent.

The board will publish a notice of intent to conduct an informational proceeding as required by § ~~9-6.14.1~~ § 9-6.14.7.1 of the Code of Virginia. This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person or organization to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar for ~~inclusion~~ publication in the Virginia Register of Regulations.

D. Informational proceedings or public hearings for existing rules.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of

compliance. Notice of such proceeding will be transmitted to the Registrar for inclusion in the Virginia Register. Such proceeding may be held separately or in conjunction with other informational proceedings.

E. Petition for rulemaking.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the next regular full board meeting. Any re-petition submitted within 13 months of its last prior disposition must show new evidence or information in order to be heard by the board. The board shall have sole authority to dispose of the petition or re-petition.

F. Notice of formulation and adoption.

After any meeting of the board or any subcommittee or advisory committee where the formulation or adoption of regulations occurs, the subject matter shall be transmitted to the Registrar for ~~inclusion~~ publication in the Virginia Register of Regulations.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-01-34. Aid to Dependent Children - Unemployed Parent (ADC-UP) Program.

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

Public Hearing Date: N/A - Written comments may be submitted until January 18, 1991.

(See Calendar of Events section for additional information)

Summary:

According to the Family Support Act of 1988, Public Law 100-485, states are mandated to implement the Aid to Dependent Children - Unemployed Parent (ADC-UP) Program. All categorical requirements and conditions of eligibility are the same as for the ADC Program unless otherwise specified except that deprivation of a child is due to the unemployment of the principal wage earner parent and the dependent child must be living in a residence where both natural or adoptive parents are residing. The regulation set forth herein assures compliance with federal regulations and laws by implementing the ADC-UP Program for two parent unemployed families.

VR 615-01-34. Aid to Dependent Children - Unemployed Parent (ADC-UP) Program.

PART I. DEFINITIONS.

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

"Aid to Dependent Children-Unemployed Parent (ADC-UP) Program" means the program which will be administered by the Virginia Department of Social Services effective October 1, 1990, which will provide financial assistance to needy two-parent unemployed families.

"Application for assistance" means the date of receipt of a signed, completed application requesting assistance.

"Assistance unit" means those persons whose needs and income shall be considered in the determination of eligibility for assistance.

"Attachment to the workforce" means the principal wage earner parent received unemployment compensation benefits under an unemployment compensation law of Virginia or of the United States or would have qualified for unemployment compensation under Virginia's Unemployment Compensation Act, or had employment in six or more calendar quarters of work within a 13-consecutive-calendar-quarter period ending within one year of application for assistance.

"Bona fide offer of employment or training" means that there was a definite offer of employment actually made.

"Dependent child" means any child of an unemployed parent, who would be eligible under the Aid to Dependent Children (ADC) Program except for the fact that his parent is not dead, absent from the home, or incapacitated. The child must be living in a place of residence with both natural or adoptive parents.

"Employment Services Program" means a program operated by the Department of Social Services which helps ADC-UP recipients in securing employment or the training or education needed to secure employment.

"Good cause" means the factors which must be considered, such as the capacity of the principal wage earner parent to do the work; the location of the employment and whether transportation is needed and available; applicable minimum wage requirements and customary wages paid for comparable work in the community; or working conditions, such as risks to health and safety or lack of workers' compensation protection.

"Principal wage earner" means the parent in the home who earned the greater amount of income in the 24-month period, the last month of which immediately precedes the month in which an application is filed for assistance.

"Qualified for unemployment compensation" means that the principal wage earner parent would have been eligible to receive benefits had he applied, based on wages covered under the Unemployment Compensation Act of Virginia, wages not covered under the Unemployment Compensation Act of Virginia, or a combination of both.

"Quarter of work" means a period of three consecutive

calendar months ending March 31, June 30, September 30, or December 31 in which the principal wage earner parent earned at least \$50 or participated in the Employment Services Program (ESP).

"Sibling" means two or more children with at least one natural or adoptive parent in common.

"Unemployed" means employed less than 100 hours a month; or exceeds that standard for a particular month if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for two prior months and is expected to be under the standard during the next month.

PART II. HOUSEHOLD COMPOSITION.

§ 2.1. Aid to Dependent Children - Unemployed Parent (ADC-UP) Program is limited to those families with a dependent child who is residing with both natural or adoptive parents, who would be eligible for assistance through the Aid to Dependent Children (ADC) Program except that he is not deprived due to the continued absence, death or incapacity of at least one parent, but due to the unemployment of the parent.

§ 2.2. Any sibling of a child who is deprived based on the unemployment of a parent, who is himself deprived based on the continued absence or death of a parent will be included in the ADC-UP assistance unit.

PART III. DEPRIVATION.

§ 3.1. The dependent child is deprived due to the unemployment of the principal wage earner parent. The principal wage earner parent is that parent who earned the greater amount of income in the 24-month period, the last month of which immediately precedes the month in which an application is filed for assistance and the principal wage earner parent:

1. Has been unemployed for at least 30 days prior to receipt of assistance, and
2. Has not without good cause, within such 30-day period prior to receipt of assistance, refused a bona fide offer of employment or training, and
3. Has an attachment to the work force as evidenced by receipt of unemployment compensation benefits or would have qualified for unemployment compensation benefits within one year prior to application for assistance, or had six quarters of work within a 13-consecutive-calendar-quarter period ending within one year of application for assistance, and
4. Has not refused to apply for or accept unemployment compensation which he qualified for under the Unemployment Compensation Act of

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Virginia or of the United States.

PART IV. FINANCIAL ELIGIBILITY.

§ 4.1. Unemployment compensation received by a principal wage earner parent shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the Commonwealth's payment method.

PART V. EMPLOYMENT SERVICES.

§ 5.1. In addition to sanctioning a parent who fails or refuses to participate in the Employment Services Program (ESP), the needs of the other parent will also not be taken into account in determining the family's eligibility and the amount of assistance if the other parent is not participating in ESP.

PART VI. DATE OF ENTITLEMENT.

§ 6.1. The date of entitlement shall not begin before the principal wage earner parent has been unemployed for at least 30 days.

PART VII. *LIMITATION OF ASSISTANCE.*

§ 7.1. In the ADC-UP Program, assistance for cash benefits is limited to six months in a 12-consecutive-month period. the 12-consecutive-month period begins in the first month of eligibility for cash benefits for the assistance unit.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulations:

VR 125-01-2. 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.

Effective Date: December 19, 1990.

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) limitations on distribution of novelty and specialty items to retailers, their employees and patrons by manufacturers, importers, bottlers, brokers, and wholesalers, (v) wholesaler delivery of advertising materials and canisters relating to charitable events, (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 beverage licensee being left with one, unopened, 50 milliliter sample of each brand of distilled spirits 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, seals or other insignia or otherwise;

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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, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers and wholesalers may supply only those items they are expressly authorized to supply to retail licensees by the provisions of subdivision B 3; 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;

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

b. 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;

e. 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;

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

e. 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;

f. 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;

g. 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 provided by beer and wine wholesalers to retail licensees for use on retail premises] if such [~~that service is~~ such items are] offered to all retail licensees equally and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers;

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

i. 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 visit] , which may not be displayed on the licensed premises. Neither manufacturers, importers,*

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

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 athletic 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 case 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 case cards [~~such advertising materials at the retail premises provided by beer and wine wholesalers to retail licensees for use on their premises~~], if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia 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~~ provide] coupon pads [~~on holders to~~] case 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 to retailers for use by retailers on their~~] premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale 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

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

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

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

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

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events [~~or 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 [~~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

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

B. "Cash" defined.

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

C. Checks and money orders.

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

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

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tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

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

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

D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed \$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 ease 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 ease 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 ease 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 ease 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 ease 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 subdivisions 1 and 2] shall be applicable to the end product of such assembly [; and]*

[4. *The size limitations set forth above in subdivisions 1 and 2 shall not be applicable to cardboard advertising material commonly referred to as corrobuff; however, corrobuff may only be used or displayed on the retail license premises when attached to or affixed around the base of a floor display using wine or malt beverage products.]*

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, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;

6. No person enumerated in ~~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

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age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and

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

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

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

§ 3. Restricted hours; exceptions.

A. Generally.

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

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

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

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

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

B. Exceptions:

1. Club licensees: No restrictions at any time;
2. Individual licensees whose hours have been more stringently restricted by the board shall comply with such requirements; and
3. Licensees in the City of Danville are prohibited

from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m.

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

A. Generally.

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

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

B. Disapproval of designated manager.

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

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

C. Restrictions upon employment.

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

§ 5. Restrictions upon employment of minors.

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

of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only.

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

A. Generally.

No mixed beverage restaurant or carrier licensee shall:

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

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

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such as to permit ready access and reasonable observation by law enforcement officers and by agents of the board. The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such rooms.

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

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

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

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

A. Generally.

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

B. Procedures under permits.

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

1. The name of the person making the withdrawal who shall be the licensee or his duly authorized agent or servant;
2. The amount withdrawn; 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;

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b. The extent to which such food or other merchandise is regularly sold; and

c. Present and anticipated sales volume in such food or other merchandise.

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

B. Wine and beer. Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided 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 the 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 B 3 above ;

Monthly sales \$1,800

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

D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

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

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

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

4. "Designated room." A public room the location, equipment and facilities of which have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption at tables on the premises at all times ~~the~~ 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.

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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 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 its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses~~] .

[Additionally, there shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.]

E. 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.

E. 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 § 4-99 of the Code of Virginia and food;

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

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

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

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

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

9. The caterer's license shall be considered a retail license for purposes of § 4-79.1 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; and

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

§ 19. Bed and breakfast licenses.

A. Qualifications.

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

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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 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 distillers, fruit distillers, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

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

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

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

§ 6. Wine or beer importer licenses; conditions for 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

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postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest.

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

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

A. Generally.

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

B. Permits.

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

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

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

c. Submit with the application a letter of authorization from the manufacturer, 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;

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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:

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

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the purpose upon the premises of the permittee, separate and apart from all other commodities, and custody thereof shall be limited to persons designated in writing by the permittee.

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

A. Purchase orders.

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

B. Records.

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

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

In addition, records of wholesale druggists shall show:

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

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

A. Permits.

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

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 of the Code of Virginia; 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

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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 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; or
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

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gress 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 of the Code of Virginia, and meals.

C. Taxes on licenses.

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

§ 14. Definitions and requirements for beverage licenses.

A. Definition.

Wherever the term "beverages" appears in these regulations, it shall mean beverages as defined in § 4-99 of the Code of Virginia. 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.

VIRGINIA RACING COMMISSION

Title of Regulation: VR 662-02-04. Regulations Pertaining to Limited Licenses for Horse Racing with Pari-Mutuel Wagering.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: December 19, 1990.

Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. The regulation sets forth the application procedures, the criteria the commission will utilize in considering applications, and the procedures, equipment and facilities the licensees will have to provide to conduct horse race meetings of 14 days or less per calendar year in the Commonwealth.

VR 662-02-04. Regulations Pertaining to Limited Licenses for Horse Racing with Pari-Mutuel Wagering.

§ 1. Definitions.

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

"Commission" means the Virginia Racing Commission.

"Licensee" includes any person holding an owner's, operator's, limited or unlimited license, or any other

license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with any calendar year.

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

§ 2. Generally.

The commission is authorized to issue limited licenses for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The horse racing, with pari-mutuel wagering privileges, shall be conducted by limited licensees so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in horse racing complete honesty and integrity.

A. Number of racing days.

The commission may issue limited licenses to conduct horse race meetings, with pari-mutuel wagering privileges on races held at the site, for a period not to exceed 14 days in any calendar year.

B. Local referendum.

The commission shall not grant a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, until a referendum approving the question is held in the county or city in which the race meeting is to be conducted.

C. Observance of regulations.

The holder of a limited license shall be charged with the same duties and responsibilities as are the holders of unlimited licenses with respect to the observance and enforcement of the act and the regulations of the commission.

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D. Racing surfaces.

The holders of limited licenses shall utilize racing surfaces which are safe and humane for participants and meet generally accepted standards for the type of racing, but any dirt surface for flat racing shall be at least one mile in circumference, any turf surface for flat or jump racing shall be at least seven-eighths of a mile in circumference, and any dirt surface for Standardbred or Quarter Horse racing shall be at least five-eighths of a mile.

E. Renewal of limited licenses.

Limited licenses are valid for one calendar year during which the licensee may conduct as many as 14 days of horse racing with pari-mutuel wagering privileges. A licensee may apply for a renewal of a limited license by submitting an application to the commission as set forth in § 3 of this regulation. An applicant for a renewal of a limited license may incorporate by reference any information submitted in previous applications.

§ 3. Application for a limited license.

A. Where to file application.

An applicant for a limited license shall submit an application on a form, prepared by the commission, to the main office of the commission no later than September 1, excluding Saturdays, Sundays or holidays, for the following calendar year. The commission may, in its discretion, extend the deadline to receive applications.

1. An application to be sent by certified mail shall be addressed to:

Executive Secretary
Virginia Racing Commission
Post Office Box 1123
Richmond, VA 23208

2. An application to be hand-delivered shall be delivered to the Executive Secretary, Virginia Racing Commission at the Commission's office in Richmond, Virginia.

3. An application delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed or the extended deadline.

4. Delivery to other than the commission's main office is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

B. Identification of applicant for limited license.

An application for a limited license shall include the

name, address and telephone number of the applicant, and the name, position, address, telephone number and authorized signature of an individual to whom the commission may make inquiry.

C. Applicant's affidavit.

An application for a limited license shall include an affidavit from the chief executive officer, director, officer or other participant in the applicant setting forth:

1. That application is made for a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, for a period not to exceed 14 days in any calendar year;

2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers and personnel, and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached (Identify attached exhibit number;)

3. That the applicant seeks a grant of privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant;

4. That the applicant consents to inquiries by the Commonwealth of Virginia, its employees, commission members, staff and agents, into the financial, character and other qualifications of the applicant by contacting individuals and organizations;

5. That the applicant, its owners, partners, members, directors, officers and personnel accept any risk of adverse public notice, embarrassment, criticism or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, and its staff or agents;

6. That the affiant has read the application and knows the contents; the contents are true to the affiant's own knowledge, except matters therein stated as information and belief, and that as to those matters, the affiant believes them to be true;

7. That the applicant recognizes all representations in the application are binding, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing;

8. That the applicant will comply with all applicable state and federal statutes and regulations, all regulations of the commission and all other local ordinances;

9. The affiant's signature, name, organization, position, address and telephone number; and

10. The date.

D. Disclosure of ownership and control.

An applicant for a limited license must disclose the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association or other.

1. If the applicant is an individual, the applicant shall disclose his legal name, whether the applicant is a United States citizen, and any aliases and business or trade names currently or previously used.

2. If the applicant is a corporation, the applicant shall disclose the applicant's full corporate name, any trade names currently or previously used; jurisdiction of incorporation, date of incorporation, and the date the applicant began doing business in the Commonwealth of Virginia. In addition, the applicant shall include:

a. A copy of the applicant's certificate of authority to do business in Virginia;

b. A copy of the applicant's articles of incorporation;

c. A description of the general nature of the applicant's business; and

d. A list of the names, in alphabetical order, and addresses of the directors, and in a separate list, the names and addresses, in alphabetical order, of the officers of the applicant.

3. If the applicant is an organization other than a corporation, the applicant shall disclose the applicant's full name, any aliases, business or trade names currently or previously used; the jurisdiction of organization; the date the applicant began doing business in Virginia; and the general nature of the applicant's business. In addition, the applicant shall include:

a. Copies of any agreements creating or governing the applicant's organization; and

b. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority.

4. If the applicant is a tax exempt organization, the applicant shall submit copies of documentation from the Internal Revenue Service granting tax exempt status.

E. Disclosure of character information.

An applicant for a limited license shall disclose and furnish particulars as follows whether the applicant or any individual identified in subsection D of this section has:

1. Been charged in any criminal proceeding other than a traffic violation. If so, the applicant shall disclose the nature of the charge, the date charged, court and disposition;

2. Had a horse racing, gambling, business, professional or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant shall disclose the date of commencement, circumstances and disposition; and

3. Begun an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant shall disclose the date of commencement, forum, circumstances and disposition.

F. Disclosure of site and facilities.

An applicant for a limited license shall disclose the following concerning the site and facilities where horse racing will be conducted with pari-mutuel wagering privileges:

1. The location of the horse racing facility including street address, municipality where the facility is located and the county in which the facility is located;

2. The present ownership of the horse racing facility;

3. If the applicant leases the site of the horse racing facility, the applicant shall submit copies of any leasing agreement, and any other arrangements for the use of the facility between the applicant and the owner of the facility;

4. The type or types of racing to be offered, the number of races to be run each day, the post time of the first race each day, type of pari-mutuel pools to be offered, and any organization that is sanctioning the races;

5. A description of the post-race detention facilities and sample collection arrangements;

6. A description of the totalizator, including vendor and manufacturer, if known;

7. A description of starting, timing, photo finish and photo patrol or video equipment, including vendor and manufacturer, if known; and

8. A description of the work areas for stewards and patrol judges.

G. Disclosure of governmental actions.

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An applicant for a limited license shall disclose whether the applicant is in compliance with all state statutes, local charter provisions, local ordinances, and street and local regulations pertaining to the development, ownership and operation of its horse racing facility. If the applicant is not in compliance, the applicant shall disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.

H. Disclosure of management.

An applicant for a limited license shall disclose its management personnel by listing the names of the personnel and their titles.

I. Disclosure of safety and security plan.

An applicant for a limited license shall describe the safety and security plan for the horse racing facility in regards to the procedures for accepting and cashing wagers, detention facility and participants.

J. Effects on competition.

An applicant for a limited license shall make a brief statement indicating why its racing days will not be harmful to other limited or unlimited licenses issued by the Virginia Racing Commission.

K. Personal information and authorization for release.

An applicant for a limited license shall include the following with respect to each individual identified as an applicant, partner, director, officer, policymaker or management personnel in subsection D or subsection H of this section:

1. Full name, business and residence addresses and telephone numbers, date of birth, place of birth, social security number, if the individual is willing to provide [such information] ;

2. An authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he:

a. Authorizes a review by, and full disclosure to, an agent of the Virginia State Police, of all records concerning the individual;

b. Recognizes the information reviewed or disclosed may be used by the Commonwealth of Virginia, its employees, the commission, members, staff and agents to determine the signer's qualifications for a license; and

c. Release authorized providers and users of the information from any liability under state or federal data privacy statutes.

L. Additional information.

Upon receipt of a properly completed application for a limited license, the commission may, in its discretion, require any further information from the applicant that it deems necessary for a full understanding and evaluation of the application.

M. Amendment of application.

An applicant for a limited license may amend a properly completed and properly submitted application to the commission.

N. Application fee.

An applicant for a limited license as provided for in § 59.1-376 of the Code of Virginia shall submit a nonrefundable application fee to the commission's designee at the time of application by a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of \$100 per number of racing days requested. The applicant also shall pay the costs of background investigations conducted by the Virginia State Police of the persons enumerated in subsections D and H of this section.

§ 4. License criteria.

A. Determination by commission.

The commission may issue a limited license if it determines on the basis of all the facts before it that:

1. Issuance of a license will not adversely affect the horse racing industry in the Commonwealth of Virginia or the public interest;

2. The horse racing facility will be operated in accordance with all applicable state and federal statutes and regulations, regulations of the commission and all local ordinances; and

3. The issuance of a limited license to the applicant will not adversely affect the public health, safety and welfare.

B. Consideration of application.

The commission, in determining whether the issuance of a limited license is in the public interest, shall consider the following factors:

1. The integrity of the applicant, including:

a. Criminal record;

b. Involvement in proceedings in which government regulation of horse racing or gambling was an issue; and

c. Any other factors related to integrity which the commission deems crucial to its decision making, as long as the same factors are considered with regard

to all applicants.

2. The quality of physical improvements and equipment in the applicant's facility, including:

a. Detention facility;

b. Totalizator;

c. Starting, timing, photo finish, photo patrol or video equipment; and

d. Any other factors related to quality which the commission deems crucial to its decision making, as long as the same factors are considered with regard to all applicants.

3. Status of governmental actions required for the applicant's facility, including:

a. Required governmental approvals for the operation of the horse racing facility; and

b. Any other factors related to status of governmental actions which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

4. The qualifications of the applicant's managers and any other factors related to management ability which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

5. Compliance with applicable statutes, charters, ordinances or regulations.

6. Efforts to promote an orderly growth of horse racing in Virginia and educate the public with respect to horse racing and pari-mutuel wagering.

7. Effects on competition, including:

a. Number, nature and relative location of other licensees;

b. Minimum and optimum number of racing days sought by the applicant; and

c. Any other factors of the impact of competition which the commission deems crucial to decision making as long as the same factors are considered with regard to all applicants.

8. The commission shall also consider any other information [~~which~~ that] the applicant discloses [~~and~~ or that] is relevant and helpful to a proper determination.

C. Issuance of limited license.

In issuing a limited license to an applicant, the commission shall designate in writing the location of the facility where the horse racing, with pari-mutuel wagering privileges, shall take place, the total number of racing days assigned, the dates within which the racing days are to be conducted and dark days, the breed or breeds to be utilized, the type or types of racing to be offered, and the hours of racing.

D. Denial of request final.

The denial of a request by the commission shall be final unless appealed by the applicant or licensee under the provisions of § 2.24 of VR 662-01-02, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

E. Transfer or acquisition of an interest in a limited license.

A holder of a limited license may apply to the commission to transfer its race meet or meetings to that of another horse racing facility already licensed by the commission under the provisions of § 2.23 of VR 662-01-02, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

§ 5. Limited license criteria.

The holder of a limited license shall conduct horse racing at a facility for the promotion, sustenance and growth of a native industry in a manner consistent with health, safety and welfare.

The adequacy and sufficiency with which the licensee meets the following criteria shall rest with the commission:

1. Each licensee shall accept, observe and enforce all federal and state laws, regulations of the commission and local ordinances;

2. Each licensee shall ensure that its grounds and facility are neat and clean, painted and in good repair, with special consideration for the comfort and safety of the public, employees, other persons whose business requires their attendance, and for the health and safety of the horses there stabled;

3. Each licensee shall honor commission exclusions from the horse racing facility and shall eject immediately any person found in the facility who has been excluded by the commission. The licensee shall make a report to the commission of each person who is ejected from the facility;

4. Each licensee shall provide uniformed security personnel in the areas where pari-mutuel wagering is conducted so that money and pari-mutuel tickets may be safeguarded, decorum maintained and public safety protected;

5. Each licensee shall provide a starting gate or

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starting apparatus that is appropriate to the type of racing being offered, sufficient, trained outriders, and timing devices or trained personnel to manually time the races and provide fractional times as deemed appropriate;

6. Each licensee shall provide a photo-finish camera and an area where photo-finish prints may be displayed to the public. The photo-finish camera and the personnel operating the camera shall be under the supervision of the stewards;

7. Each licensee shall provide a totalizer where wagers are recorded, pools calculated, approximate odds displayed visibly to the general public in the infield at periodic intervals during the wagering and with the payouts on winning tickets are displayed;

8. Each licensee shall provide an adequate number of ambulances and emergency medical services for participants and public during those hours when horse racing is conducted. At no time will horse racing be permitted unless there is at least one ambulance at the facility;

9. Each licensee shall provide at least one veterinarian to administer and provide emergency service to any horse participating in the racing program;

10. Each licensee shall provide a detention facility where samples of blood, saliva, urine and other substances can be collected from horses following racing. The commission may, in its discretion, authorize the commission veterinarian and his assistants to collect samples from horses following racing in their stalls; and

11. Each licensee shall coordinate its fire, safety and security plans with local fire and police agencies so that the public health and safety may be protected.

* * *

GENERAL GUIDELINES

The following limited license application, regulations and guidelines are developed to implement the filing of applications pursuant to § 59.1-376 of the Code of Virginia. The applicant or its designated representative shall execute all sections of this application unless otherwise provided.

1. False or misleading information in a license application, omission of required information or substantial deviation from representation in the application is cause for denial, revocation or suspension of a license or imposition of a fine.

2. The applicant shall provide all information required to be disclosed.

3. The applicant shall provide only information relevant to disclosures required by the Virginia Racing Commission.

4. Upon filing the application, the applicant shall provide the following:

a. A letter of transmittal to the Virginia Racing Commission;

b. An original and six copies of the application, in sealed envelopes; and

c. Any exhibits and attachments to the application.

5. The applicant shall file with the application a disclosure statement on the form attached hereto (original and six copies) for itself and for each officer, director, partner, policymaker and owner or holder of 5% or more of the legal or beneficial ownership interest in the applicant. If 25% or more of the applicant is owned by another entity, disclosure statements shall be filed by the officers, directors, partners and policymakers of the other entity and the owner or holders of 10% or more of the legal or beneficial ownership interest in the other entity. This disclosure shall continue through as many tiers as necessary to disclose the ultimate owners or holders of 5% or more of the legal or beneficial ownership interest in the applicant. A person having an interest subject to disclosure in more than one applicant shall file one set of disclosure statements for each application. Each disclosure statement shall be attached to the application as an exhibit.

6. Upon request of the Virginia Racing Commission, the applicant shall provide copies of any documents used in the preparation of its application or any other documents the commission requests.

7. Each disclosure required in the application shall be provided in printed or typewritten form on 8-1/2 by 11 inch paper.

8. Each page shall be sequentially numbered including exhibits and attachments.

9. All disclosures shall be submitted in the order that they are presented in the application.

10. If the applicant elects not to utilize this application form, then the applicant shall restate the question and the question number, immediately preceding each response.

11. All documents which are part of the application shall be submitted as a bound single assemblage (unless multiple volumes are necessary) with each disclosure section, exhibit or other attachment identified and separated by tabs.

12. An applicant shall provide photographs of any three-dimensional exhibits.

13. If a question is inappropriate or not applicable, indicate "N.A." on the application.

14. If additional forms are required, the applicant may detach the form and make as many copies as necessary.

IDENTIFICATION OF APPLICANT FOR LIMITED LICENSE

Application for a limited license is hereby made to the Virginia Racing Commission:

(Applicant)

(Address)

(City) (State) (Zip Code)

(Area Code) (Telephone Number)

The Virginia Racing Commission may make inquiries to:

(Name)

(Address)

(City) (State) (Zip Code)

(Area Code) (Telephone Number)

APPLICANT'S AFFIDAVIT

(Applicant)

The undersigned executes this affidavit of his own free will and with no coercion. The applicant, and to the best of the applicant's knowledge, any partner, officer, director and owner subject to 59.1-376 of the Code of Virginia, and any other person with a present, or future direct or indirect financial or management interest in the application meets the qualifications set forth in the Virginia Code and regulations of the Virginia Racing Commission.

1. That application is made for a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, for a period not to exceed 14 days in any calendar year.

2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers and personnel, and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached. (Identify attached exhibit number.)

3. That the applicant seeks a grant of privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant.

4. That the applicant consents to inquiries by the Commonwealth of Virginia, its employees, the commission members, staff and agents, into the financial, character and other qualifications of the applicant by contacting individuals and organizations.

5. That the applicant, its owners, partners, members, directors, officers and personnel accept any risk of adverse public notice, embarrassment, criticism or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, staff or agents.

6. That the affiant has read the application and knows the contents; the contents are true to the affiant's own knowledge, except matters therein stated as information and belief; as to those matters, the affiant believes them to be true.

7. That the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing; and

8. That the applicant will comply with all applicable state and federal statutes and regulations, all regulations of the commission and all other local ordinances.

I hereby swear and affirm that all of the facts set forth in this application and affidavit and all exhibits and attachments contained herein are true and correct.

this _____ day of _____, 19 _____

Further your affiant sayeth not.

(Signature)

(Name)

(Title)

(Address)

(City)

(State) _____
(Zip Code)

COMMONWEALTH OF VIRGINIA

_____ COUNTY

_____, personally appeared before me and having been duly sworn, stated to me _____ the undersigned Notary Public in and for the County of _____ State of _____ that all of the facts set forth in this application and all exhibits and attachments contained herein are true and correct and that he executed the same voluntarily and with full authority to do this _____ day of _____, 19 _____.

(Notary Public)
My commission Expires: _____

(Seal)

DISCLOSURE OF OWNERSHIP AND CONTROL

The applicant must disclose the type of organizational structure of the applicant:

- Individual
- Business corporation
- Nonprofit corporation
- Partnership
- Joint venture
- Trust
- Association
- Other

If other, describe: _____

If the applicant is an individual, the applicant must disclose the individual's:

Legal name: _____

United States citizen: (Yes or No): _____

Any aliases and business or trade names currently or previously used:

If the applicant is a corporation, the applicant must disclose the applicant's:

Full corporate name: _____

Any trade names currently or previously used: _____

Jurisdiction of incorporation: _____

Date of incorporation: _____

Date the applicant began doing business in the Commonwealth of Virginia: _____

A copy of the applicant's certificate of authority to do business in Virginia. (Identify attached exhibit number.)

Copies of the applicant's articles of incorporation. (Identify attached exhibit number.)

The general nature of the applicant's business: _____

The names, in alphabetical order, and addresses of the directors, and in a separate list, officers of the applicant.

If the applicant is an organization other than a corporation:

The applicant's full name: _____

Any aliases, business or trade names currently or previously used:

The jurisdiction of organization of the applicant: _____

The date the applicant began doing business in Virginia: _____

The general nature of the applicant's business: _____

Copies of any agreements creating or governing the applicant's organization. (Identify attached exhibit number.)

The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policy-making authority.

If the applicant is a tax exempt organization, the applicant must submit copies of documentation from the Internal Revenue Service granting tax exempt status. (Identify attached exhibit number.)

DISCLOSURE OF CHARACTER INFORMATION

An applicant for a license shall disclose and furnish particulars whether the applicant, director, officer, partner and other persons who have or share policy-making authority:

Been charged in any criminal proceeding other than a traffic violation: (Yes or No) _____

If yes, the applicant must disclose:

Name: _____

Title: _____

Nature of the charge: _____

Date charged: _____

Court: _____

Disposition: _____

Had a horse racing, gambling, business, professional, or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so: (Yes or No) _____

If yes, the applicant must disclose:

Name: _____

Title: _____

Date of commencement: _____

Circumstances: _____

Disposition: _____

Begun an administrative or judicial action against a governmental regulator of horse racing or gambling: (Yes or No): _____

If yes, the applicant must disclose:

Name: _____

Title: _____

Date of commencement: _____

Forum: _____

Circumstances: _____

Disposition: _____

DISCLOSURE OF SITE AND FACILITIES

An applicant for a limited license shall disclose the following concerning the horse racing facility:

Address of the facility:

(Street Address)
(Municipality)
(County)

Present ownership of the horse racing facility:

If the applicant leases the site of the horse racing facility, the applicant must submit copies of any leasing agreement, and any other arrangements for the use of the facility between the applicant and the owner of the facility. (Identify attached exhibit number.)

The type or types of racing which will be offered:

- Thoroughbred
Standardbred
Steeplechase
Quarter Horse
Arabian
Other

If other, describe:

The number of races to be run each day, the post time of the first race each day, types of pari-mutuel pools to be offered, and any organization sanctioning the races. (Identify attached exhibit number.)

A description of the post-race detention facility or sample collecting arrangements:

A description of the totalizator, including vendor and manufacturers, if known:

A description of starting, timing, photo finish and photo patrol, or video equipment, including vendor and manufacturers, if known:

A description of the work areas for stewards and patrol judges:

DISCLOSURE OF GOVERNMENTAL ACTIONS

An applicant for a limited license shall disclose:

Whether the applicant is in compliance with all state statutes, local charter provisions, local ordinances, and state and local regulations pertaining to the development, ownership and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.

Is the applicant in compliance with all state statutes, local charter provisions, local ordinances, and state and local regulations pertaining to the development, ownership and operation of its horse racing facility? (Yes or No)

If no, the applicant must disclose the reasons why the applicant is not in compliance:

Further, the applicant must summarize plans to obtain compliance:

DISCLOSURE OF MANAGEMENT

An applicant for a limited license shall disclose its management personnel:

<u>Name</u>	<u>Title</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

DISCLOSURE OF SAFETY AND SECURITY PLANS

An applicant for a limited license shall describe the safety and security plans for the horse racing facility in regards to the procedures for accepting and cashing wagers, detention facility and participants:

EFFECTS ON COMPETITION

An applicant for a limited license shall make a brief statement indicating why its racing days will not be harmful to other limited and unlimited licenses issued by the Virginia Racing Commission:

AUTHORIZATION FOR RELEASE OF PERSONAL INFORMATION

I, _____ (Name)
a _____ (Title)
of _____ (Name of Applicant)

hereby authorize a complete review of my background and of the information provided by me in my disclosure statement and the information provided in the applicant's application. In addition, I hereby authorize a complete background investigation to be conducted by the Virginia State Police, Federal Bureau of Investigation, the Virginia Racing Commission, and its agents, contractors and assignees of all records concerning me, whether these records are public, non-public, private or confidential. I accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Virginia Racing Commission, its employees, commission staff or agents. I recognize that the information provided and discovered may be used by the Virginia Racing Commission, its employees, members, staff and agents in order to evaluate both the applicant and my fitness and qualifications for participation in the applicant's license under 59.1-376 Code of Virginia; and I further release authorized providers and users of any such information from any liability under state or federal privacy laws.

(Signature)

Subscribed and sworn to before me

on this _____ day of _____, 19 _____.

(Notary Public)

PERSONAL INFORMATION FORM

(Name)

(Date of Birth) _____ (Social Security Number)

(Home Address)

(City) _____ (State) _____ (Zip Code)

(Area Code) _____ (Home Telephone Number)

(Business Address)

(City) _____ (State) _____ (Zip Code)

(Area Code) _____ (Business Telephone Number)

Have you ever been suspended, denied a license or fined more than \$25 by any state racing commission? (Yes or No) _____

Have you ever been arrested or charged with a crime (other than a traffic violation)? (Yes or No) _____

Have you ever been employed by or associated with a bookmaker or any gambling or illegal establishment or ever owned or operated a handbook or other illegal establishment? (Yes or No) _____

I hereby certify that I have read the foregoing form and affirm that every statement therein is true and correctly set forth. I also agree to abide by and obey the regulations of the Virginia Racing Commission and the Commonwealth of Virginia.

(Signature)

VIRGINIA RACING COMMISSION

Title of Regulation: VR 662-03-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Racing Officials.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: December 19, 1990.

Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities and horse race meetings with pari-mutuel wagering. The regulation sets forth the qualifications, duties and responsibilities of permit holders who will be acting in the capacity of racing officials at race meetings with pari-mutuel wagering. Further, the proposed regulation sets forth how the racing officials will interact with each other and the commission.

VR 662-03-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Racing Officials.

PART I. GENERAL.

§ 1.1. Generally.

No racing official shall participate in any horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting or pari-mutuel wagering of the race meeting unless the person possesses a permit from the commission and complies with the provisions of the Act of the General Assembly creating Horse Racing and Pari-Mutuel Betting and the regulations of the commission. Permits issued by the commission are not transferable.

A. Application for permit.

A person desiring to obtain a permit as a racing official shall make an application for a permit on a form prescribed by the commission. The application shall be accompanied by a fee prescribed by the commission and shall include the cost of fingerprinting and a background investigation. The applicant shall be fingerprinted upon making his initial application in the Commonwealth and at least once every five years thereafter. The application shall be verified by the oath or affirmation of the applicant. In addition, the applicant shall demonstrate that he:

1. Is of good moral character and reputation;
2. Is experienced in horse racing;
3. Is familiar with the duties the applicant is applying to do and with the regulations of the commission;

4. Possesses the mental and physical capacity to perform the duties of the position; and

5. [~~The applicant~~ An applicant whose vision is essential to the performance of his duties] shall take and satisfactorily pass an optical examination every two years. The eye examination results must show natural or corrected 20-20 vision and an ability to distinguish colors correctly.

B. Fee schedule.

Before submitting an application for a permit as a racing official, the applicant shall consult the fee schedule of the Virginia Racing Commission to ascertain the applicable fee, make out a check or money order payable to the Virginia Racing Commission or pay in cash the full amount of the fee, and submit the fee with the application.

C. Consideration by commission.

The commission shall promptly consider an application and shall issue or deny the permit based on information in the application and all other information before it, including any investigation it deems appropriate. If an application is approved, the commission shall issue a permit and the permit shall be valid for one year.

D. Denial of application.

The commission shall deny the application, if it finds that the issuance of a permit to a person as a racing official would not be in the interests of the people of the Commonwealth, or the horse racing industry of the Commonwealth or would reflect adversely on the honesty and integrity of the horse racing industry in the Commonwealth. The commission shall also deny the application, if it finds that the applicant:

1. Has knowingly made a false statement of a material fact in the application, or has deliberately failed to disclose any information requested by the commission;
2. Is or has been guilty of any corrupt or fraudulent practice or conduct in connection with any horse race meeting in this or any other state;
3. Has knowingly failed to comply with the provisions of the Act or the regulations of the commission;
4. Has had a permit to engage in activity related to horse racing denied for just cause, suspended or revoked in any other jurisdiction, and such denial, suspension or revocation is still in effect;
5. Is unqualified to perform the duties required for the permit sought; or
6. Has been convicted of a misdemeanor or felony involving unlawful conduct or wagering, fraudulent use

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of a credential, unlawful transmission of information, touting, bribery, administration or possession of drugs or any felony considered by the commission to reflect adversely on the horse racing industry in the Commonwealth.

E. Denial is final.

The denial of an application by a person as a racing official shall be final unless an appeal is made by the applicant under the provisions of these regulations.

F. Prohibited activities for racing officials.

No racing official or any assistant of a racing official, while serving at any race meeting licensed by the commission, shall engage in any of the following activities:

1. Participating in the sale, purchase or ownership of any horse which is racing at a meeting where the racing official is serving;
2. Being involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
3. Wagering at race meetings licensed by the commission;
4. Accepting any gratuity or payment, other than regular wages or salary, directly or indirectly; or
5. Engaging in any activity that would impair a racing official's judgment or to function in his assigned capacity.

G. Reporting violations.

Every racing official, and any assistant, [are is] responsible to report immediately to the stewards every observed violation of these regulations as well as all violations of state and federal laws during the race meeting.

H. Single appointment.

No racing official may hold more than one official position, unless at the request of the licensee or on its own motion the commission determines that, the holding of more than one appointment would not subject the official to a conflict of his interests and duties in the two official positions.

I. Emergency appointment.

Any racing official who desires to leave his position or is unable to fulfill his responsibilities must first obtain permission from the commission. The licensee shall promptly appoint a successor, subject to the issuance of the appropriate permit by the commission. In the event of an emergency and the licensee is unable to appoint a successor in time to permit the orderly conduct of racing,

the stewards shall immediately appoint a temporary successor.

J. Notification of commission.

The list of racing officials to be employed by the licensee shall be submitted to the commission no later than 30 days prior to the opening of the race meeting. The licensee shall be responsible for submitting an application for each racing official who has not been previously issued a permit by the commission no later than 60 days prior to the opening of the race meeting.

K. Fine, suspension and revocation.

A racing official may be fined, suspended or have his permit revoked at any time by the commission for incompetence, failure to follow or enforce the commission's regulations, or any conduct detrimental to horse racing. The disciplinary action of the commission shall be final unless the racing official appeals the action under the provisions of these regulations.

L. Attendance at proceedings.

A racing official shall attend, when requested by the stewards or commission, any hearing, appeal or proceeding where his testimony may be material in arriving at a determination of the matter.

M. Interference with other officials.

A racing official shall not interfere with the deliberations or the decision-making of other racing officials.

PART II. PERSONNEL.

§ 2.1. General manager.

The licensee shall appoint a qualified person to act as the general manager for any unlimited race meeting. The general manager, and his assistant, if one is appointed, shall oversee the conduct of the race meeting and cooperate with the commission in implementing these regulations. In addition, the general manager's duties include but are not limited to:

1. Providing the procedures, facilities and equipment as set forth in VR 662-02-01 that the race meeting shall be free of any incompetent or unprincipled practices;
2. Ensuring the pari-mutuel wagering at the race meeting is conducted in accordance with the provisions as set forth in Part III of VR 662-02-01.
3. Developing, with the assistance of the licensee's marketing and promotional staff, plans for the education of the public concerning horse racing and

the growth of the horse industry in the Commonwealth; and

4. Properly supervising the licensee's employees to assure that they are present in sufficient numbers to provide for the public health, safety and welfare as well as to protect the integrity of horse racing.

§ 2.2. Racing secretary.

The licensee shall appoint a qualified person to act as racing secretary for the race meeting. The racing secretary shall be responsible for the conduct of the racing office and all of the licensee's employees who are assigned to the racing office. The racing secretary, and his assistant, if one is appointed, shall also be responsible for the programming of races during the race meeting and all of the duties pertaining to the programming of races. Among the duties of the racing secretary are:

1. Recruiting the highest possible quality of horses for the race meeting and assigning stall space to horses. The racing secretary shall submit the procedures and stall application forms to achieve a quality horse population no later than 60 days before the opening of the race meeting;
2. Receiving and keeping safe, with the assistance of the clerk of the course, registration or eligibility certificates of horses stabled within the enclosure or horses to be entered into races, and returning upon request the certificates to the horse owner or his representative;
3. Publishing at least 30 days prior to the opening of the race meeting and at intervals thereafter of not more than 15 days a condition book or sheet that sets forth the conditions and eligibility for horses to be entered into races for the meeting and distributing the book or sheet among owners, trainers and the commission;
4. Supervising the taking of entries for each day's races, verifying the eligibility, the accuracy of the information submitted with the entry and the weights claimed for the horses, where appropriate;
5. Coupling of entries for wagering purposes, as provided for in these regulations, and assigning horses to the mutuel field for wagering purposes in a manner approved by the stewards;
6. Maintaining a list of horses which were entered but denied an opportunity to race because they were excluded from a race programmed in the condition book or sheet either by overfilling or failure to fill the race. The racing secretary shall submit to the commission for approval, at least 30 days prior to the opening of the race meeting, a detailed description of the manner in which preference will be allocated to those horses excluded;

7. Posting a list of entries or an overnight sheet in a conspicuous location in the racing secretary's office, upon the closing of entries each day, and making available copies of the list of entries or overnight sheet to other racing officials, commission personnel, horsemen, members of the media and the public;

8. Maintaining, with the assistance of the clerk of the course, a permanent record of all stakes, entrance moneys and arrears paid or due, and depositing the moneys in an escrow account as provided in [~~VR 662-02-01~~ VR 662-01-02] ;

9. Publishing, with the assistance of the program director, a daily racing program accurately containing all of the information that is deemed appropriate to the type of racing being offered and any other information the commission may deem appropriate;

10. Assigning weights to be carried by each horse in a handicap race, and when weights are not specified by the conditions of the race, the scale of weights of either The Jockey Club or the National Steeplechase and Hunt Association shall apply, as they are appropriate;

11. Keeping, with the assistance of the clerk of the course, permanent records of the results of each race of the meeting, and updating the registration or eligibility certificate with information deemed appropriate by the commission or the appropriate breed registry;

12. Informing the horsemen's bookkeeper of the results of each race as well as the amounts of purse moneys due and the parties to whom the purse moneys are due and, in general, supervising the account;

13. Posting a list in a conspicuous place in the racing secretary's office of those horses that have been nerved and those horses that have been gelded or spayed;

14. Maintaining, with the assistance of the stall superintendent, a list of the horses stabled within the enclosure, and maintaining a record of arrival and departure of all horses stabled within the enclosure;

15. Supervising the claims clerk in determining the eligibility of owners to claim other horses at the race meeting and whether sufficient funds exist in the horsemen's account or proper funding is available to make a valid claim; and

16. Withdrawing, cancelling or changing any race which has not closed. In the event the cancelled race is a stakes race, all subscriptions and fees paid in connection with the race shall be refunded.

§ 2.3. Licensee's veterinarian.

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The licensee shall appoint a qualified person to act as the licensee's veterinarian for the race meeting. The licensee's veterinarian shall possess a [full and unrestricted] license to practice veterinary medicine from the Virginia Board of Veterinary Medicine and shall be present within the enclosure on racing days to perform his duties. The duties of the licensee's veterinarian include, but are not limited, to:

1. Making the prerace examination of the horses entered to race on that day's program under the supervision of the commission veterinarian, and recommending to the stewards that horses found to be unfit for racing be scratched;
2. Observing the horses in the paddock and being present at the starting gate, where he can recommend to the stewards scratching any horse that he deems to be unfit for racing;
3. Observing all of the horses after the finish of a race and upon their leaving the racing surface for injuries or lameness;
4. Rendering emergency care to horses injured either in workouts or racing when a [private practitioner practicing veterinarian] is not readily available to perform these services; and
5. Assisting the commission veterinarian in determining those horses which are bleeders, either through observing the horse bleed from the nostrils after a workout or a race, or by observing a private practitioner's endoscopic examination of a horse following a workout or race.

§ 2.4. Paddock judge.

The licensee shall appoint a qualified person to act as the paddock judge for the race meeting. The paddock judge shall have general supervision of the paddock and among the duties of the paddock judge are:

1. Assuring that horses are in the paddock at the time appointed by the stewards and reporting to the stewards those horses which are late to the paddock;
2. Assembling the horses and jockeys in the paddock no later than 15 minutes before the scheduled post time for each race;
3. Keeping a record of all equipment carried by all horses in all races and permitting no change in equipment unless authorized by the stewards;
4. Inspecting the leg bandages worn by horses and ordering the bandages removed or replaced as deemed appropriate;
5. Supervising the schooling of horses in the paddock with the prior permission of the stewards;

6. Supervising the farrier assigned to the paddock to ensure that the plating of each horse in each race is examined, determining whether the horse is properly shod, and making changes deemed necessary;

7. Excluding from the paddock all those persons who have no immediate business with the horses entered in a race and reporting rule violations in the paddock area to the stewards;

8. Taking all measures to ensure that the saddling of all horses is orderly, open to public view, free from interference, and further assuring that the horses are mounted at the same time, and leave the paddock for the post parade in the proper sequence;

9. Permitting a horse to be excused from parading and instead permitting that the horse be led to the post, with the approval of the stewards;

10. Assuring that the horse displays the proper saddle cloth number and the jockey wears the proper number before leaving the paddock for the post parade;

11. Keeping a record of those horses accompanied to the post by pony riders; and

12. Checking out horses and drivers as they leave the paddock for warmups prior to racing and checking in their return to the paddock after the warmups for Standardbred race meetings.

§ 2.5. Patrol judge.

The licensee shall appoint a sufficient number of qualified persons to act as patrol judges for the race meeting. For flat and jump race meetings, the licensee shall appoint at least three patrol judges, and for Standardbred race meetings, a single patrol judge shall ride in the mobile starting gate. Among the duties of the patrol judge are:

1. Reporting, particularly as to any suspected violation of these regulations, during the running of each race to the stewards through radio or telephone communication;
2. Writing a report of their observations of every race, and documenting all violations of these regulations that they observed during the running of the race. These reports shall be delivered to the stewards at the conclusion of each day of racing;
3. Assisting the stewards in making a determination of an objection, inquiry or protest of the running of a race;
4. Assisting the stewards in making up a list of participants in each race to review the films before the commencement of the next succeeding day of

racing; and

5. Notifying the stewards of any objection lodged by a driver after a Standardbred race, and the mobile starting gate shall be positioned so that drivers can promptly lodge objections with the patrol judge.

§ 2.6. Horse identifier.

The licensee shall appoint a qualified person to act as horse identifier for the race meeting. The horse identifier shall be responsible for the proper identification of all horses entered to race. Among the duties of the horse identifier are:

1. Accompanying the commission's or licensee's veterinarian during the prerace examination of all horses entered to race so as to ascertain their identity;
2. Examining every horse entered to race in the paddock for sex, age, color, markings, lip-tattoo number and name for comparison with the information contained on the certificate of registration;
3. Using photographs, if they exist, as an aid in identifying horses entered to race, during the prerace examination and in the paddock prior to racing;
4. Notifying both the stewards and paddock judge of any doubts he has concerning the identity of any horse entered to race; and
5. Assisting the racing secretary in the safekeeping of certificates of registration, eligibility certificates and racing permits, and recording any information required to be entered on these documents.

§ 2.7. Clerk of scales.

The licensee shall appoint a qualified person to act as clerk of scales for the race meeting. The clerk of scales shall be responsible for the security, regulation and control of the jockeys' room, equipment in the jockeys' room and personnel permitted access to the jockeys' room. Among the duties of the clerk of scales are:

1. Securing the jockeys' room and excluding unauthorized persons, and ensuring that no jockey, valet or other person leaves the jockeys' room or paddock until their participation in the racing day is concluded;
2. Supervising the custodian of the jockeys' room and ensuring that the jockeys' room is properly equipped as provided for in VR 662-02-01 and informing the stewards and licensee of any deficiencies;
3. Ascertaining that all of the jockeys, who are programmed to ride on that racing day, are in the jockeys' room at the time appointed by the stewards

and are in possession of the proper permit from the commission;

4. Weighing out every jockey no later than 15 minutes prior to the race that the jockey is scheduled to ride and recording all overweights which shall immediately be posted and announced to the public;

5. Weighing in every jockey immediately after the finish of each race and promptly notifying the stewards whether any jockey weighed in more than two pounds underweight or overweight;

6. Providing the horsemen's bookkeeper with an accounting of riding fees due each jockey at the end of each racing day;

7. Safekeeping of all racing colors;

8. Reporting all color changes or jockey changes from that listed in the daily racing program and causing any changes to be immediately posted and announced to the public;

9. Supervising the valets and the issuance of numbered saddle cloths and equipment for each horse;

10. Testing the accuracy of the scales at the beginning of the race meeting and conducting periodic tests of the scales thereafter;

11. Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any; and

12. Notifying the stewards immediately of all complaints, protests, objections or disputes submitted to the clerk of scales, and if the stewards are not available, then to the commission.

§ 2.8. Placing judge.

The licensee shall appoint three qualified persons to act as placing judges for a flat race meeting. The judges shall occupy a stand directly above the finish line during the running of each race. Among the duties of the placing judges are:

1. Placing horses at the finish of race [;] . The placing judges shall only consider the position of the horses' noses and not any other part of the body;
2. Placing the horses in the order of finish and displaying the result on the infield results board;
3. Calling for a photograph from the photo-finish camera when the finish indicates a close finish or when the judges are not in unanimous agreement as to the correct order of finish;
4. Referring photo-finish photographs to the stewards

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for concurrence before the order of finish is displayed on the infield results board, when the placing judges are not in unanimous agreement or there is an apparent dead heat following the examination of the photograph;

5. Submitting to the stewards and the horsemen's bookkeeper at the conclusion of each racing day a list of the placings of those in each race and those horses which did not finish;

6. Correcting errors in the displaying of the order of finish on the infield results board, with the permission of the stewards, before the race is declared "official" by the stewards; and

7. For Standardbred race meetings, the stewards may act as placing judges; however, all three stewards shall inspect any photo-finish and be in unanimous agreement before posting the order of finish.

§ 2.9. Starter.

A. Flat races.

The licensee shall appoint a qualified person to act as starter for a flat race meeting. The starter shall be responsible for the fair and equal start of all horses at the scheduled starting time by means of a starting gate and bell. Among the duties of the starter are:

1. Ensuring that two operable starting gates are available at all times during racing days and that the starting gates are clean, neat and in good repair;

2. Permitting no horses to be entered in a race unless approved by the starter;

3. Maintaining a starter's list of the horses' names and posting the list in the racing secretary's office of those ineligible to start because lack of training or bad behavior at entering or leaving the starting gate;

4. Schooling those horses which are on the starter's list by being present with an adequate number of assistant starters during hours approved by the stewards, and approving those horses for entry which are making their first lifetime starts;

5. Appointing assistant starters who shall not handle or take charge of a horse in the starting gate without the express instructions from the starter;

6. Changing daily the gate position of each assistant starter without notice to the assistant starters until the field for the first race comes upon the racing surface;

7. Taking all necessary measures to ensure a fair and equal start;

8. Overseeing the post parade of the horses, jockeys,

outriders and pony riders from the time they arrive on the track until the start is effected;

9. Ensuring that no jockey dismounts without the permission of the starter. A jockey may dismount only due to accident or injury to horse or jockey or equipment adjustment; in that case the starter may permit all jockeys to dismount. The starter shall delay the start until all jockeys have remounted their horses;

10. Ensuring that no other person than the jockey shall help in effecting a start by striking a horse or shouting at it or otherwise assisting;

11. Causing all horses, so far as is practical, to be loaded in order of post position, but the starter may, in his discretion, load an unruly or fractious horse out of order;

12. Reporting to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommending penalties for offenders;

13. Maintaining a written record showing the names of all starters during the racing day and the names of the assistant starters who handled each horse, and making the record available to stewards upon request;

14. Notifying the stewards immediately of any significant failure of the starting gate, or any defect in the starting process if any horse is not in the starting gate when the field is dispatched, or for any other reason a horse [doesn't does not] receive a fair start; and

15. Keeping in constant radio or telephone communication with the stewards from the time the horses leave the paddock until the horses leave the starting gate.

B. Jump races.

In jump races, where the horses are started by other than a starting gate, the licensee shall appoint qualified persons to act as a starter and assistant starter. The starter shall be responsible for securing a fair and equal start for all horses at the scheduled time by means of a flag. Among the duties of the starter are:

1. Ensuring that there shall be no start until, and no recall after, the assistant starter has dropped the flag in answer to the flag of the starter;

2. Starting the horses as far as possible in a line, but the horses may be started at a reasonable distance behind the starting post as the starter deems necessary;

3. Cancelling a race unless at least one horse and jockey returns to the starter after the recall flag has

been raised for a false start;

4. Declaring a race a walkover if only one horse and jockey returns and satisfies the starter of obeying the recall flag;

5. Restarting the race, when the racing surface is clear, if more than one horse and jockey obeys the recall flag;

6. Ensuring that no jockey dismounts without the permission of the starter. A jockey may dismount only because of an accident or injury to horse or jockey or equipment adjustment; in that case the starter permits all jockeys to dismount. The starter shall delay the start until all jockeys have remounted their horses;

7. Ensuring that no other person than the jockey shall help in effecting a start by striking a horse or shouting at it or otherwise assisting;

8. Reporting to the stewards any disobedience of his orders or attempts to take unfair advantage at the start and recommending penalties for offenders; and

9. Keeping in constant radio or telephone communication with the stewards from the time the horses leave the paddock until the horses start.

C. Standardbred races.

In Standardbred races, where horses are started by means of a mobile starting gate, the licensee shall appoint a person qualified to act as starter for the race meeting. Among the duties of the starter are:

1. Maintaining two operable mobile starting gates and ensuring that both mobile starting gates are clean, neat and in good repair;

2. Providing a mobile starting gate with a screen or shield in front of the position for each horse, and the arms of the starting gate shall be perpendicular to the rail;

3. Appointing a qualified person to be the driver of the mobile starting [gate] ;

4. Ensuring that the driver of the mobile starting gate knows and practices emergency procedures in the event there is a malfunction of the starting gate;

5. Maintaining a starter's list of the horses' names and posting the list in the racing secretary's office of those ineligible for entry because lack of training or bad behavior at the starting gate;

6. Schooling those horses which are on the starter's list by being present with a mobile starting gate during nonracing hours, approved by the stewards, and approving those horses coming off the starter's list and

those making their first start;

7. Starting qualifying races by being present with a mobile starting gate as directed by the licensee and approved by the stewards;

8. Having control of the horses from the formation of the post parade until the starter gives the word "go";

9. Notifying the drivers during or before the post parade of the number of preliminary warming up scores and calling the horses to the starting gate no nearer than an eighth of a mile from the starting point;

10. Allowing sufficient time so that the speed of the starting gate can be gradually increased, and so that the following minimum speeds will be maintained:

a. For the first eighth of a mile, not less than 11 miles per hour;

b. For the next sixteenth of a mile, not less than 18 miles per hour; and

c. From that point to the starting point, the speed will be gradually increased to maximum speed.

11. Ensuring that the starting point is marked on the inside rail and not less than 200 feet from the first turn, and at the starting point the starter shall give the word "go";

12. Sounding for a recall by flashing a plainly visible light and sounding a recall signal to the drivers, when:

a. A horse scores ahead of the starting gate;

b. There is interference;

c. A horse has broken equipment;

d. There is a malfunction of the starting gate; or

e. A horse falls before the word "go" is given.

However, there shall be no recall after the word "go" has been given and any horse, regardless of its position or an accident, shall be deemed a starter. While the starter shall endeavor to get all horses away in position and on gait, there shall be no recall for a horse that breaks its gait.

13. Recommending to the stewards penalties to drivers for the following actions:

a. Delaying the start;

b. Failing to obey the starter's instructions;

c. Rushing ahead of the inside or outside wing of

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the gate;

d. Coming to the starting gate out of position;

e. Crossing over before reaching the starting point;

f. Interfering with another horse during the start; or

g. Failing to come up into position.

14. Using a loudspeaker for any other purpose other than to give instructions to drivers is prohibited and the volume of the loudspeaker shall be no higher than necessary to carry the voice of the starter to the drivers; and

15. Notifying the stewards of an unmanageable or bad acting horse or a horse liable to cause accidents or injury to any other horse or driver and recommending to the stewards that unmanageable horses be excused.

§ 2.10. Outriders.

The licensee shall appoint a sufficient number of qualified people to act as outriders for the race meeting. The outriders shall accompany the field of horses from the paddock to the post, assist jockeys with unruly horses, render assistance when requested by the jockey, and be present during morning workouts at flat and jump race meetings to assist exercise riders as required by these regulations.

§ 2.11. Entry clerk.

The licensee shall appoint a sufficient number of qualified people to act as entry clerks for the race meeting. The entry clerks shall assist the racing secretary in the taking of entries for each day's races, verifying the eligibility of the entrants, the accuracy of the information submitted with the entry, the weights claimed for the horses, where appropriate, and assisting the draw for post position. Entry clerks may also serve in other capacities during the race meeting with the approval of the stewards.

§ 2.12. Clocker.

The licensee shall appoint a sufficient number of qualified people to act as clockers for flat race meetings. The clockers shall be present at their assigned locations at the opening of training hours each morning and remain there until training hours are concluded. The clockers shall keep a listing of the name of each horse working out, distance, time, manner in which the workout was accomplished, condition of the racing surface, and any other information deemed appropriate. At the conclusion of training hours, the clocker shall submit the listing to the stewards, racing secretary, media and any other personnel deemed appropriate.

§ 2.13. Gap attendant.

The licensee shall appoint a sufficient number of qualified people to act as gap attendants for flat race meetings. The gap attendants shall be present at their assigned locations at the opening of training hours each morning and remain there until training hours are concluded. The gap attendant shall obtain the name of each horse working out, distance, and the starting and finishing points of the workout, and report this information to the clocker. The gap attendants shall report to the stewards any exercise rider or trainer who refuses to supply this information.

§ 2.14. Timer.

The licensee shall appoint a sufficient number of qualified people to act as timers for race meetings. The timers shall be present at their assigned locations and equipped with stopwatches or other timing devices to record the time of each race, along with appropriate fractional times, in the event of a failure of the electronic timing system or limitations to the electronic system. The timer shall keep record of his time for each race along with the appropriate fractional times.

§ 2.15. Custodian of jockeys' room.

The licensee shall appoint a qualified person to act as custodian of the jockeys' room for flat race meetings or custodian of the drivers' room for Standardbred race meetings. The custodian shall assist the clerk of scales in performing his duties and supervise the valets. Among the duties of the custodian are:

1. Maintaining order, decorum and cleanliness in the jockeys' room and scale rooms;
2. Assisting the clerk of scales as required;
3. Ensuring that no unauthorized persons are admitted to the jockeys' room;
4. Supervising the care and storage of racing colors;
5. Supervising the valets, and arranging with the stewards and clerk of scales a rotation among the valets for the weighing out of jockeys;
6. Ensuring that no valet converses with the public after reporting to the jockeys' room or leaves the confines of the area where they perform their duties which includes the jockeys' room, paddock and winners' circle;
7. Ensuring that jockeys are neat in appearance and properly attired when they leave the jockeys' room to ride in a race;
8. Reporting to the stewards any violation of a regulation occurring within the jockeys' room; and
9. Assigning to each jockey a locker capable of being

locked for the use of storing clothing, equipment and personal effects.

§ 2.16. Valets.

The licensee shall appoint a sufficient number of qualified persons to act as valets for flat race meetings. The valets shall attend the weighing out of jockeys prior to riding in races and the weighing in of jockeys after riding in races under the supervision of the clerk of scales and custodian of the jockeys' room. Among the duties of valets are:

1. Reporting to the jockeys' room at the time appointed by the stewards and clerk of scales, and not leaving the confines of the area where they perform their duties which includes the jockeys' room, paddock and winners' circle;
2. Conversing with the public while performing their duties is forbidden;
3. Attending the weighing out of jockey, the saddling of the jockeys' mount prior to racing, and [attend attending] the weighing in of jockeys in a rotation approved by the stewards and clerk of scales; and
4. Returning to the confines where they perform their duties is forbidden, once valets have completed their participation in the racing day and left the confines.

§ 2.17. Claims clerk.

The licensee shall appoint a qualified person to act as claims clerk for the race meeting. The claims clerk shall assist the stewards and racing secretary in processing claims filed for horses entered in claiming races. Among the duties of the claims clerk are:

1. Ensuring there is an adequate supply of claiming forms and envelopes provided by the licensee, and the forms and envelopes are in a form approved by the commission;
2. Ensuring that the claims box is locked at the time appointed by the stewards and only opened when the horses for the race enter the racing surface on their way from the paddock to the post;
3. Informing no one except the stewards of any claims filed for a horse in the claiming race and of any multiple claims on a horse entered in the race;
4. Ascertaining that the claiming form and envelopes are properly complete;
5. Ascertaining that the person filing a claim is eligible to claim horses at the race meeting and informing the stewards immediately of any doubts of the person's eligibility to make a claim;

6. Ascertaining that sufficient funds have been deposited with the licensee or exist in the horsemen's account to cover the cost of the claim and informing the stewards immediately of any insufficiency in funds; and

7. Being present when the stewards draw for the successful claimant in those cases where multiple claims are made on a single horse.

§ 2.18. Clerk of the course.

The licensee shall appoint a qualified person to act as clerk of the course for the race meeting. The clerk of the course shall assist the racing secretary in performing his duties. Among the duties of the clerk of the course are:

1. Safekeeping of registration or eligibility certificates and making any notation upon them required by recognized breed registries;
2. Returning registration or eligibility certificates to the owners of the horses or their representative upon request;
3. Publishing conditions and entry forms for stakes and futurities to be run at the race meeting;
4. Receiving nominations for stakes races and futurities, and depositing any fees associated with these races in an escrow account as provided for in [~~VR 662-02-01~~ VR 662-01-02]; and
5. Maintaining accurate records of race results from each racing day.

§ 2.19. Director of security.

The licensee shall appoint a qualified person to act as director of security for the race meeting. The director of security shall be responsible for the safety and security of the public, participants and physical plant of the horse racing facility. Among the duties of the director of security are:

1. Developing a comprehensive security plan for the horse racing facility encompassing local emergency services available; including fire fighting, law enforcement and medical emergency;
2. Inspecting on a periodic basis the security equipment, such as fences, locks, alarms and monitoring equipment for the horse racing facility;
3. Developing procedures whereby unauthorized persons may be excluded from restricted areas, securing areas where money and mutuel tickets are vaulted, and discovery and expulsion of persons who are a threat to the integrity of racing in Virginia;
4. Supervising the security officers employed by the

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licensee so that the safety and welfare of the public and participants may be protected and to protect the integrity of racing in Virginia;

5. Developing evacuation procedures in case of a fire or other emergency, and training the licensee's security personnel and other employees in their responsibilities in emergency situations;

6. Inspecting the licensee's first aid and medical facilities and ensuring the personnel are trained, equipped and ready to render emergency assistance to the public and participants when required;

7. Reporting to the commission's director of security any actual, suspected or indicated violation of these regulations or of any criminal offense coming to his attention;

8. Cooperating with commission personnel, Virginia State Police and industry security services in the performance of their duties; and

9. Informing the commission of the licensee's internal accounting controls to safeguard assets, and detect fraud and embezzlement.

§ 2.20. Security officer.

The licensee shall appoint a sufficient number of qualified persons to act as security officers for the race meeting. The security officers shall assist the licensee's director of security in carrying out his responsibilities. The security officers shall conduct themselves so as to protect the safety and welfare of the public and participants and protect the integrity of horse racing in Virginia.

§ 2.21. Mutuel manager.

The licensee shall appoint a qualified person to act as mutuel manager for the race meeting. The mutuel manager shall supervise the operations of the mutuel department and the licensee's personnel employed in the mutuel department so that the public interest and the integrity of horse racing in Virginia may be protected. Among the duties of the mutuel manager are:

1. Inspecting on a periodic basis the operation of the totalizator for the accuracy of its calculations;

2. Assigning a sufficient number of mutuel clerks so that the wagering may be conducted efficiently and without undue delay or inconvenience to the public;

3. Observing the progression of the wagering and informing the stewards immediately of any malfunction in the totalizator or suspected unusual patterns in the wagering;

4. Locking the ticket-issuing machines at the start of the race in the event of a failure in the system or

through the inadvertence of the stewards;

5. Making any emergency decisions when there is not sufficient time for consultation with the stewards, but submitting a written report to the stewards and the commission of the action taken and the reason for taking the action;

6. Comparing two independent sets of pool totals at periodic intervals and verifying any discrepancies;

7. Ascertaining the accuracy of the approximate odds and payouts posted on the infield results board;

8. Preparing, at the request of the stewards or commission, special reports on any of the wagering activity during the race meeting; and

9. Safekeeping the records of the wagering activity for a period of at least 30 days following the conclusion of the race meeting and not destroying the records without the permission of the commission.

§ 2.22. Photo-finish camera operator.

The licensee shall appoint a qualified person to act as photo-finish camera operator for the race meeting. The photo-finish camera operator shall be responsible for the operation of the photo-finish camera equipment and for producing prints of photo-finishes of a quality required by the placing judges and stewards. Among the duties of the photo-finish camera operator are:

1. Being in his assigned location in sufficient time prior to the first race to ensure that the photo-finish cameras are operable and sufficient supplies are on hand;

2. Taking clear photo-finish photographs of all horses passing the finish line on two separate cameras;

3. Producing prints of the finishes of any races as requested either by the placing judges or stewards;

4. Notifying the stewards and placing judges immediately of any malfunction in either camera or the inability to produce prints;

5. Supplying the media and other appropriate personnel with the number of beaten lengths of any horses finishing in the race; and

6. Keeping safe films of the finishes of all races for one year after the closing of the race meeting, and not destroying any films without the permission of the commission.

§ 2.23. Video patrol personnel.

The licensee shall appoint a sufficient number of qualified persons to operate the film or video patrol

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camera for the race meeting. The video patrol camera personnel shall be responsible for the recording of each race during meeting as provided for in [~~VR 662-02-01~~ VR 662-01-02]. Among the duties of the video patrol camera personnel are:

1. Being in their assigned location in sufficient time prior to the first race to ensure that the video patrol cameras and equipment are in operable condition;
2. Making recording of the running of each race clearly showing the position and actions of the horses and jockeys or drivers at close range;
3. Replaying for the benefit of the stewards of any portion of the race requested by the stewards;
4. Notifying the stewards immediately of any malfunction in either the cameras or equipment or the inability to replay any portion of a race;
5. Replaying the running of each race for the benefit of the public and showing the public any riding fouls that resulted in a disqualification; and
6. Safekeeping the records of all races for one year after the closing of the race meeting, and not destroying any of the records without the permission of the commission.

§ 2.24. Program director.

The licensee shall appoint a qualified person to act as program director for the race meeting. The program director shall perform his duties under the supervision of the racing secretary, ensure that all of the information contained in the daily racing program is accurate, and provide all of the information in the daily racing program that is deemed appropriate to the type of racing.

§ 2.25. Track superintendent.

The licensee shall appoint a qualified person to act as track superintendent for the race meeting. The track superintendent shall (i) be responsible for the maintenance of the racing and training surfaces in a safe and humane condition, (ii) keep written records of the maintenance done on the racing and training surfaces and present records for inspection upon request of the stewards or commission, and (iii) keep the necessary equipment and personnel to maintain the racing and training surfaces in proper condition.

§ 2.26. Stall superintendent.

The licensee shall appoint a qualified person to act as stall superintendent for the race meeting. The stall superintendent shall assist the racing secretary in seeing that the horses are in their assigned stalls, establishing a system where horses may not leave or enter the stabling area without the racing secretary's permission, and seeing

that the stabling area is maintained in a clean, neat and sanitary condition.

§ 2.27. Horsemen's bookkeeper.

The licensee shall appoint a qualified person to act as the horsemen's bookkeeper during the race meeting. The horsemen's bookkeeper shall assist the racing secretary in maintaining the separate bank account known as the horsemen's account. Among the duties of the horsemen's bookkeeper are:

1. Ensuring the purse money statutorily mandated is deposited in the account within 48 hours after the running of the race and informing the commission immediately of any deficiencies;
2. Making all portions of purse money available when the stewards have authorized payment to the earners;
3. Ensuring that no portion of the purse money, other than jockey fees, [are is] deducted without proper authorization;
4. Ensuring that proper authorization is on file prior to making deductions from the purse money other than jockey fees;
5. Mailing to each owner a duplicate record of a deposit, withdrawal or transfer of funds affecting the owner's racing at the close of the race meeting; and
6. Assisting the claims clerk in determining whether there [is are] sufficient funds available for an owner or authorized agent to claim another horse.

§ 2.28. Other.

The licensee may appoint qualified persons to assist the racing officials for the race meeting. No person shall act as an assistant in any capacity or serve under the supervision of a racing official unless the person has been issued a permit by the commission as provided for elsewhere in these regulations.

FEE SCHEDULE FOR PERMIT HOLDERS

Type of Permit	Fee
Apprentice Jockey	\$ 10
Assistant General Manager	\$ 10
Assistant Racing Secretary	\$ 10
Assistant Starter	\$ 5
Assistant Trainer	\$ 10
Authorized Agent	\$ 10
Bloodstock Agent	\$ 10
Claims Clerk	\$ 10
Clerk of Scales	\$ 10
Clerk of the Course	\$ 10
Clocker	\$ 10

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Concessionaire/Vendor	\$ 25	Valet	\$ 5
Concessionaire/Vendor Employee	\$ 5	Veterinarian (Licensee)	\$ 10
Corporate Horse Owner	\$ 25	Veterinarian (Private Practice)	\$ 10
Custodian of Jockeys' Room	\$ 10	Video Patrol Personnel	\$ 10
Director of Security	\$ 10		
Driver	\$ 10		
Entry Clerk	\$ 10		
Equine Dentist	\$ 10		
Exercise Rider	\$ 10		
Farrier	\$ 10		
Foreman	\$ 10		
Gap Attendant	\$ 10		
General Manager	\$ 10		
Groom/Hotwalker	\$ 5		
Horse Identifier	\$ 10		
Horsemen's Bookkeeper	\$ 10		
Horse Owner	\$ 10		
Jockey	\$ 10		
Jockey Agent	\$ 10		
Lease	\$ 25		
Licensee-Administrative Employee	\$ 10		
Licensee-Marketing Employee	\$ 10		
Licensee-Medical Employee	\$ 10		
Licensee-Operations Employee	\$ 10		
Licensee-Plant Employee	\$ 10		
Licensee-Staff Employee	\$ 10		
Mutuel Clerk	\$ 10		
Mutuel Manager	\$ 10		
Nightwatchman	\$ 10		
Other	\$ 10		
Outrider	\$ 10		
Paddock Judge	\$ 10		
Partnership	\$ 25		
Patrol Judge	\$ 10		
Pharmaceutical Representative	\$ 25		
Photo-Finish Camera Operator	\$ 10		
Placing Judge	\$ 10		
Pony Rider	\$ 10		
Program Director	\$ 10		
Racing Secretary	\$ 10		
Security Officer	\$ 10		
Stable Name	\$ 25		
Stall Superintendent	\$ 10		
Starter	\$ 10		
Timer	\$ 10		
Track Superintendent	\$ 10		
Trainer	\$ 10		

EMERGENCY REGULATIONS

DEPARTMENT OF COMMERCE

Title of Regulation: VR 583-01-01. Real Estate Appraiser Board Public Participation Guidelines.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Dates: October 31, 1990 through October 30, 1991.

Preamble:

The Department of Commerce is promulgating emergency regulations as detailed in § 9-6.14:5 of the Code of Virginia regarding the solicitation of input from interested parties in the formation and development of regulations governing the practice of real estate appraisal in the Commonwealth.

Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 provides protection for Federal financial and public policy interests by requiring states to establish real estate appraiser regulatory programs by July 1, 1991. In response to the mandate of Title 11, the 1990 Virginia General Assembly adopted the Virginia Real Estate Appraiser Act, Chapter 20.1 of the Code of Virginia, which was signed into law by Governor Wilder on April 3, 1990.

Section 54.1-2013 of the Code of Virginia grants the Director of the Department of Commerce the authority to promulgate initial emergency regulations to comply with applicable federal requirements provided that within twelve months of the effective date of these regulations, the Real Estate Appraiser Board repromulgates the regulations in accordance with the Administrative Process Act. In order to facilitate the input of interested parties during the repromulgation of appraisal regulations by the Real Estate Appraiser Board, the Department of Commerce is also promulgating the following emergency regulations governing the public participation process.

Approved:

/s/ Milton K. Brown, Jr.
Department of Commerce
Date: October 4, 1990

/s/ Lawrence H. Framme, III
Secretary of Economic Development
Date: October 10, 1990

/s/ Lawrence Douglas Wilder
Governor
Date: October 26, 1990

/s/ Joan W. Smith
Virginia Registrar of Regulations
Date: October 31, 1990

VR 583-01-01. Real Estate Appraiser Board Public Participation Guidelines.

PART I GUIDELINES.

§ 1.1. Guidelines.

Pursuant to § 9-6.14:7.1 and § 54.1-2013 of the Code of Virginia, the Director of the Department of Commerce proposes the following public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

A. Mailing List.

The Real Estate Appraiser Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations;
2. "Notice of Public Comment Period" and "Public Hearing," the subject of which is proposed or existing regulations; and
3. Notice that final regulations have been adopted.

B. Additions or deletions to mailing list.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Individuals and organizations on the list will be provided all information stated in Section I. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail addressed to individuals and organizations on the mailing list is returned to the agency as undeliverable, those individuals and organizations shall be deleted from the list.

C. Notice of intended regulatory action.

At least thirty days prior to publication of the notice of comment period and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar for inclusion in the Virginia Register.

D. Petition for rulemaking.

Any person may petition the agency to adopt, amend, or delete any regulation. Any petition received shall appear

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on the next agenda of the agency. The agency shall have sole authority to dispose of the petition.

E. Notice of comment period.

The agency shall file a "Notice of Comment Period" and its proposed regulations with the Registrar as required by § 9-6.14:7.1. Such notice shall establish the date of the public hearing (informal proceeding) and shall afford interested persons the opportunity to submit written data, views and arguments regarding the proposed regulations by a specific date. Interested persons may make their public submissions in writing, orally at the public hearing or both.

F. Notice of formulation and adoption.

At any meeting of the board or any sub-committee or advisory committee where it is anticipated the formulation of the regulation will occur, a notice of meeting indicating that formulation or adoption of regulations will occur shall be transmitted to the Registrar for inclusion in the Virginia Register.

G. Advisory committees.

The agency may appoint advisory committees as it deems necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

H. Applicability.

Sections A through G shall apply to all regulations promulgated except emergency regulations adopted in accordance with § 9-6.14:9 of the Code of Virginia.

* * * * *

Title of Regulation: VR 583-01-02. Real Estate Appraiser Board Emergency Regulations.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Dates: October 31, 1990 through October 30, 1991.

Preamble:

The Department of Commerce is promulgating emergency regulations as detailed in § 9-6.14:5 of the Code of Virginia governing the practice of real estate appraisal in the Commonwealth.

Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 provides protection for Federal financial and public policy interests by requiring states to establish real estate appraiser regulatory programs by July 1, 1991. To ensure that appraisals are performed under uniform standards and that appraisers are subject to effective supervision nationwide, Title 11 creates an Appraisal

Subcommittee of the Federal Financial Institutions Examination Council to monitor each state's compliance with uniform standards and license qualifications and to approve or disapprove of each state's appraiser regulatory program.

In response to the mandate of Title 11, the 1990 Virginia General Assembly adopted the Virginia Real Estate Appraiser Act, Chapter 20.1 of the Code of Virginia, which was signed into law by Governor Wilder on April 3, 1990. Because the federal law prohibits grandfathering of current professionals into licensed status and the Commonwealth requires qualified appraisers by July 1, 1991, § 54.1-2013 of the Appraiser Act grants the Director of the Department of Commerce the authority to promulgate these initial emergency regulations to comply with applicable federal requirements, provided that within twelve months of the effective date of these regulations the Real Estate Appraiser Board repromulgates the regulations in accordance with the Administrative Process Act.

Approved

/s/ Milton K. Brown, Jr.
Department of Commerce
Date: October 4, 1990

/s/ Lawrence H. Framme, III
Secretary of Economic Development
Date: October 11, 1990

/s/ Lawrence Douglas Wilder
Governor
Date: October 26, 1990

/s/ Joan W. Smith
Virginia Registrar of Regulations
Date: October 30, 1990

VR 583-01-02. Real Estate Appraiser Board Emergency Regulations.

PART I. GENERAL.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges," means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

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"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987 to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraiser Qualification Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of (i) all types of real estate and real property that a licensed residential real estate appraiser is permitted to appraise; (ii) any complex residential real estate or real property of one-to-four family residential units where atypical factors such as age of improvements, architectural style, size of improvements, size of lot neighborhood land use and etc., would require the services of a certified appraiser for a federally related transaction; (iii) and any residential real estate or real property where less than ten percent of the real estate or real property is commercial.

"Classroom hour" means as 50 minutes out of each 60 minute segment.

"Experience" as used in these regulations includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study, and teaching of appraisal courses.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four residential units including those federally related transactions where the transaction value is less than \$1,000,000.

"Licensee" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified

general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser as defined, respectively, in § 54.1-2009 of the Code of Virginia and in these regulations.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of the citizens of its domain.

"Proprietary School" means a privately owned school, under the authority of a local, state or federal government agency, board or commission, offering appraisal or appraisal related courses.

"Real estate appraisal or real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States, and where its educational courses or seminars meet standards set forth by the organization.

"Registrant" means any corporation, partnership or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011(E) of the Code of Virginia.

"Substantially equivalent" is a description for any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in these regulations and Chapter 20 of Title 54.1 of the Code of Virginia for licensure and renewal.

"Uniform Standards of Professional Appraiser Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

PART II. ENTRY.

§ 2.1. Requirement for registration.

A corporation, partnership or other business entity seeking to provide appraisal services shall register with the board by completing an application furnished by the board describing the location, nature and operation of its practice, and the name and address of the registered agent, an associate, a partner or the sole proprietor of the business entity. Along with a completed application form corporations shall provide a copy of the Certificate of Authority from the State Corporation Commission; partnerships shall provide a copy of the certified Partnership Certificate; and other business entities shall provide a copy of written authority from the appropriate local court to the board.

§ 2.2. General qualifications for licensure.

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Every applicant to the Real Estate Appraiser Board for a certified general, certified residential or licensed residential real estate appraiser license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department or its agent prior to the time the applicant is approved to sit for the licensing examination. Applications for licensure must be complete within twelve months of the date of the receipt of the license application and fee by the Department of Commerce or its agent.
3. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
4. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.
5. The applicant shall be at least 18 years old.
6. Applicants for licensure who do not meet the requirements set forth in items § 2.2.3. and § 2.2.4. may be approved for licensure following consideration of their application by the Board.

§ 2.3. Additional qualifications for licensure of licensed residential real estate appraisers.

An applicant for a license as a licensed residential real estate appraiser shall meet the requirements of § 2.3.A. in addition to those set forth in § 2.2 of these regulations:

A. Education, experience and examination requirements.

1. The applicant shall have successfully completed 75 classroom hours of courses in subjects related to real estate appraisal to include coverage of the Uniform Standards of Professional Appraisal Practice from accredited colleges, universities, junior and community colleges; adult distributive or marketing education

programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

2. The applicant shall have a minimum of two calendar years experience as an appraiser in the five years immediately preceding application. During that two year period a minimum total of 2,000 hours as an appraiser must be accumulated. The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. The applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board prior to the renewal of his initial license.

§ 2.4. Additional qualifications for licensure of certified residential real estate appraisers.

An applicant for a license as a certified residential real estate appraiser shall meet the requirements of § 2.4.A. in addition to those set forth in § 2.2 of these regulations:

A. Education, experience and examination requirements.

1. The applicant shall have successfully completed 165 classroom hours of courses in subjects related to real estate appraisal to include coverage of the Uniform Standards of Professional Appraisal Practice from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The 165 classroom hours may include the 75 classroom hours completed by a licensed residential real estate appraiser.

2. The applicant shall have a minimum of two calendar years experience as an appraiser during the five years immediately preceding application. During that two year period a minimum of 2,000 hours as an appraiser must be accumulated. The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within twelve months after being approved to sit for the certified residential real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

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§ 2.5. Additional qualifications for licensure for certified general real estate appraisers.

An applicant for a license as a certified general real estate appraiser shall meet the requirements of § 2.5.A. in addition to those set forth in § 2.2 of these regulations:

A. Education, experience and examination requirements.

1. The applicant shall have successfully completed 180 classroom hours of courses in subjects related to real estate appraisal to include coverage of the Uniform Standards of Professional Appraisal Practice from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The 180 classroom hours may include the 165 classroom hours required for the certified residential real estate appraiser.

2. The applicant shall have a minimum of three calendar years experience as a real estate appraiser during the five years immediately preceding application. During that three calendar year period, a minimum of 3,000 hours as an appraiser must be accumulated. For all applicants for a certified general real estate appraiser license, at least one-half of the appraisal experience required (1500 hours) must be in non-residential appraisal assignments.

The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within twelve months after being approved by the Board to sit for the certified general real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

§ 2.6. Qualifications for licensure by reciprocity.

Every applicant to the Real Estate Appraiser Board for a license by reciprocity shall have met the following qualifications:

A. An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a Virginia real estate appraiser license by providing documentation that the applicant has met educational, experience and examination requirements that are substantially equivalent to those required in Virginia for the appropriate level of licensure. All reciprocal applicants shall be required to pass the Virginia appraiser law and regulation section of the licensing examination prior to

licensure.

B. The applicant shall be at least 18 years of age.

C. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

D. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

E. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate appraiser in such a manner as to safeguard the interest of the public.

F. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

G. Applicants for licensure who do not meet the requirements set forth in items § 2.6.D. and § 2.6.F. may be approved for licensure following consideration by the board.

§ 2.7. Qualifications for temporary licensure as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser.

An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a temporary Virginia real estate appraiser's license as required by Section 1121 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The appraiser's certification or license issued by another state shall be recognized as equivalent to a Virginia license provided that:

A. The property to be appraised is part of a federally related transaction.

B. The appraiser's business is of a temporary nature, and is limited to one specific assignment.

C. The education, experience and general examination

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completed in the jurisdiction of original licensure is deemed to be substantially equivalent to those required for the appropriate level of licensure in Virginia.

D. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

E. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

F. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate appraiser in such a manner as to safeguard the interest of the public.

G. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

H. Applicants for licensure who do not meet the requirements set forth in items § 2.7.E. and § 2.7.G. may be approved for licensure following consideration by the board.

I. The applicant shall be at least 18 years of age.

Applicants for temporary licensure shall verify the above information on an application form provided by the board. A temporary license cannot be renewed.

§ 2.8. Application and registration fees.

All application fees for licenses and registrations are nonrefundable.

A. Application fees for original registrations and licenses are as follows:

Registration of corporation, partnership or business entity	\$180.00
Certified General Real Estate Appraiser by education and examination	\$120.00
Certified General Real Estate Appraiser by reciprocity	\$120.00

Temporary Certified General Real Estate Appraiser	\$200.00
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Certified Residential Real Estate Appraiser by education and examination	\$120.00
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Certified Residential Real Estate Appraiser by reciprocity	\$120.00
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Temporary Certified Residential Real Estate Appraiser	\$200.00
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Licensed Residential Real Estate Appraiser by education and examination	\$120.00
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Licensed Residential Real Estate Appraiser by education and examination	\$120.00
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Temporary Licensed Residential Real Estate Appraiser	\$200.00
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Certification of licensure	\$25.00
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B. Examination fees.

Examination services will be secured following a competitive bidding process in accordance with the Virginia Procurement Act. Examination fees will be determined as a result of this bidding process and promptly reported to all interested parties.

C. National Registry Fee Assessment for all permanent license applicants	\$50.00
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To be assessed of each applicant in accordance with Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

National Registry Fee Assessment for all temporary license applicants	\$25.00
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To be assessed of each temporary appraiser license applicant in accordance with Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

PART III. RENEWAL OF LICENSE/REGISTRATION.

§ 3.1. Renewal required.

Licenses issued under these regulations for certified general real estate appraisers, certified residential real estate appraisers, licensed residential real estate appraisers and registrations for corporations, partnerships and business entities shall expire two years from the last day of the month in which they were issued, as indicated on the license or registration.

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§ 3.2. Qualifications for renewal.

A. Continuing education requirements.

As a condition of renewal, and under § 54.1-2014, of the Code of Virginia, all certified general real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers, resident or non-resident, shall be required to complete continuing education courses satisfactorily within each licensing term.

1. Continuing education requirements for certified general real estate appraisers.

a. Certified general real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 20 classroom hours during each licensing term.

b. Certified general real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes to include, but is not limited to teaching, program development, or authorship of textbooks.

c. Six of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

2. Continuing education requirements for certified residential real estate appraisers.

a. Certified residential real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organization of not less than 20 classroom hours during each licensing term.

b. Certified residential real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes to include, but is not limited to teaching, program development, or authorship of textbooks.

c. Six of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

3. Licensed residential real estate appraisers must satisfactorily complete a six classroom hour continuing education course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

B. Applicants for renewal of a license shall meet the standards for entry as set forth in § 2.2.1, § 2.2.3 and § 2.2.4 of these regulations.

C. Applicants for the renewal of a registration shall meet the requirement for registration as set forth in § 2.1.

§ 3.3. Procedures for renewal.

A. The board will mail a renewal application form to the licensee at the last known home address and to the registered firm or at the last known business address. This form shall outline the procedures for renewal. Failure to receive the renewal application form shall not relieve the licensee or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring to renew the license or registration shall return to the board the completed renewal application form and the appropriate renewal and registry fees as outlined in § 3.4 of these regulations.

C. The date on which the renewal application form and the appropriate fees are received by the Department of Commerce or its agent will determine whether the licensee or registrant is eligible for renewal. If either the renewal application form or renewal fee, including the registry fee, is received by the Department of Commerce or its agent after the expiration date, the license or registration cannot be renewed and the licensee or registrant shall reapply for licensure as a new applicant, meeting current education, examination and experience requirements.

§ 3.4. Fees for renewal.

A. National registry fee assessment.

In accordance with the requirements of Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, \$50 of the biennial renewal fee assessed for all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. Should a license be revoked or surrendered during the current licensing term, the remaining \$25 National Registry Fee assessment for that year will be refunded. All remaining fees for renewal are

nonrefundable.

B. Renewal fees are as follows:

Certified general real estate appraiser	\$165.00
Certified residential real estate appraiser	\$165.00
Licensed residential real estate appraiser	\$165.00
Registered corporation, partnership or other business entity	\$175.00

§ 3.5. Board discretion to deny renewal.

The board may deny renewal of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline an extant license or registration.

PART IV. STANDARDS

§ 4.1. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, and to suspend or revoke any license or registration issued under the provisions of Title 54.1, Chapter 20.1 of the Code of Virginia, and the regulations of the board, in accordance with § 54.1-201(7), § 54.1-202 and the provisions of the Administrative Process Act, Title 9, Chapter 1.1:1 of the Code of Virginia, when any licensee or registrant has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 20.1 of the Code of Virginia, or any regulation of the board, including, but not limited to, Standards of ethical conduct (§ 4.2) and Standards of professional practice (§ 4.3).

§ 4.2. Standards of ethical conduct.¹ A. A licensee or registrant shall perform ethically and competently in accordance with these standards and not engage in conduct that is unlawful, unethical, or improper. Any licensee or registrant who could be reasonably perceived to act as a disinterested third party in rendering an unbiased appraisal, review, or analysis shall perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests.

B. The payment or acceptance of a fee, commission, or things of value in connection with the procurement or placement of an analysis, appraisal or review assignments is unethical.

C. The payment or acceptance of compensation that is contingent upon reporting a predetermined value or a direction in value that favors the cause of the client or upon the amount of the value estimate or upon the attainment of a stipulated result or upon the occurrence of a subsequent event is unethical.

D. Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical.

E. A licensee or registrant shall protect the confidential nature of the appraiser-client relationship.

F. All applicants for licensure shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instruction communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board or a testing service acting on behalf of the board with regard to conduct at the examination shall be grounds for denial of a license.

G. A licensee or registrant shall not obtain a license or registration by false or fraudulent representation.

H. A licensee or registrant shall not make any misrepresentation.

§ 4.3. Standards of professional practice.

A. Maintenance of licenses.

1. Change of address.²

a. Certified general real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers shall at all times keep the board informed in writing of their current home address.

b. Registered real estate appraisal corporations, partnerships and business entities shall at all times keep the board informed in writing of their current business address.

2. Change of name.³

a. Certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal corporations, partnerships and business entities shall promptly notify the board of any change of name or change of business structure on a form provided by the board. In addition to the form, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission; partnerships shall provide a copy of a certified Partnership Certificate; and other business entities trading under a fictitious name shall provide written authority from the appropriate local court.

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3. Upon the the change of name or address of the registered agent, associate, partner, or sole proprietor designated by a registered corporation, association, partnership or other business entity; the corporation, association, partnership, or other registered business entity shall notify the board in writing of the change within ten days of such event.

4. No license or registration issued by the board shall be assigned or otherwise transferred.

5. All licensees and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure/registration in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of licensee/registrant name or address, such licenses/registrations must be returned with proper instructions and supplemental material to the board within ten days of such event.

B. Use of seal.

1. The application of a licensed appraiser's seal shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall affix his seal to any appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with § 54.1-2011(C) of the Code of Virginia.

2. All licensed real estate appraisers shall apply a rubber stamp, preprinted seal or raised seal to any page of an appraisal report containing the final estimate or conclusion of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report for which they obtained the license to authenticate such report.

a. All seal imprints on final documents shall be signed.

b. An appraiser may provide written reports, market analysis studies or valuations, which do not constitute appraisals, provided, that such reports, studies or evaluations shall contain a conspicuous statement that such reports, studies or valuations are not an appraisal as defined in § 54.1-2009 of the Code of Virginia.

c. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

d. The seal shall conform in detail and size to the design illustrated below:



*The number on the seal shall be the number on your license issued by the board.

C. Development of Appraisal.⁴

In developing a real property appraisal, an appraiser shall meet the following standards:

1. Be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

2. Not render appraisal services in a careless or negligent manner.

3. Adequately identify the real estate through a legal description of the property, identify the real property interest under consideration, define the purpose and intended use of the appraisal, consider the extent of the data collection process, describe any special limiting conditions, and identify the effective date of the appraisal.

4. Define the value being considered. If the value to be estimated is the market value, the appraiser must clearly indicate whether the estimate is the most probable price:

a. in terms of cash; or

b. in terms of financial arrangements equivalent to cash; or

c. in such other terms as may be precisely defined. If an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained.

5. Consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature.

6. Consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole.

7. Identify and consider any personal property, fixtures or intangible items that are not real property,

but are included in the appraisal.

8. Consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the property, neighborhood trends, and the highest and best use of the property.

9. Not commit a substantial error of omission or commission that significantly affects an appraisal.

10. Consider and analyze any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business.

11. Consider and analyze any prior sales of the property being appraised that occurred within the following time periods:

- a. one year for one-to-four family residential property; and
- b. three years for all other property types.

12. Consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

13. Consider and analyze the effect on value, if any, of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date.

14. Observe the following specific appraisal guidelines:

- a. Value the site by an appropriate appraisal method or technique;
- b. Collect, verify, analyze and reconcile the following:
 - (i) such comparable cost data as are available to estimate the cost new of the improvements (if any);
 - (ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
 - (iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;
 - (iv) such comparable rental data as are available to estimate the market rental of the property being appraised;

(v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;

(vi) such comparable data as are available to estimate rate of capitalization and rates of discount.

15. Identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal.

16. Consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts.

17. Recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.

18. Base projections of future rent and expenses on reasonably clear and appropriate evidence.

19. When estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease(s).

20. Appraise proposed improvements, only after examining and having available for future examination:

- a. plans, specifications or other documentation sufficient to identify the scope and character of the proposed improvements;
- b. evidence indicating the probable time of completion of the proposed improvements; and
- c. reasonably clear and appropriate evidence supporting development costs, anticipated earning, occupancy projections, and the anticipated competition at the time of completion.

D. Appraisal report requirements.⁵

1. Each real property appraisal report must:

- a. Clearly and accurately set forth the appraisal in a manner that will not be misleading;
- b. Contain sufficient information to enable the person(s) who receive(s) or relies on the report to understand it;
- c. Clearly and accurately disclose any extraordinary

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assumption or limiting condition that affects the appraisal and indicate its impact on value;

d. Identify and provide a legal description of the real estate being appraised;

e. Identify the real property interest being appraised.

f. State the purpose of the appraisal.

g. Define the value to be estimated.

h. Set forth the effective date of the appraisal and the date of the report.

i. Describe the extent of the process of collecting, confirming and reporting data;

j. Set forth all assumptions and limiting conditions that affect the opinions and conclusions;

k. Set forth the information considered, the appraisal procedures followed, and the reasoning that supports the analyses opinions and conclusions;

l. Set forth the appraiser's opinion of the highest and best use of the real estate being appraised when such an opinion is necessary and appropriate;

m. Explain and support the exclusion of any of the usual valuation approaches;

n. Set forth any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from the requirements set forth in § 4.3.E. of these regulations.

o. Inform the reader of any material information that is unavailable for consideration and indicate why such information could not be obtained.

2. Each written real property appraisal report must contain a certification that is similar in content to the following form:

"I certify that, to the best of my knowledge and belief:

a. The statements of fact contained in this report are true and correct.

b. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

c. I have no (or the specified interest) present or prospective interest in the property that is the subject of this report, and I have no (or the

specified interest) personal interest or bias with respect to the parties involved.

d. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

e. My analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the requirements of these regulations and Title 54.1 Chapter 20.1 of the Code of Virginia.

f. I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs this report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

g. No one provided significant professional assistance to the person signing this report." (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

3. To the extent that it is both possible and appropriate, each oral real property appraisal report (including expert testimony) must address the substantive matters set forth in § 5.3.D of these regulations.

E. Record keeping requirements.

1. A licensee shall maintain written records of appraisal, analysis, and review assignments— including oral testimony and reports— and retain such records for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which testimony was given, which ever expires last.

2. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.

3. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

F. Disclosure requirements.

1. A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this regulation, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

G. Competency.

1. A licensee shall not enter into an agreement to perform any appraisal assignment without the knowledge and experience to complete the assignment competently.

2. A licensee shall be considered to have performed an incompetent appraisal if the licensee enters into an agreement to perform an appraisal for which he does not have the knowledge or experience to complete competently, and the licensee:

a. fails to disclose his lack of knowledge and experience to the client before accepting the appraisal assignment; and

b. fails to take all steps necessary or appropriate to complete the appraisal competently; or

c. fails to describe the lack of knowledge or experience and the steps taken in the report.

H. Unworthiness.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication,

of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

PART V. COURSES

§ 5.1. Courses.

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, and § 54.1-2013 of the Code of Virginia, the qualifications criteria set forth by the Appraisal Qualifications Board of the Appraisal Foundation for the content for courses, seminars, workshops or conferences which may be accepted for pre-licensure and continuing education credit are outlined below.

A. Pre-licensure education.

While various appraisal courses may be credited toward the classroom requirement specified for each level of licensure, all applicants for licensure as a licensed residential real estate appraiser and a certified residential real estate appraiser license must demonstrate that their coursework included coverage of all the topics listed below with particular emphasis on the appraisal of residential properties. All applicants for licensure as a certified general real estate appraiser must demonstrate that their education included coverage of all the topics listed below with particular emphasis on the appraisal of non-residential properties. Additional hours may be obtained from those related topics listed in § 5.1.B.

- Influences on real estate value
- Legal considerations in appraisal
- Types of value
- Economic principles
- Real estate markets and analysis
- Valuation process
- Property description
- Appraisal statistical concepts
- Sales comparison approach
- Site value
- Cost approach
- Income approach
- Valuation of partial interests
- Appraisal standards and ethics

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B. Continuing education.

The content of courses, seminars, workshops or conferences which may be accepted for continuing education credit includes, but is not limited to those topics listed in § 5.1.A. and below.

- Ad valorem taxation
- Arbitrations
- Business courses related to the practice of real estate appraisal
- Construction estimating
- Ethics and Uniform Standards of Professional Appraisal Practice
- Land use planning, zoning, and taxation
- Property development
- Real estate appraisal (valuations/evaluations)
- Real estate financing and investment
- Real estate law
- Real estate related computer applications
- Real estate securities and syndication
- Real property exchange

§ 5.2. Standards for approval of appraisal courses.

A. All appraisal and appraisal-related courses offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations that are presented for pre-licensure credit must have a final, written examination.

B. All courses, seminars, workshops or conferences submitted for credit must have a grade or indicate successful completion of the course, seminar, workshop or conference.

C. All courses, seminars and workshops must indicate the number of credit hours and an explanation of those hours. Credit toward the classroom hour requirement to satisfy the continuing education requirements shall be granted only where the length of the educational offering is at least two hours. Credit toward the classroom hour requirement to satisfy the educational requirement prior to licensure shall be granted only where the length of the educational offering is at least 15 hours.

D. All courses, seminars, workshops or conferences submitted for satisfaction of requirements must have been offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

E. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate or certified true copy of such.

F. Information which may be requested by the Board in order to further evaluate course content includes, but is not limited to course descriptions, syllabi or textbook references.

G. Where credit is requested for pre-licensure courses completed more than seven years from the date of application, the applicant shall provide a course description or other additional information as is delineated in § 5.2.F.

H. Courses taken by correspondence method are not acceptable for pre-licensure or continuing education credit.

I. Credit may be awarded for courses completed by challenge examination without classroom attendance, if such credit was granted by the course provider prior to July 1, 1990, and provided that the Board is satisfied with the quality of the challenge examination that was administered by the course provider.

J. Courses, seminars, workshops or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased his knowledge, skill and competency in real estate appraisal.

§ 5.3. Required continuing education course.

As outlined in Part III of these regulations all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall complete a six classroom hour course on recent developments in federal, state and local real estate appraisal law and regulation prior to the renewal of any license.

Footnotes

¹ Regulations § 4.2.A. through § 4.2.H. are based upon Section I of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

² The board shall not be responsible for the licensee's/registrator's failure to receive notices, communications and correspondence caused by the licensee's/registrator's failure to promptly notify the board of any change of address.

³ The board shall not be responsible for the licensee's/registrator's failure to receive notices, communications and correspondence caused by the licensee's/registrator's failure to promptly notify the board of any change of name.

⁴ The content of Regulation § 4.3.C. is based upon Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

⁵ The content of Regulation § 4.3.D. is based upon Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

Emergency Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: Emergency Regulation for Spousal Impoverishment.

VR 460-02-2.6100. Eligibility Conditions and Requirements.

VR 460-03-2.6113. § 1924 Provisions.

VR 460-04-8.8. Spousal Impoverishment.

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

Effective Dates: October 26, 1990 through October 25, 1991.

Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled *Spousal Impoverishment*. This policy will provide state regulatory authority for the Department to administer its spousal impoverishment policies.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding *Spousal Impoverishment*. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski
Date: October 19, 1990

CONCURRENCES:

Concur:
/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: October 22, 1990

4. GOVERNOR'S ACTION:

Approve:
/s/ Lawrence Douglas Wilder
Governor
Date: October 25, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: October 26, 1990

6. **BACKGROUND:** This Plan amending and regulatory action affects Attachment 2.6 A and the *Spousal Impoverishment* regulations at VR 460-04-8.6. This action replaces an expired emergency regulation. The proposed regulation will be filed immediately upon the Governor's approval of this emergency regulation. The final regulation to supersede this emergency will be promulgated by September, 1991.

The provisions of § 1924 of the Social Security Act define new methods for determining income and

resource eligibility and set forth a new method of computing post-eligibility income for institutionalized individuals who have spouses and dependent relatives at home. These requirements allow a community spouse (or other dependent relative) of a nursing home patient a minimum income allowance for basic living expenses, and protect a specified amount of the resources which the institutionalized spouse owns individually or jointly with the community spouse. In this way, the community spouse is not completely impoverished in order for the institutionalized spouse to become eligible for Medicaid.

This emergency regulation is based upon the statutory language where that is clear, and upon the interpretive guidelines obtained from HCFA where interpretation is required. The levels of income and resource standards are the minimum required by federal law.

The federal statute allows states to apply these income and resource rules to individuals in home and community-based care waiver programs. These individuals receive services intended to prevent their entering nursing homes. The Department evaluates eligibility for these individuals in the same manner as if they were institutionalized. This similar treatment ensures that individuals are not forced to enter nursing homes to become eligible for Medicaid if services in their private homes would cost Medicaid less than nursing home care. Failure to implement spousal allowance rules for both groups simultaneously could result in unnecessary and more expensive nursing home placements for individuals who otherwise would remain at home under the waiver program.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

The Medicare Catastrophic Coverage Act (MCCA) of 1988 established new rules in the Social Security Act for determining eligibility of persons who are likely to be institutionalized for a continuous period in a medical institution or a nursing home, or who are likely to receive home and community-based waiver services for a continuous period.

8. **FISCAL/BUDGETARY IMPACT:** The Spousal Impoverishment provisions of the Medicare

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Catastrophic Coverage Act of 1988 have been budgeted for in the process associated with the entire Catastrophic Coverage Bill as previously submitted in the Department's budget. Therefore, no additional fiscal impact is anticipated for fiscal years 1991 and 1992 above that already projected in the DMAS biennium budget. These funds are appropriated to the Department by the 1990 General Assembly.

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department lacks the authority to administer its state policies regarding spousal impoverishment.

10. Approval Sought for VR 460-02-2.6100 and VR 460-04-8.6.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

VR 460-02-2.6100. Eligibility Conditions and Requirements.

Citations(s)	Condition or Requirement
	3. For families and children, each family member
	AFDC level \$
Monthly Medically needy levels	\$ See Below
	Other as follows \$
	4. Amounts for incurred medical expenses not subject to payment by a third party
	\$856
Except as provided in § 1924 of the Act, the policies reflected in C, items 1-5 apply. See Supplement 13 for additional policies relative to § 1924.	a. Health insurance premiums, deductibles and co-insurance charges
described	b. Necessary medical or remedial care not covered under the Medicaid plan (Reasonable limits on amounts are
	in Supplement 3 to ATTACHMENT 2.6-A.) (No limits on amounts are applied)
	5. An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified he or she is likely to return home within that period.
of	X Yes. Amount for maintenance
	home \$. See B.2.

No.	Condition or Requirement
1902(1) of the Act, P.L. 99-643 (§ 3(b))	6. SSI benefits paid under § 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, SNF, or ICF.
	For § 1924 policies see 5a.
435.711 Categorically	C. Financial Eligibility -
435.721	and Medically Needy and Qualified
435.831	Medicare Beneficiaries
	1. Income disregards - Categorically and Medically Needy and Qualified Medicare Beneficiaries
B.2. Group I = \$216.67; Group II - \$250.00; Group III = \$325.00	
B.3. For appropriate family size (see Supplement 1 to Attachment 2.6A, Page 2)	
community	7. Maintenance Standard for spouse and other dependent family members under § 1924 of the Act.
	a. Community Spouses
formula	X 1. Standard based on
is	contained in § 1924(d)
	used.
	2. Maximum standard contained in § 1924(d)3.
is	3. A fixed standard which
	greater than the minimum standard described in § 1924(d) plus actual shelter costs not to exceed maximum standard contained in § 1924(d)(3)(c).
	The standard used is
	b. Other family members who are dependent.
	X 1. Standard based on the formula contained in § 1924(d)(1)(C) is used.
	2. A fixed standard greater than the amount which would be used if the formula described in § 1924(d)(1)(c) were used.
	The standard used is
....	X c. The standards described above are used for individuals receiving home and community based services in lieu of services provided in medical or remedial institutions.

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d. Definition of dependency.

The definition of dependency below is used to define dependent children, parents and siblings for purposes of deducting allowances under § 1924.

The definition used is:

Dependent Children - A

couples'

children age 21 and older who live with a community spouse and who may be claimed as dependents by either member of a couple for tax purposes

under

the Internal Revenue Services Code. This also includes minor children under age 21 who live with a community spouse.

Code.

Dependent Parents - Parents of either member of a couple who reside with the community spouse and who may be claimed as dependents by either spouse for tax purposes under the Internal Revenue Services

be

Dependent Siblings - A brother or sister of either member of a couple (including and half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and who may

be claimed by either member of the married couple for tax purposes under the Internal Revenue Services Code.

VR 460-03-2.6113. § 1924 Provisions.

§ 1924 Provisions

eligibility

a. Income and Resource

policies used to determine eligibility for institutionalized spouses who have spouses living in the community are consistent with § 1924.

b. In the determination of resource eligibility the state resource standard is \$12,000 adjusted annually in accordance with § 1924(g)

c. The definition of undue hardship or purposes of

determining

if institutionalized spouses receive Medicaid in spite of having excess countable resources is described below:

Denial of Medicaid eligibility would result in the institutionalized spouse

being removed from the institution and unable to purchase life-sustaining medical care.

VR 460-04-8.6. Spousal Impoverishment.

Part I. General. Article I. Definitions.

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

"Acceptable medical evidence" means either (1) certification by a nursing home pre-admission screening committee; or (2) certification by the individual's attending physician.

"Applicable percent" means that percentage as defined in § 1924 (d)(3)(B) of the Social Security Act.

"As soon as practicable" (transfer of resources) means within 90 days from the date an institutional spouse agrees to transfer resources to the community spouse, unless the Department determines that a longer period is necessary.

"At the beginning" of a continuous period of institutionalization means the first calendar month of the most recent continuous period of institutionalization or receipt of waiver services.

"Community spouse" means a married person who is not an inpatient at a medical institution or nursing facility and who is married to an institutionalized spouse.

"Community spouse maintenance needs allowance" is an amount by which the applicable percent of 1/12 of the FPL for a family of 2, in effect on July 1 of each year, plus an excess shelter allowance exceeds the amount of monthly income otherwise available to the community spouse. The community spouse maintenance allowance cannot exceed \$1500 except pursuant to a court order or an amount designated by a DMAS hearing officer.

"Community spouse resource allowance" means the difference between a couple's countable resources and the greatest of (a) the spousal share, not to exceed \$60,000; or (b) the spousal resource standard, \$12,000; or (c) an amount transferred to the community spouse by the institutionalized spouse pursuant to a court order; or (d) an amount designated by a Department hearing officer. For services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

"Continuous period of institutionalization" means 30

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consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of waiver services, or 30 consecutive days of a combination of institutional and waiver services. Continuity is broken only by 30 or more days absence from institutionalization or waiver services.

“Countable resources” means all non-exempt resources, except for a couple’s home, contiguous property, household goods, and one automobile. (These items are exempt for purposes of determining the combined and separate resources of institutionalized and Community Spouses only.)

“Department” means the Department of Medical Assistance Services.

“Dependent child” means a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

“Dependent family member” means a parent, dependent child, or dependent sibling (including half brothers and half sisters and siblings gained through adoption) of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

“Exceptional circumstances resulting in significant financial duress” means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

“Excess shelter allowance” means the actual monthly expense of maintaining the community spouse’s residence that exceeds 30% of the community spouse maintenance needs allowance, but limited to the total of: rent or mortgage (including interest and principal), taxes and insurance, any maintenance charge for a condominium or cooperative, and utilities (if not included in the rent or maintenance charge) except that utility expenses will not be included to the extent that they exceed the standard deduction under the Food Stamp program that would be appropriate to the number of persons living in the community spouse’s household.

“Federal Poverty Level or FPL” means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

“Initial determination” means

A. eligibility determinations made in conjunction with

Medicaid applications filed during an individual’s most recent continuous period of institutionalization; or

B. the first redetermination of eligibility for a Medicaid eligible institutionalized spouse after being admitted to an institution or receiving waiver services.

“Initial redeterminations” means those redeterminations of eligibility for a Medicaid eligible spouse which are regularly scheduled, or which are made necessary by a change in the individual’s circumstances.

“Institutionalized spouse” means a married person who is an inpatient at a medical institution or nursing facility or who is receiving waiver services and who is likely to remain in such facility or under such care, and whose spouse is not an inpatient at a medical institution or nursing facility.

“Likely to remain” in an institution means a reasonable expectation based on acceptable medical evidence that an individual will be institutionalized for 30 consecutive days, even if his institutionalization or waiver services actually terminate in less than 30 consecutive days.

“Maintenance needs standard” means an income standard to which a community spouse’s or other family member’s income is compared in order to determine the community spouse’s and other family members’ maintenance allowance.

“Medical institution or nursing facility” means hospitals, skilled nursing facilities, intermediate care facilities (including ICF/MR) consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009 and which are authorized under Virginia law to provide medical care.

“Minor” means a child under age 21, of either spouse, who lives with the community spouse.

“Other family members maintenance needs allowance” means an amount for each family member, equal to 1/3 of the applicable percent of 1/12 of the FPL for a family of two in effect on July 1 of each year, reduced by the amount of the monthly income of that family member.

“Otherwise available income and/or resources” means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

“Promptly assess resources” means within 45 days unless the delay is due to non-receipt of documentation or verification, if required, from the applicant or from a third party.

“Resource assessment” means an appraisal completed by request of a couple’s combined countable resources at the beginning of each continuous period of institutionalization beginning on or after September 30,

1989.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources (\$12,000 in 1989 and as increased each year beginning in 1990 by the same percentage increase as in the Consumer Price Index), necessary for the community spouse to maintain himself in the community.

"Spousal share" means 1/2 of the couple's countable resources at the beginning of the most recent continuous period of institutionalization, or at the beginning of a continuous period of receipt of waiver services, as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means denial of Medicaid eligibility would result in the institutionalized spouse being removed from the institution and unable to purchase life sustaining medical care.

"Waiver services" means Medicaid reimbursed home or community-based services covered under a 1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

Part 2. Resource Assessments and Eligibility. Article 1. General.

§ 2.1. *Applicability.* Resource assessment and resource eligibility rules contained in Part 2 of these regulations shall apply to:

A. persons whose first continuous period of institutionalization began on or after September 30, 1989; and

B. institutionalized persons who leave the institution (or cease receiving waiver services) for at least 30 consecutive days and who are readmitted to the institution for a continuous period (or begin receiving waiver services for a continuous period) on or after September 30, 1989.

Article 2. Assessments of Couple's Resources.

§ 2.2. *Resource assessment initiated.* A resource assessment shall be initiated:

A. Upon payment of a fee, if any, (the amount of which is determined by the Department of Social Services) by either member of a couple, or a representative acting on behalf of either spouse, if the institutionalized spouse has not applied for Medicaid; or

B. Upon application for Medicaid by an institutionalized

spouse who has a community spouse.

§ 2.3. *Notification of documentation required.* When a resource assessment is initiated, the Department of Social Services shall notify the applicant of all relevant documentation required to be submitted for the assessment.

§ 2.4. *Failure to provide documentation.* If an applicant fails to provide requested documentation within 45 days of receipt of notification sent pursuant to § 2.3, the Department shall notify him that the assessment cannot be completed.

§ 2.5. *Notification of assessment and appeal rights.* The Department shall provide each member of a couple with copies of the completed resource assessment and the documentation used to produce it. The Department shall notify the couple of the procedure by which to appeal the resource assessment.

§ 2.6. *Appeal of resource assessment.*

A. *Non-Medicaid application.* If the resource assessment was conducted pursuant to a non-Medicaid application, it may be appealed pursuant to the existing Client Appeals regulations (VR 460-04-8.7).

B. *Medicaid application.* A resource assessment which was conducted pursuant to a Medicaid application submitted by the institutionalized spouse may be appealed pursuant to existing Client Appeals regulations (VR 460-04-8.7).

Article 3. Resource Eligibility Determinations For Institutionalized Spouses.

§ 2.7. *Applicability.* This article shall be used to determine an institutionalized spouse's initial and continuing eligibility for his current continuous period of institutionalization.

§ 2.8. *Initial eligibility determinations.* Except as provided in §§ 2.10 and 2.11 of these regulations, an institutionalized spouse is eligible for Medicaid if the difference between the couple's combined countable resources and its community spouse resource allowance (as defined in § 1.1) is equal to or less than the appropriate Medicaid resource limit for one person.

§ 2.9. *Initial determinations of ineligibility.* If the difference between a couple's current combined countable resources and its community spouse resource allowance is greater than the appropriate Medicaid resource limit for one person, the institutionalized spouse shall be ineligible for Medicaid until the couple's combined countable resources are reduced to the greatest of:

A. the State's spousal resource standard (\$12,000) plus the appropriate Medicaid resource limit for one person; or

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B. the spousal share (not to exceed \$60,000) plus the appropriate Medicaid resource limit for one person; or

C. a court ordered spousal share plus the appropriate Medicaid resource limit for one person; or

D. a spousal allowance determined necessary by a Department hearing officer plus the appropriate Medicaid resource limit for one person.

E. for services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

§ 2.10. *Revisions to the community spouse resource allowance. For the purposes of this Article, a community spouse resource allowance may be revised if:*

A. a Department hearing officer determines on appeal that the income generated from the community spouse resource allowance as originally calculated as described in § 2.9 of this article is inadequate to raise the community spouse's income to the minimum amount to be deducted as a maintenance allowance in the post-eligibility determination made pursuant to Part 3 of these regulations; or

B. a Department hearing officer determines on appeal that the original calculation was incorrect; or

C. the Department determines that the original information with which the spousal share was calculated was incorrect.

§ 2.11. *Additional resource exclusions. If an institutionalized spouse has resources exceeding the appropriate Medicaid resource limit for one person, the following are deducted from his resources for the purpose of establishing eligibility, as appropriate:*

A. the amount of resources which the institutionalized spouse has transferred to the community spouse or to other dependents pursuant to a court support order;

B. support rights of institutionalized spouses assigned to the Commonwealth;

C. any support rights which cannot be assigned due to the institutionalized spouse's legal incompetency and upon which the Commonwealth would have a legal right to recover against the community spouse;

D. an amount necessary to make the individual eligible if the Department determines that the denial of Medicaid would create undue hardship as defined in § 1.1 of these regulations.

§ 2.12. *Redetermination of eligibility of institutionalized*

spouses. Beginning with the first calendar month following the date of the initial determination of eligibility (unless §§ 2.18 or 2.19 of these regulations applies) the institutional spouse's continuing eligibility shall be determined based solely on resources held in his name. The community spouse's resources shall not be deemed available to the institutional spouse in the month following the initial month of ongoing eligibility.

§ 2.13. *Post-eligibility resource transfers. After an initial determination of eligibility, an institutionalized spouse may transfer to his community spouse any of the community spouse resource allowance which is not already titled to the community spouse. Any amount of the community spouse resource allowance which is not transferred pursuant to this section and which is not actually available to meet the community spouse's needs, shall be deemed available to the institutional spouse for the purpose of determining continuing eligibility.*

§ 2.14. *Protected periods of eligibility. Subject to § 2.15, for 90 days after an initial determination of eligibility, an institutionalized spouse's eligibility shall be protected (i.e., the resources in the community spouse resource allowance shall not be attributed to the institutionalized spouse) to allow him time to legally transfer resources pursuant to § 2.13 if the institutionalized spouse expressly indicates his intention to effect such a transfer. Absent such an expression of intent, the protected period will not extend beyond the end of the month in which eligibility is being determined. The Department may extend the protected period if it finds an extension is necessary.*

§ 2.15. *Exception to protected period of eligibility. If, at the time of an initial determination of eligibility, a community spouse has title to resources equal to or exceeding his community spouse resource allowance, no protected period of eligibility shall exist. In this circumstance, an institutionalized spouse may transfer resources in any amount to the community spouse, pursuant to § 1917 of the Social Security Act, but there shall be no protected period of eligibility for doing so.*

§ 2.16. *Additional resources acquired during protected period of eligibility. If a couple obtains additional resources during a protected period of eligibility, the additional resources shall be exempt during the protected period if:*

A. the new resources combined with other resources that the institutionalized spouse intends to retain do not exceed the appropriate Medicaid resource limit for one person and/or

B. the institutionalized spouse intends to transfer the new resources during the protected period of eligibility to the community spouse, and the community spouse's resources are less than the community spouse resource allowance.

§ 2.17. *Resources transferred pursuant to § 1917 of the*

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Act. Provided transfers are made within one month of the initial determination of eligibility, resources held by an institutionalized spouse shall not be counted in determining continuing eligibility when § 1917 transfers are made to parties for which there is no penalty for failure to receive equitable value, or transfer for which equitable value is received.

§ 2.18. Resource eligibility determinations in retroactive periods.

A. First application for Medicaid. In each of the three (3) months preceding an institutionalized spouse's first application for Medicaid in the current continuous period of institutionalization for which resource eligibility is to be determined, the community spouse resource allowance shall be deducted from the couple's combined countable resources.

B. Later applications for Medicaid. In later applications for the same period of institutionalization, including retroactive months, the community spouse resource allowance shall not be deducted for the couple's combined countable resources except in the first month in the retroactive period for which eligibility is being determined.

§ 2.19. Eligibility for community spouses and other family members.

Resources are considered under the eligibility rules which would apply to the community spouse and other family members, regardless of the rules governing the institutionalized spouse.

Part 3. Post-Eligibility Process. Article 1. General.

§ 3.1. Applicability. The post-eligibility process contained in Part 3 of these regulations shall apply to persons living in a nursing facility and to persons receiving services under home and community-based waivers. This process determines how much such persons contribute to the cost of their institutional care and/or waiver services.

Article 2. Income.

§ 3.2. Determining Income. A couple's income shall be determined as follows, without regard to state laws governing community property or division of marital property:

A. Income from non-trust property. Unless a Department hearing officer determines that the institutionalized spouse has proven to the contrary by a preponderance of the evidence:

1. income paid to one spouse belongs to that spouse;
2. each spouse owns one-half of all income paid to both spouses jointly;

3. each spouse owns one-half of any income which has no instrument establishing ownership;

4. income paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

B. Income from trust property. Ownership of trust property shall be determined pursuant to the State Plan, except as follows:

1. each member of a couple owns the income from trust property in accordance with the trust's specific terms.

2. if a trust instrument is not specific as to the ownership interest in income, ownership shall be determined as follows:

a. income paid to one spouse belongs to that spouse;

b. one-half income paid to both spouses shall be considered available to each spouse;

c. Income from a trust paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income from a trust is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

Article 3. Patient Pay.

§ 3.3. Applicability. After all appropriate deductions pursuant to §§ 3.4, 3.5, and 3.6 have been made from an institutionalized spouse's gross monthly income pursuant to this article, the balance shall constitute the amount the institutionalized spouse shall pay for institutional or waiver services.

§ 3.4. Mandatory deductions from institutionalized spouse's income. The following amounts shall be deducted from the institutionalized spouse's gross monthly income:

- A. a personal needs allowance of \$30.00; and
- B. the community spouse maintenance allowance as calculated pursuant to § 3.5; and
- C. the family maintenance allowance, if any, as calculated pursuant to § 3.6; and
- D. incurred medical and remedial care expenses recognized under State law, not covered under the State

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Plan and not subject to third party payment.

§ 3.5. Community spouse maintenance allowance.

A. The community spouse maintenance allowance shall be the greatest of the following amounts:

- 1. the total of the community spouse maintenance needs standard and the excess shelter allowance; or*
- 2. an amount set in a spousal support court order; or*
- 3. an amount determined necessary by a Department hearing officer because of exceptional circumstances resulting in extreme financial duress.*

B. Deductions are not made from the income of the institutionalized spouse income when the allowances are not actually made available to the community spouse.

§ 3.6. Family members maintenance needs allowance.

A. An amount equal to 1/3 of the minimum monthly standard for the community spouse (without regard to excess shelter allowances), minus each family member's income, shall be deducted for the maintenance of each family member.

B. This allowance is to be deducted regardless of whether the institutionalized spouse actually makes the allowance available to the family member.

Part 4. Appeals. Article 1. General.

§ 4.1. Applicability. The appeals process contained in Part 4 of these regulations shall apply to appeals of initial determinations and redeterminations of resources and income amounts and allowances made in connection with applications for Medicaid benefits by spouses institutionalized for a continuous period on or after September 30, 1989, or receiving waived services for a continuous period on or after September 30, 1989, pursuant to existing Client Appeals regulations.

Article 2. Notification.

§ 4.2. Notices. Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:

A. The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and

B. Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.

§ 4.3. Regulatory authority. Hearings and appeals held for the purpose of § 4.1 are consistent with regulations at 42 CFR § 431 Subpart E.

§ 4.4. Hearing officer authority. Through the appeals process applicable as described in § 4.1 of these regulations, hearing officers shall prescribe appropriate increases in spousal maintenance allowances in the event they determine that exceptional circumstances exist which cause financial duress to the community spouse.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (BOARD OF)

Title of Regulation: VR 470-05-01. Regulation for Certification of Case Management.

Statutory Authority: §§ 37.1-10 and 37.1-179 of the Code of Virginia and Item 466.F.5 of the 1990 Appropriations Act.

Effective Dates: October 24, 1990 through September 30, 1991.

DECISION BRIEF FOR:

The Honorable Lawrence Douglas Wilder
Governor

**SUBJECT: EMERGENCY REGULATION FOR
CERTIFICATION OF CASE MANAGEMENT**

1. REQUEST: The Governor's approval is hereby requested to adopt the revised emergency regulation entitled Certification of Case Management Services. These regulations will enable the implementation of a certification system which will allow Title XIX payments, with 50% federal financial participation, for services previously reimbursed with 100% state dollars.

The regulations were first signed by the Governor on June 30, 1990. However, due to concerns raised by the Health Care Financing Administration (HCFA), services related to the Mental Retardation Waiver have been deleted. In addition, case manager qualifications have been changed. Originally, case managers had to meet Qualified Mental Health Provider (QMHP) and Qualified Mental Retardation Professional (QMRP) standards. These revised regulations require case managers to meet knowledge, skills and abilities (KSAs) which have been developed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

A copy of the original regulations are attached with areas highlighted in yellow that have been changed or deleted.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding these regulations. The Department intends to initiate the public notice and comment

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requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ King E. Davis, Ph.D.
Commissioner
Date: September 21, 1990

3. CONCURRENCES:

Concur

/s/ Howard M. Cullum
Secretary of Health and Human Resources

4. GOVERNOR'S ACTION:

Approve

/s/ Lawrence Douglas Wilder
Governor
Date: October 4, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: October 24, 1990

DISCUSSION

6. BACKGROUND: The 1990 Appropriation Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for community mental health, mental retardation, and substance abuse services in Virginia. The purpose of this expansion of the Medicaid program is to obtain federal financial participation for some current programs and services as well as to meet future demand for treatment services. At a time of increasing fiscal constraints on state dollars, federal funding through Title XIX is the only mechanism available for addressing significant unmet service needs and continuing the Phase I Community Services Initiative. In addition, this action enables the Commonwealth to make effective use of federal funds.

Mental Health services to be covered include targeted case management and rehabilitation services (e.g. emergency services, partial hospitalization/day treatment for adults, psychosocial rehabilitation for adults, therapeutic day treatment for children and adolescents, intensive in-home).

Mental retardation services to be covered include targeted case management and rehabilitation services such as day health and rehabilitation services.

Item 466.F.5 of the 1990 Appropriations Act requires that as part of the implementation of this Community

Medicaid Program, "Qualified providers shall be licensed or certified under regulations promulgated by the Department of Mental Health, Mental Retardation and Substance Abuse Services." One of the services, case management, is not currently licensed by DMHMRSAS and therefore regulations must be promulgated to implement this requirement in the Appropriations Act.

7. AUTHORITY TO ACT: The Code of Virginia § 37.1-10 gives the State Mental Health, Mental Retardation and Substance Abuse Services Board the authority to promulgate regulations to carry out the provisions of the laws of the Commonwealth. The Code in § 37.1-179 et seq. gives the Commissioner the authority to license facilities and institutions. Item 466.F.5 of the 1990 Appropriations Act states that qualified providers shall be licensed or certified under regulations promulgated by DMHMRSAS.

Without an emergency regulation, certification of services cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Due to the substantial program development activities necessary to implement these new services, it was not possible to meet the time schedule of the APA public comment requirements. Therefore, an emergency regulation is needed to meet the October 1, 1990, effective date established by the General Assembly for mental health and mental retardation services under the State Plan. Substance abuse services coverage will not be effective until July 1, 1991, and therefore is not included in this package.

8. FISCAL/BUDGETARY IMPACT: This initiative is not expected to result in any new General Fund expenditures by DMHMRSAS. The General Funds necessary to draw down the Federal matching dollars will be transferred by DMHMRSAS to DMAS from funds appropriated for the 1990-92 Biennium.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective October 1, 1990. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, DMHMRSAS could not certify providers as required in the 1990 Appropriations Act.

10. APPROVAL SOUGHT FOR VR 470-05-01: Approval of the Governor is sought for the adoption of the attached emergency regulations in accordance with Code of Virginia § 9-6.14:4.1(c)(5).

VR 470-05-01. Regulation for Certification of Case Management.

PART I.
INTRODUCTION.

Emergency Regulations

Article 1. Definitions.

§ 1.1. Definitions.

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

“Board” means the State Mental Health, Mental Retardation and Substance Abuse Services Board.

“Case Management Services” means assisting individual children, adults, and their families in accessing needed medical, psychiatric, social, educational, vocational and other supports essential to meeting basic needs.

“Commissioner” means the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.

“Department” means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

“Facility” means any facility not operated by an agency of the federal government by whatever name or designation which provides case management services to mentally ill or mentally retarded persons. Such institution or facility shall include a hospital as defined in subsection 1 of § 32.1-123 of the Code of Virginia, outpatient clinic, special school, halfway house, home and any other similar or related facility.

“Mentally ill” means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment.

“Mental retardation” means substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

Article 2. Legal Base

§ 1.2. Pursuant to § 37.1-10, the Board shall make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of laws of the Commonwealth administered by the Commissioner or the Department. Section 37.1-179 et seq. requires facilities providing care and treatment of mentally ill, mentally retarded and substance abusing persons to be licensed in accordance with regulations promulgated by the Board. Item 466.F.5 of the 1990 Appropriation Act requires that qualified providers shall be licensed or certified under regulations promulgated by the Department.

Article 3. Services Subject to Certification Under These Regulations.

§ 1.3. No person shall establish, conduct, maintain or

operate in this Commonwealth case management services which receive reimbursement from the Department of Medical Assistance Services without first being duly certified except where such services are exempt from certification.

Article 4. Application for Case Management Certification

§ 1.4. A facility desiring to be certified or recertified for case management services shall submit to the Commissioner a letter stating that all individuals providing case management services for which reimbursement from the Department of Medical Assistance Services will be sought possess a combination of applicable mental health or mental retardation work experience or related education which indicates that the individual possesses the knowledge, skills and abilities (KSAs) as established by the Department and attached hereto which are necessary to perform case management services. This letter shall constitute the application for certification. This letter shall clearly identify the entity that is seeking certification and is responsible for assuring compliance with all certification requirements.

§ 1.5. Every facility shall be designated by a permanent and distinctive name and physical location which shall appear in the application for certification or certification renewal and which shall not be changed without first securing approval of the Department.

§ 1.6. The terms of any certification issued shall include: (i) the operating name of the facility; (ii) the name of the entity, to whom the certification is issued; (iii) the physical location of the facility; (iv) the effective dates of the certification; and (v) other specifications prescribed within the context of the regulations.

Article 5 The Certification.

§ 1.7. The Commissioner may certify a facility for the provision of case management services for which reimbursement is sought from the Department of Medical Assistance Services only after he is satisfied that all individuals providing services for which medicaid reimbursement will be sought meet applicable KSAs. In addition, the Commissioner must be satisfied that the facility can:

1. Guarantee that clients have access to emergency services on a 24 hour basis;
2. Demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for medicaid reimbursement;
3. Meet the administrative and financial management requirements of state and federal regulations;

Emergency Regulations

4. Document and maintain individual case records in accordance with state and federal requirements;

5. Ensure that services are in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

6. Provide comprehensive mental health services if the facility provides mental health case management; and

7. Provide comprehensive mental retardation services if the facility provides mental retardation case management.

§ 1.8. The Commissioner may issue a certification to a facility that has fulfilled the conditions listed in § 1.7 for any period not to exceed two (2) years from its date of issuance, unless it is revoked or surrendered earlier.

§ 1.9. The Commissioner may revoke or suspend any certification issued, or refuse issuance of a certification on any of the following grounds:

1. Permitting, aiding or abetting the commission of an illegal act in a facility or institution certified under these regulations.

2. Conduct or practices detrimental to the welfare of any client of a facility or institution certified under these regulations.

3. Failure to employ individuals who meet the standards set forth under these regulations.

§ 1.10. Whenever the Commissioner revokes, suspends or denies a certification, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) shall apply.

§ 1.11. If a certification is revoked or refused as herein provided, a new application for certification may be considered by the Commissioner when the conditions upon which such action was based have been corrected and satisfactory evidence of this fact has been furnished.

§ 1.12. Suspension of a certification shall in all cases be for an indefinite time and the suspension may be lifted and rights under the certification fully or partially restored at such time as the Commissioner determines that the rights of the certified facility appear to so require and the interests of the public will not be jeopardized.

Article 6. Inspection.

§ 1.13. Each applicant or certified facility agrees as a condition of application or certification to permit properly designated representatives of the Department to examine records including employee personnel records to verify information contained in the application.

PART II. REQUIREMENTS.

Article 1. Staff Qualifications.

§ 2.1. For services reimbursable by the Department of Medical Assistance Services, the facility shall employ only individuals who possess a combination of applicable mental health work experience or related education which indicates that the individual possesses the knowledge, skills and abilities as established by the Department which are necessary to perform case management services for the mentally ill.

§ 2.2. For services reimbursable by the Department of Medical Assistance Services, the facility shall employ only individuals who possess a combination of applicable mental retardation work experience or related education which indicates that the individual possesses the knowledge, skills and abilities as established by the Department which are necessary to perform case management services for persons with mental retardation.

Article 2. Facility Requirements.

§ 2.3. The facility must:

1. Guarantee that clients have access to emergency services on a 24 hour basis;

2. Demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for medicaid reimbursement;

3. Have the administrative and financial management capacity to meet state and federal requirements;

4. Have the ability to document and maintain individual case records in accordance with state and federal requirements;

5. Ensure that services are in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services;

6. Provide comprehensive mental health services if the facility provides mental health case management; and

7. Provide comprehensive mental retardation services if the facility provides mental retardation case management.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-05-22.2. Conservation Regulations for Gas and Oil.

Emergency Regulations

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Effective Dates: November 2, 1990 through November 1, 1991.

Preamble:

The 1990 session of the Virginia General Assembly passed Senate Bill 382 which, effective July 1, 1990, enacted the Virginia Gas and Oil Act of 1990, Chapter 22.1 of Title 45.1 and repealed the Virginia Oil and Gas Act of 1982, Chapter 22 of Title 45.1, of the Code of Virginia. These provisions replace the basic law governing gas and oil resource conservation, exploration, development and production in Virginia.

The Virginia Gas and Oil Act of 1990 is made up of three Articles.

1. Article 1, General Provisions, establishes administrative provisions, authorizes civil charges and penalties, and provides for appeals.

2. Article 2, Gas and Oil Conservation, establishes the Virginia Gas and Oil Board and its duties. The Board has the authority to establish field rules and drilling units, issue orders pooling costs and production among owners of the gas or oil resources around a well, establish the types of allowable expenses which a well operator may charge to other pooled gas or oil resource owners, and hear administrative appeals of decisions of the Director of the Department of Mines, Minerals and Energy.

3. Article 3, Regulations of Gas and Oil Development and Production sets standards to ensure the safe and efficient exploration, development, and production of gas and oil resources and establishes the Gas and Oil Plugging and Restoration of Orphaned Well Funds. These provisions are administered by the Department of Mines, Minerals and Energy.

The new Virginia Gas and Oil Board has been given many of the duties that rested with the Virginia Oil and Gas Conservation and Virginia Well Review Boards under the 1982 Act. The Virginia Gas and Oil Board must hear all matters pending before the old Boards as of July 1, 1990, when the new Act took effect, as well as hear all new business submitted after July 1, 1990.

Basis of Emergency:

The Virginia Gas and Oil Board must promulgate this emergency regulation to implement the provisions of the Virginia Gas and Oil Act of 1990, which became effective on July 1, 1990. In many cases, a gas or oil operator must first obtain an order from the Board to set up a drilling unit and pool to allocate production and costs between multiple resource owners before the operator can obtain a permit to drill a well. If

the Board is not able to issue a necessary pooling order in such cases, an operator cannot proceed.

The emergency regulation will establish requirements for applications for field rules, drilling units, and forced pooling. The regulation also provides rules for administrative matters such as establishing application fees and filing of petitions.

The Board was established in law on July 1, 1990, and adopted this emergency regulation at its first meeting. Time did not allow for the promulgation of the regulation under the full Administrative Process Act procedure. Therefore, this emergency regulation is required.

The Virginia Gas and Oil Board will promulgate a permanent regulation in accordance with the Administrative Process Act and the Department of Mines, Minerals and Energy's public participation guidelines to replace this emergency regulation. The Board will solicit comments and recommendations from the public and industry when developing the regulation. The Board plans to have a draft of the regulation available for public comment by April 1991 and adopt the final regulation before the emergency regulation expires.

This emergency regulation is designated as VR 480-05-22.2 of the Virginia Gas and Oil Board. The regulation shall become effective upon filing with the Registrar of Regulations and shall expire one year after it becomes effective, or upon the effective date of the permanent regulation, whichever occurs first.

The Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this emergency regulation.

It is so ordered by:

/s/ Benny R. Wampler
Chairman, Virginia Gas and Oil Board
Date: September 5, 1990

/s/ Lawrence H. Framme, III
Secretary of Economic Development
Date: September 30, 1990

/s/ Lawrence Douglas Wilder
Governor
Date: October 20, 1990

/s/ Joan W. Smith
Registrar of Regulations
Date: October 30, 1990

VR 480-05-22.2 Conservation Regulations for Gas and Oil.

§ 1. Definitions.

Emergency Regulations

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

"Complete Application" means all the materials required to be submitted by the applicant under § 4 of these regulations where applicable.

"Mine Development Plan" or "Registered Operations Plan" means plans submitted to the Division of Mines or the Division of Mined Land Reclamation as part of the licensing or permitting for the legal permission to engage in extraction coal resources.

§ 2. Authority and Applicability.

A. The Virginia Gas and Oil Board is authorized to promulgate this regulation pursuant to § 45.1-361.15 of the Code of Virginia.

B. The requirements of this regulation are in addition to the requirements of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing (VR 480-05-22) and orders issued by the Virginia Oil and Gas Conservation Board, the Virginia Well Review Board, the Virginia Gas and Oil Board, or the Department of Mines, Minerals and Energy.

§ 3. Administrative Provisions.

A. The Virginia Gas and Oil Board shall schedule or hold regular monthly meetings to hear any complete applications filed with the board. Regular meetings of the Virginia Gas and Oil Board shall be held on the third Tuesday of each calendar month unless otherwise authorized by the board or no action is required by the board.

B. All complete applications for consideration by the Virginia Gas and Oil Board shall be received by the Division of Gas and Oil 30 calendar days prior to the regularly scheduled meeting of the board. Petitions not received 30 calendar days prior to a scheduled meeting shall be carried over to the next scheduled meeting.

C. All complete applications for the establishment of units, spacing or pooling shall be accompanied by a fee of \$100 payable to the the Treasurer of Virginia.

D. All certifications of compliance with the provisions of § 45.1-361.19 of the Code of Virginia and a completed Form DGO-VGOB-1, shall be tendered to the inspector five days prior to the regularly scheduled meeting of the Virginia Gas and Oil Board.

§ 4. Application requirements for Petitions to the Board.

A. Prior to submittal of an application, the applicant must first secure a docket number and Form DGO-VGOB-1 from the Division of Gas and Oil.

B. An application for a petition under § 45.1-361.20 of the Code of Virginia for field rules and drilling units shall contain the following:

1. The application shall be headed by a caption, which shall contain (i) the heading, "Before the Virginia Gas and Oil Board"; (ii) the applicant; and (iii) the relief sought and the docket number assigned by the Division of Gas and Oil.

2. The body of the petition shall contain the following:

a. Citations of statutes, rules, orders, and decided cases authorizing the relief sought.

b. A statement of the relief sought and proposed provisions of the order.

c. In the case of an application to vacate, alter, modify, or amend an order, state the specific order which is sought to be vacated, altered, modified, or amended.

d. Type of field (gas, oil, or coalbed methane gas).

e. Proposed formation(s) subject of the petition.

f. Description of pool based on geological data or technical data.

g. Map showing the extent of the pool.

h. The amount of acreage to be included in the order.

i. The acreage to be embraced within each drilling unit.

j. A map showing the size and shape of a drilling unit and the area in which a well can be drilled within the drilling unit (minimum distance from the unit boundary).

k. Proposed allowable production rates and supporting documentation, if applicable.

l. Copies of all other proposed exhibits.

3. The application shall be signed by the applicant or an authorized agent of the applicant, or by an attorney for the applicant, certifying that, "The foregoing application to the best of my knowledge, information, and belief is true and correct."

C. An application for a petition under §§ 45.1-361.21 or 45.1-361.22 of the Code of Virginia for action by the board shall contain the following:

1. The application shall be headed by a caption, which shall contain (i) the heading, "Before the

Emergency Regulations

Virginia Gas and Oil Board"; (ii) the applicant; (iii) the relief sought; and (iv) docket number supplied by the Division of Gas and Oil.

2. The body of the application shall contain the following:

a. Citations of statutes, rules, orders, and decided cases authorizing the relief sought.

b. A statement of the relief sought and proposed provisions of the order.

c. In the case of an application to vacate, alter, modify, or amend an order, state the specific order which is sought to be vacated, altered, modified, or amended.

d. Type of well (gas, oil, or coalbed methane gas).

e. Valid permit number if issued.

f. Description of area to be pooled.

g. A map showing the size and shape of the proposed unit, as well as the percent of ownership. The map is to be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board.

h. Percentage of ownership of each acreage to be pooled within the unit by each owner and status of ownership (held by lease, not leased, or lease held by another party).

i. Percentage of interest held by the applicant.

j. Percentage of ownership to be escrowed by the board under § 45.1-361.21.D. of the Code of Virginia for each such un-identifiable owner, if applicable. For force pooling under § 45.1-361.22 of the Code of Virginia, the applicant shall submit a plan of escrowing proceeds attributable to conflicting interests.

k. Formation(s) to be produced.

l. Estimated production over the life of well.

m. Estimated amount of reserves of the unit.

n. Estimated cost of drilling, completing, and producing the well.

o. Copies of all other proposed exhibits.

3. The application shall be signed by the applicant or an authorized agent of the applicant, or by an attorney for the applicant, certifying that, "The foregoing application to the best of my knowledge,

information, and belief is true and correct."

§ 5. Determination of Allowable Cost Estimates under §§ 45.1-361.21 or 45.1-361.22 of the Code of Virginia.

For the purposes of calculating the allowable cost under a forced pooling petition, only the following items may be considered:

1. Site work and preparation.

2. Drilling cost.

3. Completion work (workover and swabbing units).

4. Cementing and cementing services.

5. Formation evaluation (electric logging and mud logging).

6. Water, fuel, and bits on day work.

7. Equipment rentals.

8. Trucking.

9. Perforating and radioactive logging.

10. Stimulation costs.

11. Itemized miscellaneous labor.

12. Supervision.

13. Casing cost (all sizes).

14. Tubing cost (all sizes).

15. Wellhead equipment.

16. Site facilities.

a. Tanks.

b. Separators.

c. Meters and meter runs.

d. Line pipe and drips.

e. Valves and fittings.

f. Other (to be specified as to necessity).

17. Contingency cost may be allowed but must be submitted with justification.

§ 6. Time limitations for Orders from the Board.

A. All orders issued by the board under § 45.1-361.20 of the Code of Virginia shall remain in effect unless vacated,

Emergency Regulations

altered, modified, or amended by a motion of the board or upon application from an operator within the field designated by the board.

B. All orders issued by the board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall be for a period of one year from the date of issuance unless vacated, altered, modified, or amended by an order of the board or upon application from the designated operator of the unit.

C. All conditional orders issued by the board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall expire in accordance with the terms and conditions of the order, unless vacated, altered, modified, or amended by an order of the board.

§ 7. Proceedings before the Virginia Gas and Oil Board.

A. All parties subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia shall be entitled to be accompanied by and represented by attorney.

B. Exhibits to be presented at a hearing by an applicant or other participant shall be identified by exhibit number and by docket number as assigned by the Division of Gas and Oil and shall all be introduced in a set and marked for identification at the commencement of such applicant's or participant's presentation. For all hearings, 10 sets of each exhibit shall be presented to the board, and every applicant and participant offering exhibits into evidence shall have available a reasonably sufficient number of exhibits for other interested parties, subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia, in attendance at the hearing.

VIRGINIA GAS AND OIL BOARD
Department of Mines, Minerals and Energy
P. O. Box 1316
Abingdon, VA 24210
(703) 628-8115

APPLICATIONS BEFORE THE BOARD

For all applications before the Board under §§ 45.1-361.20, 45.1-361.21 and 45.1-361.22 of the Code of Virginia, this cover sheet must be completed and submitted as per Regulation VR 480-05-22.2, § 3.D.

For Applications Under § 45.1-361.20:

Please check, if the following items have been submitted with the application.

<input type="checkbox"/> Docket number	<input type="checkbox"/> Statement of relief sought
<input type="checkbox"/> Type of application	<input type="checkbox"/> Description of pool
<input type="checkbox"/> New	<input type="checkbox"/> Type of pool
Order to vacate <input type="checkbox"/>	<input type="checkbox"/> Map of proposed pool
alter <input type="checkbox"/>	<input type="checkbox"/> Amt. of acreage to be embraced in
modify <input type="checkbox"/>	<input type="checkbox"/> in the Board's order
amend <input type="checkbox"/>	<input type="checkbox"/> Amt. of acreage to be embraced in
<input type="checkbox"/> Certification of notice	<input type="checkbox"/> each drilling unit
under § 45.1-361.19	<input type="checkbox"/> Proposed allowable production
<input type="checkbox"/> Application fee	<input type="checkbox"/> rate
<input type="checkbox"/> Signature as per Regulation VR 480-05-22.2, § 4.B.3	

For Applications Under §§ 45.1-361.21 and 45.1-361.22:

Please check, if the following items have been submitted with the application.

<input type="checkbox"/> Docket number	<input type="checkbox"/> Statement of relief sought
<input type="checkbox"/> Type of application	<input type="checkbox"/> Type of well (gas, oil, methane)
<input type="checkbox"/> New	<input type="checkbox"/> Permit #, if issued
Order to vacate <input type="checkbox"/>	<input type="checkbox"/> Description of area to be pooled
alter <input type="checkbox"/>	<input type="checkbox"/> Map showing the size and shape of
modify <input type="checkbox"/>	<input type="checkbox"/> the proposed unit
amend <input type="checkbox"/>	<input type="checkbox"/> Percentage of ownership of each
<input type="checkbox"/> Percentage of interest to be	<input type="checkbox"/> acreage to be pooled and status of
escrowed by the Board under	<input type="checkbox"/> ownership
§ 45.1-361.21.D	<input type="checkbox"/> Percentage of interest held by the
<input type="checkbox"/> Plan of escrowing proceeds	<input type="checkbox"/> applicant in the proposed drilling
attributable to conflicting	<input type="checkbox"/> unit
interest under § 45.1-361.22	<input type="checkbox"/> Estimated production of well
<input type="checkbox"/> Formations to be produced	<input type="checkbox"/> Estimated reserves of unit
<input type="checkbox"/> Proposed AFE	<input type="checkbox"/> Application fee
<input type="checkbox"/> Certification of notice	<input type="checkbox"/> Signature as per Regulation
under § 45.1-361.19	<input type="checkbox"/> VR 480-05-22.2, § 4.C.3

D60-VG08-1
Sept, 1990

Emergency Regulations

DEPARTMENT OF THE TREASURY (THE TREASURY BOARD)

Title of Regulation: VR 640-02. Virginia Security for Public Deposits Act Regulations.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Effective Date: November 1, 1990 through October 31, 1991.

Summary:

These regulations amend and supersede the Emergency Regulations adopted 5/15/86.

Upon its effective date of January 1, 1974, the Act superseded all other existing statutes concerning security for public deposits and established a single body of law to provide a procedure for securing such deposits that is uniform throughout the Commonwealth. The Act does not, of itself, require security for any public deposit, and thus the statutes previously existing continue in effect insofar as they require certain deposits to be secured. All deposits that are required to be secured, whether by statute, by charter provision, or by the custodian of the fund, must be secured pursuant to the Act. No alternate method of securing such deposits may be utilized.

The primary responsibility for determining that the Act is being complied with rests upon the financial institutions that accept and hold public deposits. If a financial institution officer is unable to ascertain whether a particular deposit is a "public deposit" for purposes of the Act he should obtain the essential details and communicate with the public depositor, the financial institution's counsel, or the State Treasurer's office. If the deposit is a "public deposit" the pertinent inquiry is whether the deposit either must be secured pursuant to the Code of Virginia, or whether the public depositor elects to require security for the deposit.

All moneys deposited by the State Treasurer must be secured pursuant to §§ 2.1-210 and 2.1-211 of the Code of Virginia. All county and city moneys deposited by a county or city treasurer or other public depositor must be secured pursuant to § 58.1-3158 of the Code of Virginia.

If security is not required by law, but the deposit is within the statutory definition of a public deposit, the treasurer or custodian of the moneys may elect to require security. If the amount of the deposit is less than the maximum amount of deposit insurance applicable, there is no need for the treasurer or custodian to require security because the financial institution will deduct the maximum amount of deposit insurance applicable to the account as provided by the Federal Deposit Insurance

Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) and secure only the excess which is not covered by the insurance. If the deposit exceeds the amount of insurance, the treasurer or custodian may decide that the deposit should be secured. In such event, he must communicate his election to the proper officer of the financial institution holding the deposit, who may require the election to be manifested in writing on a form approved by the Treasury Board. A copy of the form will be retained by the treasurer and the financial institution, and a copy will be forwarded to the State Treasurer.

Definition of participants.

The three major participants in the scheme of activities required by the Act are defined as follows:

1. Qualified public depositories. Any national banking association, federal savings and loan association or federal savings bank located in Virginia and any bank, trust company or savings and loan association organized under Virginia law that receives or holds public deposits which are secured pursuant to the Act.

2. Treasurers or public depositors. The State Treasurer, a county, city, or town treasurer or director of finance or similar officer and the custodian of any other public deposits secured pursuant to the Act.

3. Treasury Board. The Treasury Board of the Commonwealth created by § 2.1-178 of the Code of Virginia consisting of the State Treasurer, the Comptroller, the State Tax Commissioner and two members appointed by the Governor.

Treasury Board duties, powers and responsibilities.

The Treasury Board is granted authority to make and enforce regulations necessary and proper to the full and complete performance of its functions under the Act pursuant to § 2.1-364. The board may require additional collateral of any and all depositories, may determine within the statutory criteria what securities shall be acceptable as collateral, and may fix the percentage of face value or market value of such securities that can be used to secure public deposits. The board may also require any public depository to furnish information concerning its public deposits and fix the terms and conditions with respect to security under which public deposits may be held. In the event of a default or insolvency of a public depository holding secured public deposits, the board may take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim.

Administration.

Emergency Regulations

The Treasury Board has designated the State Treasurer to be the chief administrative officer with respect to the provisions of the Act. Inquiries and correspondence concerning the Act should be addressed to:

Treasurer of Virginia
P. O. Box 6-H
Richmond, Virginia 23215

Effective Date: The Act became effective January, 1974, and was amended effective March 18, 1987.

Preamble:

The Virginia Security for Public Deposits Act (the Act), Code of Virginia, Sections 2.1-359 through 2.1-370, creates a single body of law applicable to providing for the pledge of securities as collateral for public funds on deposit in financial institutions. The Act authorizes the Treasury Board to make and enforce regulations necessary and proper to carry out its responsibilities under The Act. Pursuant to this authority, the Treasury Board previously adopted Virginia Security for Public Deposits Act regulations (Regulation VR 640-02).

The following Emergency Regulation amends Section 4 and Section 7 of Regulation VR 640-02. The Emergency Regulation is necessary to provide adequate protection for public funds on deposit in financial institutions in light of recent changes in institutions and in the types of securities being pledged as collateral under the Act. The amendments to Section 4 and Section 7 will remain in effect until final adoption of permanent regulations amending Section 4 and Section 7 on or before November 1, 1991.

The amendment to Section 4 states that the Treasury Board may increase the required collateral of any and all savings institutions above 100 percent of the public deposits held. The amendment to Section 7 states that pledged securities which are difficult to value or subject to decline in value may be valued at less than their market value.

The Treasury Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of the provisions of Section 4 and Section 7 of Regulation VR 640-02.

VR 640-02. Virginia Security for Public Deposits Act Regulations.

§ 1. General.

The definitions provided by § 2.1-360 of the Code of Virginia, shall be used throughout these regulations unless the context requires otherwise.

§ 2. Effective date.

These regulations, as amended, shall be effective on and after ~~March 18, 1987~~ November 1, 1990.

§ 3. Required collateral for banks.

A. The required collateral of a national or state chartered bank to secure public deposits shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value for collateralization purposes not less than:

1. Fifty percent of the actual public deposits held at the close of business on the last banking day in the preceding month, or the average balance of all public deposits for the preceding month, whichever is greater;
2. Seventy-five percent of the bank's average daily balance for the preceding month or the actual public deposits held as aforesaid, whichever is greater, in the event that the bank's average daily public deposits for the preceding month exceed one-fifth of its average daily total deposits;
3. One hundred percent of the bank's average daily balance for the preceding month or the actual public deposits held, as aforesaid, whichever is greater, in the event that the bank's average daily public deposits for the preceding month exceed one-fifth of its average daily total deposits and the bank has not been actively engaged in the commercial banking business for at least three years;
4. One hundred percent of the bank's average daily balance for the preceding month or the actual public deposits held, as aforesaid, whichever is greater, in the event that the bank's average daily public deposits for the preceding month exceed one-third of its average daily total deposits;
5. One hundred percent of the bank's average daily balance for the preceding month or the actual public deposits held, as aforesaid, whichever is greater, in the event the bank has not been actively engaged in the commercial banking business for at least one year;
6. Or, in the event that the bank has repeatedly violated the pledging statutes and regulations or for other reasons deemed sufficient, the Treasury Board may increase the bank's ratio of required collateral to 100% of its actual public deposits.

§ 4. Required collateral for savings and loan associations or savings banks savings institutions.

The required collateral of a savings and loan association shall mean a sum equal to 100% of the average daily balance for the preceding month of all public deposits held by such depository but shall not be less than 100% of

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the public deposits held by such depository at the close of business on the last banking day in the preceding month.

The required collateral of a savings institution to secure public deposits shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value, for collateralization purposes, not less than a sum equal to 100% of the average daily balance of public deposit held by such savings institution for the preceding month, but shall not be less than 100% of the public deposits held by such savings institution at the close of business on the last banking day in the preceding month.

In the event that a savings institution has repeatedly violated the pledging statutes and regulations, or for other reasons deemed sufficient, the Treasury Board may increase such savings institution's ratio of required collateral above 100% of its actual public deposits.

§ 5. Average daily balance computation.

The average daily balance for any month of all public deposits held during the month shall be derived by dividing the total of the daily balances of such deposits for the month by the number of calendar days in the month.

In computing the amount of public deposits to be collateralized during any month, there shall be excluded the amount of each deposit which is insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

§ 6. Eligible collateral.

A. Securities eligible for collateral are limited to:

1. Obligations of the Commonwealth. Bonds, notes and other evidences of indebtedness of the State of Virginia, and securities unconditionally guaranteed as to the payment of principal and interest by the State of Virginia.

2. Obligations of the United States, etc. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof.

3. Obligations of Virginia counties, cities, etc. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the State of Virginia upon which there is no default; provided that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the State of Virginia or its

political subdivisions upon which there is no default, and which are rated BBB or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

4. Obligations of International Bank for Reconstruction and Development and Asian Development Bank. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development and bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank.

5. Obligations partially insured or guaranteed by any U.S. Government Agency.

6. Obligations (including revenue bonds) of states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

7. Corporate Notes rated AA by both Standard & Poor's and Moody's with a maximum maturity of ten years.

8. Any additional securities approved by the Treasury Board pursuant to § 2.1364(d).

B. No security which is in default as to principal or interest shall be acceptable as collateral.

C. No financial institution shall utilize securities issued by itself, its holding company, or any affiliate for purposes of collateralizing its public deposits.

D. Securities excluded by action of the Treasury Board pursuant to § 2.1-364(d) shall not be acceptable.

§ 7. Valuation of collateral.

Each financial institution shall value its securities for reporting purposes at their current *asset market* value in accordance with the following method:

At the market value as of the close of business on the last banking day in the preceding month, except that any extraordinary decline in value between such day and the date of mailing the monthly report to the Treasury Board shall be considered and used for reporting purposes.

The State Treasurer, upon written notice to any or all savings institutions and any or all financial institutions, may require as deemed necessary for reporting purposes, that certain securities that are difficult-to-value, subject to rapid decline in value or otherwise represent a risk of decrease in value, be valued at a rate less than 100% of their market value.

§ 8. Substitution of eligible collateral.

A substitution of eligible collateral may be made by the depository financial institution at any time provided that the market value of the securities substituted is equal to or greater than the market value of the securities withdrawn.

At the time of making a substitution, the depository financial institution shall prepare a request for the substitution upon a form approved by the State Treasurer and deliver the original to the escrow bank and a copy to the State Treasurer. The escrow bank shall not allow a substitution unless the market value of the securities to be substituted is equal to or greater than the market value of the securities to be withdrawn.

9. Withdrawal of collateral.

A financial institution shall not be permitted to withdraw collateral previously pledged without the prior approval of the State Treasurer. The State Treasurer may grant such approval only if the financial institution certifies in writing that such withdrawal will not reduce its collateral below its required collateral as defined by these regulations, and this certification is substantiated by a statement of the financial institution's current public deposits which indicates that after withdrawal such deposits will continue to be secured to the full extent required by the law and regulations. A bank or trust company holding securities as collateral for another financial institution shall not permit the depositing financial institution to withdraw same without the written approval of the State Treasurer.

§ 10. Reports by qualified public depositories.

Within 10 business days after the end of each month each qualified public depository shall submit to the State Treasurer a written report, under oath, indicating the total amount of public deposits held by it at the close of business on the last business day in the preceding month, and average daily balance for such month of all secured public deposits held by it during the month, together with a detailed schedule of pledged collateral at its current asset value, determined pursuant to § 7 of these regulations, at the close of business on the last business day in such month. This report shall indicate the name of the escrow agent holding the collateral and its location and shall contain the amount of the financial institution's required collateral as of the close of business on the last business day in such month.

At the request of any public depositor for which it holds deposits, within 10 business days after the end of any month, the qualified public depository shall submit a statement indicating the total secured public deposits in each account to the credit of such depositor on the last business day in the month and the total amount of all secured public deposits held by it upon such date.

Within the first 10 business days of each calendar quarter the qualified public depository shall submit to each public depositor for whom it holds secured public

deposits, a report indicating the account number and amount of deposit as of the close of business on the last banking day of the calendar quarter being reported. A copy of said report shall be submitted to the State Treasurer at the same time.

§ 11. Deposit of collateral.

No qualified public depository shall accept or retain any public deposit which is required to be secured unless it has previously executed a "Public Deposit Security Agreement", and deposited eligible collateral, as defined in these regulations, equal to its required collateral, determined as herein provided, with (i) the Federal Reserve Bank of Richmond, (ii) The Federal Home Loan Bank of Atlanta, (iii) a bank or trust company located within Virginia which is not a subsidiary of the depository's parent holding company, or (iv) a bank or trust company located outside Virginia which has been approved by the Treasury Board.

Whether or not a depository has eligible collateral deposited as heretofore provided at the time it receives a public deposit, if such deposit would result in an increase of 10% or more in the depository's required collateral computed as of the day on which the deposit is received, such depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to paragraphs (1) through (6) of § 3, or § 4, of these regulations, whichever is applicable, but utilizing the depository's actual public deposits held at the close of business on the day such deposit is received in lieu of those held at the close of business on the last banking day in the preceding calendar month.

Except as provided in the preceding paragraph, each qualified public depository shall increase its collateral deposit on or before the day its monthly report is required to be submitted to the State Treasurer pursuant to § 10 of these regulations if such report indicates that the depository's required collateral is in excess of the collateral previously deposited in accordance with its preceding monthly report.

At the time of the deposit of registered securities, the qualified public depository owning the securities shall attach appropriate bond power forms as required to allow the State Treasurer to transfer ownership of such registered securities for the purpose of satisfying the depository's liabilities under the Act in the event the collateral needs to be liquidated.

§ 12. Reports by State Treasurer.

The State Treasurer shall report to the auditors of any public depositor, upon their request, the status of any public depository's collateral account and compliance with the reporting requirements of the Act. The State Treasurer shall notify any public depositor that maintains accounts with any bank or savings and loan of any irregularities, including, but not limited to, the late filing of the required

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monthly reports or of deficiencies in the financial institution's eligible collateral at any time. The Treasury Board shall be notified of the sending of any reports of irregularities required herein no later than at its next regularly scheduled meeting.

§ 13. Exception reports by public depositors.

Upon receipt of the quarterly public depositor report, as stated in § 10, the public depositors will notify the State Treasurer of any unresolved discrepancy between the information provided and the public depositors' records.

I hereby certify that the foregoing regulations are full, true and correctly dated.

/s/ Eddie N. Moore, Jr., Chairman
Treasury Board of the
Commonwealth of Virginia
Date: October 22, 1990

The Honorable Lawrence Douglas Wilder, Governor of the Commonwealth of Virginia, by his signature below approves the issuance of the foregoing Emergency Regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 25, 1990

Filed with:

/s/ Joan W. Smith
Registrar of Regulations
Date: October 30, 1990

STATE CORPORATION COMMISSION

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 23, 1990

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS900351

Ex Parte: In the matter of adopting
Rules Governing Private Review Agents

ORDER SETTING HEARING

WHEREAS, Virginia Code § 12.1-13 provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction and Virginia Code §§ 38.2-223, 38.2-4214, 38.2-4319 and §§ 38.2-5300 through 38.2-5309 provide that the Commission is authorized to issue reasonable rules and regulations necessary to regulate private review agents;

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed regulation entitled "Rules Governing Private Review Agents";

WHEREAS, said regulation concerns a subject appropriate for Commission regulation; and

WHEREAS, the Commission is of the opinion that a hearing should be held on the proposed regulation, at which hearing all interested persons may appear and be heard;

THEREFORE, IT IS ORDERED:

(1) That the proposed regulation entitled "Rules Governing Private Review Agents" be appended hereto and made a part hereof, filed and made a part of the record herein;

(2) That a hearing be held in the Commission's Courtroom, 13th Floor, Jefferson Building, Bank and Governor Streets, Richmond, Virginia at 10:00 a.m. on November 27, 1990, for the purpose of considering the adoption of the proposed regulation, at which time and place all interested persons may appear and be heard with respect to the proposed regulation;

(3) That an attested copy hereof, together with a copy of the proposed regulation, be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who shall forthwith give further notice of the proposed regulation and hearing by mailing a copy of this order together with a copy of the proposed regulation to all insurers licensed to sell accident and sickness insurance in the Commonwealth of Virginia; and

(4) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

RULES GOVERNING PRIVATE REVIEW AGENTS

§ 1. Authority.

This regulation is issued pursuant to the authority vested in the Commission under §§ 38.2-223, 38.2-4214, 38.2-4319 and §§ 38.2-5300 through 38.2-5309 of the Code of Virginia.

§ 2. Purpose.

The purpose of this regulation is to implement §§ 38.2-5300 through 38.2-5309 of the Code of Virginia with respect to private review agents.

This regulation is designed to:

- (a) provide minimum qualifications for private review agents;
- (b) provide guidelines for the protection of consumers regarding the confidentiality of medical records; and
- (c) promote the delivery of quality health care in a cost effective manner.

§ 3. Effective date.

This regulation shall be effective on January 1, 1991.

§ 4. Scope.

This regulation applies to all private review agents performing utilization review in this Commonwealth. This regulation does not apply to insurers, health services plans, hospital service corporations, preferred provider organizations, or health maintenance organizations conducting reviews solely for their own insureds, subscribers, members, or enrollees. This regulation does not apply to a private review agent performing utilization review for self-insured groups or a private review agent that operates under contract with the federal government for utilization review of patients eligible for hospital services under Title XVIII of the Social Security Act or under contract with a plan otherwise exempt from operation of Chapter 53 of Title 38.2 §§ 38.2-5300 et seq. pursuant to the Employee Retirement Income Security Act of 1974.

§ 5. Definitions.

For the purposes of this regulation:

A. "Certificate" means a certificate of registration granted by the Commission to a private review agent.

B. "Physician advisor" means a physician licensed to

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practice medicine who provides medical advice or information to a private review agent in connection with its utilization review activities.

C. "Private review agent" means a person or entity performing utilization review, except that the term shall not include an insurer, health services plan, hospital service corporation, preferred provider organization, or health maintenance organization conducting reviews solely for its own insureds, subscribers, members, or enrollees.

D. "Utilization review" means a system for reviewing the necessity, appropriateness and efficiency of hospital, medical or other health care resources provided or to be provided to a patient or group of patients for the purpose of determining whether such services should be covered or provided by an insurer, health services plan, health maintenance organization or other entity or person.

E. "Utilization review program" means a program for conducting utilization review by a private review agent.

F. "Insurer" means an insurance company, health services plan, health maintenance organization, preferred provider organization or multiple employer welfare arrangement.

G. "Operating in the Commonwealth" means providing utilization review services affecting insureds, subscribers, members or enrollees covered under a contract issued for delivery and delivered in Virginia.

§ 6. Certificates to perform utilization review.

A. Beginning January 1, 1991, a private review agent shall obtain a certificate from the Commission prior to operating in this Commonwealth.

B. Private review agents operating in this Commonwealth prior to the effective date of this regulation shall submit an application for a certificate on or before January 1, 1991.

C. An applicant for a certificate shall pay an application fee and shall submit an application to the Commission on the forms prescribed by the Commission. The applicant shall also submit the following information required by § 38.2-5302 of the Code of Virginia:

- (1). A description of the procedures to be used in evaluating proposed or delivered hospital, medical or other health care services;
- (2). The procedures by which patients or providers may seek reconsideration of determinations by private review agents;
- (3). The type and qualifications of the personnel either employed or under contract to perform the utilization review;

(4). Procedures and policies which ensure that patient-specific medical records and information shall be kept strictly confidential except as authorized by the patient or by § 11 of this regulation; and

(5). Assurances that reviewers will be readily accessible by telephone to patients and providers at least forty hours per week during normal business hours.

§ 7. Fee for certificate.

A. Every private review agent shall pay an application fee of five hundred dollars and a biennial renewal fee of five hundred dollars to the Commission. Each certificate shall expire on June 30 of the appropriate year. An interim license shall be issued for the period beginning January 1, 1990, and ending June 30, 1991. The fee for the interim license shall be two hundred and fifty dollars. Prior to June 1 of the renewal year, each private review agent shall remit a renewal application form and fee to the Commission.

B. The Commission may refuse to issue a certificate to a private review agent and may suspend or revoke the certificate of any certificate holder whenever it finds that the applicant or certificate holder:

- (1). has failed to meet or maintain the requirements of § 38.2-5302;
- (2). has violated any sections of this regulation;
- (3). has failed to adhere to its procedures as submitted to the Commission;
- (4). has violated any provisions of any law of this Commonwealth applicable to private review agents; or
- (5). has been guilty of fraudulent or dishonest practices.

C. A certificate issued to a private review agent shall authorize him to act as a private review agent until his certificate is otherwise terminated, suspended or revoked. The Commission shall not revoke or suspend an existing certificate until the certificate holder is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new certificate or proposes to revoke or suspend an existing certificate it shall give the applicant or certificate holder at least ten days' notice in writing of the time and place of the hearing if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the certificate or the reason for its proposed revocation or suspension, as the case may be. The notice may be given to the applicant or certificate holder by registered or certified mail sent to the last known address of record. The Commission may summon witnesses to testify with respect to the applicant

or certificate holder and the applicant or certificate holder may introduce evidence in its behalf. No applicant to whom a certificate is refused after a hearing, nor any certificate holder whose certificate is revoked shall again apply for a certificate until after the time, not exceeding two years, the Commission prescribes in its order.

§ 8. Minimum Qualifications of Staff.

A. The personnel of a private review agent responsible for making decisions regarding the appropriateness of care shall, as a minimum, consist of medical record technicians with credentials equal to or exceeding those of Accredited Record Technicians (ART) as awarded by the American Medical Record Association. Other personnel making decisions regarding the appropriateness of care may include registered nurses, licensed practical nurses, or physicians licensed to practice by the appropriate jurisdiction. Other practitioners such as podiatrists, clinical social workers, and psychologists, licensed in the appropriate jurisdiction, may also make decisions regarding the appropriateness of care.

B. The private review agent shall have available the services of a sufficient number of medical records technicians, licensed practical nurses, and registered nurses, supported and supervised by appropriate physicians, to carry out its utilization review activities. The staff shall include physicians in appropriate specialty areas including, but not limited to neurology, cardiology, and psychiatry. The physicians shall be certified by the appropriate board within the American Boards of Medical Specialists.

§ 9. Adverse decisions.

A. Any case where there is a potential adverse decision must be reviewed by a physician on the staff of the private review agent. The reviewing physician must be licensed in the same field of practice as the attending physician.

B. An initial adverse recommendation must be communicated by the reviewing physician to the attending physician prior to the issuance of a final denial.

C. Notification of an adverse recommendation shall include the type of review performed, the reason for the adverse recommendation, the alternate length or type of treatment that the private review agent deems to be appropriate, the nature of the health care criteria upon which the decision was based, and the opportunity for an appeal. The private review agent shall not recommend alternate health care if that alternate care is not available to the insured within a reasonable distance of the insured's home.

§ 10. Appeals of adverse decisions.

A. Private review agents shall include in their procedures, an appeal process that can be utilized when a

determination is made not to certify an admission or extension of stay. Hospitals and physicians shall have the right to notify the patient of any determination not to certify the admission and the physician of record may file an appeal on behalf of the patient. A written description of the appeal process shall be furnished to the insured and attending physician. The description of the process shall include relevant information including, but not limited to time limits, addresses, and telephone and facsimile numbers.

B. Each private review agent shall establish an appeals committee to hear and reconsider any adverse decision that is appealed by an insured, his representative, or his provider. The appeals committee shall include at least one provider who is practicing the same health care specialty as the provider that renders or proposes to render health care to the insured and who did not participate in the adverse decision being appealed.

C. When an initial determination not to certify a service is made during ongoing therapy and the physician of record believes that the determination warrants immediate appeal, the physician of record shall have an opportunity to appeal that determination by telephone on an expedited basis. Private review agents shall provide for reasonable access to their consulting physician(s) for such appeals. Both providers of care and private review agents shall attempt to share the maximum information by telephone, facsimile machine, or otherwise to satisfactorily resolve the expedited appeal. Expedited appeals which cannot resolve a difference of opinion may be reconsidered in the standard appeals process.

D. For appeals not subject to subsection C, appeals will be made in writing or telephonically by the process established by the private review agent. Private review agents shall transmit their determination on the appeal as soon as practicable, but in no case more than 30 days after receiving the required documentation on an appeal. The required documentation may include among other things, copies of part or all of the medical record and/or a written statement from the physician of record. The private review agent shall provide that such documentation be reviewed by a physician. A private review agent and/or claim administrator may set a period of time after notification of a determination within which an appeal must be filed. A physician of record who has been unsuccessful in overturning a determination not to certify has the right to request of the private review agent the medical basis for that determination.

The private review agent shall furnish the support for that determination within five days.

E. The private review agent shall provide an opportunity for the appellant to present additional evidence and arguments during the course of the hearing. Before rendering a final decision, the committee shall review the pertinent medical records of the insured's provider and the pertinent records of any facility in which health care

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is provided to the insured. Where an insured, his representative, or his provider requests an expedited appeal, the private review agent shall make such appeal proceeding, including access to its consulting providers, available within 72 hours after the request and make decisions not less than one working day after the date of the hearing of the expedited appeal.

§ 11. Confidentiality of medical records and information.

A. The private review agent's procedures shall specify that specific information exchanged for the purpose of conducting review will be considered confidential, be used solely for the purposes of utilization review, and shared with only those parties who have authority to receive such information, such as the claim administrator. The private review agent's process shall specify that procedures are in place to assure confidentiality and that the private review agent agrees to abide by any Federal and State laws governing the issue of confidentiality. Summary data which does not provide sufficient information to allow identification of individual patients need not be considered confidential.

B. When consistent with the above and Federal and State statutes and regulations, patient specific data gathered by the private review agent which raises questions of deficiencies in quality may be shared with the hospital's or outpatient surgical facility's Quality Assurance Committee with appropriate signed release including, but not limited to, patients or their representatives. Prior to the sharing of such information, a private review agent may require the hospital or outpatient surgical facility to assure compliance with confidentiality requirements, to assure the appropriate review and follow-up within that hospital's or outpatient facility's Quality Assurance Committee, and to indemnify the private review agent from inappropriate use of such information.

C. Prior to the release of patient specific information to a private review agent, a patient shall provide written consent to the private review agent. The information release forms signed by or on behalf of a patient at the time of treatment by a hospital or physician shall be modified, if necessary, to clarify the provider's right to release medical information telephonically and in writing for utilization review purposes. Hospitals and physicians may reserve the right to discuss the release of sensitive information to a private review agent with the patient. If the patient will not authorize the release of information, or has refused to sign the release of information forms, the private review agent, upon receipt of written notice thereof, may then follow its own policy or that of the insurer regarding that refusal.

D. Medical records and patient specific information shall be maintained by the private review agent in a secure area with access limited to essential personnel only.

E. Documents relating to claims shall be retained by private review agents for at least five years.

§ 12. Accessibility.

A. A private review agent shall provide free telephone access to insureds and providers at least 40 hours per week during normal business hours. Insurers using private review agents located outside of the eastern time zone must provide insureds advance written notification of the eastern time zone hours during which those entities are accessible; provided that such hours shall be no less than 40 hours per week.

B. It is the responsibility of the private review agent to install and maintain an adequate telephone system that must include, among other features, the abilities to monitor downtime in the telephone system, track lost calls, and accept and record incoming calls outside of normal business hours.

C. The Commission may determine, upon written request, that other telephone systems are adequate in special circumstances.

§ 13. Examination of private review agents.

A. The Commission may conduct reviews of the operations of private review agents operating in this Commonwealth to determine if the private review agent is operating in compliance with this regulation and Chapter 53 of Title 38.2 §§ 38.2-5300 et seq. of the Code of Virginia. The reviews may include telephone audits to determine if the private review agents are accessible as required by this regulation.

B. The Commission may investigate any complaint from a health care provider or insured regarding the conduct or operation of a private review agent that is governed by this regulation or Chapter 53 of Title 38.2 §§ 38.2-5300 et seq. of the Code of Virginia.

The investigation of private review agents shall not include determinations of medical necessity, appropriate charges for covered services or any other areas not addressed by this regulation or Chapter 53 of Title 38.2 §§ 38.2-5300 et seq. of the Code of Virginia.

§ 14. Severability.

If any provision of this regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

BUREAU OF INSURANCE

October 12, 1990

Administrative Letter 1990-13

TO: ALL INSURERS LICENSED IN THE

COMMONWEALTH OF VIRGINIA

RE: ANNUAL STATEMENT FILING BY CERTAIN INSURERS IN MACHINE - READABLE FORMAT: DISKETTES REQUIRED

The 1990 General Assembly passed Senate Bill 74 to amend Virginia Code Section 38.2-1300 effective July 1, 1990. The amendment provides that the Commission "may prescribe the form of the annual statement and supplemental schedules and exhibits to include additional copies in machine-readable format, and may vary the form for different types of insurers." [added text underscored]

The purposes of this Administrative Letter are to notify certain insurers licensed in this Commonwealth that they will be required to file additional copies in the format described below, to define the types of insurers affected, and to provide a method for exemption from the requirement.

In addition to the 13 x 19 inch National Association of Insurance Commissioners (NAIC) convention blank in printed form, the annual filing for 1990 and thereafter must include diskettes containing annual statement information in the format prescribed by the NAIC Annual Statement Diskette Filing Specifications and must be submitted on or before the March 1 due date of the corresponding printed information.

The diskette filing will be required of all insurers licensed in Virginia which file the NAIC Fire and Casualty ("yellow blank") or the NAIC Life and Accident and Health ("blue blank") annual statements. Other types of companies are exempted from filing in machine-readable format until otherwise notified. Also exempted are companies licensed under Chapter 26 of Title 38.2 (home protection companies) or approved under Chapter 11.1 of Title 15.1 (local government group self-insurance pools) of the Code of Virginia.

Where this requirement would pose an undue and demonstrable hardship on a company, application may be made for a one-year exemption. Any such application for exemption must be made in writing and received before December 1st prior to the March 1 filing deadline.

Questions regarding this Administrative Letter and applications for exemption should be directed to:

Mr. Edward J. Buyalos, Jr., CFE, CPA, FLMI
Financial Analysis Section
Bureau of Insurance
P. O. Box 1157
Richmond, VA 23209

Information regarding the NAIC Diskette Submission Directive is available from:

Publications Department

NAIC
120 West 12th Street, Suite 1100
Kansas City, MO 64105

/s/ Steven T. Foster
Commissioner of Insurance

* * * * *

BUREAU OF INSURANCE

October 12, 1990

Administrative Letter 1990-16

TO: All Insurance Companies Licensed in Virginia

RE: Actuarial Opinion Submissions in Company Annual Statements

In an effort to improve the Commission's oversight of the financial condition of licensed companies doing business in the Commonwealth, all Annual Statement filings for the calendar year ending December 31, 1990 and each year thereafter, subject to the provisions which follow, must contain the opinion of a qualified actuary regarding the adequacy of policy and claim reserves and any other actuarial items established for all lines of business written by the company. This actuarial opinion filing is being required pursuant to Sections 38.2-1109, 38.2-1203, 38.2-1300, 38.2-2506, 38.2-2613, 38.2-3804, 38.2-3903, 38.2-4004, 38.2-4126, 38.2-4214, 38.2-4307, 38.2-4408, 38.2-4509, and 38.2-4602 of Title 38.2 of the Virginia Code.

Who Must Comply

All life, accident and health, and property and casualty companies licensed to do business in Virginia under Chapter 10 of Title 38.2 of the Virginia Code and all other organizations licensed to do business under the following chapters of Title 38.2 must file an opinion by a qualified actuary in their Annual Statement submissions to the Commission, subject to the limitations and/or exemptions stated in this letter:

- a) Chapter 11 - Captive Insurers
- b) Chapter 12 - Reciprocal Insurance
- c) Chapter 25 - Mutual Assessment Property and Casualty Insurers - provided they have:
 - a) 500 members, and
 - b) \$500,000 of assessments received during a calendar year.
- d) Chapter 26 - Home Protection Companies
- e) Chapter 38 - Cooperative Nonprofit Life Benefit Companies
- f) Chapter 39 - Mutual Assessment Life, Accident and Sickness Insurers
- g) Chapter 40 - Burial Societies
- h) Chapter 41 - Fraternal Benefit Societies
- i) Chapter 42 - Health Services Plans
- j) Chapter 43 - Health Maintenance Organizations

State Corporation Commission

- k) Chapter 44 - Legal Services Plans
- l) Chapter 45 - Dental or Optometric Services Plans
- m) Chapter 46 - Title Insurance

Definitions

The following terms as stated in this letter shall have the following meanings:

- a) Annual Statement means the annual financial statement required to be filed by licensed organizations with the Commission as provided in Section 38.2-1300 of the Virginia Code (Section 38.2-4307 for licensed health maintenance organizations, Section 38.2-4126 for fraternal benefit societies).
- b) A qualified actuary is either:

1) an individual who is a member in good standing of the American Academy of Actuaries and is qualified to sign statements of actuarial opinion in accordance with the American Academy of Actuaries Qualification Standards for actuaries signing such statements; or

2) an individual who is either a Fellow or an Associate by examination of the Society of Actuaries or the Casualty Actuarial Society.

Opinion Form and Content

The actuarial opinion is to consist of, though not necessarily be limited to, the following:

- a) an identification paragraph,
- b) a scope paragraph,
- c) a reliance paragraph (if necessary),
- d) an opinion paragraph,
- e) any additional paragraphs deemed necessary to further explain or to qualify the opinion, and
- f) date of the opinion's issuance and actuary's signature.

If the qualified actuary relied on another individual's(s') opinion(s) for determining the accuracy of the underlying records, the qualified actuary should state such in the reliance paragraph of his opinion. Additionally, the individual(s) upon whom the qualified actuary relied, should submit a signed and Administrative Letter 1990-16 dated statement certifying the accuracy and inclusion of the underlying records. This statement should be attached to the qualified actuary's opinion.

The language expressed in the opinion should follow that encompassed in the N.A.I.C. Annual Statement instructions and/or the American Academy of Actuaries Financial Reporting Recommendations and Interpretations.

The Commission shall have final authority regarding approval of the form of the actuarial opinion.

Exemptions

The Commission may allow an exemption from filing the actuarial opinion to certain companies which can demonstrate the following:

- a) They are under supervision or conservatorship pursuant to statutory provision, unless ordered by their domiciliary commissioner to file an actuarial opinion.
- b) The nature of business written and/or the nature of asset or liability items on the company's Annual Statement balance sheet would not necessitate the filing of such actuarial opinion.
- c) The filing of an actuarial opinion would be detrimental to the policyholders, contract holders, or general public.
- d) Filing the opinion would be an undue financial hardship.

If an exemption from filing or any other provision of this letter is sought by a company, a written request for an exemption must be made for each calendar year on or before December 1st of the year for which such exemption is sought. Such request must set forth the basis and reasons for which the exemption is sought. The Commission may require that the request for an exemption contain the statement of a qualified actuary, which sets forth the basis for which the exemption is sought. The Commission may then issue a written exemption.

Delay by a company in obtaining any exemption will not relieve the company from any applicable fines, penalties, and/or other appropriate regulatory action.

Due Date

The actuarial opinion or certified copy of the Commission's written exemption: (i) is to be included on or attached to Page 1 of the company's Annual Statement that is to be filed with the Commission, and (ii) is due when the Annual Statement is due. Annual Statement submitted without the qualified actuary's opinion or Commission's written exemption may subject the company to applicable penalties and/or fines as well as suspension or revocation of its Virginia license as provided for in Title 38.2 of the Virginia Code. For good cause shown, the Commission may extend a company's deadline for submitting the qualified actuary's opinion or the Commission's written exemption but not beyond 60 days after its Annual Statement filing deadline.

Any and all statements in this letter take precedence over any N.A.I.C. Annual Statement instructions and any other rules and guidelines previously issued.

Any questions regarding the implementation of the contents of this letter should be directed to:

Edward J. Buyalos, Jr., CFE, CPA, FLMI
Supervisor, Financial Analysis Section
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23209
(804) 786-3637

/s/ Steven T. Foster
Commissioner of Insurance

* * * * *

BUREAU OF INSURANCE

October 12, 1990

Administrative Letter 1990-17

TO: All Insurance Companies Licensed in Virginia

RE: Foreign and Alien Life Insurer's Reserve Valuation Certificate Requirements

In accordance with Virginia Code Section 38.2-3127.B each foreign and alien life insurer doing business in the Commonwealth is required to submit a Life Reserve Valuation Certificate which certifies that the domiciliary state insurance department has valued and verified the insurer's aggregate life insurance reserves as reported in the insurer's Annual Statement.

Effective Date

Effective for Annual Statements dated December 31, 1990 and each year thereafter, the deadline for submitting this Certificate to the Commission will be the August 1st next following the Annual Statement date, subject to other provisions contained in this administrative letter.

Compliance

If an insurer is unable to obtain the Certificate from its domiciliary state insurance department, then a letter from the domiciliary state insurance department must be submitted to the Commission by the August 1st deadline which clearly states: a) the insurer's name, b) the reason(s) why the Certificate has not been issued, and c) the anticipated date of the Certificate's issuance. The Commission may then decide whether to have the insurer's policies valued by the Commission in accordance with Virginia Code Section 38.2-3127.B.

Accountability

Each insurer will be held responsible for: a) obtaining the letter regarding the Life Reserve Valuation Certificate from the domiciliary state insurance department and submitting the letter to the Commission, and/or b) submitting the Certificate when it is received from the domiciliary state insurance department to the Commission.

Ramifications

If the Life Reserve Valuation Certificate or the letter from the domiciliary state insurance department is not received on or before the August 1st deadline, the Commission shall directly value or have valued the insurer's aggregate life insurance reserves, as provided in Section 38.2-3127.B of the Virginia Code. The valuation will be performed at the insurer's expense, as provided in Virginia Code Section 38.2-3143.

Extension

If the insurer is unable to comply with the above mentioned deadline, it must submit a written request to the Commission by August 1st stating the reasons why it cannot comply with the provisions of this administrative letter and requesting an extension be granted. For good cause shown, the Commission may extend an insurer's deadline for filing the Life Reserve Valuation Certificate or the letter from the domiciliary state insurance department. This will under no circumstance exempt the insurer from these filings. The Commission shall have final authority regarding the form and/or acceptability of the submission. Any questions regarding the implementation of the contents of this letter should be directed to:

Edward J. Buyalos, Jr., CFE, CPA, FLMI
Supervisor, Financial Analysis Section
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23209
(804) 786-3637

/s/ Steven T. Foster
Commissioner of Insurance

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (90)

VIRGINIA'S ELEVENTH INSTANT GAME LOTTERY; "DOUBLE FEATURE," END OF GAME

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's eleventh instant game lottery, "Double Feature," will officially end at midnight on Friday, October 19, 1990. The last day to redeem winning tickets for "Double Feature" will be Wednesday, April 17, 1991, 180 days from the declared official end of the game. Claims for winning tickets from "Double Feature" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a postmark of April 17, 1991, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson, Director
Date: September 28 1990

DIRECTOR'S ORDER NUMBER TWENTY-NINE (90)

VIRGINIA'S TWELFTH INSTANT GAME LOTTERY; "THREE TIMES LUCKY," END OF GAME

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's twelfth instant game lottery, "Three Times Lucky," will officially end at midnight on Thursday, November 8, 1990. The last day to redeem winning tickets for "Three Times Lucky" will be Tuesday, May 7, 1991, 180 days from the declared official end of the game. Claims for winning tickets from "Three Times Lucky" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a postmark of May 7, 1991, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box

4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson, Director
Date: October 18, 1990

DIRECTOR'S ORDER NUMBER THIRTY (90)

"WEDNESDAY LOTTO DRAWING"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the "Wednesday Lotto Drawing" promotional contest and drawing rules for the kickoff events which will be conducted at various shopping mall and lottery retailer locations throughout the Commonwealth beginning Monday, October 29, 1990 and extending through Wednesday, October 31, 1990. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until November 1, 1990, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson, Director
Date: October 22, 1990

DIRECTOR'S ORDER NUMBER THIRTY-ONE (90)

VIRGINIA LOTTERY RETAILER LOTTO JACKPOT BONUS PROGRAM AND RULES

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia Lottery Retailer Lotto Jackpot Bonus Program and Rules for the lottery retailer incentive program which will begin on Wednesday, October 31, 1990. These rules amplify and conform to the duly adopted State Lottery Board regulations and are as follows:

When the outcome of a Virginia Lotto drawing results in either a single jackpot winning ticket or multiple jackpot winning tickets, the lottery retailer(s) selling the jackpot winning tickets are entitled to bonus compensation, payable by the State Lottery

Department according to the following terms:

- (1) For any Virginia Lotto drawing which results in a single jackpot winning ticket, the retailer selling that jackpot winning ticket will receive bonus compensation of \$5,000.
- (2) For any Virginia Lotto drawing which results in two or three jackpot winning tickets, the retailer(s) selling the jackpot winning tickets will receive bonus compensation of \$5,000 for each jackpot winning ticket sold for that drawing.
- (3) For any Virginia Lotto drawing which results in four (4) through fifteen (15) jackpot winning tickets, the retailer(s) selling the jackpot winning tickets will receive bonus compensation representing a pro rata share of \$15,000 divided equally among each retailer selling a jackpot winning ticket according to the number of jackpot winning tickets each retailer sold. The total bonus compensation for this category shall not exceed \$15,000.
- (4) For any Virginia Lotto drawing which results in sixteen (16) or more jackpot winning tickets, no bonus compensation will be paid to any retailer.

Lottery retailers are responsible for all federal and state taxes associated with bonus compensation, as with other earned income. The retailer Lotto jackpot bonus maximum payment for any Lotto drawing is \$15,000. All retailer bonus compensation associated with this program will be made by the State Lottery Department in a single payment to the retailer(s). This program is applicable only to Virginia Lotto tickets and drawings and is payable only to Virginia licensed lottery retailers.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson, Director
Date: October 30, 1990

GOVERNOR

EXECUTIVE ORDER NUMBER TWENTY-FIVE (90)

GOVERNOR'S ADVISORY BOARD OF ECONOMISTS

By virtue of the authority vested in me as Governor by Section 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 members appointed by the Governor and shall serve 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 14 (90), Governor's Advisory Board of Economists, issued June 30, 1990.

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 10th day of October, 1990.

/s/ Lawrence Douglas Wilder
Governor

EXECUTIVE ORDER NUMBER TWENTY-SIX (90)

PROMULGATION OF THE COMMONWEALTH OF VIRGINIA EMERGENCY OPERATIONS PLAN, CLOSING OF THE CHESAPEAKE BAY BRIDGE-TUNNEL

By virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia as Governor and as

Director of Emergency Services, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby promulgate and issue the Commonwealth of Virginia Emergency Operations Plan, Closing of the Chesapeake Bay Bridge-Tunnel (hereinafter referred to as "the Plan"), issued and dated December 1987 and revised in October 1990.

The Plan is consistent with the Commonwealth of Virginia Emergency Services and Disaster Law of 1973 (Chapter 3.2, Title 44 of the Code), as amended.

The Plan is hereby made applicable to all state agencies and political subdivisions assigned emergency responsibilities by the Plan. Heads of affected state agencies and governing bodies of all affected political subdivisions are hereby directed to prepare detailed operating procedures for executing their emergency responsibilities and implementing the Plan.

The State Coordinator of Emergency Services, in accordance with Section 44-146.18 of the Code, shall be responsible for maintaining and updating the Plan and coordinating its administration with the appropriate federal, state and local agencies.

This Executive Order shall become effective on the date of its signing and shall remain in full force and effect until amended or rescinded by further executive order.

This Executive Order rescinds Executive Order Number 56 (87), Promulgation of the Commonwealth of Virginia Emergency Operations Plan, Closing of the Chesapeake Bay Bridge-Tunnel, issued by Governor Gerald L. Baliles on December 11, 1987.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 16th day of October, 1990.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS (Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF COMMERCE

Title of Regulation: VR 190-05-1. Asbestos Licensing Regulations.

Governor's Comment:

These regulations are intended to comply with recent changes to state asbestos licensing laws. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: October 29, 1990

* * * * *

Title of Regulation: VR 190-06-01. Regulations Governing Athlete Agents.

Governor's Comment:

These regulations, promulgated pursuant to 1990 legislation, are intended to ensure that athlete agents in Virginia are competent and qualified. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder

Governor

Date: October 20, 1990

GENERAL NOTICES/ERRATA

Symbol Key †
† Indicates entries since last publication of the Virginia Register

BOARD FOR ACCOUNTANCY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider amending regulations entitled: **VR 105-01-02. Board for Accountancy Regulations.** The purpose of the proposed action is to initiate a review process to consider establishing continuing professional education requirements to assure continued competency of licensees.

Statutory Authority: § 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until December 19, 1990.

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).

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to amend regulations to implement the statutes dealing with the certification of interior designers which went into effect July 1, 1990, and to adjust fees for all professions.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until November 21, 1990.

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.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† 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: **VR 230-30-004. Adult Community Residential Services Standards.** The purpose of the proposed action is to establish minimum standards for Adult Community Residential Programs.

Statutory Authority: § 53.1-178 of the Code of Virginia.

Written comments may be submitted until January 21, 1991.

Contact: R. M. Woodard, Regional Manager, Adult Community Alternatives, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3729.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **VR 270-02-0007. Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia.** The purpose of the proposed action is to review the regulations to assess their conformity with the federal regulations governing the education of the handicapped.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Written comments may be submitted until December 1, 1990.

Contact: Robin L. Hegner, Supervisor of Due Process Proceedings, Virginia Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2887.

VIRGINIA STATE LIBRARY AND ARCHIVES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending

regulations entitled: **VR 440-01-137.1 Standards for the Microfilming of Public Records for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.2. Archival Standards for Recording Deeds and other Writings by a Procedural Microphotographic Process.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-134.4. Standards for the Microfilming of Ended Law Chancery and Criminal Cases the Clerks of the Circuit Courts prior to Disposition.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.5. Standards for Computer Output Microfilm (COM) for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.6. Standards for Plats.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.7. Standards for Recorded Instruments.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State

General Notices/Errata

Library and Archives intends to consider amending regulations entitled: **VR 440-02-01. Requirements Which Must Be Met in Order to Receive Grants-In-Aid.** The purpose of the proposed action is to consider changes to the local minimum expenditure requirement and to other criteria libraries must meet in order to receive grants-in-aid.

Statutory Authority: § 42.1-52 of the Code of Virginia.

Written comments may be submitted until November 26, 1990.

Contact: Anthony Yankus, Director of Public Library Development, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2320.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

NOTE: CHANGE IN WRITTEN COMMENT DATES.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Board intends to consider amending regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed action is to clarify department procurement regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 20, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Board intends to consider amending regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed action is to clarify standards for licensing; authorize issuance of lottery retailer license on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board.

Other Pertinent Information: Section 1.7 was adopted on an emergency basis on May 14, 1990.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 20,

1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Board intends to consider amending regulations entitled: **VR 447-02-2. On-Line Game Regulations.** The purpose of the proposed action is to authorize issuance of lottery retailer license on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board. For free on-line tickets only, reduce the prize redemption period from 180 days to 60 days. Provide for additional game features.

Other Pertinent Information: Section 2.7 was adopted on an emergency basis on May 14, 1990; § 3.7 was adopted on September 18, 1990.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until November 20, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

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 480-01-1. Public Participation Guidelines for the Formation and Promulgation of Regulations by the Virginia Department of Mines, Minerals and Energy.** The purpose of the proposed action is to allow participation by the public in the formulation of regulations that are written to carry out the legislative mandates of the department and its associated boards and commissions.

The department is considering amendments to comply with changes in the Virginia Administrative Process Act.

Statutory Authority: § 45.1-230 of the Code of Virginia.

Written comments may be submitted until November 20, 1991.

Contact: Bill Edwards, Policy Analyst, Department of Mines, Minerals, and Energy, 2001 W. Broad St.,

Richmond, VA 23220, telephone (804) 367-0330 or toll-free 1-800-552-3831/TDD ☎

Virginia Gas and Oil Board

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Gas and Oil Board intends to consider promulgating regulations entitled: **VR 480-05-22.2. Virginia Gas and Oil Board Regulations.** The purpose of the proposed action is to establish requirements addressing field rules, drilling units and forced pooling, and to govern administrative matters such as application fees and petitions.

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Written comments may be submitted until November 20, 1990.

Contact: B. Thomas Fulmer, Gas and Oil Inspector, Division of Gas and Oil, P.O. Box 1416, 239 Charwood Drive, Abingdon, VA 24210, telephone (804) 628-8115, 676-5501 or toll-free 1-800-552-3831.

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: **VR 662-05-01. Conduct of Flat Racing.** The purpose of the proposed action is to establish conditions under which horses, ridden by jockeys over flat surfaces, shall race.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. 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: **VR 662-05-02. Conduct of Standardbred Racing.** The purpose of the proposed action is to establish the specialized conditions under which trotting and pacing horses, hitched to sulkies, shall be driven in races.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. 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: **VR 662-05-03. Conduct of Steeplechase Racing.** The purpose of the proposed action is to establish the specialized conditions under which horses, ridden by jockeys and racing over fences, shall be conducted.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. 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: **VR 662-05-04. Conduct of Quarter Horse Racing.** The purpose of the proposed action is to establish the specialized conditions under which Quarter Horses, ridden by jockeys, shall be raced.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. 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.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-07. Oil Discharge Contingency Plans and**

General Notices/Errata

Financial Responsibility Requirements. The purpose of the proposed action is to (i) establish the standards, content and requirements of oil discharge contingency plans and plan application; (ii) establish the requirements for maintaining evidence of financial responsibility; (iii) establish a fee for the approval of the required oil discharge contingency plans; and (iv) establish a fee for the approval of the tank vessel evidence of financial responsibility.

Section 62.1-44.34:15 requires operators to have oil discharge contingency plans for tank vessels, with a capacity of 15,000 or more gallons, transporting or transferring oil in state waters; and for facilities, with a storage or handling capacity of 25,000 or more gallons of oil, operating in the Commonwealth. Section 62.1-44.34:16 requires the operator of a tank vessel to deposit, with the board, cash or its equivalent in the amount of \$500 per gross ton. Various means will be allowed to provide the required evidence of financial responsibility. One type of information that would assist the board as it develops these regulations would be to identify those vessels and facilities affected by these regulations.

These regulations will impact all tank vessels, as defined in § 62.1-44.34:14, with a capacity of greater than or equal to 15,000 gallons of oil and those facilities that handle or store oil with a capacity greater than or equal to 25,000 gallons. The financial impact of this section includes costs associated with the development of the oil discharge contingency plans and obtaining financial responsibility mechanisms, as well as the fee authorized by the board for approval of this plan and the fee to be charged for approval of the evidence of financial responsibility required for tank vessels.

The board will hold two public meetings to receive views and comments (see Calendar of Events Section).

Applicable laws and regulations include the State Water Control law, § 62.1-44.2 et seq. of the Code of Virginia and the Federal Oil Pollution Act of 1990 (Public Law No. 101-380).

Statutory Authority: §§ 62.1-44.34:15(10), 62.1-44.34:15 and 62.1-44.34:16 of the Code of Virginia.

Written comments may be submitted until December 21, 1990.

Contact: David Ormes, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-9704.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **VR 675-01-02. Board for Waterworks and Wastewater Works Operators.** The purpose of the proposed action is to initiate a review process to consider adjusting fees charged by the board.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 22, 1990.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534 or toll-free 1-800-552-3016.

GENERAL NOTICES

DEPARTMENT OF LABOR AND INDUSTRY

Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the Federal level. Therefore, the Virginia Department of Labor and Industry is issuing the following notice:

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

(Docket No. H-033-e)

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking; extension of time to submit comments and notices of intention to appear at hearing; rescheduling of informal hearing; clarification regarding submission of Advisory Committee on Construction Safety and Health.

SUMMARY: On July 20, 1990, the Occupational Safety and Health Administration (OSHA) published a notice of proposed rulemaking (NPRM) on Asbestos (55 FR 29712). Today's notice extends the period for the submission of public comments and for the submission of notices of intention to appear at an informal hearing on the NPRM from September 25, 1990, until December 3, 1990. It also reschedules the beginning of the informal hearing from October 23, 1990, to January 23, 1991. These changes are intended to allow interested parties additional opportunity to participate more fully in this rulemaking.

In addition, this notice clarifies that the report of the Advisory Committee on Construction Safety and Health (Exhibit 1-126) discussed in the July 20 NPRM was drafted by the labor representatives on the Committee and was submitted by the entire Committee on OSHA for consideration in this rulemaking.

DATES: Written comments concerning the proposal and notices of intention to appear at the public hearing must be postmarked on or before December 3, 1990. Parties requesting more than 10 minutes for their presentation at the hearing, and parties planning to present documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence not later than December 3, 1990. The hearing will take place in Washington, DC, and will begin at 9:30 a.m. on January 23, 1991.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket H-033e, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N2625, Washington, DC 20210; telephone (202) 523-7894.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241-0064.

Notices of intention to appear at the hearing, testimony, and documentary evidence should be submitted in quadruplicate to Mr. Tom Hall, Division of Consumer Affairs, Docket H-033e, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N3647, Washington, DC 20210; telephone (202) 523-8615.

The informal public hearing will begin at 9:30 a.m. on January 23, 1991, at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3649, 200 Constitution Avenue NW., room N3649, Washington, DC 20210.

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Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the Federal level. Therefore, the Virginia Department of Labor and Industry is issuing the following notice:

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

(Docket No. H-033-d)

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed rule; re-opening of the rulemaking record and reconvening of public hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announced the re-opening of the rulemaking record on non-asbestiform tremolite, anthophyllite and actinolite to allow for the submission of comments and analyses on a recent document submitted to the Agency by the American Thoracic Society (ATS). OSHA is also re-convening the informal public hearing for one day to provide an opportunity for testimony to be presented by the ATS.

DATES: Comments and analyses relevant to issues raised in the ATS final report were to be postmarked on or before October 31, 1990. The one day hearing will begin at 9 a.m. on November 9, 1990.

ADDRESSES: All written materials received will be available for inspection and copying in the Docket Office, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; between the hours of 8:15 a.m. and 4:45 p.m.

The informal public hearing will begin at 9 a.m. on November 9, 1990, at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3649, 200 Constitution Avenue NW., Washington, DC 20210.

General Notices/Errata

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 LABOR AND INDUSTRY

Title of Regulation: VR 425-01-75. Boiler and Pressure Vessel Rules and Regulations.

Publication: 7:2 V.A.R. 218 October 22, 1990.

Correction to Proposed Regulation:

Page 218, summary, line 9 should read:

"...per square inch) or 210° Fahrenheit; and (iv)..."

BOARD OF VETERINARY MEDICINE

Title of Regulation: VR 645-01-1. Regulations Governing the Practice of Veterinary Medicine.

Publication: 6:26 V.A.R. 4318-4339 September 24, 1990.

Correction to Final Regulation:

Page 4318, definition of "Full Service Facility" should read in part:

"...all aspects of health care for small or large animals, or both."

Page 4319, § 1.3 A, line 7, should read:

"...veterinary medicine and holders of certificates *censes* as..."

Page 4319, § 1.3 A, line 12, should read:

"...licensed or certified person as it receives proof..."

Page 4319, § 1.3 C, line 5, should read:

"...regulations to be mailed to any veterinarian, certified ..."

Page 4320, § 1.7 A, should read in part:

"A. Every person authorized by the board to practice veterinary medicine shall, ~~on February 28~~ *before March 1* of every year, pay to the board a renewal fee as prescribed in § 1.10 of these regulations and every holder of a ~~certificate~~ *license* of veterinary..."

Page 4320, § 1.7 B 2, line 1, should read:

"2. Failure to renew the facility permit by ~~February 28~~ *March 1* of each year..."

Page 4323, § 2.4 10, line 2, should read:

"...veterinarian, ~~certified~~ *licensed* veterinary technician, or person..."

Page 4323, § 2.4 11, line 2, should read:

"...veterinarian or a ~~certified~~ *licensed* veterinary technician to..."

Page 4323, § 2.4 13, line 3, should read:

"...surgery suite and adequate recovery area and..."

Page 4324, § 3.2 A 2, line 1, should read:

" § 2. The applicant has been issued a ~~certificate~~ *license* as a..."

Page 4325, § 4.2 D 1, line 5, should read:

"... ~~certified~~ *licensed* veterinary technician."

Page 4326, § 4.3 A, line 3, should read:

"...for small or large animals , or both . All full-service facilities shall..."

Page 4329, § 4.3 A 4 e (7), line 1, should read:

"(7) ~~Anesthetic support~~ Equipment for delivery of

assisted..."

Page 4329, § 4.3 B, line 10, should read:

"...limitations on the scope of practice ~~in~~ *on* a form acceptable..."

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

BOARD FOR ACCOUNTANCY

† December 4, 1990 - 10:30 a.m. — Open Meeting
Capitol Building, House Room One, Capitol Square, Ninth and Grace Streets, Richmond, Virginia.

A meeting to conduct a formal hearing:

File numbers 89-00962 and 89-01300, Board for Accountancy v. Brenda G. Radford.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulations: VR 115-04-12. Rules and Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.

NOTICE: The Board of Agriculture and Consumer Services has decided to hold the record open until 5 p.m., January 22, 1991, on the referenced proposed regulation published July 16, 1990, for the purpose of receiving further public comment. See General Notices in 7:2 VA.R. 321-322 October 22, 1990, for details.

* * * * *

December 6, 1990 - 2 p.m. — Public Hearing
1100 Bank Street, Room 204, Washington Building, 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 115-06-01. Rules Governing the Solicitation of Contributions.** The proposed amendments to the regulation are for the purpose of bringing the regulation into conformity with amendments in the statute; to define certain terms contained in the statute regarding exemption from annual registration; to specify, pursuant to § 57-55.2(i) of the Code of Virginia, the name or names by which a professional solicitor may identify himself and his employer; to standardize documentation required for filing with the Commissioner of the Department of Agriculture and Consumer Services; to establish procedures for compliance with the statute; to consider other measures to enforce laws governing the solicitation of contributions in Virginia (§ 57-48 et seq. of the Code of Virginia), hereinafter referred to as the "Virginia Solicitation of Contributions Law"; and to assure uniform regulation of charitable solicitations throughout the Commonwealth.

PLEASE NOTE:

"The statement of basis, purpose, substance, issues, and impact on proposed regulation VR 115-06-01, Rules Governing the Solicitation of Contributions, published on August 27, 1990, in the Virginia Register (pp. 4045-4047 (Volume 6, issue 24)), states as one of the proposed regulation's purposes the establishment of certain evidence deemed adequate to lift a suspension of registration. This is not one of the purposes of the proposed regulation, and the proposed regulation does not address this matter."

Statutory Authority: § 57-66 of the Code of Virginia.

NOTE: CORRECTION IN WRITTEN COMMENT DATE.

Written comments may be submitted until November 12, 1990.

Contact: Jo Freeman, Chair, Revisions Committee, Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209 or 1100 Bank Street, Room 204, Richmond, VA 23219, telephone (804) 786-1343 or toll-free 1-800-552-9963.

STATE AIR POLLUTION CONTROL BOARD

† December 19, 1990 - 10 a.m. - Public Hearing
Washington County, Board of Supervisors' Meeting Room,
205 Adademy Drive, Abingdon, Virginia.

† December 19, 1990 - 10 a.m. - Public Hearing
Virginia Department of Transportation, Auditorium, 731
Harrison Avenue, Salem, Virginia.

† December 19, 1990 - 10 a.m. - Public Hearing
Auditorium of the Recreation Center, 301 Grove Street,
Lynchburg, Virginia.

† December 19, 1990 - 10 a.m. - Public Hearing
Department of Air Pollution Control, Northeastern Virginia
Regional Office, 300 Central Road, Suite B, Fredericksburg,
Virginia.

† December 19, 1990 - 10 a.m. - Public Hearing
Virginia War Memorial Auditorium, 621 South Belvidere
Street, Richmond, Virginia.

† December 19, 1990 - 2:30 p.m. - Public Hearing
Hampton Roads Planning District Commission, Regional
Building, 723 Woodlake Drive, Chesapeake, Virginia.

† December 19, 1990 - 10 a.m. - Public Hearing
Pohick Regional Library Meeting Room, 6450 Sydenstricker
Road, Burke, 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. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed regulation amendments concerns emission standards for noncriteria pollutants and the amendments are being made in response to problems discovered during the first five years of implementation of these rules. The amendments include changes to the Significant Ambient Air Concentration guidelines and to the method used to determine exemptions. Other changes are made and new provisions are added.

STATEMENT

Purpose: The purpose of the standards is to require the owner to limit source emissions of noncriteria pollutants to a level that will not produce ambient air concentrations that may cause, or contribute to, the endangerment of human health. Unlike most other rules, there are no definitive emission limits in the emission standard itself. However, the rules do provide significant ambient air concentration guidelines as a mechanism for the agency to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the agency. The proposed regulation amendments are being made in response to problems discovered during the implementation of these rules.

Substance: The major provisions of the proposal are summarized below:

1. **Significant ambient air concentrations guidelines.** The proposal amends these guidelines by using averaging times of 1 hour and 1 year instead of 24 hours, and by setting Significant Ambient Air Concentration (SAAC) guidelines for the Threshold Limit Values[®] (TLVs[®]) listed in the American Conference of Governmental Industrial Hygienist (ACGIH) handbook instead of for the categories currently used, carcinogens and non-carcinogens.

2. **Exemption determination.** The proposal replaces the exemption table with exemption formulas for each of the TLVs[®] set in the ACGIH handbook to reflect the change in the SAACs. The assumptions from which the exemption formulas are derived, principally the stack height assumption, are now more representative of the facilities emitting toxic pollutants.

3. **Exemption ceiling.** The proposal amends the exemption ceiling from the current limit of 126.76 pounds per hour at the end of the TLV[®] range of 501 or greater to a new limit of 22.8 pounds per hour or 100 tons per year for all substances.

4. **Potential to emit.** The current rules use uncontrolled emission rates as a basis for the exemption determination and controlled emission rates as a basis for the determining whether a facility meets the SAAC. The proposal uses the potential for a facility to emit a pollutant as the basis for determining both whether a facility is exempt and whether it meets the SAAC. The operational and physical limits set out in a permit define a facility's potential to emit. If no permit exists, facilities must be evaluated as if they are uncontrolled.

5. **Exemption determination for pollutants otherwise regulated.** The absolute exemption for some toxic pollutants otherwise regulated has been changed. Exemptions for these pollutants will be given by the department only after application by the owner and if the regulation under which the pollutant is otherwise governed is based on health effects considerations.

6. **Applicable standards.** The section describing the standards to be met by facilities not exempt under the noncriteria pollutant rules has been clarified to indicate that facilities must both meet the SAAC for pollutants emitted and be evaluated for adequate control technology even if the facility's emissions meet the SAAC. Evaluation of the facility's control technology does not necessarily mean it will be required to add additional controls. The control technology standard in the existing source rule has been expanded to clarify and define what board-directed control technology means.

7. **Appendix R.** Currently exemptions are allowed for

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any modification to a facility based on the increased emissions alone. The proposal amends Appendix R to include all emissions from the plant in determining whether a facility is exempt.

8. Title of regulations. The current title of rules is changed to indicate that the rules govern the emissions of "toxic" pollutants rather than "noncriteria" pollutants. The change is made because of the belief that the public is more familiar with the phrase "air toxic pollutants" than with the phrase "noncriteria pollutants."

9. Consumer product exemptions. The proposal adds a provision to the rules that exempts consumer products used in the same manner as in normal consumer use.

10. Administrative requirements. To provide consistency in administering the program and to communicate the department's expectations to those affected, the proposal adds schedules for the submittal of information and completion of option demonstrations for existing facilities.

11. Compliance requirements for existing sources. The proposal adds an additional requirement for any existing facility found to be emitting a pollutant at a level considerably higher than the SAAC. Any such facility would have to reduce its emissions of that pollutant within an approved timetable through the implementation of controls, without benefit of proceeding through option demonstrations.

12. Public participation. The proposal adds a public participation requirement for any facility emitting a substance above the SAAC whose owner chooses to demonstrate that those emissions do not endanger human health. Choosing this option will require that the demonstration will be subject to public comment and an optional public hearing.

Issues. The noncriteria pollutant program regulations were promulgated in 1985 to protect public health by setting significant ambient air concentration guidelines for all existing and new facilities emitting air toxic substances not already covered by federal regulations. A number of problems with these regulations have been discovered during their implementation. The issue is whether the proposed amendments solve these problems. The major changes to these rules concern two of these problems.

First, the exemption table used in both the existing and new source noncriteria pollutant rules was developed to provide a mechanism for source owners, especially small source owners, to determine whether their facilities are exempt without the use of modeling. The exemption table was based on what was considered at the time to be worst-case emission and stack parameter assumptions, using a model that incorporated worst-case meteorological data. Program experience has proved that the assumptions

used were not worst-case for many sources. For instance, many sources emit substances through vents no higher than ten feet and some as low as six feet. However, the stack height assumption used to develop the exemption table was 30 feet, a less conservative parameter. The screening model originally used to develop the exemption table is no longer in general use and has been replaced with a model that has more options and gives more detailed data. Also, several new screening models are now available which provide further options, including the ability to model various types of terrain. The availability of these models provides more conservative and more accurate methods of calculating levels of exemptions.

A second problem is the time frame set for the ambient air concentration guidelines. The noncriteria rules establish 24-hour ambient air concentration guidelines. However, many facilities encountered during program evaluations have been found to emit toxic substances on an infrequent basis and others emit toxic substances as "puffs" over short time-spans. Another problem related to the time frame of concern is that some compounds have short-term effects, and other have long-term effects. What is seen are two time-related conditions. One condition is that 24-hours-a-day, 7-days-a-week operations are not necessarily the norm for facilities emitting air toxics. The second condition is that the health effects from exposure to air toxic pollutants are related to the length of exposure. Exposure to some of these pollutants produces an immediate effect while exposure to other pollutants produces no harmful effect unless the exposure is chronic and happens over a long time.

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law, Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

Impact:

Sources affected and their costs.

All stationary sources that emit noncriteria pollutants and are not exempt from the noncriteria pollutant rules are affected currently by these rules. The department estimates that approximately 4500 existing facilities emit noncriteria pollutants and 250 new or modified facility permit applications are received every year which require noncriteria pollutant evaluation.

The proposed amendments affect which of these facilities may be exempt from the rules, and which may exceed the Significant Ambient Air Concentration (SAAC) guidelines that any facility not exempt from the rules must meet. However it is impossible to determine how many of the facilities not yet evaluated will be exempt, or will emit at levels that produce ambient air concentrations below the guidelines because the operating characteristics, emissions and siting of each facility are different.

In reviewing a sample of facilities that have already

been evaluated under the current rules to see how they would fare under the proposed amendments, certain conclusions may be drawn. It is important to understand that this is a small sample which may not be representative of the facilities yet to be evaluated and that the sample tells more about the substances evaluated than the facilities. Nine facilities emitting 149 substances were analyzed. Of these 149 substances, 132 substances or 89% showed no change in their exemption status and in whether they exceeded the SAAC guideline or not. The predominant effect in the 11% that showed a difference was in the exemption determination. There is approximately a 5.0% increase overall in substances not meeting the SAAC guidelines but this increase is only one-half of 1.0%. The overall increases take into account that some substances, which are exempt under the proposal, were not exempt under the current rules. However this does not indicate whether or not an individual facility will be exempt from the rules. Each facility's operation, emissions, and siting is different, and these variables affect whether a facility is exempt from the rules or if it will exceed the SAAC guidelines for each substance emitted. Because of these differences any cost estimates made for an individual facility would have little meaning.

Impact on the department.

The costs to the agency will increase minimally due to the increase in substances no longer exempt from the rules and those few substances that will now exceed the SAAC guidelines that would not exceed the guidelines under the current rules. As discussed in the paragraph above, about 5.0% more substances will be subject to the rules under the proposed amendments. The current annual cost to the agency to run the noncriteria pollutant program is approximately \$800,000.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until January 18, 1991, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. 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

November 26, 1990 - 9:30 a.m. - Open Meeting
December 10, 1990 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, LAND SURVEYORS, PROFESSIONAL ENGINEERS AND LANDSCAPE ARCHITECTS

November 29, 1990 - 9 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia. ☐

A meeting to (i) approve minutes of October 3, 1990, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

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.

VIRGINIA COMMISSION FOR THE ARTS

November 28, 1990 - 9 a.m. - Open Meeting
Berkeley Hotel, 12th and Cary Streets, Richmond, Virginia.
☐

A quarterly meeting (Grant Round).

Contact: Commission for the Arts, James Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219-3683, telephone (804) 225-3132.

ATHLETIC BOARD

NOTE: CHANGE IN DATE AND LOCATION
November 30, 1990 - 10 a.m. - Open Meeting
3600 West Broad Street, Room 580, Richmond, Virginia. ☐

A meeting to discuss rules and regulations.

Contact: Doug Beavers, Assistant Director, 3600 W. Broad St., Room 580, Richmond, VA 23230, telephone (804) 367-8507.

AUCTIONEERS BOARD

† December 19, 1990 - 10 a.m. - Open Meeting
Board of Supervisors Conference Room, Massey Building, A Level, 4100 Chain Bridge Road, Fairfax, Virginia.

A meeting to conduct a formal hearing:

File numbers 90-00117 and 90-00044, Board for Auctioneers v. Anwar M. Khan.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230,

Calendar of Events

telephone (804) 367-8524.

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† **December 11, 1990 - 10 a.m.** – Public Hearing
Department of Commerce, 3rd Floor, Room #395, 3600
West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Auctioneers Board intends to amend regulations entitled: **VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board.** The proposed amendments will adjust fee structure of the board and bring its application in line with these adjustments for auctioneers in the Commonwealth of Virginia.

STATEMENT

Pursuant to §§ 54.1-113 and 54.1-602 of the Code of Virginia, the Virginia Auctioneers Board proposes to amend its regulations to adjust fees for registration, certification, renewal, and reinstatement. These regulations apply directly to 1285 certified/registered auctioneers and 165 auction firms in Virginia.

The purpose of the proposed amendments is to adjust registration/certification, renewal, and reinstatement fees in order to assure that the variance between revenues and expenditures so the board does not exceed 10% in any beinnium as required by § 54.1-113 of the Code.

Statutory Authority: §§ 54.1-113 and 54.1-602 of the Code of Virginia.

Written comments may be submitted until January 18, 1991.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917, telephone (804) 367-8534.

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

† **December 13, 1990 - 10 a.m.** – Open Meeting
1606 Santa Rosa Road, Richmond, Virginia ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23220-5005, telephone (804) 662-9907.

VIRGINIA BOATING ADVISORY BOARD

† **November 27, 1990 - 10 a.m.** – Open Meeting
Solomon's Hotel, Conference Center and Marina, Routes 2 and 4, Solomon's Island, Maryland.

A joint meeting with Maryland's Boat Act Advisory Committee for discussion of issues affecting the recreational boaters of Maryland and Virginia.

Contact: Wayland W. Rennie, Chairman, 8411 Patterson Ave., Richmond, VA 23220, telephone (804) 740-7206.

DEPARTMENT FOR CHILDREN

State-Level Runaway Youth Services Network

December 6, 1990 - 10:30 a.m. – Open Meeting
Department of Corrections, 6900 Atmore Drive, Rooms 2103-2104, Richmond, Virginia. ☒

A general meeting open to the public.

Contact: Dr. Joseph McGreal, Deputy Director, Virginia Department for Children, 805 East Broad Street, 11th Floor, Richmond VA 23219, telephone (804) 786-5990.

BOARD OF COMMERCE

January 10, 1991 - 1 p.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

This meeting is scheduled to coincide with convening of the General Assembly short session. Members will meet in the morning with legislators; the afternoon meeting will address legislation expected to have an impact upon the department.

Contact: Alvin D. Whitley, Staff Assistant to the Board of Commerce, Department of Commerce, 3600 W. Broad St., Fifth Floor, Richmond, VA 23230, telephone (804) 367-8564, SCATS 367-8519 or toll-free 1-800-552-3016.

COMPENSATION BOARD

November 29, 1990 - 5 p.m. – Open Meeting
December 20, 1990 - 5 p.m. – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Catoctin Creek Scenic River Advisory Board

November 30, 1990 - 2 p.m. – Open Meeting
Waterford, Virginia.

Review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or 786-2121/TDD ☎

Falls of the James Scenic River Advisory Board

† **December 14, 1990 - noon** – Open Meeting
Planning Commission Conference Room, 5th Floor, City Hall, Richmond, Virginia.

December 21, 1990 - noon – Open Meeting
Planning Commission Conference Room, 5th Floor, City Hall, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23209, telephone (804) 786-4132 or 786-2121/TDD ☎

Virginia Soil and Water Conservation Board

† **December 5, 1990 - 9 a.m.** – Open Meeting
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg, Virginia.

Bimonthly meeting held in conjunction with VA Association Soil and Water Conservation Districts Annual Meeting.

† **January 17, 1991 - 9 a.m.** – Open Meeting
Colonial Farm Credit, 6525 Mechanicsville Turnpike, Williamsburg, Virginia.

Bimonthly board meeting.

Contact: Donald L. Wells, Deputy Director, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23210, telephone (804) 786-2064.

Staunton River Scenic River Advisory Board

† **November 29, 1990 - 7 p.m.** – Open Meeting
Community Center, Main Street, Brookneal, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203

Governor Street, Suite 326, Richmond, VA 23209, telephone (804) 786-4132 or 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† **November 27, 1990 - 8:30 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia. ☒

8:30 a.m. Recovery Fund Committee will consider claims filed against the Virginia Contractor Transaction Recovery Fund.

Noon. Board of Contractors will address policy and procedural issues as well as other routine business matters.

2 p.m. Applications Review Committee will review applications with convictions and/or complaints for Class A Contractor licenses and Class B registrations.

These meetings are open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Vickie L. Brock, Recovery Fund Administrator, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8561 or toll-free 1-800-552-3016.

BOARD OF CORRECTIONS

December 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.

Contact: Ms. Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

† **November 26, 1990 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review correspondence; (ii) review applications; (iii) review enforcement cases; (iv) discuss emergency nail regulations; and (v) consider routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

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Calendar of Events

† **January 18, 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 Cosmetology intends to amend regulations entitled: **VR 235-01-02. Board for Cosmetology Regulations**. The proposed amendments change the fees charged by the board to ensure compliance with § 54.1-113 of the Code of Virginia.

STATEMENT

Pursuant to § 54.1-201(5) of the Code of Virginia and in accordance with § 9-6.14:17.1, the Board for Cosmetology proposes to amend its regulations to ensure compliance with § 54.1-113 of the Code of Virginia. Estimated/Impact:

1. The regulations apply directly to approximately 95 licensed cosmetology schools, 1,015 certified cosmetology instructors, 5,240 licensed cosmetology salons, and 34,374 licensed cosmetologists.

2. The projected cost for the regulated entities is \$624,135.00 biennially.

3. The agency anticipates no material cost for implementation of the reporting requirement.

4. User fee.

The proposed regulations are necessary to comply with § 54.1-113. Without the proposed fee increases it is projected in the 90-92 biennium that the board will not have enough revenue to cover its expenses.

Clarity and simplicity were assured in the drafting of the proposed regulations by the board.

The board anticipates that the impact to small businesses will be approximately an additional \$20 per biennium.

Statutory Authority: §§ 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until January 18, 1991.

Contact: Roberta L. Banning, Assistant Director, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

BOARD OF DENTISTRY

† **December 6, 1990 - 8:30 a.m.** – Open Meeting

† **December 7, 1990 - 8:30 a.m.** – Open Meeting

1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia.

A meeting to consider the following committee reports: Regulatory Committee, Advertising Committee,

Executive Committee, Legislative Committee, Budget Committee, Exam Committee, and to consider regular board business and formal hearings.

The public may observe the meeting; however, no comments from the public will be accepted on any item except the following:

Regulatory Committee (comments accepted during discussion of item).

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

BOARD OF EDUCATION

November 27, 1990 - 9 a.m. – Open Meeting

November 28, 1990 - 9 a.m. – Open Meeting

James Montroe Building, Conference Rooms D and E, 101 North Fourteenth Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold its 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, Department of Education, P.O. Box 6-1, Richmond, VA 23216, telephone (804) 225-2540.

GOVERNOR'S COMMISSION ON EDUCATIONAL OPPORTUNITY FOR ALL VIRGINIANS

NOTE: CHANGE IN MEETING LOCATION

December 5, 1990 - 9:30 a.m. – Open Meeting

Monroe Building, Conference Rooms D & E, 1st Floor, Richmond, Virginia. ☒

A full commission meeting.

Contact: Kris Ragan, Staff, P.O. Box 1422, Ninth Street Office Bldg., Room 329, Richmond, VA 23211, telephone (804) 786-1688.

STATE BOARD OF ELECTIONS

† **November 26, 1990 - 10 a.m.** – Open Meeting

State Capitol, House Room 2, Richmond, Virginia. ☒

A meeting to ascertain and certify the results of the November 6, 1990, general and special elections.

Contact: Lisa M. Strickler, Executive Secretary Senior, 200 North 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551 or toll-free 1-800-552-9745/TDD ☒

EMERGENCY MEDICAL SERVICES ADVISORY BOARD

† November 29, 1990 - 7 p.m. - Open Meeting
Holiday Inn, Portsmouth on the Waterfront, Portsmouth,
Virginia. ☒

Executive Committee

† November 30, 1990 - 1 p.m. - Open Meeting
Holiday Inn, Portsmouth on the Waterfront, Portsmouth,
Virginia. ☒

A quarterly meeting.

Contact: Gary Brown, Assistant Director, Division of
Emergency Medical Services, 1538 E. Parham Road,
Richmond, VA 23228, telephone (804) 371-3500.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

December 6, 1990 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, 10,001
Ironbridge Road, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund
Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services
Coordination, Chesterfield Fire Department, P.O. Box 40,
Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - GATE CITY

November 27, 1990 - 1:30 p.m. - Open Meeting
County Office Building, 112 Water Street, Gate City,
Virginia. ☒

Update of proposed changes to Sara, Title III Annex
to Scott County's Emergency Plan.

Contact: Barbara Edwards, 112 Water Street, Suite 1, Gate
City, VA 24251, telephone (703) 386-6521.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF MANASSAS, CITY OF MANASSAS PARK AND COUNTY OF PRINCE WILLIAM

† December 17, 1990 - 1:30 p.m. - Open Meeting
1 County Complex Court, Prince William, Virginia. ☒

A meeting to discharge the provisions of SARA Title
III.

Contact: Thomas J. Hajduk, Information Coordinator, 1
County Complex Court, Prince William, VA 22192-9201,
telephone (703) 335-6800.

LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

November 21, 1990 - 9 a.m. - Open Meeting
Salem Civic Center, Room C, 1001 Roanoke Boulevard,
Salem, Virginia. ☒

Local emergency preparedness committee meeting as
required by SARA Title III.

Contact: Danny W. Hall, Fire Chief Coordinator, Salem
Department of Emergency Services, 105 S. Market St.,
Salem, VA 24153, telephone (703) 375-3080.

FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

Board of Trustees

NOTE: CHANGE IN MEETING TIME

December 7, 1990 - 9 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 fall fundraising
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.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

November 27, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond,
Virginia. ☒

FDE Informals.

November 28, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Rooms 3 and 4,
Richmond, Virginia. ☒

At 9 a.m. - FDE Examinations given.

At 1 p.m. - FDE Board Meeting.

December 14, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond,
Virginia. ☒

FDE Informals.

Contact: Meredyth P. Partridge, Executive Director, 1601
Rolling Hills Dr., Richmond, VA 23229-5005, telephone
(804) 662-9907.

Calendar of Events

VIRGINIA GAS AND OIL BOARD

November 20, 1990 - 9 a.m. – Open Meeting
University of Virginia, Southwest Center, U.S Highway 19,
two miles north of Abingdon, Virginia. ☒

The board will receive comments on its intention to consider adoption of regulations to establish requirements addressing field rules, drilling units and forced pooling, and to govern administrative matters such as application fees and the filing of petitions. The board also will consider pending applications for forced pooling, and to establish drilling units and field rules.

Contact: B. Thomas Fulmer, Gas and Oil Inspector, Division of Gas and Oil, P.O. Box 1416, 230 Charwood Drive, Abingdon, VA 24210, telephone (703) 628-8115, SCATS 676-5501 or toll-free 1-800-552-3831/TDD ☎

GEORGE MASON UNIVERSITY

† **November 27, 1990 - 5 p.m. – Open Meeting**
George Mason University, Mason Hall, Board Room #23,
Fairfax, Virginia. ☒

Student Affairs Committee meeting.

Board of Visitors

November 28, 1990 - 4 p.m. – Open Meeting
George Mason University, Mason Hall, Board Room #23,
Fairfax, Virginia. ☒

A regular meeting of the Board of Visitors of George Mason University whereby the board will hear reports of recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Standing Committees will meet during the day
November 28.

Contact: Ann Wingblade, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 764-7904.

BOARD OF HEALTH PROFESSIONS

Administration and Budget Committee

† **December 5, 1990 - 10 a.m. – Open Meeting**
Koger Center, 1606 Santa Rosa Road, Culpeper Building,
1st Floor, Richmond, Virginia. ☒

A meeting to consider department budget, General Fund Assessments and Fund Transfers.

Executive Committee

† **December 5, 1990 - 1 p.m. – Open Meeting**
Koger Center, 1601 Santa Rosa Road, Culpeper Building,
1st Floor, Richmond, Virginia. ☒

A meeting to consider matters requiring Executive Committee attention.

Contact: Richard Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9919.

DEPARTMENT OF HEALTH

Radiation Advisory Board

† **December 5, 1990 - 9 a.m. – Open Meeting**
State Capitol Building, House Room 1, Richmond, Virginia.
☒

The department will inform the Radiation Advisory Board of its activities regarding radiation protection and solicit the board for their comments. Public comment will not be received.

Contact: Leslie P. Foldesi, Director, Madison Bldg., Room 914, 109 Governor St., Richmond, VA 23219, telephone (804) 786-5932 or 1-800-468-0138.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

November 27, 1990 - 9:30 a.m. – Open Meeting
† **December 18, 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 ☎

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December 21, 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 Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations if the Virginia Health Services Cost Review Council.** The proposed amendments will allow investor-owned institutions organized as proprietorships, partnerships, or S-corporations to have their income tax imputed into the aggregate cost of operating the

facility to allow them to be treated similarly to corporations.

Statutory Authority: §§ 9-158 and 9-164 of the Code of Virginia.

Written comments may be submitted until December 21, 1990.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† November 20, 1990 - 10:30 a.m. - Open Meeting
Office of the Preservation Alliance of Virginia, 601 East Market Street, Richmond, Virginia.

A general business meeting.

Contact: Margaret T. Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

DEPARTMENT OF HISTORIC RESOURCES

Virginia War Memorial Commission

† November 19, 1990 - 1:30 p.m. - Open Meeting
Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia. ☒

A general business meeting.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or 786-1934.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 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 Committee 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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

November 20, 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; (iv) consider and, if appropriate, approve proposed Rules and Regulations for Allocation of Elderly and Disabled Low-Income Housing Tax Credits; and (v) consider such other matters and take such other actions as it 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

December 12, 1990 - 2 p.m. - Open Meeting
Koger Executive Complex, Blair Building, Conference Room C, 8007 Discovery Drive, Richmond, Virginia.

A regular meeting to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Secretary Manager, 8007 Discovery Drive, Richmond, VA 23229-9285, telephone (804) 662-9285 or 1-800-552-7096/TDD ☎

COUNCIL ON INFORMATION MANAGEMENT

† December 14, 1990 - 9 a.m. - Open Meeting
Washington Building, 9th Floor Conference Room, 1100 Bank Street, Richmond, Virginia.

A regular business meeting to consider adoption of certain information technology resource management policy, standard and guidelines.

Contact: Linda Hening, Administrative Assistant, Washington Building, Suite 901, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-225-3624/TDD ☎

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

† December 14, 1990 - 8:30 a.m. - Open Meeting
Office of the Coordinator, Interdepartmental Regulation,

Calendar of Events

1603 Santa Rose Road, Tyler Building, Richmond, Virginia.
☐

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **December 4, 1990 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 2, Capitol Square, Richmond, Virginia. ☐

An open meeting without public comment period to:
(i) review the response of Dorey Electric Company;
and (ii) consider staff proposal on evaluation and selection of related instruction agents.

Contact: Robert S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2381.

Safety and Health Codes Board

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.

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.

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January 8, 1991 - 10 a.m. - Public Hearing
Virginia Housing Development Authority, Conference Center #1, 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 Safety and Health Codes Board intends to amend regulations entitled: **VR 425-01-75. Boiler and Pressure Vessel Rules and Regulations.** Included in these proposed amendments are changes due to required departmental regulatory review and a requirement for the National Board "R" Stamp for organizations performing repairs and alterations to boilers and pressure vessels.

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Written comments may be submitted until December 28, 1990, to Anna Bradley, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241.

Contact: Jim Hicks, Director of Boiler and Pressure Vessel Safety, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-3262.

LOCAL GOVERNMENT ADVISORY COUNCIL

November 19, 1990 - 1 p.m. – Open Meeting
The Homestead, Hot Springs, Virginia. ☐

A regular meeting of the Local Government Advisory Council which will be held in conjunction with the 1990 annual conference of the Virginia Association of Counties. There will be a public comment period. The LGAC will discuss future agenda topics.

Persons desiring to participate in the council's public comment period and requiring special accommodations or interpreter services should contact the Council's offices by November 12, 1990.

Contact: Robert H. Kirby, Secretary, 702 Eighth Street Office Building, 805 East Broad St., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

MARINE RESOURCES COMMISSION

November 27, 1990 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☐

The Commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The Commission will hear and decide fishery management items at approximately 2 p.m.: regulatory proposals; fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings 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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

November 23, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.7. Client Appeals**. This proposed regulation will govern the appeal process of Medicaid recipients.

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

Written comments may be submitted until 4:30 p.m., November 23, 1990, to Marsha Vandervall, Director Division of Client Appeals, DMAS, 600 E. Broad St., 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.

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December 7, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.11. Home and Community-Based Services to Individuals with Acquired Immune Deficiency Syndrome and Aids Related Complex**. This regulation will provide for home and community based services for individuals with AIDS/ARC.

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

Written comments may be submitted until 4:30 p.m., December 7, 1990, to Chris Pruett, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad St., 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.

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† January 18, 1991 – 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-02-2.6100 Eligibility Conditions and Requirements; VR 460-03-2.6113, § 1924 Provisions; and VR 460-04-8.6, Spousal Impoverishment**. This proposed regulation intends to promulgate permanent regulations consistent with the Medicare Catastrophic Coverage Act of 1988 re-eligibility rules for persons institutionalized for a continuous period.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

The Medicare Catastrophic Coverage Act (MCCA) of 1988 established new rules in the Social Security Act for determining eligibility of persons who are likely to be institutionalized for a continuous period in a medical institution or a nursing home, or who are likely to receive home and community-based waiver services for a continuous period.

Purpose: The purpose of this proposal is to promulgate regulations which define new methods for determining income and resource eligibility.

Summary and Analysis: This Plan amending and regulatory action affects Attachment 2.6 A and the Spousal Impoverishment regulations at VR 460-04-8.6.

The provisions of § 1924 of the Social Security Act define new methods for determining income and resource eligibility and set forth a new method of computing post-eligibility income for institutionalized individuals who have spouses and dependent relatives at home. These new requirements allow a community spouse (or other dependent relative) of a nursing home patient a minimum income allowance for basic living expenses, and protect a specified amount of the resources which the institutionalized spouse owns individually or jointly with the community spouse. In this way, the community spouse is not completely impoverished in order for the institutionalized spouse to become eligible for Medicaid.

Calendar of Events

The regulation is based upon the statutory language where that is clear, and upon the interpretive guidelines obtained from HCFA where interpretation is required. The levels of income and resource standards are the minimum required by federal law.

The federal statute allows states to apply these income and resource rules to individuals in home and community-based care waiver programs. These individuals receive services intended to prevent their entering nursing homes. The Department evaluates eligibility for these individuals in the same manner as if they were institutionalized. This similar treatment ensures that individuals are not forced to enter nursing homes to become eligible for Medicaid if services in their private homes would cost Medicaid less than nursing home care. Failure to implement spousal allowance rules for both groups simultaneously could result in unnecessary and more expensive nursing home placements for individuals who otherwise would remain at home under the waiver program.

Impact: The spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 have been budgeted for in the process associated with the entire Catastrophic Coverage Bill as previously submitted in the Department's budget. Therefore, no additional fiscal impact is anticipated for fiscal years 1991 and 1992 above that already projected in the DMAS biennium budget. These funds were appropriated to the Department by the 1990 General Assembly.

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

Written comments may be submitted until 4:30 p.m., January 18, 1991, to Ann E. Cook, Regulatory and Eligibility Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 E. Broad St., 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.

BOARD OF MEDICINE

† December 5, 1990 - 9 a.m. - Open Meeting
† December 6, 1990 - 9 a.m. - Open Meeting
Springfield Hilton, 6550 Loisdale Road, Springfield, Virginia. ☒

The Informal Conference Committee of the board 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 of the Code of Virginia.

Public comment will not be received.

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9908.

December 8, 1990 - 9 a.m. - Open Meeting
December 9, 1990 - 9 a.m. - Open Meeting
The Boar's Head Inn, Charlottesville, Virginia. ☒

The board and its staff will meet to plan for accomplishing the work as assigned to it. No public comments will be received. No regular business of the board will be conducted.

Chiropractic Test Committee

November 29, 1990 1 p.m. - Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The board of Medicine Chiropractic Test Committee will meet in executive and closed session to develop test items for chiropractic examination.

The Chiropractic Test Committee will not receive public comment.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone 662-9925

† January 19, 1991 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-01-01. Public Participation Guidelines.** The amendments to this regulation establish requirements for filing a re-petition for proposed amendments by the public on specific issues previously acted on by the Board of Medicine.

STATEMENT

Purpose: The proposed amendments to the Public Participation Guidelines establish the requirements for re-petitioning the board on issues or regulations which have previously been acted upon by the board.

Estimated Entities and Impact:

Regulated entities: There are 28,900 Doctors of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, Acupuncture, Interns and Residents, which also include Physicians' Assistants, Physical Therapists, and Respiratory Therapy Practitioners, that are licensed and certified to practice the healing arts in Virginia.

Projected costs to regulated entities: The proposed

amendment will impact the public who elect to petition or re-petition the board for regulation changes.

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

Written comments may be submitted until January 19, 1991, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9925.

Advisory Committee on Radiological Technology

November 30, 1990 - 2 p.m. - Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to review proposed regulations VR 465-10-01, regulating the certification of Radiological Therapy Practitioners, and other such matters that may come before the Committee.

Public comments may be received at the conclusion of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229, telephone (804) 662-9925.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **December 11, 1990 - 6 p.m. - Open Meeting**
See agenda for location.

A committee meeting and informal session.

† **December 12, 1990 - 10 a.m. - Open Meeting**
James Monroe Building, 13th Floor Conference Room, Central Office, 109 Governor Street, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be published on December 5 and may be obtained by calling Jane Helfrich.

Joint Board Liaison Committee

† **December 7, 1990 - 10 a.m. - Open Meeting**
Henrico Department of Health, Parham and Hungry Springs Road, Richmond, Virginia. ☒

A quarterly meeting of the Joint Board Liaison Committee comprised of representatives of the Boards of Education, Health, Mental Health, Mental Retardation and Substance Abuse Services, Rehabilitative Services and Social Services. Agenda items include topics of common interest and the

development of joint policies relative to clients who are mutually served.

Contact: Jane Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

State Human Rights Committee

† **December 14, 1990 - 9 a.m. - Open Meeting**
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Monroe Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting of the State Human Rights Committee to discuss business relating to human rights issues. Agenda items are listed prior to the meeting.

Contact: Elsie D. Little, ACSW, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

BOARD OF NURSING

November 26, 1990 - 9 a.m. - Open Meeting
November 27, 1990 - 9 a.m. - Open Meeting
November 28, 1990 - 9 a.m. - Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A regular meeting to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement and other matters under the jurisdiction of the board. At 1:30 p.m. on Monday, November 26, 1990, the board will consider oral and written comments received during the comment period which ended on October 27, 1990, on proposed regulations related to the authority of licensed practical nurses to teach aides. The board will develop responses to comments, and take action on the proposed regulations.

Public comment on other matters will be received during an open forum session beginning at 11:00 a.m. on Monday, November 26, 1990.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☒

BOARD OF NURSING HOME ADMINISTRATORS

December 5, 1990 - 9 a.m. - Open Meeting
NOTE: CHANGE IN LOCATION

Calendar of Events

1601 Rolling Hills Drive, Conference Rooms 3 and 4, Richmond, Virginia. ☒

Nursing Home Administrators Examinations.

December 6, 1990 - 8:30 a.m. – Open Meeting
1601 Rolling Hills Drive, Conference Rooms 3 and 4, Richmond, Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9907.

JOINT BOARDS OF NURSING AND MEDICINE

Special Conference Committee

November 28, 1990 - 2 p.m. – Open Meeting
Department of Health Professions, Conference Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A meeting to conduct an informal conference with a licensee.

Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☎

VIRGINIA OUTDOORS FOUNDATION

December 10, 1990 - 10:30 a.m. – Open Meeting
State Capitol, House Room 2, Richmond, Virginia. ☒

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-5539.

BOARD OF PSYCHOLOGY

† **December 7, 1990 - 10 a.m. – Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Informal hearings.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9913.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **December 10, 1990 - 10 a.m. – Open Meeting**
110 South Seventh Street, Richmond, Virginia.

The Virginia Public Telecommunications Board's staff in the Department Information Technology will conduct a teleconference to receive comments by interested parties on the proposed Master Plan for Public Telecommunications. Teleconference locations will be in Roanoke, Norfolk, Harrisonburg, Fairfax and Richmond. Contact, by December 7, the address below to preregister or submit written comments.

Contact: Mamie White, Administrative Assistant to the Virginia Public Telecommunications Board, 110 South 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 344-5522.

REAL ESTATE APPRAISER BOARD

November 27, 1990 - 1:30 p.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Fifth Floor, Conference Room One, Richmond, Virginia.

An organizational meeting of the board for the purpose of planning. Agenda will consist of discussion of regulatory issues.

Contact: Demetra Y. Kontos, Assistant Director, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-2175 or toll-free 1-800-552-3016.

REAL ESTATE BOARD

November 27, 1990 - 10 a.m. – Open Meeting
November 28, 1990 - 10 a.m. – Open Meeting
Council Chambers, Municipal Building, 4th Floor, 215 Church Street, Roanoke, Virginia.

The board will conduct a formal hearing: File Numbers 86-00183, 87-01417, 8801102, Real Estate Board v. Floyd Earl Frith and Kenneth Gusler, Jr.

† **December 10, 1990 - 10 a.m. – Open Meeting**
Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia.

The board will conduct a formal hearing: File Number 89-01137, Real Estate Board v. Frank M. Connell, Jr.

† **December 10, 1990 - 1 p.m. – Open Meeting**
Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia.

The board will conduct a formal hearing: File Numbers 83-00336 and 87-01470, Real Estate Board v. H. M. Gradl.

† **December 11, 1990 - 10 a.m. – Open Meeting**
Department of Commerce, 3600 West Broad Street, Fifth

Floor, Richmond, Virginia.

The board will conduct a formal hearing: File Number 88-00968, Real Estate Board v. Richard D. Lyttle.

December 11, 1990 - 2 p.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Fifth Floor, Conference Room One, Richmond, Virginia.

The board will conduct a formal hearing: File Number 89-00933, Real Estate Board v. William S. Ives.

† December 12, 1990 - 10 a.m. - Open Meeting
Board of Supervisors Conference Room, Massey Building, A Level, 4100 Chain Bridge Road, Fairfax, Virginia.

The board will conduct a formal hearing: File Number 88-00473, Real Estate Board v. Irvin L. Barb.

† December 17, 1990- 10:30 a.m. - Open Meeting
Fredericksburg Juvenile and Domestic Relations Court, 601 Caroline Street, Third Floor, Juvenile Courtroom, Fredericksburg, Virginia.

The board will conduct a formal hearing: File Number 88-00749, Real Estate Board v. Nancy Neely.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

BOARD OF REHABILITATIVE SERVICES

† December 13, 1990 - 11 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia ☐

The board will (i) receive department reports, (ii) consider regulatory matters and (iii) conduct the regular business of the board.

Finance Committee

† December 13, 1990 - 9:30 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia ☐

The committee will review monthly financial reports and budgetary projections.

Legislation and Evaluation Committee

† December 13, 1990 - 9:30 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia ☐

A meeting to consider the program evaluation and legislation update.

Program Committee

† December 13, 1990 - 9:30 a.m. - Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia ☐

A meeting to consider the (i) Independent Living Report; (ii) Specific Learning Disability Program Update; and (iii) WWRC Program Report.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019 TDD or Voice or (804) 367-0280/TDD ☐

STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† December 5, 1990 - 10 a.m. - Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia.

A meeting to hear and render a decision on all appeals of denials of on-site sewage disposal system permits.

Contact: Deborah E. Randolph, 109 Governor St., Room 500, Richmond, VA 23219, telephone (804) 786-3559.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

November 23, 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 adopt regulations entitled: **VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.** The purpose of the proposed amendment is to revise the entitlement date policy to require that when an application is approved in the month of application, entitlement will begin with the date of authorization.

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

Written comments may be submitted until November 23, 1990, to Mr. Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Dr., Richmond, VA 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

* * * * *

November 24, 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 adopt regulations entitled: **VR 615-53-01. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement federal

Calendar of Events

requirements related to welfare reform pursuant to Federal Public Law 100-485.

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

Written comments may be submitted until November 24, 1990.

Contact: Margaret Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9182.

January 3, 1991 - 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 adopt regulations entitled: **VR 615-01-35. Monthly Reporting in the Food Stamp Program.** This regulation requires monthly reports from all Food Stamp households that are required to file them for the Aid to Dependent Children Program or which contain at least one person with earnings.

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

Written comments may be submitted until January 3, 1991, to Burt Richman, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

† **January 18, 1991** - 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 adopt regulations entitled: **VR 615-01-34. Aid to Dependent Children-Unemployed Parent (ADC-UP) Program.** The purpose of the proposed amendments is to limit the number of months to which a family may receive benefits to six months in a 12-consecutive-month period.

STATEMENT

Subject: When an ADC-UP case is approved, benefits are limited to six months in a 12-consecutive-month period for unemployed two-parent families who are in need. The proposed policy is an option to states who are not currently operating the ADC-UP Program and are mandated to implement ADC-UP effective October 1, 1990.

Substance: This regulation will mandate that when an application is approved for ADC-UP, benefits will be

limited to six months in a 12-consecutive-month period beginning with the initial month of eligibility for an unemployed two-parent family.

Issues: The issue to be addressed in this regulation is whether the six-month limitation of assistance will be approved.

Basis: Section 63.1-25 of the Code of Virginia and the Family Support Act of 1988, Public Law 100-485.

Purpose: The purpose of this regulation is to adopt the option of limiting assistance to benefits in the ADC-UP Program.

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

Written comments may be submitted until January 18, 1991, to Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Dr., Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF TAXATION

January 4, 1990 - Written comments may be submitted until this date.
General Assembly Building, House Room C, 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 630-2-322.01. Virginia Individual Income Tax: Self-employment Tax Addback and Subtraction.** The purpose of this regulation is to establish the requirements for the addback and subsequent subtraction of self-employment tax for taxable years 1990-1993.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until January 4, 1991.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Department of Taxation, Richmond, VA 23282, telephone (804) 367-8010.

December 7, 1990 - Written comments may be submitted until this date.
General Assembly Building, House Room C, 9th and Broad Streets, 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**

630-2-322.02 Individual Income Tax: Age Subtraction.
This proposed regulation sets forth the age 62 and over income subtraction available to taxpayers.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

December 7, 1990 - Written comments may be submitted this date.
General Assembly Building, House Room C, 9th and Broad Streets, 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 630-3-323.1 Corporation Income Tax: Excess Cost Recovery.** The amendment to the statutory recovery period and percentages for the outstanding balance of ACRS depreciation affects the subtraction claimed by corporate taxpayers. The adoption of this regulation will make the regulation consistent with the changes made to the law.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

December 7, 1990 - Written comments may be submitted until this date.
General Assembly Building, House Room C, 9th and Broad Streets, 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 630-2-492. Declaration of Estimated Income Tax: Failure by Individual to Pay Estimated Tax.** This regulation sets forth the \$150 tax threshold on the underpayment of estimated taxes by an individual.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

December 7, 1990 - Written comments may be submitted until this date.
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-302. Corporation Income Tax: Definitions - "Sales"** and **VR 630-3-414. Corporation Income Tax: Sales Factor.** The amendment to the statutory definition of "sales" affects the computation of the sales factor for multistate corporations with sales of intangible property. The adoption of these regulations will make the regulations consistent with the revised statutory definition and set forth the method for computing net gain from the sale of intangible property for multistate corporations required to compute the Virginia sales factor.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

COMMONWEALTH TRANSPORTATION BOARD

† **December 19, 1990 - 2 p.m.** - Open Meeting
Virginia Department of Transportation, Board Room, 1401 E. Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

† **December 20, 1990 - 10 a.m.** - Open Meeting
Virginia Department of Transportation, Board Room, 1401 E. Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting of the Commonwealth Transportation 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,

Calendar of Events

1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-9950.

TRANSPORTATION SAFETY BOARD

December 14, 1990 - 10 a.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia. ☒

A meeting to discuss various subjects which pertain to
Transportation Safety.

Contact: William H. Leighty, Deputy Commissioner for
Transportation Safety, Department of Motor Vehicles, 2300
West Broad Street, Richmond, VA 23219, telephone (804)
367-6614 or (804) 367-1752/TDD ☎

TREASURY BOARD

November 21, 1990 - 9 a.m. - Open Meeting
101 North 14th Street, James Monroe Building, 3rd Floor,
Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting.

Contact: Laura Wagner-Lockwood, Senior Debt Manager,
Department of the Treasury, P.O. Box 6-H, Richmond, VA
23215, telephone (804) 225-4931.

VIRGINIA RACING COMMISSION

November 20, 1990 - 9:30 a.m. - Open Meeting
VSRS Building, 1204 East Main Street, Richmond, Virginia.
☒

A meeting to review drafts of regulations and to
consider other business that may come before the
Commission.

Contact: William H. Anderson, Policy Analyst, Virginia
Racing Commission, P.O. Box 1123, Richmond, VA 23208,
telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

† **January 12, 1991 - 11 a.m. - Open Meeting**
Administrative Headquarters, 397 Azalea Avenue,
Richmond, Virginia. ☒ (Interpreter for deaf provided upon
request)

The committee meets quarterly to advise the Virginia
Board for the Visually Handicapped on matters related
to serves for blind and visually handicapped citizens
of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397
Azalea Avenue, Richmond, VA 23227, telephone (804)
371-3350, toll-free 1-800-662-2155 or (804) 371-3340/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

December 7, 1990 - 10 a.m. - Public Hearing
Main Floor Conference Room, James Madison Building,
109 Governor Street, Richmond, Virginia.

A public 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,
and the most recent supplement to that Formulary.
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 December 7, 1990,
will be made a part of the hearing record and
considered by the board.

January 17, 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., Richmond, VA 23219,
telephone (804) 786-4326 or (804) 786-3596 (SCATS).

STATE WATER CONTROL BOARD

November 28, 1990 - 7 p.m. - Public Hearing
Virginia Beach City Council Chambers, City Hall Building,
Second Floor, Courthouse Drive, Virginia Beach, Virginia.

November 28, 1990 - 7 p.m. - Public Hearing
Roanoke County Administration Center Community Room,
3738 Brambleton Avenue, S.W., Roanoke, Virginia.

December 4, 1990 - 7 p.m. - Public Hearing
NOTE: CHANGE IN LOCATION
Spotsylvania County General District Courtroom, 9109
Courthouse Road, Spotsylvania, Virginia.

December 5, 1990 - 7 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 adopt regulations entitled: VR

680-15-02. Virginia Water Protection Permit Regulation. The proposed regulation delineates the procedures and requirements to be followed for issuance of a Virginia Water Protection Permit.

Statutory Authority: §§ 62.1-44.15:5 and 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until December 24, 1990, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

Contact: Martin G. Ferguson, Jr., Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-1868.

December 10, 1990 - 7 p.m. - Public Hearing
Virginia Beach City Council Chambers, City Hall Building, Courthouse Drive, Virginia Beach, Virginia.

December 12, 1990 - 7 p.m. - Public Hearing
Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

A public meeting to receive views and comments and to answer questions of the public on the promulgation of regulations entitled Oil Discharge Contingency Plans and Financial Responsibility Requirements.

Contact: David Ormes, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-9704.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 3, 1990 - 8:30 a.m. - Open Meeting
December 4, 1990 - 8:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

An open meeting to conduct regulatory review and routine board business.

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.

COUNCIL ON THE STATUS OF WOMEN

† **December 3, 1990 - 1 p.m. - Open Meeting**
Richmond Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A regular meeting of the Council on the Status of Women to conduct general business and to receive reports from the council standing committees.

Contact: B. J. Northington, Executive Director, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9200 or toll-free 1-800-552-7096/TDD ☐

LEGISLATIVE

VIRGINIA CODE COMMISSION

November 20, 1990 - 10 a.m. - Open Meeting
General Assembly Building, Sixth Floor Conference Room, 910 Capitol St., Richmond, Virginia. ☐

The commission will continue with its revision of Title 65.1.

Contact: Joan W. Smith, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE TO STUDY DIVORCEMENT AND REPRESENTATIVE OFFERING FOR INCLUSION IN THE VIRGINIA PETROLEUM FRANCHISE ACT

† **December 6, 1990 - 2 p.m. - Open Meeting**
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

A working session is scheduled. HJR: 120.

Contact: Maria J. K. Everett, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING ELECTION LAWS

November 27, 1990 - 10 a.m. - Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 82.

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.

JOINT SUBCOMMITTEE STUDYING THE FEASIBILITY OF ESTABLISHING A RESIDENTIAL SCHOOL FOR GIFTED STUDENTS AT MONTPELIER

November 19, 1990 - 2 p.m. - Open Meeting
General Assembly Building, House Room D, Richmond,

Calendar of Events

Virginia.

The initial meeting for the study of the feasibility of establishing a residential school for gifted students at Montpelier. HJR 119.

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

HOUSE OF DELEGATES COURTS OF JUSTICE COMMITTEE

† December 7, 1990 - 9 a.m. - Executive Session
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

An Executive Session to interview judges.

Contact: Mary K. Geisen, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

HOUSE GENERAL LAWS COMMITTEE

† December 19, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

A public hearing has been scheduled by subcommittee No. 2 of the House General Laws Committee for the purpose of receiving input regarding the Property Owners' Association Act.

Contact: Maria J. K. Everett, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES (AIDS)

November 27, 1990 - 10 a.m. - Open Meeting
House Room C, General Assembly Building, Richmond, Virginia.

A meeting to continue their study. HJR 129.

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 LICENSING OF BOAT OPERATORS AND WAYS TO ENHANCE BOATING SAFETY

† December 6, 1990 - 1 p.m. - Open Meeting
General Assembly Building, 6th Floor Conference Room,

Richmond, Virginia.

A final working session. HJR 102.

Contact: Deanna Sampson, Staff Attorney, or Mary K. Geisen, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING MEANS OF REDUCING PREVENTABLE DEATH AND DISABILITY IN THE COMMONWEALTH AND TO EXAMINE THE FEASIBILITY OF IMPLEMENTING A COMPREHENSIVE PREVENTION PLAN IN VIRGINIA

† December 4, 1990 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, Richmond, Virginia.

† December 18, 1990 - 2 p.m. - Open Meeting
State Capitol, House Room 2, Richmond, Virginia.

The committee will meet to continue its study. HJR 179.

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NECESSITY AND DESIRABILITY OF REVISING THE COMMONWEALTHS "COMPARATIVE PRICE ADVERTISING" STATUTE

December 5, 1990 - 10 a.m. - Public Hearing
Virginia Beach Center for the Arts, 2200 Park Avenue, Virginia Beach, Virginia.

A public hearing in a continuation of its study on Comparative Price Advertising. HJR 184.

December 19, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, Richmond, Virginia.

A work session and public hearing in a continuation of its study of the necessity and desirability of revising the Commonwealth's "Comparative Price Advertising" Statute. HJR 184.

Contact: Mary Geisen, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CITIZEN COMMITTEE STUDYING THE NECESSITY OF LEGISLATION REGARDING DANGEROUS DOMESTIC ANIMALS

November 20, 1990 - 10:30 a.m. - Public Hearing
General Assembly Building, 3rd Floor West, Richmond,
Virginia.

A meeting to consider the final draft of
recommendations. SJR 136.

Contact: Liz Sills, 219-86th St., Virginia Beach, VA 23451,
telephone (804) 428-6682.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

November 29, 1990 - 10 a.m. - Open Meeting
December 20, 1990 - 10 a.m. - Open Meeting
General Assembly Building, House Room D, 910 Capitol
Street, Richmond, Virginia.

Statutory Commission, §§ 9-145.11 through 9-145.15
(c.833, 1990).

Agendas have not been set.

Contact: Jeff Finch, Assistant Clerk for Projects and
Research, House of Delegates, P.O. Box 406, Richmond, VA
23203, telephone (804) 786-2227.

JOINT SUBCOMMITTEE STUDYING PROPERTY OWNERS' ASSOCIATION ACT

November 19, 1990 - 10 a.m. - Public Hearing
General Assembly Building, House Room C, Richmond,
Virginia.

A public hearing for the purpose of reviewing House
Bill 247 relating to the Property Owners' Association
Act. HJR 247.

Contact: Maria Everett, Staff Attorney, Division of
Legislative Services, General Assembly Bldg., 910 Capitol
St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 19

- † Historic Resources, Department of
- Virginia War Memorial Commission
- † Local Emergency Planning Committee - City of
Manassas, City of Manassas Park and County of Prince
William
- Local Government Advisory Council
Feasibility of Establishing a Residential School for
Gifted Students at Montpelier, Joint Subcommittee
Studying

November 20

- Code Commission, Virginia
- Gas and Oil Board, Virginia
- † Historic Preservation Foundation, Virginia
- Housing Development Authority, Virginia
- Necessity of Legislation Regarding Dangerous Domestic
Animals, Citizen Committee Studying
- Virginia Racing Commission

November 21

- Emergency Planning Committee, Local - Roanoke
Valley
- Treasury Board

November 26

- Alcoholic Beverage Control Board
- † Cosmetology, Board for
- † Elections, State Board of
- Nursing, Board of

November 27

- † Boating Advisory Board, Virginia
- † Contractors, Board for
- Education, Board of
- Election Laws, Joint Subcommittee Studying
- Emergency Planning Committee, Local - Gate City
- Funeral Directors and Embalmers, Board of
- Health Services Cost Review Council, Virginia
- Human Immunodeficiency Viruses (AIDS), Joint
Subcommittee Studying
- Marine Resources Commission
- Nursing, Board of
- Real Estate Appraiser Board

November 28

- Arts, Virginia Commission for the
- Education, Board of
- Funeral Directors and Embalmers, Board of
- † George Mason University
- Board of Visitors
- Lottery Board, State
- Nursing, Board of
- Nursing and Medicine, Joint Boards of
- Special Conference Committee
- Real Estate Board

November 29

- Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Arts, Virginia Commission for the
- † Conservation and Recreation, Department of
- Staunton River Scenic River Advisory Board
- Compensation Board
- † Emergency Medical Services Advisory Board
- † Medicine, Board of
- Chiropractic Test Committee
- Population Growth and Development, Commission on

November 30

- Athletic Board
- Conservation and Recreation, Department of

Calendar of Events

- Catoctin Creek Scenic River Advisory Board
- Medicine, Board of
- Advisory Committee on Radiological Technology

December 3

- Waterworks and Wastewater Works Operators, Board for
- † Women, Council on the Status of

December 4

- † Accountancy, Board for
- Hopewell Industrial Safety Council
- † Labor and Industry, Department of
- Virginia Apprenticeship Council
- † Reducing Preventable Death and Disability in the Commonwealth and to Examine the Feasibility of Implementing a Comprehensive Prevention Plan in Virginia, Joint Subcommittee Studying
- Waterworks and Wastewater Works Operators, Board for

December 5

- † Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
- Educational Opportunity for All Virginians, Governor's Commission on
- † Health, Department of
- Radiation Advisory Board
- † Health Professions, Board of
- Administration and Budget Committee
- † Medicine, Board of
- Nursing Home Administrators, Board of
- † Sewage Handling and Disposal Appeals Review Board

December 6

- Children, Department for
- State-Level Runaway Youth Services Network
- † Dentistry, Board of
- † Divorcement and Representative Offering for Inclusion in the Virginia Petroleum Franchise Act, Joint Subcommittee Studying
- Early Childhood and Day Care Programs, Joint Subcommittee Studying
- Emergency Planning Committee, Local - Chesterfield County
- † Licensing of Boat Operators and Ways to Enhance Boating Safety, Joint Subcommittee Studying
- † Medicine, Board of
- Nursing Home Administrators, Board of

December 7

- † Dentistry, Board of
- Family and Children's Trust Fund of Virginia
- Board of Trustees
- † House of Delegates Courts of Justice Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Joint Board Liaison Committee
- † Psychology, Board of

December 8

- Medicine, Board of

December 9

- Medicine, Board of

December 10

- Alcoholic Beverage Control Board
- Outdoors Foundation, Virginia
- † Public Telecommunications Board, Virginia
- † Real Estate Board

December 11

- † Real Estate Board

December 12

- Corrections, Board of
- Indians, Council on
- † Mental Health, Mental Retardation and Substance Abuse Services Board, State
- † Real Estate Board

December 13

- † Audiology and Speech Pathology, Board of
- † Health Professions, Department of
- † Rehabilitative Services, Board of
- Finance Committee
- Legislation and Evaluation Committee
- Program Committee

December 14

- † Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- Funeral Directors and Embalmers, Board of
- † Information Management, Council on
- † Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
- Transportation Safety Board

December 17

- † Real Estate Board

December 18

- † Health Service Cost Review Council, Virginia
- † Reducing Preventable Death and Disability in the Commonwealth and to Examine the Feasibility of Implementing a Comprehensive Prevention Plan in Virginia, Joint Subcommittee Studying

December 19

- † Auctioneers, Board for
- Lottery Board, State
- † Transportation Board, Commonwealth

December 20

- Compensation Board
- Population Growth and Development, Commission on

† Transportation Board, Commonwealth

Commonwealth's "Comparative Price Advertising"
Statute, Joint Subcommittee Studying

December 21

Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

January 8, 1991

Labor and Industry, Department of
- Safety and Health Codes Board

January 10, 1991

Commerce, Board of

January 12

† Visually Handicapped, Department for the
- Advisory Committee on Services

January 17

† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

November 19

† House General Laws Committee
Property Owners' Association Act, Joint Subcommittee
Studying

November 26

Water Control Board, State

November 28

Water Control Board, State

December 4

Water Control Board, State

December 5

Necessity and Desirability of Revising the
Commonwealth's "Comparative Price Advertising"
Statute, Joint Subcommittee Studying
Water Control Board, State

December 6

Agriculture and Consumer Services, Department of

December 7

Voluntary Formulary Board, Virginia

December 10

Water Control Board, State

December 11

† Auctioneers Board

December 12

Water Control Board, Virginia

December 19

† Air Pollution Control Board, State
Necessity and Desirability of Revising the

Calendar of Events
